

Item 1

Proposed Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
September 26, 2014

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

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

CALL TO ORDER AND ROLL CALL

Chairperson Ortega called the meeting to order at 10:03 a.m. Executive Director Heather Halsey called the roll. She noted that Member Ramirez was unable to make it to the hearing.

APPROVAL OF MINUTES

Member Chivaro made a motion to adopt the minutes. With a second by Member Olsen, the July 25, 2014 hearing minutes were adopted by a vote of 6-0.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

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

CONSENT CALENDAR

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

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

Item 8* ***Notification of Truancy, 11-PGA-01 (07-PGA-01, 05-PGA-56, CSM-4133)***

Education Code Section 48260.5

Statutes 1983, Chapter 498; Statutes 1994, Chapter 1023; Statutes 1995, Chapter 19; Statutes 2007, Chapter 19

State Controller's Office, Requester

Item 9* ***Peace Officers Procedural Bill of Rights, 11-PGA-09 (CSM-4499, 05-RL-4499-01, 06-PGA-06)***

Government Code Sections 3301, 3303, 3304, 3305, 3306

Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1187; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675

County of Los Angeles, Requester

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

STATEWIDE COST ESTIMATES

Item 11* ***Interagency Child Abuse and Neglect Investigation Reports (ICAN), 00-TC-22***

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9¹, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, Title 11, Section 903 (Register 98, Number 29)

"Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)

County of Los Angeles, Claimant

¹ Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

Item 12* *Peace Officers Procedural Bill of Rights II (POBOR II)*, 03-TC-18
Government Code Sections 3304, 3306.5, 3309 and 3312
Statutes 1976, Chapter 465; Statutes 1998, Chapter 786; Statutes 2000,
Chapter 209; and Statutes 2002, Chapter 170
County of Los Angeles, Claimant

Item 13* *Immunization Records – Pertussis*, 11-TC-02
Health and Safety Code Section 120335
Statutes 2010, Chapter 434 (AB 354)
Twin Rivers Unified School District, Claimant

Executive Director Halsey announced that after the agenda for this hearing was released, the parties agreed to place Items 8 and 9 on the Consent Calendar. Chairperson Ortega asked if there was any objection to adding Items 8 and 9 to the Consent Calendar and if there were any comments from the public. No objection was made and there was no public comment.

Member Chivaro made a motion to adopt the Consent Calendar. With a second by Member Saylor, the Consent Calendar was adopted by a vote of 6-0.

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

Executive Director Heather Halsey swore in 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

There were no appeals to consider.

TEST CLAIMS

Item 3 *Sheriff Court-Security Services*, 09-TC-02
Government Code Sections 69920, 69921, 69921.5, 69922, 69925, 69926, 69927(a)(5)(6) and (b), and 77212.5
Statutes 1998, Chapter 764 (AB 92); Statutes 2002, Chapter 1010 (SB 1396); Statutes 2009-2010, 4th Ex. Sess., Chapter 22 (SB 13)
California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security), Adopted as California Rule of Court, rule 810 effective July 1, 1988; amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Amended and renumbered to Rule 10.810 effective January 1, 2007
County of Los Angeles, Claimant

Item 3 was postponed to the December 5, 2014 hearing at the request of the Judicial Council of California.

Item 4 *Top Two Candidates Open Primary Act, 12-TC-02*

Statutes 2009, Chapter 2 (SCA 4), adopted June 8, 2010
(Proposition 14)

Elections Code Sections 13, 300.5, 325, 332.5, 334, 337, 359.5, 9083.5, 13102, 13105, 13110, 13206, 13230, 13302, 14105.1, as added or amended by Statutes 2009, Chapter 1 (SB 6);

Elections Code Sections 8002.5, 8040, 8062, 9083.5, 13105, 13206, 13206.5, 13302, as added or amended by Statute 2012, Chapter 3 (AB 1413);

Secretary of State County Clerk/Registrar of Voters Memoranda Nos. 11005, effective 1/26/11; 11125, effective 11/23/11; 11126, effective 11/23/11; 12059, effective 2/10/12.

County of Sacramento, Claimant

This test claim alleges reimbursable state mandated activities arising from implementation of the *Top Two Candidates Primary Act*, adopted by the voters July 8, 2010.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed decision denying the test claim.

Parties were represented as follows: Alice Jarboe, representing the claimant; Lee Scott and Donna Ferebee, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Saylor made a motion to continue the item and bring it back at a later hearing. With a second by Member Olsen, the motion to continue the item and bring it back at a later hearing failed with a tie vote of 3 to 3.

After further discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Rivera, the motion to adopt the staff recommendation to deny the test claim was adopted by a vote of 6-0.

MANDATE REDETERMINATION

Item 5 *Fire Safety Inspections of Care Facilities (01-TC-16), 13-MR-01*

Health and Safety Code Section 13235(a); Statutes 1989, Chapter 993

As Alleged to be Modified by: Statutes 2009-2010, Chapter 12 (ABX 4 12)

Department of Finance, Requestor

SECOND HEARING: NEW TEST CLAIM DECISION

The second hearing is to determine whether the subsequent change in law alleged has modified the State's liability for the program, requiring the Commission to adopt a new test claim decision.

Senior Commission Counsel Giny Chandler presented this item and recommended that the Commission adopt the proposed decision as its new test claim decision.

Parties were represented as follows: Michael Byrne and Lee Scott, Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion to adopt the staff recommendation, finding that the *Fire Safety Inspections of Care Facilities* program does not constitute a reimbursable state mandated program as of July 1, 2012, was adopted by a vote of 6-0.

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

- Item 6 *Fire Safety Inspections of Care Facilities*, 01-TC-16 (13-MR-01)
Health and Safety Code Section 13235(a)
Statutes 1989, Chapter 993, Amended by 13-MR-01, As Modified by:
Statutes 2009-2010, Chapter 12 (ABX 4 12)
Department of Finance, Requester

This parameters and guidelines amendment is based on a subsequent change in law that authorized sufficient fee authority to cover the full costs of the mandated activities.

Senior Commission Counsel Giny Chandler presented this item and recommended that the Commission adopt the proposed decision and amendment to the parameters and guidelines.

Parties were represented as follows: Lee Scott, Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation to adopt the proposed decision and to amend the parameters and guidelines. With a second by Member Rivera, the motion to adopt the staff recommendation to amend the parameters and guidelines was adopted by a vote of 6-0.

- Item 7 *Post Election Manual Tally (PEMT)*, 10-TC-08
Former California Code of Regulations, Title 2, Sections 20120, 20121,
20122, 20123, 20124, 20125, 20126 and 20127
Register 2008, No. 43
County of Santa Barbara, Claimant

The parameters and guidelines govern standards and procedures for conducting post election manual tallies of votes for races with very narrow margins of victory during elections conducted using a voting system.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt the proposed decision and parameters and guidelines.

Parties were represented as follows: Renee Bischof and Anne Rierson, representing the claimant; Lee Scott and Donna Ferebee, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the proposed decision of parameters and guidelines. With a second by Member Chivaro, the motion to adopt the staff recommendation to adopt the parameters and guidelines was adopted by a vote of 6-0.

INCORRECT REDUCTION CLAIMS

- Item 10 *Notification to Teachers: Pupils Subject to Suspension or Expulsion, 05-4452-I-01*

Education Code Section 49079; Statutes 1993, Chapter 1257
San Diego Unified School District, Claimant

Senior Commission Counsel Tyler Asmundson presented this item and recommended that the Commission adopt the proposed decision to deny the incorrect reduction claim.

Parties were represented as follows: Martha Alvarez, representing the claimant; Jim Spano and Ken Howell, representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the proposed decision to deny the incorrect reduction claim. With a second by Member Olsen, the motion to adopt the staff recommendation to adopt the parameters and guidelines was adopted by a vote of 6-0.

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

- Item 9 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer
Note: This item will only be taken up if an application is filed.

No applications were filed.

STAFF REPORTS

- Item 15 Legislative Update (info)

No update was provided.

- Item 16 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 17 Executive Director: 2015 Meeting Calendar, Succession Plan, Workload Update, and Tentative Agenda Items for Next Meeting (action/info)

Executive Director Heather Halsey presented this item and reported on the Commission's backlog reduction.

Executive Director Halsey presented the 2015 hearing calendar to the Commission and recommended adoption. Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the proposed 2015 hearing calendar. With a second by Member Saylor, the motion to adopt the 2015 hearing calendar was adopted by a vote of 6-0.

Executive Director Halsey also presented a proposed succession plan for the Commission's management team. Member Olsen made a motion to adopt the proposed succession plan. With a second by Member Rivera, the motion to adopt the proposed succession plan was adopted by a vote of 6-0.

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

A. PENDING LITIGATION

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

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al* (petition and cross-petition).
California Supreme Court, Case No. S214855
(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]
2. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.* (petition and cross-petition)
Third District Court of Appeal, Case No. C070357 (Sacramento County Superior Court Case No. 34-2010-80000604)
[*Discharge of Stormwater Runoff, Order No. R9-207-000*, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
3. *California School Board Association (CSBA) v. State of California et al.*
Alameda County Superior Court, Case No. RG11554698
[2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
4. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*
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
5. *Santa Clarita Valley Sanitation District v. Commission on State Mandates, California Regional Water Quality Control Board, Department of Finance*
Los Angeles County Superior Court, Case No. BS148024
Upper Santa Clara River Chloride Requirements, 10-TC-09
(Los Angeles Regional Water Quality Control Board Resolution No. R4-

2008-012, adopted December 11, 2008; approved by United States Environmental Protection Agency April 6, 2010)

6. *County of Los Angeles v. Commission on State Mandates, Department of Finance*

Los Angeles County Superior Court, Case No. BS148845
Public Guardianship Omnibus Conservatorship Reform,
07-TC-05(Probate Code Sections 1850(a), 1851(a), 2113, 2250(a)-(c), 2250.4(a)-(d); 2352(a)-(f), 2352.5(a)-(e), 2410, 2540(a)-(b), 2543(a)-(d), 2610(a), 2620(a)-(e), 2620.2(a)-(d), 2590, 2591(a)-(q), 2591.5(a)-(d), 2623(a)-(b), 2640(a)-(c), 2640.1(a)-(c), 2641(a)-(b), 2653(a)-(c), 2920(a)-(c), and 2923 Statutes 2006; Chapter 490 (SB 1116), Statutes 2006, Chapter 492 (SB 1716), and Statutes 2006, Chapter 493 (AB 1363))

7. *Coast Community College District, et al. v. Commission on State Mandates, et al.*

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); “Program and Course Approval Handbook”

B. PERSONNEL

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

The Commission adjourned into closed executive session at 10:51am, pursuant to Government Code section 11126(e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

**RECOVENE IN PUBLIC SESSION
REPORT FROM CLOSED EXECUTIVE SESSION**

At 11:00 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) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

ADJOURNMENT

Hearing no further business, Chairperson Ortega adjourned the meeting at 11:00 a.m.

Heather Halsey
Executive Director



ORIGINAL

PUBLIC MEETING
COMMISSION ON STATE MANDATES



TIME: 10:00 a.m.
DATE: Friday, September 26, 2014
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:
Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomate Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.
Certified Shorthand Reporters
8414 Yermo Way, Sacramento, California 95828
Telephone 916.682.9482 Fax 916.688.0723
FeldhausDepo@aol.com

A P P E A R A N C E S

COMMISSIONERS PRESENT

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

SCOTT MORGAN
Representative for Ken Alex, Director
Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

SARAH OLSEN
Public Member

ANDRÉ RIVERA
Representative for BILL LOCKYER
State Treasurer

DON SAYLOR
Yolo County Supervisor
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(*Items and Item 17*)

JASON HONE
Assistant Executive Director

CAMILLE N. SHELTON
Chief Legal Counsel
(*Item 16*)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

TYLER ASMUNDSON
Commission Counsel
(Item 10)

GINY CHANDLER
Senior Commission Counsel
(Item 5 and Item 6)

ERIC FELLER
Senior Commission Counsel
(Item 7)

MATTHEW B. JONES
Commission Counsel
(Item 4)



PUBLIC TESTIMONY

Appearing Re Item 4:

For Claimant, County of Sacramento:

ALICE JARBOE
Countywide Services Agency
7000 65th Street, Suite A
Sacramento, California 95823

For California State Association of Counties:

GEOFFREY NEILL
Senior Legislative Analyst
Revenue and Taxation
California State Association of Counties
1100 K Street, Suite 101
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4: *continued*

For Department of Finance:

DONNA FEREBEE
Legal Department
Department of Finance
915 L Street, Suite 1280
Sacramento, California 95814

LEE SCOTT
Mandates Unit
Department of Finance
915 L Street, Eighth Floor
Sacramento, California 95814

Appearing Re Item 5:

For Department of Finance:

MICHAEL BYRNE
Mandates Unit
Department of Finance
915 L Street
Sacramento, California 95814

LEE SCOTT
Mandates Unit
Department of Finance

Appearing Re Item 6:

For Department of Finance:

LEE SCOTT
Mandates Unit
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 7:

For Claimant, County of Santa Barbara:

ANNE M. RIERSON
Senior Deputy County Counsel
Office of County Counsel
County of Santa Barbara
105 E. Anapamu Street, Suite 201
Santa Barbara, California 93101

RENEE BISCHOF
Chief Deputy Registrar of Voters
County of Santa Barbara
4440-A Calle Real
Santa Barbara, California 93110

For Department of Finance:

DONNA FEREBEE
Legal Department
Department of Finance

LEE SCOTT
Mandates Unit
Department of Finance

Appearing Re Item 10:

For San Diego Unified School District:

MARTHA ALVAREZ
Director of Government Relations
San Diego Unified School District
1130 K Street, Suite 2015
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 10: *continued*

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
State Controller's Office
3301 C Street, Suite 700
Sacramento, California 95816

KENNETH C. HOWELL
Division of Audits
State Controller's Office
3301 C Street, Suite 700
Sacramento, California 95816



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Commission on State Mandates – September 26, 2014

1 CHAIR ORTEGA: Thank you.

2 Are there any objections or corrections to the
3 July 25th meeting minutes?

4 MEMBER CHIVARO: Move approval.

5 MEMBER OLSEN: Second.

6 CHAIR ORTEGA: Moved by Mr. Chivaro, second by
7 Ms. Olsen.

8 All in favor, "aye."

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

10 CHAIR ORTEGA: Any abstentions?

11 *(No response)*

12 CHAIR ORTEGA: No?

13 The minutes are adopted.

14 MS. HALSEY: And now we'll take up public
15 comment for matters not on the agenda.

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

20 CHAIR ORTEGA: Any comments from the public on
21 items not on the agenda today?

22 *(No response)*

23 CHAIR ORTEGA: Seeing none, we'll move on.

24 MS. HALSEY: Next, we have a proposal to add
25 Item 8, a proposed parameters and guidelines amendment on

Commission on State Mandates – September 26, 2014

1 *Notification of Truancy*, and Item 9, a proposed
2 parameters and guidelines amendment on *Peace Officers*
3 *Procedural Bill of Rights* to the Consent Calendar.

4 After the agenda for this hearing was issued,
5 the parties agreed to place Items 8 and 9 on consent.

6 CHAIR ORTEGA: Okay, are there any objections
7 to placing Items 8 and 9 on the Consent Calendar?

8 *(No response)*

9 CHAIR ORTEGA: Anything from the public on
10 that?

11 *(No response)*

12 CHAIR ORTEGA: Seeing none, is there a motion
13 to approve the Consent Calendar?

14 MEMBER CHIVARO: I'll move approval.

15 MEMBER SAYLOR: Second.

16 CHAIR ORTEGA: Moved by Mr. Chivaro, second by
17 Mr. Saylor.

18 MS. HALSEY: The Consent Calendar consisted of
19 Items 8, 9, 11, 12, and 13.

20 CHAIR ORTEGA: Okay, any further comment on the
21 Consent Calendar?

22 *(No response)*

23 CHAIR ORTEGA: All in favor?

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

25 CHAIR ORTEGA: Any abstentions?

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1 *(No response)*

2 CHAIR ORTEGA: Seeing none, the Consent
3 Calendar is adopted.

4 MS. HALSEY: Now, let's move to the Item 7
5 portion of the hearing.

6 Will the witnesses for Items 2 through 7 and
7 Item 10 please rise?

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

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

14 *(A chorus of affirmative responses was
15 heard.)*

16 MS. HALSEY: Thank you.

17 Item 2 is reserved for appeals of the Executive
18 Director decisions. There are no appeals to consider
19 under Item 2 for this hearing.

20 Item 3 is the test claim on *Sheriff Court-*
21 *Security Services*, which has been postponed to the
22 December hearing, at the request of Judicial Council of
23 California.

24 Commission Counsel Matt Jones will present
25 Item 4, a test claim on *Top Two Candidates Open Primary*

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1 *Act.*

2 MR. JONES: Good morning.

3 This test claim alleges reimbursable
4 state-mandated activities arising from implementation of
5 the *Top Two Candidates Open Primary Act*, adopted by the
6 voters July 8th, 2010.

7 Staff finds that the test-claim statutes and
8 executive orders alleged either do not impose new
9 activities on local government or are part and parcel of
10 the voter-enacted ballot measure and, therefore, not
11 reimbursable under Government Code section 17556(f).
12 Staff, therefore, recommends that the Commission adopt
13 the proposed decision denying the test claim.

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

16 MS. JARBOE: Alice Jarboe, Sacramento County
17 Elections claimant representative.

18 MR. NEILL: Geoff Neill, California State
19 Association of Counties.

20 MR. SCOTT: Lee Scott, Department of Finance.

21 MS. FEREBEE: Donna Ferebee, Department of
22 Finance.

23 CHAIR ORTEGA: Ms. Jarboe?

24 MS. JARBOE: Hi, this is my first time here, so
25 I'm really not familiar with the procedure.

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1 I would just like to note that there are many
2 portions of both the State Legislature's actions that are
3 mandates. They are either new or higher level of
4 services, clearly called out in the test claim that I
5 have provided.

6 There may be some confusion because I included
7 the initiative just for reference only; and in full
8 disclosure, I did not intend to claim the initiative as
9 any type of mandate, but just to show that there was this
10 initiative.

11 Separate from the initiative, there were these
12 two legislative actions that are causing county election
13 offices to have higher levels of services and new
14 services.

15 I just passed -- or staff has just passed out
16 a letter showing just a little snippet of some of the
17 services and products that we have to provide for
18 elections. Clearly, \$39,000, not de minimis. It is a
19 higher level of service. Clearly, it's a cost to the
20 County.

21 One example is the party-endorsement page that
22 goes in the County's sample ballot pamphlet. That was
23 not mentioned in the initiative. It's not incidental to
24 the passage or implementation of the initiative. Never
25 was it even considered at that time clearly part of the

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1 legislation that was passed.

2 Nobody pays for that. The parties don't pay
3 for it. Clearly, the County taxpayers pay for that.
4 It's a burden on the County. It's a State mandate.
5 Having to post additional information at the polls.
6 Having to put instructions on the ballot itself. That's
7 the most expensive place you can put instructions.

8 The County didn't have a say on where to put
9 those instructions. A less-expensive and less-burdensome
10 place to put that is in the book or online. We didn't
11 have an option to do that. Clearly, we're being directed
12 to do something in a specific way. The initiative did
13 not demand, call out, address any of these things at all.

14 And I'm requesting that the Commission find
15 that the test claim is a mandate.

16 Thank you.

17 CHAIR ORTEGA: Thank you, Ms. Jarboe.

18 Mr. Neill?

19 MR. NEILL: Thank you.

20 I think even prior to whether the claim that
21 is before you today is a mandate, I would actually --
22 as said in the letter sent from our organization to the
23 commissioners a couple of weeks ago, I would request that
24 the Commission ask staff to present them at presumably a
25 future hearing, the claim that actually should be before

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1 the Commission today, which is the claim as lawfully
2 amended by Sacramento County.

3 The claim that is before you today, is a claim
4 that was lawfully amended; but those amendments are not
5 presented to the Commission today.

6 We feel that the statute in this case is plain
7 and unambiguous. The regulations that, I guess, govern
8 the Executive Director's decision to deny the amendment
9 to reject the filing of the amendment, I think is the
10 proper term, those regulations are in direct conflict
11 with statute and not a statutory -- I'm not a regulations
12 lawyer, but I would assume that regulations that are
13 supposed to implement statute, that, in fact, conflict
14 with it when a matter comes up before the Commission
15 where those two do conflict, the statute should be the
16 governing body of law.

17 So that's a request that I put before, in fact,
18 testimony on the claim -- the unamended claim that's
19 before you today.

20 If you'd like me to go on and do that now, or
21 if you'd like to go ahead and make that motion and direct
22 staff to do that.

23 CHAIR ORTEGA: Let's have a quick response to
24 the issue of -- Matt or Camille, I don't know who wants
25 to handle it -- but on the issue of the request from

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1 CSAC.

2 MR. JONES: Thank you.

3 First, to clarify, a discussion of this
4 amendment without having it on the agenda, staff believes
5 would be a violation of Bagley-Keene. So we can talk
6 about it a little bit, but we really can't -- it would be
7 inadvisable to take action on it today.

8 I suppose the most that the members would want
9 to do, would be to agendaize that question for a future
10 hearing, and then you could take action on it.

11 However, the most important point to note here
12 with respect to this proposed amendment is that the
13 claimant had ten days to raise an objection to the
14 Executive Director's decision to reject the proposed
15 amendment, and missed that deadline by, I think, over a
16 month.

17 In fact, you have in front of you the
18 supplemental analysis -- or excuse me, supplemental
19 information that's been provided, which really just
20 highlights the relevant dates.

21 The amendment that was offered was submitted to
22 the Commission on October 28th, 2013; was rejected by the
23 Executive Director on November 4th, 2013. And the first
24 Commission staff was contacted thereafter was in the
25 person of Jason Hone, was December 13th, 2013. So we're

1 looking at a minimum of four weeks by which the claimant
2 missed its deadline to object to the rejection.

3 And then you'll note, there is an e-mail --
4 there are a couple of other e-mail exchanges along with
5 that supplemental information throughout December and
6 January. And the claimant finally submitted a written
7 challenge, it was entitled, on January 21st, 2014, after
8 the amendment had been rejected November 4th.

9 So, first of all -- first and foremost, the
10 claimants missed its deadline by quite some margin.
11 However, to address, you know, the concern that the
12 regulations and the statute are inconsistent, I just want
13 to point out that the claimant is relying -- to the
14 extent I've read and analyzed the comments, the claimant
15 is relying on a provision of 17557 of the Government
16 Code, which states that test claim -- let's see, it
17 states that "*The claimant may thereafter amend the test*
18 *claim at any time*" -- excuse me, let's start from the
19 beginning.

20 Subdivision (e) says: "*A test claim shall be*
21 *submitted on or before June 30th following a fiscal year*
22 *in order to establish eligibility for reimbursement for*
23 *that fiscal year. The claimant may thereafter amend the*
24 *test claim at any time*" -- I'm quoting -- "*but before the*
25 *test claim is set for a hearing, without affecting the*

1 original filing date, as long as the amendment
2 substantially relates to the original test claim.”

3 Now, claimant, in my understanding, is
4 suggesting that that second provision, “*may thereafter*
5 *amend the test claim at any time but before set for a*
6 *hearing,*” is controlling over the Commission’s
7 regulations. But if you look at 17557 in its entirety,
8 it’s all about parameters and guidelines. 17557 is about
9 the adoption of parameters and guidelines after a test
10 claim has been heard and approved.

11 The entire section, subdivision (a) starts
12 with: “*If the Commission determines there are costs*
13 *mandated by the state, it shall determine the amount to*
14 *be subvented.*”

15 Subdivision (e), staff’s position, is that
16 subdivision (e) deals with the period of reimbursement,
17 the period of eligibility for a test claim that’s been
18 approved. It doesn’t -- it’s not intended to create an
19 end run around the statute of limitations in 17551.

20 And just in case there is any confusion there,
21 the Commission has adopted a regulation which has been on
22 the books since 2005; and that regulation clarifies that
23 any test claim or amendment has to be filed within
24 12 months of the effective date of the statute, or within
25 12 months of first incurring costs.

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1 And so staff's position is that these are not
2 inconsistent; and that's the reason for the rejection,
3 and that's the reason this matter isn't before you and
4 isn't analyzed in the test claim itself.

5 And so if there are any additional questions --

6 CHAIR ORTEGA: Thank you.

7 MR. JONES: -- I'd rather not go any further
8 into it.

9 CHAIR ORTEGA: Right. So let's see if there
10 are any questions on the procedural question before we
11 get back to the test-claim issue.

12 Any questions from the members?

13 MEMBER OLSEN: I do find it a little ironic
14 that we've had serious backlogs and delays in processing
15 test claims in the past; and we are trying to catch up
16 with that. And when one of our constituent parties has
17 a backlog or delay in responding, we're very quick to
18 procedurally, in essence, slap them down. I mean, that's
19 what I'm hearing right now.

20 So if that's not what's happening, I'd
21 certainly like a better explanation.

22 MS. SHELTON: The statutory scheme has allowed
23 for amendments to test claims for a long time, that
24 addition to 17557 has been in there long before the
25 Legislature added a statute of limitations. So the

1 amendment was there.

2 And at that time, when there was no statute of
3 limitations, they could add in any code section going
4 back to 1975, as long as they did it before the hearing
5 was set.

6 The Legislature, in 2005 -- 2004 added the
7 one-year statute of limitations, and it did not provide
8 any exceptions for amending a test claim. And it
9 wouldn't make sense to not analyze 17551 in the statute
10 of limitations when you're adding in new code sections,
11 because that's an end run around what the Legislature
12 intended.

13 The Commission did adopt regulations in 2005,
14 and interpreted that provisions -- and they've been
15 around now for almost ten years -- that any amendment,
16 when you're adding new code sections or new executive
17 orders, has to comply with the statute of limitations in
18 17551. So it's nothing new.

19 MEMBER SAYLOR: I actually tend to agree with
20 the sentiment that has just been expressed. And I
21 appreciate the technical, procedural rulings that have
22 been described here. But I think that more important is
23 the constitutional provision that local governments have
24 an opportunity to file claims when there is a state
25 mandate. And I would really like to have the opportunity

1 to hear what the actual claim is based on, and have the
2 Commission have an opportunity to hear the real issues at
3 stake.

4 I appreciate that Sacramento County Clerk's
5 office here has come forward saying that they made a
6 mistake, or that they overemphasized the initiative and
7 failed to accurately describe what the claim really
8 should be about. I appreciate that. And, you know, we
9 here in this room hear these matters over and over and
10 over, and are very detail-oriented in -- appropriately in
11 the proceedings. We need to do that because we set
12 precedents by the actions that we take.

13 But I think in fairness to the local government
14 claimant, it would make sense, from my perspective, to
15 schedule a future item to consider the actual claim that
16 they intend to bring forward and to take another look at
17 what they're bringing forward.

18 And I realize we don't have before us the exact
19 actions that have been taken by our staff, but I'd like
20 to agendize it for a later discussion.

21 MS. SHELTON: Let me just raise a couple of
22 points.

23 You can certainly do that. If you do that,
24 again, it would be -- you don't have -- because of
25 Bagley-Keene, you shouldn't be talking about those issues

1 now. I would recommend that you continue the item, the
2 full item to the next hearing.

3 But there are two deadlines that are
4 jurisdictional, which means that if you take action on
5 something when they failed to meet the deadline, then
6 your action could be considered void by a court. It's a
7 question of law, not a question of equity.

8 So, one, the statute of limitations, if you're
9 late on that and the body takes action on it, a court is
10 going to determine that action to be void.

11 The same with the requirement to appeal an
12 Executive Director's decision within ten days. Both of
13 those laws are jurisdictional, so that's the problem.
14 I mean, if you take action when you don't have
15 jurisdiction, you're going to have a potential lawsuit.

16 MEMBER OLSEN: By the same token, if we take
17 action on the item that's before us, without considering
18 the other thing that's out there, okay, when and if this
19 goes to the courts, is there anything that we know about
20 how the courts will approach that other thing?

21 MS. SHELTON: Well, we would file a response
22 and maybe file a demurrer and say the court doesn't have
23 jurisdiction over these sections because of the statute
24 of limitations. I mean, that's how it would work. If
25 we don't have jurisdiction, the court would not have

1 jurisdiction.

2 MR. NEILL: To the point of the statute of
3 limitations, that's specifically addressed is 17557(e),
4 when it says that "*the claimant may amend the test claim*
5 *at any time before it's set for a hearing without*
6 *affecting the original filing date.*"

7 MS. SHELTON: And the filing date is written
8 there -- I'm sorry, go ahead.

9 MR. NEILL: No, I'm good. Go ahead.

10 MS. SHELTON: I was going to say, the filing
11 date is written there in that section, because that's the
12 section that talks about the period of reimbursement.
13 And the concern when that language was added, was that
14 if they did file something later, they wanted to still
15 maintain their earlier period of reimbursement, which
16 goes back an earlier fiscal year. And that's the intent
17 of putting an end to 17557.

18 MR. NEILL: It could be -- the statute makes a
19 pretty clear distinction between claims and amendments.
20 And the statute that staff is relying on to say that the
21 amendment can't be filed, is specifically talking about
22 claims.

23 The time when amendments are talked about, is
24 in 17557(e), which says "*at any time, without affecting*
25 *the original filing date.*"

1 The things that under the -- in the subsequent
2 or the supplemental materials that are before you, the
3 things that that analysis says, the amendment would still
4 be allowed to revise the narrative, present evidence,
5 things like that; all of the things that staff says would
6 still be allowed in an amendment are actually things that
7 statute specifically allows to happen at the hearing
8 itself. And so having a time limit of only until
9 something is set for hearing apply to things that statute
10 in other places say are specifically allowed at the
11 hearing itself, makes the section nonsensical unless it
12 is actually talking about amendments.

13 MS. SHELTON: Can I just -- those are, you
14 know, reasonable arguments. The regulation has been in
15 law for over ten years, and it's presumed to be a valid
16 constitutional and consistent regulation. And it is an
17 issue of law. It is a law that has to be followed. So
18 it is in the regs.

19 MR. NEILL: So when statute disagrees with the
20 regulation, that the regulation -- when the regulation
21 disagrees with the statute that it is implementing, which
22 one controls?

23 MS. SHELTON: Well, first, I would disagree
24 with that suggestion.

25 But secondly, you have to presume that they are

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1 consistent; and that's in law.

2 CHAIR ORTEGA: Mr. Saylor?

3 MEMBER SAYLOR: Chair Ortega, the discussion
4 that we are not supposed to have, we are having. So it
5 seems to me reasonable to postpone this item and have
6 it -- as I think the suggestion was made, to bring it
7 back with all of the matters before it.

8 MS. HALSEY: And if that were to happen, I
9 would suggest bifurcating and first bringing it back on
10 the Executive Director appeal.

11 And then if, depending on your finding on that,
12 bringing up and changing the analysis or not, depending
13 on what the result of that hearing would be.

14 MEMBER SAYLOR: That seems sensible.

15 CHAIR ORTEGA: So at this point, I am
16 supportive of the staff analysis and the staff
17 recommendation.

18 So I think what we would need to see is a
19 motion to continue the item and bring it back at a later
20 meeting.

21 MEMBER SAYLOR: I move that we continue the
22 item and bring it back in the manner that the Executive
23 Director has described.

24 MEMBER OLSEN: And I'll second that.

25 MS. HALSEY: Is there a second?

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1 CHAIR ORTEGA: Yes, Ms. Olsen.

2 MS. HALSEY: I'll call the roll.

3 Mr. Morgan?

4 MEMBER MORGAN: Yes.

5 MS. HALSEY: Mr. Chivaro?

6 MEMBER CHIVARO: No.

7 MS. HALSEY: Ms. Olsen?

8 MEMBER OLSEN: Yes.

9 MS. HALSEY: Ms. Ortega?

10 CHAIR ORTEGA: No.

11 MS. HALSEY: Mr. Rivera?

12 MEMBER RIVERA: No.

13 MS. HALSEY: Mr. Saylor?

14 MEMBER SAYLOR: Yes.

15 MS. HALSEY: So we have a tie here.

16 A tie vote means there's no action taken.

17 What does that mean?

18 MS. SHELTON: Okay, that means there's no

19 action taken.

20 MEMBER SAYLOR: It's good to have attorneys.

21 MS. SHELTON: And you know it works really well

22 on a test claim, because then they just bring it back.

23 Under the Commission's regs, when there is a

24 tie vote, no action is taken; and the process is just to

25 bring it back when there's an odd number of members to

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1 retake the vote.

2 CHAIR ORTEGA: Okay.

3 MS. SHELTON: It's odd in this case because
4 you're doing what the motion is suggesting.

5 MS. HALSEY: Well, we're just coming back to
6 vote if we should come back to vote. I mean, that's what
7 this motion would be. We wouldn't even bring the item
8 next hearing because it has not been approved.

9 CHAIR ORTEGA: No, I wouldn't think so, either.
10 I think we could return to the item that's on
11 the agenda today; right?

12 MS. SHELTON: Yes.

13 MS. HALSEY: Yes.

14 MS. SHELTON: Because no action has been taken,
15 so you can return to the item, yes.

16 CHAIR ORTEGA: So let's just -- go ahead.

17 Yes, I was going to say, let's conclude the
18 testimony on the original item.

19 Mr. Scott?

20 MR. SCOTT: Yes, the Department of Finance
21 would urge, though, that we do agree with the staff
22 recommendation and that you do go forward with adopting
23 the decision.

24 CHAIR ORTEGA: Okay, are there any --

25 MR. NEILL: On the merits of the case then, can

1 I speak?

2 CHAIR ORTEGA: Yes, yes. Definitely we can
3 return to the non-procedural issue and go back to the
4 test claim that is agendized for today.

5 MS. HALSEY: Yes. So just to be clear then,
6 we will be sticking only to the non-amendment portions.
7 So what --

8 MR. NEILL: No, I haven't analyzed the amended
9 portion either, so that's fine.

10 I want to speak first to the issue of
11 "*de minimis*," because I think *de minimis* runs -- the term
12 runs throughout the entire analysis, that I'm sure you
13 guys underlined and highlighted just as much as I did.

14 "*De minimis*," as a legal term, means so little
15 as to be unnoticeable or not worthy of note. Not
16 unnoticeable but unworthy of note. The example that
17 is in the legal dictionary that I consulted said, on a
18 million-dollar transaction, a \$10 error is *de minimis*.
19 That makes sense. A company has a million-dollar
20 contract, there is a \$10 error. Who cares? You can buy
21 two bags of chips with \$10.

22 In this case, however, we're talking about for
23 one county, tens of thousands of dollars, which is not
24 *de minimis*. Statewide, this could very well reach
25 \$1 million, conceivably \$2 million. That does not fit

1 the definition of "*de minimis*."

2 For one county that is a County-of-Sacramento
3 size, tens of thousands of dollars equals multiple
4 temporary workers that they rely on to get through the
5 election season twice, every two years. That's not a
6 *de minimis* cost; that is significant operational cost.

7 The issue of whether the things that the
8 Legislature required through SB 6 and AB 1413, they are
9 things -- many of them, they're completely not
10 contemplated in the ballot measure. They're not only not
11 necessary to implement, they aren't even -- they don't
12 even really have anything to do with the illumination of
13 the ballot measure. They just added these other things
14 in the bills that also have in them elements that
15 implement the ballot measure.

16 As Ms. Jarboe said, the idea of having a page
17 in the sample ballot where the County is required to
18 print a party's endorsements, that's almost antithetical,
19 in fact, to the point of the ballot measure, which was to
20 have the party representations have less importance to
21 the voter, not more importance by giving them whole pages
22 of real estate in the sample ballot.

23 As to the instructions on the ballot itself --
24 this is kind of getting down into the weeds of how
25 elections are run at a local level -- the paper the

1 ballots are printed on has to meet certain, very specific
2 requirements. There are only a few printers in the state
3 that are legally allowed to print ballots because the
4 requirements are so fine.

5 And so as these bills were pending before the
6 Legislature, elections officials, their statewide
7 association, CSAC, possibly others, specifically told the
8 Legislature: As you're considering this, this is the
9 most expensive place you can put instructions to the
10 voters. There is no more expensive way to do it than
11 the way that you are contemplating to do it, in very
12 particular font sizes, very specific wording that has to
13 go on the ballot itself.

14 So the Legislature knew when they were passing
15 this that they were not doing it the least burdensome
16 way; they were, in fact, doing it in the most expensive
17 possible way.

18 And so to say that this was incidental to the
19 passage of the ballot measure and of a de minimis cost,
20 I think it fails on both of those tests.

21 And so the items in the test claim itself are
22 a higher level of service that's required specifically
23 by the Legislature that cost counties a significant
24 amount of money. And that's what a mandate is. A
25 mandate is a higher level of service that makes -- that

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1 costs local agencies money.

2 And, I mean, there's no -- that's what a
3 mandate is. And so we would request that, given those
4 facts, that you approve the test claim before you today.

5 CHAIR ORTEGA: Okay, thank you.

6 Any questions or comments from the Members?

7 *(No response)*

8 CHAIR ORTEGA: Anything further from the
9 Department of Finance?

10 MR. SCOTT: No.

11 CHAIR ORTEGA: Okay.

12 MEMBER CHIVARO: Move the staff recommendation.

13 CHAIR ORTEGA: A motion by Mr. Chivaro.

14 MS. HALSEY: Mr. Morgan?

15 CHAIR ORTEGA: I don't think we have a second.

16 MEMBER RIVERA: Second.

17 CHAIR ORTEGA: Mr. Rivera seconds.

18 MEMBER SAYLOR: May I ask a question?

19 CHAIR ORTEGA: Yes, go ahead.

20 MEMBER SAYLOR: So if this -- as this passes,
21 based on the analysis and everything that's been
22 presented procedurally thus far, what will be the
23 opportunity to address the other issues that were
24 identified earlier?

25 MS. HALSEY: Well, next hearing, we can come

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1 back with the motion that you made earlier; and if it is
2 approved by a majority, then we would take up the appeal;
3 and from there, it would --

4 MEMBER SAYLOR: So the action on the test claim
5 before us as presented in the staff recommendation, and
6 subsequently the motion --

7 MS. HALSEY: It only relates to what's pled
8 here and nothing else.

9 MEMBER SAYLOR: Yes, so it doesn't prejudge the
10 other discussion?

11 MS. HALSEY: Yes, anything else.

12 MEMBER SAYLOR: All right.

13 CHAIR ORTEGA: Okay, call the roll.

14 MS. HALSEY: Mr. Morgan?

15 MEMBER MORGAN: Yes.

16 MS. HALSEY: Mr. Chivaro?

17 MEMBER CHIVARO: Yes.

18 MS. HALSEY: Ms. Olsen?

19 MEMBER OLSEN: Yes.

20 MS. HALSEY: Ms. Ortega?

21 CHAIR ORTEGA: Yes.

22 MS. HALSEY: Mr. Rivera?

23 MEMBER RIVERA: Yes.

24 MS. HALSEY: Mr. Saylor?

25 MEMBER SAYLOR: Yes.

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1 MS. HALSEY: Thank you.

2 The motion carries.

3 CHAIR ORTEGA: Thank you, everyone.

4 MS. HALSEY: Senior Commission Counsel Giny
5 Chandler will present Item 5, the mandate redetermination
6 on *Fire Safety Inspections of Care Facilities*.

7 MS. CHANDLER: Good morning.

8 This is a request by the Department of Finance
9 to redetermine the Commission's statement of decision on
10 the *Fire Safety of Inspections of Care Facilities* program
11 on the basis that a subsequent change in law authorized
12 sufficient fee authority to cover the full costs of the
13 mandated activities, thus modifying the State's
14 liability.

15 This second hearing is to determine whether a
16 subsequent change in law has occurred that modifies the
17 State's liability for the program, requiring the
18 Commission to adopt a new test-claim decision.

19 Staff finds that the subsequent change in law
20 provides local agencies with the authority to charge a
21 fee equal to the actual cost of the mandated activities.
22 Government Code section 17556(d) provides that the
23 Commission shall not find costs mandated by the State
24 where the local government has fee authority sufficient
25 to cover the costs of the mandate. Accordingly, the *Fire*

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1 *Safety Inspection of Care Facilities* program does not
2 constitute a reimbursable state-mandated program as of
3 July 1, 2012.

4 Staff recommends that the Commission adopt the
5 analysis as its new test-claim decision.

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

8 MR. BYRNE: Michael Byrne, Department of
9 Finance.

10 MR. SCOTT: Lee Scott, Department of Finance.

11 CHAIR ORTEGA: Mr. Scott, do you have anything?

12 MR. SCOTT: The Department of Finance concurs
13 with staff.

14 CHAIR ORTEGA: Thank you.

15 Any questions or comments from the
16 commissioners?

17 MEMBER CHIVARO: Move staff recommendation.

18 MEMBER OLSEN: Second.

19 CHAIR ORTEGA: Moved by Mr. Chivaro, second by
20 Ms. Olsen.

21 CHAIR ORTEGA: Do you need to call the roll, or
22 can I...? Do you want to call the roll?

23 MS. HALSEY: Yes, please.

24 Mr. Morgan?

25 MEMBER MORGAN: Yes.

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1 MS. HALSEY: Mr. Chivaro?

2 MEMBER CHIVARO: Yes.

3 MS. HALSEY: Ms. Olsen?

4 MEMBER OLSEN: Yes.

5 MS. HALSEY: Ms. Ortega?

6 CHAIR ORTEGA: Yes.

7 MS. HALSEY: Mr. Rivera?

8 MEMBER RIVERA: Yes.

9 MS. HALSEY: Mr. Saylor?

10 MEMBER SAYLOR: Yes.

11 MS. HALSEY: Thank you.

12 Item 5 will be presented by Commission
13 Counsel -- I'm sorry, Item 6 will be presented by
14 Commission Counsel Giny Chandler. And this is the
15 parameters and guidelines amendment for *Fire Safety*
16 *Inspections of Care Facilities*.

17 MS. CHANDLER: This is a proposed amendment to
18 the parameters and guidelines on the *Fire Safety*
19 *Inspections of Care Facilities* program on the basis that
20 a subsequent change in law authorized sufficient fee
21 authority to cover the full costs of the mandated
22 activities, thus modifying the State's liability.

23 In Item 5, the Commission adopted the proposed
24 decision which adopted a new test-claim decision, finding
25 the activities approved for reimbursement in the prior

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1 test claim are no longer reimbursable as of July 1, 2012.

2 Staff recommends that the Commission adopt the
3 attached proposed decision and amendment to parameters
4 and guidelines.

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

7 MR. SCOTT: Lee Scott, Department of Finance.

8 And the Department of Finance concurs with
9 staff.

10 CHAIR ORTEGA: Okay. Questions or comments?

11 *(No response)*

12 CHAIR ORTEGA: Seeing none, a motion?

13 MEMBER CHIVARO: Move staff recommendation.

14 CHAIR ORTEGA: Mr. Chivaro moves.

15 MEMBER RIVERA: Second.

16 CHAIR ORTEGA: Second by Mr. Rivera.

17 MS. HALSEY: Mr. Morgan?

18 MEMBER MORGAN: Yes.

19 MS. HALSEY: Ms. Chivaro?

20 MEMBER CHIVARO: Yes.

21 MS. HALSEY: Ms. Olsen?

22 MEMBER OLSEN: Aye

23 MS. HALSEY: Ms. Ortega?

24 CHAIR ORTEGA: Yes.

25 MS. HALSEY: Mr. Rivera?

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1 MEMBER RIVERA: Yes.

2 MS. HALSEY: Mr. Saylor?

3 MEMBER SAYLOR: Aye.

4 MS. HALSEY: The motion carries.

5 Thank you.

6 Item 7 is a parameters and guidelines -- is
7 parameters and guidelines for *Post Election Manual Tally*.

8 And this will be presented by Senior Commission
9 Counsel Eric Feller.

10 MR. FELLER: Good morning.

11 The parameters and guidelines govern standards
12 and procedures to conduct post election manual tallies of
13 votes for races with very narrow margins of victory
14 during elections conducted on a voting system.

15 The parameters and guidelines identify
16 the activities listed in the test-claim decision which
17 directly quote the test-claim regulations except where
18 needed to be consistent with the Commission's findings or
19 for clarification.

20 Comments received on the period of
21 reimbursement eligible claimants. The period of
22 reimbursement is October 20 through November 26th, 2008,
23 coinciding with the November 2008 Presidential General
24 Election. Cities are not included as eligible claimants
25 because the mandated activities are performed only by

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1 counties.

2 Staff recommends the Commission adopt the
3 attached proposed decision of parameters and guidelines.

4 Would the parties and witnesses please state
5 your names for the record?

6 MS. RIERSON: Anne Rierson, Senior Deputy
7 County Counsel, County of Santa Barbara.

8 MS. BISCHOF: Renee Bischof, claimant
9 representative, County of Santa Barbara.

10 MR. SCOTT: Lee Scott, Department of Finance.

11 MS FEREBEE: Donna Ferebee, Department of
12 Finance.

13 CHAIR ORTEGA: Okay, thank you.

14 Are there any comments that you wanted to make?

15 MS. RIERSON: We would just like to thank staff
16 for their work on the parameters and guidelines. And we
17 don't have additional comments.

18 CHAIR ORTEGA: Okay, Finance, any additional
19 comments?

20 MS. FEREBEE: Only that Department of Finance
21 disagreed with the Commission's approval of the test
22 claim, but the Department has no objection to these
23 P's and G's.

24 Thank you.

25 CHAIR ORTEGA: Thank you.

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1 Any questions or comments from the
2 commissioners?

3 MEMBER OLSEN: Move adoption.

4 MEMBER CHIVARO: Second.

5 CHAIR ORTEGA: Moved by Ms. Olsen, second by
6 Mr. Chivaro.

7 MS. HALSEY: Mr. Morgan?

8 MEMBER MORGAN: Yes.

9 MS. HALSEY: Ms. Chivaro?

10 MEMBER CHIVARO: Yes.

11 MS. HALSEY: Ms. Olsen?

12 MEMBER OLSEN: Aye.

13 MS. HALSEY: Ms. Ortega?

14 CHAIR ORTEGA: Aye.

15 MS. HALSEY: Mr. Rivera?

16 MEMBER RIVERA: Yes.

17 MS. HALSEY: Mr. Saylor?

18 MEMBER SAYLOR: Aye.

19 MS. HALSEY: Thank you.

20 Items 8 and 9 were on the Consent Calendar.

21 Senior Commission Counsel Tyler Asmundson will
22 present Item 10, an incorrect reduction claim on
23 *Notification to Teachers: Pupils Subject to Suspension*
24 *or Expulsion.*

25 MR. ASMUNDSON: Good morning.

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1 This incorrect reduction claim challenges
2 reductions made by the State Controller's Office to
3 reimbursement claims filed by San Diego Unified School
4 District for the *Notification to Teachers* program.

5 The issue in dispute is reductions of employee
6 salaries, benefits, and related indirect costs on the
7 ground that the claims for many schools within the
8 district were not supported by actual time records or
9 valid documented time study for the time school-site
10 employees spent on the program. The claimant instead
11 reported an average time spent on each reimbursable
12 activities for each student suspended from school based
13 on from data from other schools within the district that
14 did collect and maintain time logs.

15 Claimant's method for claiming costs for these
16 school sites did not comply with the parameters and
17 guidelines governing these reimbursements claims. As
18 such, staff recommends that Commission adopt the proposed
19 decision to deny the incorrect reduction claim.

20 Staff further recommends that the Commission
21 authorize staff to make any technical, non-substantive
22 changes to the decision after the hearing.

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

25 MS. ALVAREZ: Good morning. Martha Alvarez on

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1 behalf of San Diego Unified School District.

2 MR. SPANO: Jim Spano, State Controller's
3 Office, Division of Audits.

4 MR. HOWELL: Ken Howell, State Controller's
5 Office, Division of Audits.

6 CHAIR ORTEGA: Ms. Alvarez?

7 MS. ALVAREZ: Good morning, Chair Ortega and
8 Members of the Commission. Martha Alvarez on behalf of
9 San Diego Unified School District. And I am here in my
10 capacity as director of Government Relations.

11 I want to thank the Commission staff for their
12 analysis and for working this incorrect reduction claim,
13 which dates back to June 26th, 2006.

14 As stated in the District's IRC, the District
15 contends it used a reasonable method to determine the
16 unsupported costs for which the State Controller's Office
17 is denying reimbursement.

18 The State Controller's Office is required by
19 law to pay the claim submitted by the District pursuant
20 to Government Code section 17561 subdivision (d).

21 It is clear in the Government Code Section
22 17518.5 that the Legislature's intent was to reimburse
23 schools for reasonable costs of complying with the state
24 mandates without burdening them with the need for
25 detailed documentation of actual local cost whenever

1 possible.

2 The District has gone to great effort to comply
3 with the State Controller's Office's desire for
4 contemporaneous logs, and has provided these logs for
5 60 percent of the schools claimed.

6 Denying reasonable funding for these schools
7 whose staff who are performing the mandated duties
8 instituted by the State simply because they do not have
9 the time to document their work is unfair and contrary to
10 the intent of Section 6 of Article XIII B of the
11 California Constitution.

12 The District is entitled to fair compensation
13 for the cost of complying with this mandate, and argues
14 that the method used was reasonable, conservative, and
15 consistent with the manner in which uniform cost rates
16 have been developed for other mandates.

17 We ask that the Commission find that the State
18 Controller has incorrectly reduced the District's
19 fiscal-year amounts for 2001 and 2002, and 2002 and 2003.

20 We do not have any additional comments at this
21 time, and we will stand with the written submissions.

22 Thank you for your consideration of our views.

23 CHAIR ORTEGA: Thank you.

24 Mr. Spano or Mr. Howell?

25 MR. SPANO: The State Controller supports the

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1 Commission's conclusion in its staff analysis.

2 CHAIR ORTEGA: Okay, any questions from the
3 commissioners?

4 Mr. Saylor?

5 MEMBER SAYLOR: So it appears that you did an
6 estimate based on what time studies in some selected
7 schools identified the cost to be.

8 If they had done that -- instead of simply
9 doing it, I think it seems like a reasonably good-faith
10 effort to estimate the cost -- what could they have done
11 differently that would have allowed them to use the
12 method that they're talking about? The method doesn't
13 seem problematic on its face. Was there some procedural
14 step that they missed, or do we disagree that the method
15 was a reasonable attempt at estimating costs?

16 You know, I'm asking this question because it's
17 very challenging to go through these times -- this actual
18 time reporting at individual school sites throughout the
19 District, and to try to do that ex post facto is even
20 more troublesome. So it doesn't seem unreasonable that
21 they would do a sample and then attach that sample to
22 other locations.

23 So how could they have -- what could they have
24 done to allow this to be an appropriate method?

25 MR. ASMUNDSON: Well, they didn't do any -- a

1 time study whatsoever. What they did was, they just
2 simply took the documents that they had, and they
3 developed an average based on those documents for the
4 schools, and then applied it to other schools.

5 MEMBER SAYLOR: Right.

6 MR. ASMUNDSON: The Controller found, when they
7 did the audit, that it was unreasonable to do this,
8 because they didn't even have a set standard to determine
9 what activities or how the activity was supposed to be
10 conducted.

11 So they didn't say, well, for instance, you're
12 supposed to take the record and do X, Y, and Z with it to
13 determine that there is a report from the police; and
14 then once you have that information, you're supposed to
15 take these steps to report that to the teachers.

16 So there wasn't -- what the Controller found
17 was that there wasn't a consistent methodology applied
18 and that this wouldn't have been something that you could
19 apply to the other schools without first doing that.

20 So basically, the parameters and guidelines are
21 what are most important here; and they say that they have
22 to have documentation. And there is no documentation for
23 these schools whatsoever -- whether those are any reports
24 or a time study, which would also have to be documented
25 to show what information they were gathering and how they

1 were applying it to other employees.

2 MEMBER SAYLOR: I don't think we disagree that
3 there were costs involved. We already have determined
4 that that's the case.

5 If this IRC is rejected as recommended here,
6 would the District have another opportunity to make --
7 to correct this and come back with a different claim?

8 MR. ASMUNDSON: I don't believe they could.
9 They don't have any -- from what we understand, there's
10 no documents whatsoever to support them. So they
11 couldn't come up with a documented time study, even if it
12 was done ex post facto.

13 MS. SHELTON: Well, let me just say on that
14 particular issue, that would be within the discretion of
15 the Controller on that part, if you wanted to keep it
16 open. But procedurally, there's a couple of things that
17 we need just to kind of talk about.

18 One, the courts have said that the parameters-
19 and-guidelines document is the ruling governing document,
20 which provides instructions on the documentation
21 requirements for supporting that claim.

22 And, yes, these parameters and guidelines do
23 not include a unit cost or a reasonable reimbursement
24 methodology, which is now available, and was available at
25 the time; but one was never proposed, I guess, on this

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1 program.

2 Under the Government Code statutes, what
3 they're entitled to is not the reasonable costs, unless
4 the Commission adopts one, but actual costs. And the
5 code does require documentation to prove your actual
6 costs. That's the language that was included in these
7 parameters-and-guidelines instructions.

8 I think it's a valid and completely reasonable
9 discussion to have for the future, especially when a
10 claimant does not have documentation of old claims, given
11 the backlog. But to do that, you need to adopt -- there
12 needs to be a proposal for an RRM; and that would be
13 going forward, and it would not be retroactive, back.

14 CHAIR ORTEGA: Okay, any additional questions
15 or comments from the Commission?

16 MEMBER CHIVARO: I'll move the staff
17 recommendation.

18 CHAIR ORTEGA: Moved by Mr. Chivaro.
19 Is there a second?

20 MEMBER OLSEN: I'll second it.

21 CHAIR ORTEGA: Second by Ms. Olsen.

22 MS. HALSEY: Mr. Morgan?

23 MEMBER MORGAN: Yes.

24 MS. HALSEY: Mr. Chivaro?

25 MEMBER CHIVARO: Aye.

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1 MS. HALSEY: Ms. Olsen?

2 MEMBER OLSEN: Aye.

3 MS. HALSEY: Ms. Ortega?

4 CHAIR ORTEGA: Aye.

5 MS. HALSEY: Mr. Rivera?

6 MEMBER RIVERA: Aye.

7 MS. HALSEY: Mr. Saylor?

8 MEMBER SAYLOR: Aye.

9 MS. ALVAREZ: Thank you.

10 MR. SPANO: Thank you.

11 MS. HALSEY: Items 11, 12, and 13 were on the
12 Consent Calendar.

13 Item 14 is reserved for county applications for
14 a finding of financial distress, or SB 1033 applications.
15 No SB 1033 applications have been filed.

16 Item 15 is a legislative update. There is no
17 legislative -- no legislation to report at this time.

18 Item 16, Chief Commission Counsel Camille
19 Shelton will present Item 16, the Chief Legal Counsel
20 report.

21 MS. SHELTON: As you can see from the report,
22 we do have one new filing from Clovis Unified School
23 District on the *Graduation Requirements* incorrect
24 reduction claim adopted by the Commission in May of 2014.

25 In addition, the trial court has now set

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1 hearing dates on these various cases. And I have one
2 more to add.

3 The *Coast Community College District v.*
4 *Commission on State Mandates*, dealing with the *Minimum*
5 *Conditions* litigation, has been scheduled for June 12th,
6 2015.

7 CHAIR ORTEGA: Any questions on the Chief Legal
8 Counsel report?

9 (No response)

10 CHAIR ORTEGA: Seeing none, I think -- oh, the
11 Executive Director's report.

12 MS. HALSEY: Yes. The Executive Director's
13 Report is next on workload.

14 After this hearing, there are 15 test claims
15 still pending, all but three of which are on inactive
16 pending the outcome of the *Stormwater* litigation
17 currently pending before the California Supreme Court.

18 There are two parameters and guidelines, one
19 of which is on an inactive, pending the outcome of
20 litigation in CSBA.

21 There are also seven statewide cost estimates
22 pending, one of which is on inactive, pending the outcome
23 of the *Stormwater* litigation.

24 And there are two mandate redetermination
25 requests.

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1 Finally, there are 81 IRCs pending.

2 And if it seems like these numbers have gone up
3 lately, that's because they are going up. We have been
4 getting new filings, so...

5 We have two action items on the Executive
6 Director's report today.

7 The first one is the hearing calendar.
8 Commission meetings have generally been held on fourth
9 Fridays of odd months. The fourth Friday of May 2015 is
10 May 22nd. However, this date directly precedes Memorial
11 Day weekend and may be a conflict for members and
12 parties. Therefore, staff proposes holding the
13 May meeting on the following Friday, May 29th.

14 Staff also proposes holding the November
15 meeting on the first Thursday in December to avoid the
16 holidays.

17 Staff recommends that the Commission adopt the
18 proposed 2015 calendar attached as Exhibit A.

19 And I can call the roll, unless you have
20 questions.

21 CHAIR ORTEGA: Any questions?

22 MS. HALSEY: A motion. I guess we need a
23 motion, sorry.

24 CHAIR ORTEGA: Is there a motion to adopt the
25 hearing calendar for 2015?

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1 MEMBER OLSEN: So moved.

2 CHAIR ORTEGA: Moved by Ms. Olsen.

3 MEMBER SAYLOR: Second.

4 CHAIR ORTEGA: Second by Mr. Saylor.

5 MEMBER OLSEN: I do have one question.

6 CHAIR ORTEGA: Yes, go ahead, sure.

7 MEMBER OLSEN: Have we checked to make sure
8 Thursday, December 3rd, is not in conflict with the High
9 Holy Days?

10 MS. HALSEY: The what?

11 MEMBER OLSEN: The High Holy Days?

12 Yom Kippur this year is on October 4th; and,
13 you know, it's kind of -- the whole calendar has sort of
14 moved.

15 I'm just asking. So if the December -- the
16 September --

17 MS. HALSEY: I don't know. I can Google it
18 right now.

19 But, you know, Rosh Hashanah is right now.

20 MEMBER OLSEN: Right, and then there's
21 Yom Kippur. And then there's --

22 CHAIR ORTEGA: So let's do this: Let's have
23 staff to confer and figure that out.

24 MEMBER OLSEN: I'm happy with it, but we might
25 need to --

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1 CHAIR ORTEGA: And then we can come back,
2 because you're going to have to look at another date if
3 there's a problem.

4 MEMBER OLSEN: We can revise it if we need to.

5 MS. HALSEY: Yes. I have that Yom Kippur
6 is October.

7 MEMBER OLSEN: Yes. It's a whole string of
8 holidays that are going to proceed through...

9 CHAIR ORTEGA: Like, Hanukkah.

10 MEMBER OLSEN: Yes.

11 CHAIR ORTEGA: Yes, if there's a problem, then
12 the staff can bring it back to us.

13 MS. HALSEY: But we often do conflict with
14 that, I'm saying, including this year.

15 MEMBER OLSEN: And we're okay with that? Okay,
16 that's fine.

17 MS. HALSEY: I mean, unless somebody asks.

18 MS. OLSEN: Okay.

19 MS. HALSEY: If there's someone that has a
20 conflict and wants to request that something to be moved,
21 then we can always do that.

22 MEMBER OLSEN: All right, great. I'm happy
23 then.

24 CHAIR ORTEGA: We had a motion?

25 MEMBER OLSEN: Yes. And a second.

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1 CHAIR ORTEGA: So can we do "all in favor"?

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

3 CHAIR ORTEGA: Yes, the calendar is adopted.

4 MS. HALSEY: And we have one more action item,
5 and that is the succession plan.

6 The Commission's management team is comprised
7 of the Executive Director, Chief Legal Counsel, and
8 Assistant Executive Director. To maintain continuity of
9 operations, a succession plan is required to address an
10 extended planned or unplanned absence or departure of a
11 member of a management team.

12 The proposed succession plans outlines the
13 authority and processes involved in the appointment of
14 these three positions, in either an acting or permanent
15 capacity, in the event of an extended planned or
16 unplanned absence, or the departure of a member of the
17 management team.

18 Staff recommends that Commission adopt the
19 proposed plan attached as Exhibit B.

20 CHAIR ORTEGA: Okay, any questions on the --

21 MEMBER OLSEN: I'll move.

22 CHAIR ORTEGA: Moved by Ms. Olsen.

23 MEMBER RIVERA: Second.

24 CHAIR ORTEGA: Second by Mr. Rivera.

25 All in favor of the succession plan?

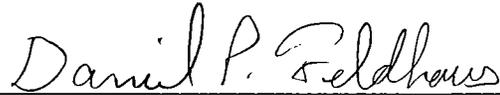
REPORTER'S CERTIFICATE

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 30th September 2014.



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