

Item 1

Proposed Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: via Zoom
September 25, 2020

Present: Member Gayle Miller, Chairperson
Representative of the Director of the Department of Finance
Member Andre Rivera
Representative of the State Treasurer, Vice Chairperson
Member Lee Adams
County Supervisor
Member Jeannie Lee
Representative of the Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member Carmen Ramirez
City Council Member
Member Jacqueline Wong-Hernandez
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 Miller called the meeting to order at 10:07 a.m. Executive Director Heather Halsey called the roll and Members Adams, Lee, Miller, Olsen, Ramirez, Rivera, and Wong-Hernandez all indicated that they were present. Chairperson Miller stated that Member Hariri was not able to attend the hearing and Executive Director Halsey confirmed that Mr. Rivera was in attendance for the Treasurer's Office.

APPROVAL OF MINUTES

Chairperson Miller asked if there were any objections or corrections to the May 22, 2020 minutes, however, the Chairperson misspoke and had intended to say "July 24, 2020 minutes" which were what was on the agenda and before the Commission. The September 25, 2020 meeting agenda and Item 2 both clearly indicated that the minutes and transcript documented the July 24, 2020 meeting. Member Olsen made a motion to adopt the minutes. With a second by Member Ramirez, the July 24, 2020 hearing minutes were adopted by a unanimous voice vote of members present.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

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

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

Executive Director Halsey stated that there were no items on consent and swore in the parties and witnesses participating in the Article 7 portion of 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.

TEST CLAIM

Item 3 *SANDAG: Independent Performance Auditor*, 19-TC-03
Public Utilities Code Section 132354.1; Statutes 2017, Chapter 658 (AB 805)
San Diego Association of Governments, Claimant

Commission Counsel Elizabeth McGinnis presented this item and recommended that the Commission adopt the Proposed Decision to deny this Test Claim.

Parties were represented as follows: Amberlynn Deaton appeared on behalf of the claimant. Chris Hill and Brittany Thompson appeared on behalf of the Department of Finance.

Following the parties stating their positions, and discussion between Member Wong-Hernandez and Commission staff, Member Ramirez made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion to adopt the staff recommendation was adopted by a vote of 7-0.

PARAMETERS AND GUIDELINES

Item 4 *Racial and Identity Profiling*, 18-TC-02
Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518); California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229, as added by Register 2017, No. 46¹
City of San Diego, Claimant

Executive Director Halsey stated that Mr. Jeff Jordon, who was not on the witness list, is going to be appearing.

Senior Commission Counsel Christopher Becker presented this item and recommended that the Commission adopt the Proposed Decision and Parameters and Guidelines.

¹ Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

Parties were represented as follows: Captain Jeff Jordon appeared on behalf of the claimant. Chris Hill and Brittany Thompson appeared on behalf of the Department of Finance.

Following the parties stating their positions, and a statement by Member Ramirez, Member Adams made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion to adopt the staff recommendation was adopted by a vote of 7-0.

INCORRECT REDUCTION CLAIM

Item 5 *Local Government Employee Relations, 17-0130-I-01*

Government Code Sections 3502.5 and 3508.5; Statutes 2000, Chapter 901 (SB 739); California Code of Regulations, Title 8, Sections 32132, 32135, 32140, 32149, 32150, 32160, 32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, 60070; Register 2001, Number 49.

Fiscal Year: 2010-2011

City of Monrovia, Claimant

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt the Proposed Decision to deny the Incorrect Reduction Claim.

Parties were represented as follows: Buffy Bullis and Annette Chinn appeared on behalf of the claimant; Gwendolyn Carlos appeared on behalf of the State Controller's Office.

Following the parties stating their positions and discussion between Member Wong-Hernandez, Ms. Bullis, Member Adams, Ms. Chinn, Member Olsen, Member Ramirez, and Commission staff, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Wong-Hernandez, the motion to adopt the staff recommendation was adopted by a vote of 7-0.

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

Item 6 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

Executive Director Heather Halsey stated that no SB 1033 applications have been filed.

REPORTS

Item 7 Legislative Update (info)

Ms. Ortman presented this item and described five bills that the Commission is tracking: SB 287, AB 2395, SB 1371, SB 98, and AB 77.

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

Chief Legal Counsel Camille Shelton presented this item.

- Item 9 Executive Director: Proposed 2021 Hearing Calendar, Workload Update, and Tentative Agenda Items for the December 2020 and January 2021 Meetings (info/action)

Executive Director Halsey presented the proposed 2021 hearing calendar. Member Adams made a motion to adopt the recommended calendar as presented. Member Olsen seconded the motion. Due to an audio malfunction, Chairperson Miller subsequently made a motion for approval and stated that Member Wong-Hernandez seconded the motion. The proposed 2021 hearing calendar was adopted by a unanimous voice vote of members present.

Executive Director Halsey described 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. *City of San Diego v. Commission on State Mandates, State Water Resources Control Board, Department of Finance*
Sacramento County Superior Court, Case No. 2019-80003169
(Lead Sampling in Schools: Public Water System No. 3710020 (17-TC-03))
2. ***On Remand from the California Supreme Court, Case No. S247266, and the First District Court of Appeal, Case No. A148606***
California School Board Association (CSBA) v. State of California et al.
Alameda County Superior Court, Case No. RG11554698
[Multiple Causes of Action on the Mandates Process]

Courts of Appeal:

1. ***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)
Second District Court of Appeal Case No. B292446
[Los Angeles County Superior Court, Case No. BS130730, Related Appeal from 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]
2. ***On Remand from the Third District Court of Appeal, Case No. C070357***
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. C092139
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]

California Supreme Court:

1. *Coast Community College District, et al. v. Commission on State Mandates*, California Supreme Court, Case No. S262663 (Petition for Review Filed June 10, 2010)
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).]

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)(1).

The Commission adjourned into closed executive session at 10:46 a.m., 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 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 11:18 a.m., the Commission reconvened in open session. Chairperson Miller 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 Miller requested a motion to adjourn the meeting. Member Olsen made a motion to adjourn the meeting. Member Wong-Hernandez seconded the motion. The September 25, 2020 meeting was adjourned by a unanimous voice vote at 11:19 a.m.

Heather Halsey
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

PUBLIC MEETING



FRIDAY, SEPTEMBER 25, 2020

10:07 A.M.

MEETING HELD

VIA ZOOM,

A VIDEO COMMUNICATIONS PLATFORM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ORIGINAL

REPORTED BY:

KATHRYN S. SWANK

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A P P E A R A N C E S

(All attendees appeared remotely, via Zoom.)

COMMISSIONERS PRESENT

GAYLE MILLER
Representative for KEELY BOSLER, Director
Department of Finance
(Chair of the Commission)

ANDRE RIVERA
Representative for FIONA MA
State Treasurer
(Vice Chair of the Commission)

JACQUELINE WONG-HERNANDEZ
Representative for BETTY T. YEE
State Controller

JEANNIE LEE
Representative for KATE GORDON, Director
Office of Planning & Research

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member
Local Agency Member

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COMMISSION STAFF

CHRISTOPHER BECKER
Senior Commission Counsel

ERIC FELLER
Senior Commission Counsel

HEATHER A. HALSEY
Executive Director

A P P E A R A N C E S C O N T I N U E D

ELIZABETH MCGINNIS
Commission Counsel

KERRY ORTMAN
Program Analyst

HEIDI PALCHIK
Assistant Executive Director

CAMILLE N. SHELTON
Chief Legal Counsel

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PUBLIC PARTICIPANTS

BUFFY BULLIS
City of Monrovia, Claimant

GWENDOLYN CARLOS
State Controller's Office

AMBERLYNN DEATON
San Diego Association of Governments, Claimant

ANNETTE CHINN
Cost Recovery Systems
For City of Monrovia, Claimant

CAPTAIN JEFFREY JORDON
City of San Diego, Claimant

BRITTANY THOMPSON
Department of Finance

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Government Code Section
12525.5, as added and
amended by Statutes 2015,
Chapter 466 (AB 953),
Statutes 2017, Chapter 328
(AB 1518), California Code
of Regulations, Title 11,
Sections 999.224, 999.225,
999.226, 999.227, 999.228,
and 999.229, as added by
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City of San Diego, Claimant

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Government Code Sections
3502.5 and 3508.5; Statutes
2000, Chapter 901 (SB 739);
California Code of
Regulations, Title 8,
Sections 32132, 32135, 32140,
32149, 32150, 32160, 32168,
32170, 32175, 32176, 32180,
32190, 32205, 32206, 32207,
32209, 32210, 32212, 32310,
32315, 32375, 32455, 32620,
32644, 32649, 32680, 32980,
60010, 60030, 60050, 60070;
Register 2001, Number 49

Fiscal Year: 2010-2011

City of Monrovia, Claimant

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1 FRIDAY, SEPTEMBER 25, 2020, 10:07 A.M.

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3 CHAIRPERSON MILLER: My apologies for being late,
4 but the meeting of the Commission on State Mandates will
5 come to order.

6 Welcome and thank you to everyone for participating
7 via Zoom.

8 Please note that in response to COVID-19 and its
9 impact on public meetings, under the Bagley-Keene Open
10 Meeting Act, Governor Newsom's Executive Order N-2920
11 suspends, on an emergency basis, pursuant to California
12 Government Code section 8571, certain requirements for
13 public meetings.

14 Accordingly, requiring the physical presence of
15 board members at public meetings and providing a
16 physical space for members of the public to observe and
17 participate have been suspended until further notice, so
18 long as the agency makes it possible for members of the
19 public to observe and address the meetings remotely; for
20 example, via web or audio conferencing such as Zoom.

21 Heather, can you hear me? Because my screen just
22 went black.

23 MEMBER RAMIREZ: You are a little broken up.

24 CHAIRPERSON MILLER: I'm so sorry. I don't know
25 what to do about that.

1 MEMBER RAMIREZ: A little bit. Not a lot.

2 CHAIRPERSON MILLER: Not? Okay. I'm going to keep
3 going then. Thank you so much, Carmen. I'm so sorry
4 about this.

5 The Commission is committed to ensuring that our
6 public meetings are accessible to the public and the
7 public has the opportunity to observe the meeting and to
8 participate by providing written and verbal comment on
9 Commission matters.

10 During this extraordinary time, and as we explore
11 new ways of doing business with technologies, we ask
12 that you remain patient with us, especially today,
13 clearly.

14 Please note that the materials for today's meeting,
15 including the notice, agenda, and witness list, are all
16 available on the Commission's website, www.csm.ca.gov,
17 under the hearings tab.

18 Heather, will you please call the roll?

19 MS. HALSEY: Sure.

20 Mr. Adams.

21 MEMBER ADAMS: Here.

22 MS. HALSEY: Ms. Lee.

23 MEMBER LEE: Here.

24 MS. HALSEY: Ms. Miller.

25 CHAIRPERSON MILLER: Here.

1 MS. HALSEY: Ms. Olsen.

2 MEMBER OLSEN: Here.

3 MS. HALSEY: Ms. Ramirez.

4 MEMBER RAMIREZ: Here.

5 MS. HALSEY: Mr. Rivera.

6 MEMBER RIVERA: Here.

7 MS. HALSEY: And Ms. Wong-Hernandez.

8 MEMBER WONG-HERNANDEZ: Here.

9 CHAIRPERSON MILLER: Great. We have a quorum.

10 And Mr. Hariri is not able to attend today's
11 hearing.

12 The next item is Number 1. Are there any
13 objections or corrections of the May 22nd, 2020, [sic]
14 minutes?

15 MS. HALSEY: Madam Chair, I just wanted to say that
16 Mr. Rivera is here, for the -- for the Treasurer's
17 Office.

18 CHAIRPERSON MILLER: Great. Thank you very much,
19 Ms. Halsey.

20 Any corrections or changes for the minutes?

21 MEMBER OLSEN: I will move adoption.

22 CHAIRPERSON MILLER: Great. Thank you, Ms. Olsen.

23 MEMBER RAMIREZ: Second.

24 CHAIRPERSON MILLER: Moved by Ms. Olsen and
25 seconded by Ms. Ramirez. And we have a motion and a

1 second.

2 All those in favor of adopting the minutes, signify
3 by saying "aye."

4 (Ayes)

5 CHAIRPERSON MILLER: Any opposed?

6 (No response)

7 CHAIRPERSON MILLER: Any abstentions?

8 (No response)

9 CHAIRPERSON MILLER: Great. The minutes are
10 adopted. Thank you very much.

11 And Ms. Halsey.

12 MS. HALSEY: And now we will take up public comment
13 for matters not on the agenda. Please note that the
14 Commission cannot take action on items not on the
15 agenda. However, it can schedule issues raised by the
16 public for consideration at future meetings.

17 CHAIRPERSON MILLER: Great. Thank you.

18 Is there any public comment?

19 MS. PALCHIK: Madam Chair --

20 CHAIRPERSON MILLER: Yes.

21 MS. PALCHIK: -- I see no raised hands from our
22 attendees. Nothing.

23 CHAIRPERSON MILLER: Great. Thank you,
24 Ms. Palchik.

25 Hearing no public comment, we'll move to the next

1 item, please.

2 Ms. Halsey.

3 MS. HALSEY: Let's move to the Article 7 portion of
4 the hearing. There are no items on consent today.

5 Now will the parties and witnesses for Items 3, 4,
6 and 5 please turn on your video and unmute your
7 microphones and please rise.

8 (Parties/witnesses stood to be sworn or
9 affirmed.)

10 MS. HALSEY: Thank you. Please be seated and turn
11 off your video and mute your microphones.

12 Item 2 is reserved for appeals of Executive
13 Director decisions. There are no appeals to consider
14 for this hearing.

15 And next is Item 3. Commission Counsel Elizabeth
16 McGinnis will please turn on her video and unmute her
17 microphone and present a proposed decision on a test
18 claim on SANDAG: Independent Performance Auditor.

19 At this time, we invite the parties and witnesses
20 for Item 3 to turn on their video and unmute their
21 microphone.

22 MS. MCGINNIS: Good morning. This test claim
23 alleges that reimbursement is required for
24 state-mandated activities and increased costs imposed on
25 the San Diego Association of Governments, or SANDAG.

1 The test claim statute requires SANDAG, as the San
2 Diego County consolidated transportation agency, to
3 appoint an independent performance auditor who is
4 charged with specified powers and responsibilities,
5 including the power to appoint staff as deemed
6 necessary.

7 SANDAG also alleges that this test claim statute
8 requires it to incur associated costs for equipment and
9 supplies, training and development, audit-related
10 travel, and professional fees and licensing.

11 Staff finds that the claimant is not subject to the
12 taxing and spending limitations of Articles XIIIA and
13 XIIIB and is, therefore, ineligible to claim mandate
14 reimbursement under Article XIIIB, section 6.

15 SANDAG has authority to charge fees but no
16 authority to levy taxes. Moreover, the authority of the
17 San Diego County Regional Transportation Commission to
18 levy transactions and use tax, does not apply to SANDAG,
19 a separate legal entity.

20 Furthermore, SANDAG's authority to create a
21 Mello-Roos Community Facilities District does not make
22 it subject to the appropriations limit of the Community
23 Facilities District. Even if SANDAG were an eligible
24 claimant, it has sufficient fee authority to offset the
25 costs associated with the new activities required by the

1 test claim statute.

2 Accordingly, staff recommends that the Commission
3 adopt the proposed decision and deny this test claim.

4 Thank you.

5 CHAIRPERSON MILLER: Thank you so much. And
6 welcome, Ms. McGinnis. And sorry again for my technical
7 difficulties.

8 Are we -- Ms. Halsey, can you help me in where we
9 are on the agenda, please?

10 MS. HALSEY: Yes. Now we're going to hear from the
11 parties, beginning with the claimant.

12 CHAIRPERSON MILLER: Oh, great. Thank you very
13 much.

14 MS. DEATON: Thank you, Chair and Members of the
15 Commission. My name is Amberlynn Deaton, and I'm
16 appearing on behalf of SANDAG, the San Diego Association
17 of Governments. SANDAG is a statutorily created public
18 agency which serves as the form for decision making in
19 the San Diego region.

20 SANDAG submitted this claim following the enactment
21 of AB 805 which, among other things, amended the Public
22 Utilities Code to impose a new state-mandated program
23 and cost on SANDAG, by requiring it to appoint an
24 independent performance auditor and employ sufficient
25 audit resources to bring independent oversight to

1 prevent waste, fraud, and abuse.

2 Prior to AB 805, the independent performance
3 auditor position at SANDAG did not exist. Further, the
4 requirement to create this position is unique to SANDAG,
5 as the statute does not apply to similar regional
6 agencies statewide.

7 In considering AB 805 prior to its passage, the
8 Department of Finance stated it opposed AB 805 because,
9 quote, it appears to create a reimbursable state
10 mandate. And, in fact, this new program has had the
11 result of transferring, to a local agency, the fiscal
12 responsibility for providing services which the state
13 believed should be extended to the public.

14 SANDAG's eligibility for reimbursement for these
15 state-mandated expenses appears to boil down to two
16 eligibility issues: Does SANDAG have the ability to
17 impose local taxes? And does it have sufficient fee
18 authority to pay for the newly required activities?

19 The proposed decision incorrectly concludes that
20 SANDAG has no authority to levy taxes, and, therefore,
21 is not eligible to claim reimbursement.

22 SANDAG is statutorily authorized to levy taxes.
23 The SANDAG Board of Directors also serves as the San
24 Diego Regional Transportation Commission, and there is
25 no dispute that Public Utilities Code sections 132301 is

1 to authorize the Commission to impose a transactions and
2 use tax within specified parameters.

3 But Public Utility Code section 132360.6 cites this
4 authority vested in the Transportation Commission and
5 states that the consolidated agency of SANDAG may use
6 the authority for the retail transaction and use tax
7 that is granted to the Transportation Commission. This
8 is the source of SANDAG's taxing authority.

9 The staff analysis adds language to the statute
10 that does not exist, and concludes that SANDAG only has
11 the authority to administer the Transportation
12 Commission's transactions and use tax and to allocate
13 those revenues.

14 But that is not what the Public Utility Code
15 states. It states that SANDAG may use the same
16 authority for the retail transaction and use tax that
17 the Commission has. The statute does not limit this
18 authority to use or administration of taxes that are
19 collected by the Transportation Commission. It is its
20 own separate authority.

21 The second issue is whether SANDAG has sufficient
22 fee authority to pay for costs mandated by the State.
23 And I emphasize the word "sufficient," because that is
24 the most important word of Government Code section
25 17556(d). It provides that a cost is not mandated by

1 the State if the local agency has the authority to levy
2 service charges, fees, or assessments sufficient to pay
3 for the mandated program.

4 Though SANDAG has the ability to and has assessed
5 membership assessment fees to the County and the cities
6 around the San Diego region, the amounts collected are
7 not sufficient to pay for the full mandated program
8 costs.

9 As a result of the state-imposed mandate, in 2019,
10 SANDAG doubled its membership assessment fees to help
11 cover some of the increased costs that resulted from the
12 state-imposed mandate.

13 Since April 2019, the assessments have and continue
14 to be used to offset the mandated cost, but there are
15 residual costs associated with this mandate.

16 The Commission has received 13 comments from
17 SANDAG's member jurisdictions, which were provided under
18 penalty of perjury, substantiating that the membership
19 assessments are not enough to cover the cost of the
20 state-imposed mandate. Given the current economic
21 situation, SANDAG member agencies are unable to further
22 increase their member assessment contributions. The
23 amounts collected are not sufficient. Thus, the
24 remainder of the costs associated with the state-imposed
25 mandate is what SANDAG is seeking through this test

1 claim.

2 For these reasons, SANDAG respectfully asks that
3 the Commission approve Test Claim 19-TC-03.

4 Thank you for your time today.

5 CHAIRPERSON MILLER: Thank you very much,
6 Ms. Deaton.

7 Is there anyone else for the County of San Diego?

8 (No response)

9 CHAIRPERSON MILLER: Mr. Hill, are there any
10 comments from the Department of Finance?

11 MS. THOMPSON: Yes. We support the staff
12 recommendation on this issue.

13 CHAIRPERSON MILLER: And I'm sorry. Could you
14 state your name and affiliation for the record.

15 MS. THOMPSON: Yeah. Brittany Thompson, Finance
16 Budget Analyst with the Department of Finance.

17 CHAIRPERSON MILLER: Great. Thank you very much.
18 Thank you for that.

19 Are there any questions from members?

20 MEMBER WONG-HERNANDEZ: Yeah. Madam Chair?

21 CHAIRPERSON MILLER: Yes.

22 MEMBER WONG-HERNANDEZ: I was actually hoping that
23 Commission staff could kind of walk through the
24 distinction between SANDAG, sort of, taxing authority as
25 separate from the transportation. I lost track of the

1 exact name that they used. But that kind of distinction
2 and why -- why that is important.

3 The fee authority piece makes sense to me.

4 CHAIRPERSON MILLER: Great. Thank you for that.

5 Ms. McGinnis, do you want to speak to the SANDAG
6 authority for taxes versus this test claim?

7 MS. MCGINNIS: Certainly. So SANDAG, as the test
8 claim statute applies to it, is technically a legal
9 entity, statutorily labeled "the consolidated agency."
10 So there have been -- SANDAG has evolved since its
11 creation in the '50s or the '60s. And I believe it was
12 in -- I would have to look at the specific dates. But
13 I -- give me one second. I will pull up the claim
14 itself or the proposed decision, and I can tell you what
15 page it's on.

16 Okay. So if you look at page 17 of the proposed
17 decision, there's a breakdown of the governance
18 structure of SANDAG. And so the -- the entity known as
19 SANDAG originally was established in the '60s as the
20 Comprehensive Planning Organization. And over the
21 decades it's been granted additional authority by the
22 legislature.

23 So in 1986, it became designated as the San Diego
24 Regional Transportation Commission. And at that time,
25 the San Diego Regional Transportation Commission was its

1 own separate legal entity. SANDAG was designated -- the
2 board of directors of SANDAG was designated to
3 administer the Transportation Commission, act as the
4 Transportation Commission.

5 And then in 2003, the Legislature passed the San
6 Diego Regional Transportation Consolidation Act. And
7 that act established SANDAG's current organization,
8 known as "the consolidated agency." So the agency still
9 operates under the name SANDAG, but for purposes of the
10 test claim statute, at issue is "the consolidated
11 agency." So they are actually separate legal entities.

12 And the Regional Transportation Commission Act
13 establishes an appropriations limit that's specific to
14 the Transportation Commission. It does not extend to
15 the consolidated agency.

16 And staff could find no indication in the materials
17 submitted by SANDAG or in the relevant Public Utilities
18 Code sections that established an appropriations limit
19 for SANDAG.

20 CHAIRPERSON MILLER: Thank you very much for that,
21 Ms. McGinnis.

22 Any further questions, Ms. Wong-Hernandez?

23 MEMBER WONG-HERNANDEZ: Yeah. I do. I have a
24 follow-up question to that.

25 So is that -- are we saying that SANDAG could not

1 ever have filed a mandate claim except -- like, as an
2 entity? Or is that after the 2003? I am trying to get
3 a sense of, has SANDAG never filed a mandate claim,
4 ever, or been -- or been reimbursed? And maybe
5 that's -- I don't know how to answer to answer that sort
6 of historical question.

7 MS. SHELTON: I can answer that.

8 SANDAG has never been a test claimant. To be a
9 test claimant.

10 CHAIRPERSON MILLER: Ms. Shelton -- do you know
11 if --

12 MS. SHELTON: Yes. To be a test claimant eligible
13 to claim reimbursement under Article XIIIB, section 6,
14 the agency has to have the statutory authority to levy
15 taxes and has to be subject to the appropriations limit.

16 We have never received a test claim from SANDAG
17 in -- since I've been there, for over 20 years, and I
18 don't recall seeing any prior test claims, before that.

19 But as I understand, the law here, they were at one
20 point a joint powers authority and then a council of
21 governments, and the law has been pretty clear that
22 those types of entities are not eligible to claim
23 reimbursement.

24 MEMBER WONG-HERNANDEZ: Thank you, Ms. Shelton. I
25 appreciate that.

1 CHAIRPERSON MILLER: Thank you for that.
2 Any further questions from the Board or any further
3 discussion?
4 (No response)
5 CHAIRPERSON MILLER: Any public comment?
6 We heard from the Department of Finance that they
7 support the staff recommendation.
8 Ms. Palchik, there's no public comment, correct?
9 MS. PALCHIK: There is no public comment, Madam
10 Chair.
11 CHAIRPERSON MILLER: Great. Thank you for that.
12 Is there a motion on this test claim, then?
13 Ms. Ramirez, did you have a question?
14 MEMBER RAMIREZ: I just want to say, I'm on
15 somewhat of a similar organization, which is Southern
16 California Association of Governments. And I do know
17 that SANDAG now has the -- Hasan Ikhata, who used to be
18 SCAG's Executive Director, and I wish him well.
19 But I'm going to move to support the staff's
20 recommendation.
21 MEMBER OLSEN: I will second the motion.
22 CHAIRPERSON MILLER: Great. Thank you.
23 Moved by Ms. Ramirez. Seconded by Ms. Olsen.
24 Ms. Halsey, will you please call the roll.
25 MS. HALSEY: Sure.

1 Mr. Adams.

2 MEMBER ADAMS: Aye.

3 MS. HALSEY: Ms. Lee.

4 MEMBER LEE: Aye.

5 MS. HALSEY: Ms. Miller.

6 CHAIRPERSON MILLER: Aye.

7 MS. HALSEY: Ms. Olsen.

8 MEMBER OLSEN: Aye.

9 MS. HALSEY: Mr. Rivera.

10 MEMBER RIVERA: Aye.

11 MS. HALSEY: Ms. Wong-Hernandez.

12 MEMBER WONG-HERNANDEZ: Aye.

13 MEMBER RAMIREZ: You missed me.

14 MS. HALSEY: Oh, sorry.

15 Ms. Ramirez.

16 MEMBER RAMIREZ: Aye.

17 CHAIRPERSON MILLER: Thank you very much. That

18 motion carries.

19 And we will move to Item 4.

20 MS. HALSEY: Yes. We will now ask the presenters

21 for Item 3 to please --

22 CHAIRPERSON MILLER: Ms. Halsey.

23 MS. HALSEY: Can you hear me?

24 CHAIRPERSON MILLER: I can. Yes.

25 MS. HALSEY: Okay. We will now ask the presenters

1 for Item 3 to please turn off their video and mute their
2 microphones.

3 And next is Item 4. Senior Commission Counsel
4 Christopher Becker will please turn on his video and
5 unmute his microphone and present a proposed decision
6 and parameters and guidelines on Racial and Identity
7 Profiling.

8 At this time, we invite the parties and witnesses
9 for Item 4 to turn on their videos and unmute their
10 microphones.

11 Also, we do have a witness who is appearing --
12 sorry -- Mr. Jeff Jordon, who was not on the witness
13 list, but is going to be appearing.

14 MR. BECKER: Thank you. Good morning, everybody.

15 CHAIRPERSON MILLER: Is Mr. Jordon --

16 MS. PALCHIK: So yes --

17 CHAIRPERSON MILLER: Go ahead, Mr. Becker.

18 MS. PALCHIK: So I would suggest that we introduce
19 the item. I would note that Mr. Jordon has his hand
20 raised and after the introduction, then I can unmute
21 when he's called upon by you, Madam Chair.

22 CHAIRPERSON MILLER: Great. Thank you very much
23 for that.

24 So we'll go ahead. And can you -- do you want to
25 present the item first, then, Ms. Palchik, before the

1 parties and witnesses state their name?

2 MS. PALCHIK: Yes, please.

3 Mr. Becker could introduce the item.

4 MR. BECKER: Great. Thank you. Good morning,
5 everybody.

6 These are the proposed parameters and guidelines
7 for the Racial and Identity Profiling Program. The
8 proposed parameters and guidelines include the
9 reimbursable activities approved by the Commission in
10 the test claim decision, and the activities are
11 reasonably necessary to comply with the mandate that are
12 supported by evidence in the record.

13 Namely, one-time training for peace officer
14 employees and supervisors that perform the
15 state-mandated activities; and one-time reimbursement to
16 install and test software to comply with the mandated
17 requirements to collect and report stop data.

18 No comments were received on the draft proposed
19 decision and parameters and guidelines.

20 Staff recommends that the Commission adopt the
21 proposed decision and parameters and guidelines and in
22 accordance with Article XIII B, section 6(a), of the
23 California Constitution, and Government Code section
24 17514 to provide for reimbursement beginning November 7,
25 2017.

1 Staff also recommends that the Commission authorize
2 staff to make any nonsubstantive, technical changes to
3 the proposed changes following the hearing.

4 CHAIRPERSON MILLER: Thank you, Mr. Becker.

5 Welcome. Great job. Welcome to you and
6 Ms. McGinnis here. Fantastic.

7 With that, if we could please ask the parties and
8 witnesses -- could please state your name for the
9 record. And I know Mr. Jordon has his hand up. If you
10 could please state your name.

11 MR. JORDAN: Hi. My name is Captain Jeff Jordon
12 with the San Diego Police Department.

13 Thank you for allowing me to join you last minute.
14 Unfortunately, this week, as you know, with national
15 incidents, as well as state and local, I was a little
16 busy. I didn't think I would be able to attend this
17 morning, but thank you for having me.

18 CHAIRPERSON MILLER: Great. Well, we're pleased
19 that you can be here.

20 Do you -- would you like to begin, then?

21 CAPTAIN JORDAN: Sure.

22 I wasn't going to provide testimony. Based on my
23 reading of the parameters and guidelines and the
24 amended, I just wanted to thank the Commission for their
25 interest and, quite frankly, analyzing the complexities

1 of this statute. It's a very, very complex issue. Very
2 important to law enforcement.

3 I know the issues that come before you are
4 incredibly complex, and I don't think you have any easy
5 decisions.

6 But I just wanted to say thank you for the time and
7 effort that you took to get into this. I think you did
8 a great job as far as analyzing the situation and coming
9 to a favorable decision on behalf of law enforcement, to
10 allow us to continue to handle and address this
11 important matter.

12 So, once again, thank you.

13 And I won't have any additional comments unless the
14 Department of Finance or something provides additional
15 information to counter.

16 CHAIRPERSON MILLER: Great. Thank you for that,
17 Mr. Jordon.

18 Mr. Hill or Ms. Thompson, do you have any comments
19 for the Department of Finance?

20 MS. THOMPSON: Yeah. We have no objection to the
21 staff recommendation. Brittany Thompson.

22 CHAIRPERSON MILLER: Thank you for that, from
23 Finance. Thank you for that. I appreciate it.

24 Any questions from board members?

25 I agree, this was incredibly well done.

1 Yes, Ms. Ramirez. Please.

2 MEMBER RAMIREZ: Only that it's such an important
3 topic, and I'm glad that this is being resolved to the
4 satisfaction of all of us. Very important.

5 CHAIRPERSON MILLER: Great.

6 Very important. And I think very important that we
7 get the training, and I think this does go a long way in
8 terms of implementing the law. So I appreciate that.

9 Any further -- oh, Ms. Adams. Do you have a
10 question?

11 MEMBER ADAMS: Yes -- no. I was just going to
12 offer a motion to approve the staff recommendation as
13 presented.

14 CHAIRPERSON MILLER: Great. We have a motion.

15 Do we have a second?

16 MEMBER OLSEN: Second.

17 CHAIRPERSON MILLER: Great.

18 Mr. Adams made the motion. Ms. Olsen seconds.

19 Is there any further discussion?

20 (No response)

21 CHAIRPERSON MILLER: No other public comment,
22 Ms. Palchik?

23 MS. PALCHIK: None. Thank you, Madam Chair.

24 CHAIRPERSON MILLER: Great. Thank you very much.

25 Ms. Halsey, will you call the roll, please?

1 MS. HALSEY: Sure.
2 Mr. Adams.
3 MEMBER ADAMS: Aye.
4 MS. HALSEY: Ms. Lee.
5 MEMBER LEE: Aye.
6 MS. HALSEY: Ms. Miller.
7 CHAIRPERSON MILLER: Aye.
8 MS. HALSEY: Ms. Olsen.
9 MEMBER OLSEN: Aye.
10 MS. HALSEY: Ms. Ramirez.
11 MEMBER RAMIREZ: Aye.
12 MS. HALSEY: Mr. Rivera.
13 MEMBER RIVERA: Aye.
14 MS. HALSEY: Ms. Wong-Hernandez.
15 MEMBER WONG-HERNANDEZ: Aye.
16 MS. HALSEY: Thank you. We will now -- oh, sorry.
17 CHAIRPERSON MILLER: That motion carries. Sorry,
18 Ms. Halsey. Thank you.
19 MS. HALSEY: We will now ask the presenters for
20 Item 4 to please turn off their video and mute their
21 microphones.
22 Next is Item 5. Senior Commission Counsel Eric
23 Feller will please turn on his video and unmute his
24 microphone and present a proposed decision on an
25 incorrect reduction claim on Local Government Employee

1 Relations.

2 At this time, we invite the parties and witnesses
3 for Item 5 to turn on their video and unmute their
4 microphones.

5 MR. FELLER: All right. Good morning.

6 This incorrect reduction claim challenges the
7 Controller's reduction of costs claimed for Fiscal Year
8 2010/11 but incurred in Fiscal Year 2009/10 for the
9 Local Government Employee Relations program.

10 In January 2012, the claimant filed a reimbursement
11 claim requesting reimbursement for contracted legal
12 services related to this program.

13 The cover sheet and each page of the claim form
14 indicates the claim was filed for Fiscal Year 2010/11.
15 However, attached to the reimbursement claim are
16 invoices for legal services incurred in other fiscal
17 years, including Fiscal Year 2009/10.

18 The Controller reduced the costs incurred in the
19 other fiscal years and notified the claimant of the
20 reduction on September 29, 2014, which was after the
21 statutory deadline to submit a reimbursement claim for
22 Fiscal Year 2009/10.

23 This IRC challenges only the reduction of costs
24 incurred in Fiscal Year 2009/10, less an undisputed
25 10 percent penalty. Although the claimant never filed a

1 2009/10 reimbursement claim, the claimant requests that
2 the Commission find that the Controller incorrectly
3 denied the claimant's request to accept the 2010/11
4 reimbursement claim as a late-filed 2009/10 claim,
5 because of an alleged clerical error in filing a
6 multi-year claim.

7 Staff finds that a reduction is correct as a matter
8 of law, and not arbitrary, capricious, or entirely
9 lacking in evidentiary support.

10 The claimant disagrees with the proposed decision.

11 Staff recommends that the Commission adopt the
12 proposed decision to deny the IRC, and authorize staff
13 to make any technical, nonsubstantive changes to the
14 proposed decision following the hearing.

15 CHAIRPERSON MILLER: Thank you, Mr. Feller.

16 If we could please have the parties and witnesses
17 state your name for the record.

18 MS. BULLIS: My name is --

19 MS. CHINN: Annette Chinn.

20 Oh, sorry Buffy.

21 MS. BULLIS: Oh, go ahead, Annette.

22 MS. CHINN: Annette Chinn, Cost Recovery Systems.

23 MS. BULLIS: Buffy Bullis, Administrative Services
24 Director for the City of Monrovia.

25 MS. CARLOS: I'm Gwendolyn Carlos, County

1 Administrative Supervisor at the State Controller's
2 Office, Local Government Programs and Services Division.

3 CHAIRPERSON MILLER: Great. Thank you very much.

4 Who would like to begin? Ms. Chinn, did you want
5 to begin? Please, Ms. Chinn, go ahead.

6 MS. CHINN: Good morning.

7 I'm Annette Chinn of Cost Recovery Systems,
8 consultant representative for the City of Monrovia. And
9 I would like to thank the Commission and staff for your
10 time spent reviewing our incorrect reduction claim of
11 the Local Government Relations Program.

12 Article XIIIIB of the California Constitution and
13 subsequent state mandate regulations were created with
14 the specific intent of providing a subvention of funds
15 to reimburse local government for the increased cost of
16 programs or increased level of services mandated by the
17 State.

18 The City incurred costs for the state-mandated
19 program related to this claim, and we prepared the claim
20 for state reimbursement, in compliance with the
21 instructions. Our claim included about a hundred pages
22 of back-up and required documentation.

23 The claimant back-up was submitted to the State
24 Controller's Office before the deadline. Our only error
25 was that we mistakenly submitted multiple fiscal years

1 of costs under one cover, rather than under two separate
2 forms.

3 The Commission analysis suggests that our mistake
4 was not clerical in nature and, therefore, not
5 correctable.

6 The analysis suggests that we misinterpreted the
7 claims in the instruction guidelines and intentionally
8 included more than one fiscal year of costs on the claim
9 form.

10 We respectfully disagree. This was not the case at
11 all. We have been preparing and submitting claims since
12 2001, and there has never been an issue before. We were
13 aware that a claim should not be combined with multiple
14 fiscal years of costs under one claim form. This was
15 simply an oversight.

16 That year, the State had approved two new
17 multi-year programs that required submission of
18 approximately 30 individual claims. Normally, we submit
19 about a half a dozen or so per year. We were simply
20 overwhelmed and didn't review the detailed invoices
21 thoroughly enough. We -- it was truly a clerical
22 mistake.

23 By recommending denial of our requests to be able
24 to correct our clerical error, we believe the Commission
25 staff analysis focuses on the letter of the law rather

1 than on the intent or the spirit of the law, which is to
2 ensure local agencies are paid for the programs mandated
3 by the State. And we would appreciate it if the
4 Commission could determine that our error was
5 correctable, and allow reinstatement of our \$45,413
6 claim.

7 Thank you.

8 MS. BULLIS: And again, I want to -- oh, I'm sorry.

9 CHAIRPERSON MILLER: Oh, no. Please, Ms. Bullis.
10 Go ahead. Please state your name again for the record.

11 MS. BULLIS: Buffy Bullis, Administrative Services
12 Director for the City of Monrovia.

13 I did want to thank the Commission for your time.
14 We do appreciate this opportunity to present our
15 information to you.

16 Again, we respectfully request that the Commission
17 consider our error to be clerical in nature, not a
18 misinterpretation of the law, and please allow our
19 claim. This really is a significant loss for our city,
20 especially during these difficult times, as we're
21 dealing with the financial impacts of the COVID
22 pandemic.

23 So we do appreciate your consideration and thank
24 you again for your time.

25 CHAIRPERSON MILLER: Thank you. I appreciate it.

1 Any further comment?

2 MS. CARLOS: From Gwendolyn --

3 CHAIRPERSON MILLER: Ms. Carlos, do you want to
4 make any statement?

5 MS. CARLOS: Yes, please. Just --

6 CHAIRPERSON MILLER: Please go ahead.

7 MS. CARLOS: We want to thank the Commission on
8 State Mandates for this opportunity and the State
9 Controller's Office supports the staff's conclusion and
10 recommendations on the incorrect reduction claim for
11 Local Government Employee Relations filed by Monrovia
12 City in January of 2012.

13 Thank you.

14 CHAIRPERSON MILLER: Great. Thank you very much.
15 Any further comments or questions?

16 (No response)

17 CHAIRPERSON MILLER: Ms. Palchik, do we have anyone
18 that wants to make any other comments?

19 MS. PALCHIK: None. Thank you, Madam Chair.

20 MEMBER WONG-HERNANDEZ: I have a question of
21 Ms. Bullis. Am I saying that right?

22 MS. BULLIS: Bullis. Buffy Bullis.

23 MEMBER WONG-HERNANDEZ: Okay. I had a question for
24 you. So sort of just understanding the process by which
25 cities are using a consultant to file these claims, do

1 you just give your invoices to your consultant, and your
2 consultant is the one who figures out how all the rules
3 get followed and what gets filed where, and then it
4 comes -- kind of comes back to you for review? I'm
5 trying to understand this process.

6 I think we've been increasingly seeing the use of
7 consultants and also seeing errors being done by
8 consultants. And so I'm trying to understand sort of
9 the interaction between the City and the person who is
10 filing your claim. Or is that you? Can you walk me
11 through that?

12 MS. BULLIS: Sure. Sure. Great question.

13 So basically, we compile all the data from our
14 department. So we work with our operating departments
15 to compile data. We gather that information. We send
16 it over to the consultant.

17 We don't have the level of expertise in these
18 claims and these mandates that the consultant does, so
19 we really do rely on their expertise, and that's where
20 their assistance is really needed to help us out.

21 So we compile it. We gather it. We send it over.
22 And then our consultant then goes through it again and
23 reviews it. And then compiles -- compiles it again and
24 resubmits it to us. We review it again and sign off and
25 then submit the claim.

1 In this particular instance, we were under a tight
2 time frame. It was really kind of a -- not a normal
3 year and not a normal time frame. And so I think that
4 added to the error and the mistake in this case.

5 MEMBER WONG-HERNANDEZ: Okay. I understand.

6 So sort of -- from just trying to get a local
7 government perspective on your recourse. So this has
8 all been compiled. It sounds like maybe it's compiled
9 by the consultant, but then you have a final chance at
10 review? Is that what I'm hearing?

11 MS. BULLIS: Yes.

12 MEMBER WONG-HERNANDEZ: Okay. I think it was
13 appropriate what -- what the auditors did, and I
14 understand that the impact is different. Right? I
15 mean, I think we all are in agreement that those
16 invoices shouldn't have been included in that claim.

17 So now we're really talking about, so what is your
18 recourse for recovering money, that maybe if it had been
19 filed differently, may have been owed you. And I'm not
20 weighing in on that. I want to make sure that we all
21 agree that this shouldn't have been part of that year's
22 claim.

23 And so what is -- you know, in the event that it is
24 not correctable, sort of, what happens to you, and how
25 does that interaction happen between you and your

1 consultant?

2 I mean, do you have -- do you have recovery clauses
3 in your contract? Maybe this is not an appropriate
4 question for you. I think it's something for you to
5 think about if -- if there's another entity sort of
6 sharing in the responsibility of this. But as a City,
7 I'm trying to figure out what are Monrovia's options.

8 MS. BULLIS: Yeah. And we haven't really
9 encountered this issue before, so we haven't really
10 looked at that.

11 Normally, had we received notification earlier, we
12 would have been able to correct and claim and file the
13 claim earlier. In this particular instance, it was
14 filed close before the deadline, and then by the time
15 the State Controller reviewed it -- I know that they
16 have a lot of work; we understand that -- it was after
17 the time for us to refile.

18 So, normally, we would go through that process and
19 correct any kind of issue that we have.

20 MEMBER WONG-HERNANDEZ: Okay. Thank you. That's a
21 really helpful clarification for me.

22 CHAIRPERSON MILLER: Yeah. Those are really good
23 questions, Ms. Wong-Hernandez.

24 Mr. Adams.

25 MEMBER ADAMS: I just want to follow up, because

1 the question that was answered -- the question that was
2 asked, is there any potential for splitting the
3 difference here and talking to the consultant.

4 As someone who has worked for local government for
5 40 years, I have a lot of sympathy for the City of
6 Monrovia, and these kind of things happen. But, at the
7 same time, I worry that, you know, number one, do we
8 have -- do we have authority to just waive a deadline?
9 And, number two, if we do, then are deadlines, deadlines
10 anymore? Where does it end?

11 MS. BULLIS: And, really, kind of our focus, in our
12 rebuttal to this, is that, in the documentation that we
13 received, and the reasoning for why it was declined, is
14 because we misinterpreted the law.

15 And what we're trying to say, or what we're trying
16 to argue, is that it was a clerical error. I know
17 there's a lot of the different circumstances involved,
18 but it was not a misinterpretation of the law, as the
19 letter stated. We do understand it was -- it was human
20 error.

21 MR. FELLER: Can I make a --

22 CHAIRPERSON MILLER: Mr. Feller.

23 MR. FELLER: Yeah. The mistake of the law analysis
24 was part of the draft decision, but the final decision
25 does not, in any way, rely on a mistake of analysis.

1 This analysis relies primarily on the Government
2 Codes 17560(a), 17568, 17561, which, taken together,
3 really forbid filing multi-year claims and forbid
4 reimbursing anything filed one year after the deadline,
5 in 17560, which is by February 15th following the fiscal
6 year in which costs are incurred.

7 So that mistake of law was taken out of the final
8 decision, based on the claimant's comments in response
9 to the draft decision.

10 CHAIRPERSON MILLER: Thank you, Mr. Feller.

11 Ms. Shelton, do you want to add to that? Please.

12 MS. SHELTON: A little bit.

13 The 17561 and 17568, by the plain language states,
14 "In no case may a reimbursement claim be made if
15 submitted more than one year after the deadline." That
16 means that the Commission doesn't have any authority
17 whatsoever to provide any type of remedy here.

18 MS. CHINN: Though, we do want to note that the
19 claim was submitted on time. It was just one cover
20 sheet that was missing. I mean, all a hundred pages of
21 documentation for all Fiscal Year 9/10, 10/11 were both
22 included and sent on time, and they were sent a month
23 early.

24 So, you know, had the State Controller's Office
25 been able to review it quickly, we would have been

1 able -- there was like a month gap between submission
2 date and the date that it was due. So it could have
3 been corrected very easily. It just needed one cover
4 sheet. That was the only thing that was missing.

5 So it was -- it could have been, you know -- it
6 could have been caught if it was caught earlier. But,
7 you know, two years -- with having the State Controller
8 look at the claims two years later, obviously, that's
9 beyond the date where anything could have been done to
10 correct it.

11 CHAIRPERSON MILLER: Right. Thank you, Ms. Chinn.
12 Ms. Shelton.

13 MS. SHELTON: Obviously, this is a mistake.

14 CHAIRPERSON MILLER: Do you have any comment?

15 MS. SHELTON: Yes. Thank you.

16 Obviously, this is a mistake. The problem is the
17 law requires that your reimbursement claim be filed
18 on -- per annual year. And this particular one was
19 stated, on every page, that it was for 2010/2011, and it
20 was signed under penalty of perjury.

21 There's been no evidence filed whatsoever that the
22 Controller did anything other than their normal custom
23 and practice with receiving and logging all these
24 reimbursement claims when they came in. The mistake was
25 noticed almost two years after the deadline, when

1 they -- it took up their desk review within the time
2 period allowed by law.

3 So when you have a mistake made, you have to -- and
4 especially with a Government Code section 17561 and 568,
5 the mistake has to be held against the claimant in this
6 particular case, because neither the Controller nor the
7 Commission have the authority to provide any remedy
8 here.

9 CHAIRPERSON MILLER: Thank you for that,
10 Ms. Shelton.

11 Are there any further questions from the Board?

12 MEMBER OLSEN: I actually have a question.

13 CHAIRPERSON MILLER: Any additional public comment?

14 MEMBER OLSEN: I have a question.

15 My question is, had the consultant or the City of
16 Monrovia noticed the error in that one-month period,
17 since they filed -- you know, a month to go before the
18 deadline. Had they noted that at that time, had they
19 reviewed and found that they could have added a cover
20 sheet to it, and then everything would have been okay?
21 Is that --

22 MR. FELLER: I believe so. Yeah. That would have
23 been a late-filed claim, only subject to a 10 percent
24 penalty. But if they had filed it 2009/10, and the
25 Controller had received it before the deadline, then I

1 don't see any reason why the Controller --

2 MEMBER OLSEN: But they did -- they did have a
3 period of recourse in which they could have corrected
4 this.

5 MS. CHINN: Yes.

6 MEMBER OLSEN: Okay. Thank you.

7 MS. BULLIS: We were notified after the time frame
8 so --

9 MEMBER OLSEN: Understood. It's an unfortunate
10 situation, but yeah.

11 CHAIRPERSON MILLER: Yeah. Absolutely. I agree
12 with that.

13 Any other questions? Comments?

14 MEMBER RAMIREZ: Madam Chair.

15 CHAIRPERSON MILLER: Ms. Ramirez. I apologize.

16 MEMBER RAMIREZ: No. That's okay.

17 I just -- being a city council person with a lot
18 of -- always looking at a budget, how tight it is,
19 especially now. And as a lawyer, I know, when that
20 deadline comes, the deadline comes and it's -- after
21 that, you are dead. And I really feel for everybody
22 here when this happens.

23 We just don't have a way to fix it at this point.
24 It's pretty hard -- the law is pretty harsh here. And
25 we don't have a way to get around it without violating

1 our own laws.

2 CHAIRPERSON MILLER: Yeah. I agree. I agree with
3 that. Absolutely.

4 Any other questions?

5 (No response)

6 CHAIRPERSON MILLER: Any other public comment?

7 MS. PALCHIK: I see none, Madam Chair.

8 CHAIRPERSON MILLER: Thank you, Ms. Palchik.

9 MEMBER OLSEN: I will move the staff
10 recommendation.

11 CHAIRPERSON MILLER: Great. It's been moved by
12 Ms. Olsen.

13 Do we have a second?

14 MEMBER WONG-HERNANDEZ: Second.

15 CHAIRPERSON MILLER: I will second it.

16 Ms. Halsey, will you call the roll, please?

17 MS. HALSEY: Yes.

18 Mr. Adams.

19 MEMBER ADAMS: Aye.

20 MS. HALSEY: Ms. Lee.

21 MEMBER LEE: Aye.

22 MS. HALSEY: Ms. Miller.

23 CHAIRPERSON MILLER: Aye.

24 MS. HALSEY: Ms. Olsen.

25 MEMBER OLSEN: Aye.

1 MS. HALSEY: Ms. Ramirez.

2 MEMBER RAMIREZ: Yes. Aye.

3 MS. HALSEY: Mr. Rivera.

4 MEMBER RIVERA: Aye.

5 MS. HALSEY: Ms. Wong-Hernandez.

6 MEMBER WONG-HERNANDEZ: Yeah.

7 MS. HALSEY: Thank you.

8 We now ask for presenters for Item 5 -- oh, sorry.

9 CHAIRPERSON MILLER: No. I'm sorry. There seems
10 to be a delay now. I'm so sorry about this.

11 Go ahead, Ms. Halsey.

12 MS. HALSEY: We now ask the presenters for Item 5
13 to please turn off their video and mute their
14 microphones.

15 Item 6 is reserved for county applications for a
16 finding of significant financial distress, or SB 1033
17 applications. No SB 1033 applications have been filed.

18 Program Analyst Kerry Ortman will please turn on
19 her video and microphone and present Item 7, the
20 Legislative Update.

21 Good morning.

22 MS. ORTMAN: Good morning I have five bills to
23 report on this morning. SB 287, Commission on State
24 Mandates: Test claims: Filing date, which proposed
25 language that would have -- that specifies that for

1 purposes of filing a test claim based on the date of
2 incurring increased costs, the phrase "within 12 months"
3 means by June 30th of the fiscal year following the
4 fiscal year by the test claimant.

5 This bill did not make it out of the Assembly and
6 is now dead.

7 AB 2395, State mandates: Claims, proposed reducing
8 the statutorily mandated minimum amount of costs
9 incurred to file a mandate reimbursement claim from
10 \$1,000 to \$900.

11 On February 24th, the bill was referred to the
12 Assembly Committee on Local Government. According to
13 the author's office, it was a spot bill which never made
14 it out of its house of origin and is now dead.

15 SB 1371, Maintenance of the codes, makes technical,
16 nonsubstantive changes to clean up, among other codes,
17 Government Code section 17581.7, which addresses the
18 Community College State Mandate Block Grant.

19 On September 10th, this bill was enrolled and
20 presented to the Governor.

21 SB 98, Education Finance: Education omnibus
22 trailer bill, allows the Director of Finance to reduce
23 the inflation or cost of living adjustments in the
24 Education Mandate Block Grant, authorized by Government
25 Code section 17581.6, by a percentage equal to or

1 greater than the projected growth rate of the minimum
2 amount necessary to meet the requirements of section 8
3 of Article XVI of the California Constitution, but not
4 less than zero.

5 On June 29th, the bill was chaptered by the
6 Secretary of State.

7 AB 77, Education Finance: Education omnibus
8 trailer bill, proposed the same action as SB 98.

9 And on June 27th, the bill was ordered to inactive
10 at the request of Senator Mitchell.

11 And that's all I have this morning.

12 MS. HALSEY: Thank you, Kerry.

13 Chief legal Counsel Camille Shelton will please
14 turn on her video and microphone and present Item 8, the
15 Chief Legal Counsel Report.

16 MS. SHELTON: Good morning.

17 The California Supreme Court has accepted the
18 petition for review in the Coast Community College
19 District versus Commission on State Mandates case,
20 addressing the decision in the minimum conditions for
21 state aid. The Supreme Court has also ordered that the
22 court of appeal opinion be de-published.

23 Review is granted on the following issues:

24 Number 1, whether regulations that establish
25 minimum conditions entitling California community

1 college districts to receive state aid constitute a
2 reimbursable state-mandated program within the meaning
3 of Article XIIIIB, section 6;

4 Number 2, whether a court lacks jurisdiction, under
5 Article XIIIIB, section 6, to make subvention findings on
6 statutes that were not specifically identified in an
7 initial test claim;

8 And, Number 3, whether the court lacks jurisdiction
9 to remand the test claim based on a statute that was the
10 subject of a prior decision of the Commission on State
11 Mandates.

12 The parties are in the process of briefing those
13 issues.

14 Number 2, the Sacramento County Superior Court has
15 recently denied a petition for writ of mandate in City
16 of San Diego versus Commission on State Mandates,
17 upholding the Commission's decision on Lead Sampling in
18 Schools. The Court agreed that that program did not
19 constitute a new program or higher level of service.

20 We do have kind of a busy litigation calendar.
21 November 13th, 2020, is a status conference scheduled in
22 the California School Board Association case, which is
23 on remand from the California Supreme Court to deal with
24 some additional causes of action.

25 And Number 2, the secondary hearing in the Second

1 District Court of Appeal in the remand of the Department
2 of Finance and State Water Resources Control Board
3 versus the Commission on State Mandates, dealing with
4 the Municipal Stormwater and Urban Runoff Discharge
5 Program. That case is scheduled for hearing
6 October 20th and will address the new program higher
7 level of service issue. And it's a cost mandated by the
8 state issue.

9 And that's all I have.

10 MEMBER OLSEN: Madam Chair?

11 Because this is part of the official record, and
12 this is a little bit of a gotcha --

13 CHAIRPERSON MILLER: Yes, Ms. Olsen.

14 MEMBER OLSEN: Oh. My microphone is on.

15 CHAIRPERSON MILLER: Yes. You are good.

16 MEMBER OLSEN: Okay. Because this is part of the
17 official record, this is a little bit of a gotcha, and I
18 apologize for that. But under Number 2, new filings, we
19 have, on July 30th, 3030 -- I don't know if that's
20 already been corrected in the record, but it should get
21 corrected.

22 MEMBER ADAMS: Back to the future, Sarah.

23 MEMBER OLSEN: I was an editor for a long time.
24 That's my excuse.

25 CHAIRPERSON MILLER: Yeah. No. Thank you for that

1 correction. We'll make that correction.

2 MS. HALSEY: We will certainly fix that. Thank
3 you.

4 CHAIRPERSON MILLER: Great. Ms. Halsey, are you
5 going to --

6 MS. HALSEY: Yes. So, finally, Item 9 is the
7 Executive Director's Report.

8 And for today, I have both action and information
9 items for you.

10 First, the action item, which is the proposed 2021
11 hearing calendar. Commission meetings are generally
12 held on the fourth Fridays of odd months unless they
13 conflict with a holiday. In 2021, the fourth Friday of
14 November is a holiday, and, therefore, the first Friday
15 of December is proposed for the hearing.

16 Additionally, the May hearing is proposed to remain
17 on the Friday of Memorial Day weekend, as is usual.

18 Therefore, all 2021 regular meetings are proposed
19 for the fourth Fridays of odd months, except for the
20 November hearing, which is proposed for the first Friday
21 of December.

22 In addition, tentative hearing dates are proposed
23 for April 23rd, 2021, and October 22nd, 2021.

24 Staff recommends that the Commission adopt the
25 proposed 2021 hearing calendar.

1 CHAIRPERSON MILLER: Great. Any questions about
2 the calendar?

3 MEMBER OLSEN: I just have one comment. And this
4 is only -- I'm perfectly happy with the calendar.

5 God willing, and COVID infection rate doesn't rise,
6 I will not be in the country for the July 23rd hearing.
7 I just wanted to make sure that there aren't a whole
8 bunch of people that are in the same situation.

9 CHAIRPERSON MILLER: Yes. Hopefully, I will
10 actually be in that same situation too, Ms. Olsen. I
11 have to say. But, yes, we'll have to see how that goes.

12 Any other comments or questions on the calendar?

13 (No response)

14 MEMBER ADAMS: I would move the recommended
15 calendar as presented.

16 MEMBER OLSEN: I will second.

17 CHAIRPERSON MILLER: Do we -- I'm going to move
18 approval. If I could have a second -- (audio
19 malfunction) -- moves. Ms. Wong-Hernandez seconds.

20 All those in favor, please signify by saying "aye."

21 (Ayes)

22 CHAIRPERSON MILLER: Anyone opposed?

23 (No response)

24 CHAIRPERSON MILLER: Any abstentions?

25 (No response)

1 CHAIRPERSON MILLER: Great. The calendar is
2 approved.

3 MS. HALSEY: Excellent. Thank you.

4 CHAIRPERSON MILLER: Thank you, Ms. Halsey.

5 MS. HALSEY: And moving on to the workload update.
6 After this hearing, there are 40 pending test claims, 39
7 of which are regarding stormwater NPDES permits.
8 There's also one active parameters and guidelines and
9 two statewide cost estimates pending.

10 And, additionally, there is one parameters and
11 guidelines and one additional statewide cost estimate,
12 both of which are regarding NPDES permits that are on
13 inactive status, pending the outcome of litigation
14 regarding the test claim decisions underlying those
15 matters.

16 In addition, there's one parameters and guidelines
17 amendment on inactive status, pending the outcome of
18 litigation in the CSBA case, which is currently pending
19 before the Alameda County Superior Court, on remand from
20 the Supreme Court.

21 Finally, there are seven IRCs pending, including
22 one new filing.

23 Commission staff currently expects to complete all
24 of the currently pending test claims and IRCs by
25 approximately the July 2023 Commission meeting,

1 depending on staffing and other workload.

2 Some of the test claims may be heard and decided
3 earlier than currently indicated if they are
4 consolidated for hearing.

5 Finally, I would ask all the parties and interested
6 persons to please check tentative agenda items on my
7 Executive Director's Report to see if you have an item
8 you are interested in coming up over the next couple of
9 hearings. You can also use the pending caseload
10 documents on the Commission's website, which are updated
11 at least bimonthly, and which list all pending
12 caseloads, to see when something is tentatively set for
13 hearing.

14 Please expect to receive your draft proposed
15 decisions on all test claims and IRC matters for your
16 review and comment at least eight weeks prior to the
17 hearing date; and a proposed decision approximately two
18 weeks prior to the hearing.

19 And that is all I have.

20 CHAIRPERSON MILLER: Thank you very much,
21 Ms. Halsey.

22 We will now meet in closed executive session
23 pursuant to Government Code section 11126(e) to confer
24 with and receive advice from legal counsel for
25 consideration and action, as necessary and appropriate,

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

6 We will reconvene in open session in approximately
7 15 minutes.

8 (Closed session was held from
9 10:46 a.m. to 11:18 a.m.)

10 CHAIRPERSON MILLER: We're back in open session.

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

20 With no further business to discuss, I will
21 entertain a motion to adjourn.

22 MEMBER OLSEN: So moved.

23 MEMBER WONG-HERNANDEZ: Second.

24 CHAIRPERSON MILLER: Moved by Ms. Olsen. Seconded
25 by Ms. Wong-Hernandez.

1 Anybody else, Ms. Palchik, on public comment? Just
2 one more chance, just to make sure.

3 MS. PALCHIK: I see none, Madam Chair.

4 CHAIRPERSON MILLER: Great. Thank you, very much,
5 everyone. Thank you, Ms. Ramirez, for joining us.

6 We have a motion and a second to adjourn. All
7 those in favor, say "aye."

8 (Ayes)

9 CHAIRPERSON MILLER: Anyone opposed?

10 (No response)

11 CHAIRPERSON MILLER: No? Thank you, everyone, and
12 this meeting is adjourned.

13 (Proceedings concluded at 11:19 a.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter
of the State of California, do hereby certify:

That I am a disinterested person herein; that the
foregoing proceedings were reported in shorthand by me,
Kathryn S. Swank, a Certified Shorthand Reporter of the
State of California, and thereafter transcribed into
typewriting.

I further certify that I am not of counsel or
attorney for any of the parties to said proceedings nor
in any way interested in the outcome of said
proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand
this 20th day of October 2020.


KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061