PUBLIC HEARING

COMMISSION ON STATE MANDATES

TIME: 9:30 a.m.

DATE: Friday, September 28, 2012

PLACE: State Capitol, Room 447
Sacramento, California

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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A P P E A R A N C E S

COMMISSIONERS PRESENT

RICHARD GILLIHAN
(Commission Chair)
Representative for ANA MATOSANTOS, Director
State Department of Finance

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

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member

DON SAYLOR
Yolo County Supervisor
Local Agency Member

COMMISSION STAFF PRESENT

HEATHER HALSEY
Executive Director
(Items 2, 17, and 20)

JASON HONE
Assistant Executive Director

CAMILLE SHELTON
Chief Legal Counsel
(Items 3 and 19)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF
continued

ERIC FELLER
Senior Staff Counsel
(Item 6)

MATT JONES
Commission Counsel
(Item 5)

KENNY LOUIE
Staff Counsel
(Items 4 and 10)

KERRY ORTMAN
Program Analyst
(Item 18)

PUBLIC TESTIMONY

Appearing Re Item 3:

For City of Kingsburg:

JULIANA F. GMUR
Manager, Financial Services
MAXIMUS
625 Coolidge Drive, Suite 100
Folsom, California 95630

For Department of Finance:

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

RANDALL WARD
Budget Analyst
Department of Finance
915 L Street
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4:

For Solana Beach School District:

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

For Department of Finance:

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

Appearing Re Item 5:

For San Diego Unified School District:

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

For Department of Finance:

LAURIE CARNEY
Department of Finance
915 L Street
Sacramento, California 95814

DONNA FEREBEE
Staff Counsel III
Department of Finance
915 L Street
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6:

For Department of Finance:

CHRIS JOHNSON
Department of Finance
915 L Street
Sacramento, California 95814

DONNA FEREBEE
Staff Counsel III
Department of Finance
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Appearing Re Item 10:

IAN JOHNSON
Finance Budget Analyst
Education Unit
Department of Finance
915 L Street
Sacramento, California 95814

DONNA FEREBEE
Staff Counsel III
Department of Finance
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Sacramento, California 95814

Also Present:

NANCY PATTON

ERRATA SHEET

Page	Line	Correction
5	N/A	~~Chris Johnson~~ Christian Osmena
34	24	~~Chris Johnson~~ Christian Osmena
35	4	~~Chris Johnson~~ Christian Osmena

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BE IT REMEMBERED that on Friday, September 28, 2012, commencing at the hour of 9:29 a.m., thereof, at the State Capitol, Room 447, Sacramento, California, before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the following proceedings were held:

(The following proceedings commenced with Member Saylor absent from the hearing room.)

CHAIR GILLIHAN: Good morning, everybody.

This meeting on the Commission on State Mandates will come to order.

First, I'd like to introduce two new commission employees: Jason Hone, Assistant Executive Director, sitting here to the right; and Matt Jones, Commission counsel.

Welcome to both of you.

Heather, will you please call the roll?

MS. HALSEY: Mr. Morgan?

MEMBER MORGAN: Here.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Here.

MS. HALSEY: Mr. Gillihan?

CHAIR GILLIHAN: Present.

MS. HALSEY: Mr. Lujano?

MEMBER LUJANO: Here.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Here.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Here.

MS. HALSEY: Mr. Saylor?

(No response)

CHAIR GILLIHAN: Okay, are there any objections, corrections to the May 25th, 2012, minutes?

MEMBER CHIVARO: Move approval.

CHAIR GILLIHAN: Is there a second?

MEMBER OLSEN: Second.

CHAIR GILLIHAN: So there's a motion and a second for adopting the minutes.

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

(A chorus of "ayes" was heard.)

CHAIR GILLIHAN: All those opposed?

(No response)

CHAIR GILLIHAN: No?

(No response)

CHAIR GILLIHAN: Any abstentions?

MEMBER MORGAN: Yes.

CHAIR GILLIHAN: And I'll be abstaining as well.

Okay, so the minutes are adopted.

MS. HALSEY: Item 2 is reserved for appeals of the Executive Director's decisions.

There are no appeals to consider under Item 2.

(Member Saylor entered the hearing room.)

MS. HALSEY: We'll give Don a moment to sit down.

The next item is the *Proposed Consent Calendar*, which consists of Items 7, 8, 9, 11, 12, 13, 14, 15, and 16.

Please note Item 7 was originally agendized as not being on the consent calendar, but all of the parties have since agreed to place it on consent.

CHAIR GILLIHAN: Are there any objections to the proposed consent calendar?

MEMBER OLSEN: I move the consent calendar.

MEMBER CHIVARO: Second.

CHAIR GILLIHAN: Second?

So it's been moved and seconded to adopt the proposed consent calendar.

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

(A chorus of "ayes" was heard.)

CHAIR GILLIHAN: All those opposed, signify by saying "no."

(No response)

CHAIR GILLIHAN: The motion carries.

MS. HALSEY: Let's move to the Article VII portion of the hearing.

Will the parties and witnesses for Items 3, 4, 5, 6, and 10 please rise?

(Parties and witnesses stood.)

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

(Parties and witnesses responded affirmatively.)

MS. HALSEY: Thank you.

Chief Counsel Camille Shelton will present Item 3, a test claim on *Reserve Peace Officer Training*.

MS. SHELTON: This test claim addresses the basic and continuing professional training requirements for reserve peace officers appointed by local law-enforcement agencies of cities, counties, special districts, and school districts. Reserve officers generally work as volunteers and perform a number of general and specialized assignments, depending on their level of training.

The test-claim statutes and POST Administrative Manual identify the training requirements and responsibilities for each level of reserve officer.

Staff finds that the claim statutes in the POST manual do not impose any mandated duties on local government.

The obligation to get training is on the individual seeking reserve peace-officer status and on those individuals seeking to continue their designation or appointment as a reserve officer.

Staff recommends that the Commission deny this test claim.

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

MS. GMUR: Juliana Gmur on behalf of test claimant, City of Kingsburg.

MS. GEANACOU: Susan Geanacou, Department of Finance.

MR. WARD: Randall Ward, Department of Finance.

MS. GMUR: Good morning, Commissioners.

The test claimant would like to thank staff for their thorough job on this matter, and we concur with the staff analysis.

CHAIR GILLIHAN: Ms. Geanacou or Mr. Ward?

MR. WARD: Yes, we concur with the statement of decision -- the draft statement of decision as well.

Thank you.

MEMBER CHIVARO: I'll move the staff

recommendation.

MEMBER OLSEN: Second.

CHAIR GILLIHAN: So the motion's been -- the staff recommendation has been moved and seconded.

Is there any public comment?

(No response)

CHAIR GILLIHAN: Seeing none, Heather, will you please call the roll?

MS. HALSEY: Mr. Morgan?

MEMBER MORGAN: Aye.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. HALSEY: Mr. Gillihan?

CHAIR GILLIHAN: Aye.

MS. PATTON: Mr. Lujano?

MEMBER LUJANO: Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Aye.

CHAIR GILLIHAN: The motion carries.

MR. WARD: Thank you.

MS. HALSEY: Commission Counsel Kenny Louie

will present Item 4, a test claim on *Uniform Complaint Procedures, K through 12*.

MR. LOUIE: This claim addresses activities associated with the procedures of filing, investigating, and resolving complaints alleging violations of specified educational programs and allegations of unlawful discrimination.

The claim also addresses notice requirements regarding the prohibition against discrimination and the availability of civil remedies for discrimination complaints.

Staff recommends the partial approval of this test claim for the activities starting on page 49 of the analysis.

These activities exceed federal law, and apply only to specified educational programs that districts are required to provide. However, staff recommends that the Commission deny some of the notice and complaint procedures because they are mandated by federal law.

In addition, staff found some of the educational programs subject to the complaint procedures to be voluntary.

As a result, staff recommends the Commission deny reimbursement for the complaint procedures for the educational programs voluntarily provided by school

districts.

The claimants have not filed comments on the staff analysis.

Yesterday afternoon, the Department of Finance filed late comments on the analysis.

Staff will address any questions that arise from these comments. And I believe that the Commission members have received a copy of the filing.

Staff recommends the Commission adopt the staff analysis and proposed statement of decision to partially approve the test claim.

Will the parties and witnesses state their names for the record?

MR. PALKOWITZ: Good morning. Art Palkowitz on behalf of the claimant.

MS. GEANACOU: Susan Geanacou, Department of Finance.

CHAIR GILLIHAN: Thank you.

Mr. Palkowitz?

MR. PALKOWITZ: Thank you.

We're willing to submit on the staff analysis. And I'd like to have an opportunity to respond to the Department of Finance's comments that I received yesterday.

CHAIR GILLIHAN: Okay, Ms. Geanacou?

MS. GEANACOU: The Department of Finance does not have any additional comments to add. We acknowledge that the filing yesterday was a late filing.

My only request is that we have an opportunity to hear the Commission staff on that late filing, those issues, as well as the request to have the various appropriations listed in the Schedule A -- I believe it's called "Attachment A" -- as possible offsets to claimant's costs, should this test claim be approved.

CHAIR GILLIHAN: Mr. Louie?

MR. LOUIE: In regard to Finance's argument that adult education is voluntary as a whole, generally speaking, that's true. However, as the code sections are laid out, code sections specifically involving citizenship and English adult education are laid out to specifically require, regardless of whether or not there is an existing program, to provide those services if requested by a certain number of the citizenship in that area.

Now, if you look at the statutory scheme in the Ed. Code, there are instances in which the Legislature has stated "if a district is maintaining an adult education program, then they may provide," or "then they shall provide" certain activities.

That is not the case with these specific code

sections that require adult education citizenship or English. And as a result, based on the plain language of the statute, they are required to provide those services. And this is consistent with our prior test claim that we found to require adult education for these specific classes. That would have been adult enrollment, education reporting.

In regards to the funding situation, to the extent that local agencies can use those funds for the purposes of complaint procedures, and if you use those funds, then we can mark them as possible offsetting of funds. And that can be handled at the P's and G's stage.

However, once again, the claimants need to be authorized to use it, and they must use it for that -- or in those instances, the claimants have to use it for that to be offsetting, unless there's a requirement that the claimants use it for the specific purposes of the complaint procedures.

CHAIR GILLIHAN: Ms. Olsen?

MEMBER OLSEN: I'll move the staff recommendation.

MEMBER CHIVARO: I'll second.

CHAIR GILLIHAN: Is there any other discussion amongst the Commission?

(No response)

CHAIR GILLIHAN: Are we ready for the question?

(No response)

CHAIR GILLIHAN: So we have a motion and a second on the staff recommendation.

Heather?

MS. HALSEY: Mr. Morgan?

MEMBER MORGAN: Aye.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. HALSEY: Mr. Gillihan?

CHAIR GILLIHAN: Aye?

MS. HALSEY: Mr. Lujano?

MEMBER LUJANO: Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Aye.

CHAIR GILLIHAN: The motion is carried.

MS. HALSEY: Moving on to Item 5, Commission Counsel Matt Jones will present Item 5 on *Pupil Health: Oral Health Assessment.*

MR. JONES: Good morning.

This test claim alleges increased costs under

Education Code section 49452.8, which requires public school pupils in kindergarten or in the first grade, if not previously enrolled in kindergarten, to obtain an oral-health assessment from a licensed dentist or other dental health professional.

Staff finds that section 49452.8 requires school districts to notify parents or legal guardians of the oral-health assessment requirement, to receive and retain the assessments and waiver forms from parents, and to report aggregated statistical results to the county office of education.

These requirements, however, are specifically funded by an ongoing budget appropriation, at line 6110-268-0001, in the amount of $4.4 million annually.

Government Code section 17556(e) prescribes a finding of cost by the Commission where an appropriation is made in the test-claim statute or in other bills specifically intended to fund a mandate and in an amount sufficient to fund the mandate.

The claimant has not demonstrated any basis for a finding that this appropriation is not sufficient to cover the costs of the mandated activities.

Staff, therefore, recommends that the Commission deny this test claim.

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

MR. PALKOWITZ: Good morning.

Art Palkowitz on behalf of the claimant, San Diego Unified School District.

MS. CARNEY: Laurie Carney on behalf of the Department of Finance.

MS. FEREBEE: Donna Ferebee, Department of Finance.

CHAIR GILLIHAN: Good morning.

Mr. Palkowitz?

MR. PALKOWITZ: Yes, thank you.

Good morning, everyone.

Looking back to, I think it was ‘06, when we filed this test claim, we knew at the time there was funding in the budget for these activities.

We were concerned that at some point that funding may be diminished or eliminated. That has not happened, and, therefore, the funding has been adequate for the districts during that period of time. However, the ‘12-13 budget has decreased the funding by 20 percent.

The districts, now that we’re in the school year of ‘12-13, have not determined yet how that will impact their activities, and whether they will have a

deficiency, in that the amount of money they will receive from the budget will be less than the costs of those activities.

I believe in the past it was a unit rate. And I don't really know how that's going to be impacted on the '12-13 for the schools.

So staff is correct, there has not been any evidence provided for the last year, since this statute was enacted, up until now, because there has been no evidence submitted regarding the District's request for reimbursement of their costs because the funding has been adequate.

But we have a situation here that in '12-13 there is a decrease of 20 percent. And based on that decrease and the possibility of an increased decrease, the funding for the activities may be deficient as years go forward.

In speaking to Camille about this earlier today, though I don't like to propose putting this off for a while, I really don't see how else we could handle this as opposed to filing a new test claim and having the claimants incur that expense, and waiting years until that's heard.

So I would like to propose that this test claim be continued, probably for about a year, which will

provide the claimants an opportunity to review the activities, and see what the costs are that have been put in the budget, and give them an opportunity to provide any evidence to this body. Because the reason this test claim is being denied is not because it's not necessarily a mandate but, rather, that the funding has been provided for all these years and is adequate.

Thank you.

CHAIR GILLIHAN: Thank you.

Before we go to the Department of Finance, Ms. Ramirez?

MEMBER RAMIREZ: As a relatively new commissioner, I'd like to just be informed of the procedure and precedent for continuing claims in the manner that counsel has stated.

MS. SHELTON: It's within the discretion of the Commission if they want to continue an item. You can certainly do that.

With respect to the issues here, there is a Government Code section that Matt has that listed in the analysis, at 17556, that does require the Commission to deny a claim when there is no evidence of costs mandated by the State when there has been a specific appropriation sufficient to fund the cost of the mandate.

Finance may have some testimony today about

that 20 percent reduction. But we still don't have evidence in the record today. So if you were to decide it today on this record, we would continue to recommend that the claim be denied.

If you don't -- in that case, if you were to take action on the item today, consistent with the staff recommendation, like Mr. Palkowitz was suggesting, he can file another test claim because the government does allow them to file a test claim within one year of first incurring costs.

MEMBER RAMIREZ: And when might it be likely to return to us, if they did do that?

MS. SHELTON: If they filed another test claim?

MEMBER RAMIREZ: Yes.

MS. SHELTON: You would know your costs after the fiscal year -- after this '12-13 fiscal year, right?

MR. PALKOWITZ: Right. But I think the concern you should have is that based on past history, it could take four or five years after we file our test claim to be heard by the Commission. And maybe that's an incorrect estimate.

MS. HALSEY: Based on our current backlog reduction plan, we should be done with all test claims in two years. And that's assuming the water cases are

actually resolved in the next year, which is unlikely. So we'll actually probably be able to get it done within less than two years.

CHAIR GILLIHAN: Mr. Saylor was first, and then Ms. Olsen.

MEMBER SAYLOR: Is your question on point?

MEMBER OLSEN: Yes, it is.

MEMBER SAYLOR: Then I'll wait. It's on a different line.

CHAIR GILLIHAN: Ms. Olsen?

MEMBER OLSEN: Ms. Shelton, you said that a test claim needs to be filed within one year of incurring costs.

MS. SHELTON: Yes.

MEMBER OLSEN: So do we really have the ability to set this off, since this test claim was filed, theoretically, within one year of something that proved to not happen?

MS. SHELTON: You're raising a good point. On this record, as I said, there is nothing in the record that suggests that the claim should be approved. We have nothing here. And still, the burden is on the claimant to prove those elements.

MEMBER OLSEN: So if we were to put it off, as Mr. Palkowitz suggests, okay -- this test claim was filed

when?

MS. SHELTON: 2006.

MEMBER OLSEN: Okay, so '06.

So we put it off, and we come back in a year or two. Presumably, they would have shown if it's going to be able to be shown, that they had some costs relative to the budget reductions. I don't know if that actually will come to pass. But let's just use that as a starting point. But the claim would not have been filed within one year of those costs being incurred.

So would we still have to deny the claim, having put it off because the claim had not been filed within one year of those costs being incurred?

MS. SHELTON: No, the body can choose to maintain jurisdiction over a claim.

MEMBER OLSEN: Okay.

MS. SHELTON: You can choose to maintain jurisdiction over that.

If there was absolutely no funding, this claim would be recommended as an approval.

MEMBER OLSEN: Right.

MS. SHELTON: If there is a subsequent finding after that Commission decision, then those appropriations would be listed as an offset in the P's & G's. And then it's possible that the Controller would deny down to

zero, if sufficient funding had been appropriated.

But here, because we do have 17556 right now on this record, there is nothing to show any increased costs beyond the amount appropriated.

MEMBER OLSEN: Okay, thank you.

MR. PALKOWITZ: I have a question.

In the test claim, there was a declaration that stated the claimant incurred costs.

Are you --

MS. SHELTON: The declaration, Matt can clarify.

MR. JONES: Based on the test claim, as I read it, at page 22 of the exhibits, or page 18, if you're looking at the test-claim numbers, paragraph 4 suggests that the claimant's statewide cost estimate is drawn directly from the California Department of Education's estimate, which, in turn, seems, on the basis of this record, to be drawn from the Budget Act itself. There seems to be no other basis for the claimant's estimate of costs that I can see on this record.

CHAIR GILLIHAN: Okay, Mr. Saylor?

MEMBER SAYLOR: So my question actually goes to the nature of the costs that might be claimed at some point in the future.

And there seem to be three things: One is a

notice; second is a compilation and keeping of the records; and third is a report.

I'm puzzled as to how those costs will continue into the future. It seems that the notice, once established, will not be a major cost because it's just an ongoing part of the procedure.

Can you describe, Mr. Palkowitz, the cost-driver in this?

MR. PALKOWITZ: Yes. Thank you.

The test claim includes, for this claimant, San Diego Unified, they estimated $1,400 for training staff; $13,000 to implement the assessment program, which includes distributing forms.

This program is going to continue every year as incoming students come in. And so it's -- I don't think some of these might be considered one-time, like, training staff might be; but I don't believe obtaining the forms, answering questions, collecting and inputting the data, that, to me, would seem to be ongoing versus one-time.

They estimate $45,000 to distribute and collect the assessment of waiver forms to the parents, and then also an expense to annually report the compliance results.

I don't know if that answers your question, but

those are their estimates.

And getting back to staff's comments, those estimates are driven or arrived at based on the budget as opposed to what they're actually -- her declaration is saying, I would -- you know, to me, I don't really -- I wouldn't agree with that.

MS. SHELTON: Except when you read the test claim as a whole, they have -- San Diego -- I think it's San Diego -- has acknowledged that they've received full funding.

MR. PALKOWITZ: Well, I guess this -- we're dealing with a couple issues.

One issue is saying that they didn't submit any costs. And we're not denying they haven't received funding. That's not the issue here.

If the recommendation is to deny the test claim because no costs have been submitted, we have a declaration that, to me, would be acceptable evidence on what the costs were for a year, that year '06-07.

So if that's the basis to deny the test claim, it seems to me that's not accurate.

If you want to dispute her declaration to some effect, to the value that she's putting on there, but to have a statement, "We're denying this because there are no costs submitted," I would like clarification on that.

MS. SHELTON: The recommendation is to deny this test claim based on 17556(e). There has been an appropriation specifically targeted for this program, which was sufficient to cover the costs of the mandate. And the claimant has the burden of proof to show that they have increased costs mandated by the State; and there is no evidence of any increased costs beyond that, which has already been appropriated.

CHAIR GILLIHAN: Can we go to the Department of Finance?

MS. FEREBEE: Yes, thank you.

Donna Ferebee, Department of Finance.

Finance believes that the comments offered by Mr. Palkowitz were and have been largely addressed in the final staff analysis in here today.

We urge you to approve the final staff analysis.

And further, we also agree with Ms. Shelton’s comments about the possibilities of a later filing by the claimant as a possibility. But today, we would urge you to adopt the final staff analysis as opposed to continuing the test claim.

Thank you.

CHAIR GILLIHAN: Thank you.

Are there any other questions?

Mr. Saylor?

MEMBER SAYLOR: I move approval of the recommended position.

CHAIR GILLIHAN: We have a motion.

Is there a second?

MEMBER CHIVARO: Second.

CHAIR GILLIHAN: So we have a motion and a second on the staff recommendation.

Is there any public comment?

(No response)

CHAIR GILLIHAN: Any other discussion amongst the Commission?

(No response)

CHAIR GILLIHAN: Heather, will you call the roll, please?

MS. HALSEY: Mr. Morgan?

MEMBER MORGAN: Aye.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. HALSEY: Mr. Gillihan?

MEMBER GILLIHAN: Aye.

MS. HALSEY: Mr. Lujano?

MEMBER LUJANO: Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Aye.

CHAIR GILLIHAN: The motion is approved on the staff recommendation.

MS. HALSEY: Item 6, Senior Staff Counsel Eric Feller will present Item 6, a test claim on *Instructional Materials Funding Requirements.*

MR. FELLER: Good morning.

This test claim requests reimbursement for activities performed by K-through-12 school districts to review, select, order, and dispose of textbooks and instructional materials, as well as activities related to categorical funding programs for the purchase of these materials.

For the reasons stated in the analysis, staff recommends the Commission deny this test claim because the statutes, regulations, and executive order do not mandate a new program or higher level of service on school districts.

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

CHRIS JOHNSON: Chris Johnson, Department of Finance.

MS. FEREBEE: Donna Ferebee, Department of Finance.

CHAIR GILLIHAN: So, Department of Finance?

CHRIS JOHNSON: We concur with the staff analysis and the proposed statement of decision.

MEMBER CHIVARO: Move staff recommendation.

CHAIR GILLIHAN: So we have a motion.

Is there a second on the staff recommendation?

MEMBER MORGAN: Second.

CHAIR GILLIHAN: We have a motion and a second.

Is there any other discussion amongst the Commission?

(No response)

CHAIR GILLIHAN: Any public comment?

(No response)

CHAIR GILLIHAN: Seeing none, Heather, will you please call the roll?

MS. HALSEY: Mr. Morgan?

MEMBER MORGAN: Aye.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. HALSEY: Mr. Gillihan?

MEMBER GILLIHAN: Aye.

MS. HALSEY: Mr. Lujano?

MEMBER LUJANO: Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Aye.

CHAIR GILLIHAN: The motion carries on the staff recommendation.

MS. HALSEY: Items 7, and 8, and 9 are on the Consent Calendar.

Item 10 is our next item.

Commission Counsel Kenny Louie will present Item 10, *Public Contracts, K-14,* Parameters and Guidelines and Proposed Statement of Decision.

MR. LOUIE: This item proposes adoption of the parameters and guidelines for the *Public Contracts* program. The *Public Contracts* program addresses the requirements imposed on school districts and community college districts when they are contracting for goods, services, and public works projects, including the requirement to specify the classification of contractor's license in a bid proposal, the required contract clauses for public works involving digging trenches or other excavation, the requirement to verify a bidder's license status, and community college districts engaging in

activities to promote minority, women, and disabled business enterprise participation in public contracts.

There are some issues in the P's & G's that may be complicated. Staff is here to answer any questions if those arise.

Staff recommends the Commission adopt the proposed parameters and guidelines and the statement of decision.

Will the parties and witnesses state their names for the record?

IAN JOHNSON: Ian Johnson, Department of Finance.

MS. FEREBEE: Donna Ferebee, Department of Finance.

CHAIR GILLIHAN: The Department of Finance?

IAN JOHNSON: Yes, we would limit our comments on the proposed parameters and guidelines to Section 7, the offsetting revenues and reimbursements.

Finance notes that as a requirement for school district participation in the *School Facilities* program, districts must set aside a percentage of their general fund each year in a routine restricted maintenance account.

Funding in this account is solely for the purpose of making necessary repairs, renewals, and

replacements to ensure that the facilities are in good repair.

We would argue that for school districts that are participating in the *School Facilities* Program, any funding in the routine restricted maintenance account should be deducted as offsetting revenue for reimbursable activities.

We believe this should apply for all school facilities program, participating districts, even if the site on which the reimbursable activities are being performed was not funded through the *School Facilities* Program directly.

We would also argue that because the routine restricted maintenance account is derived from districts' revenue limits, all revenue and that funding is available to school districts for the purpose of offsetting the costs of these reimbursable activities.

MR. LOUIE: I'm sorry, these are kind of a twist on some of the arguments that were proposed earlier.

We kind of addressed Finance's original argument on page 10 of the analysis, which does open up the possibility -- or exclude certain districts and certain projects that do participate in *SFP* funding. Pursuant to the plain language of the code sections, they

agree to -- or cover the cost of the repairs.

However, to the extent that revenue limit funding and things of that nature are to be used for purposes of other projects, this is kind of a new argument here that we haven't fully had the time to analyze or address.

MS. SHELTON: On that issue of revenue limit funding, it is an issue pending in litigation in the *Grad Requirements* parameters and guidelines. In that claim, the Commission denied that as an offsetting revenue because revenue limit funding is their proceeds of taxes and their general revenue, which, when you look at the purpose of Article XIII B, section 6, cannot be used as an offset.

Again, it's an issue pending in court.

MS. HALSEY: Also, in recent budgets -- and I haven't looked at every one of them, but I looked at several -- there has been authority given to use deferred maintenance account money for any educational purpose. I think it's being used for textbooks and other kinds of things lately. So it might not be available for that purpose.

CHAIR GILLIHAN: Any additional follow-up comments from Finance?

IAN JOHNSON: We would just continue to argue

that, you know, while there are several revenue sources listed under Section 7 of the proposed parameters and guidelines, we would continue to argue that especially the routine restricted maintenance account which, again, is a requirement to be set aside by school districts for the purposes of maintaining facilities, we would argue that that should be also considered in these sources for offsetting revenue for reimbursable activities.

CHAIR GILLIHAN: Are there any questions amongst the Commission?

MEMBER CHIVARO: I'll move staff recommendation.

MEMBER OLSEN: Second.

CHAIR GILLIHAN: So we have a motion and a second on the staff recommendation.

No further discussion amongst the committee?

(No response)

CHAIR GILLIHAN: Any public comment?

(No response)

CHAIR GILLIHAN: Seeing none, Heather, will you call the roll, please?

MS. HALSEY: Mr. Morgan?

MEMBER MORGAN: Aye.

MR. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. HALSEY: Mr. Gillihan?

CHAIR GILLIHAN: Aye.

MS. HALSEY: Mr. Lujano?

MEMBER LUJANO: Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Aye.

CHAIR GILLIHAN: The motion carries.

MS. HALSEY: Items 11 through 16 are all on the consent calendar.

Item 17 is reserved for county applicants for a finding of significant financial distress, or SB 1033 applications.

No SB 1033 applications have been filed.

Moving on to Item 18, Program Analyst Kerry Ortman will present the *Legislative Update*.

MS. ORTMAN: Good morning.

There were two bills relating to the mandates process introduced this year.

The first was SB 1112, introduced by Senator Liu. This bill would have reduced the deadline for local governments and the Department of Finance to submit a

proposed joint reimbursement methodology to the Commission by 15 days.

And the second was SB 1147, also introduced by Liu. Under this one, existing law requires that the statewide cost estimates be completed within 12 months after receipt of a test claim, and allows this 12-month deadline to be extended for six months upon the request of the claimant or the Commission. This bill would have reduced the six-month extension period to four months.

Both of these bills were spot bills that never made it out of committee and they are now dead.

CHAIR GILLIHAN: Thank you.

MS. HALSEY: Item 19, Chief Legal Counsel Camille Shelton will present the *Chief Legal Counsel's Report.*

MS. SHELTON: As noted on the report, the *Grad Requirements* parameters and guidelines litigation has been continued again until February 15th.

One more item to add: On the litigation brought by the California School Boards Association, they have filed a motion to amend their complaint to add challenges to the education block grant for mandates. And that motion will be heard on January 17th.

MS. HALSEY: Thanks, Camille.

Item 20 is the *Executive Director's Report.*

This is our year-end report, since we did not have our July hearing. So just an update on where we are at with regard to workload.

We completed 14 test claims, 35 incorrect reduction claims, eight parameters and guidelines, eight parameters and guidelines amendments, six statewide cost estimates, and one request to review claiming instructions this year.

We're making good headway on our backlog reduction plan. We have 36 test claims still pending with the Commission. And we've also greatly reduced our incorrect-reduction claims from 157 last year, to 127 this year.

And so I wanted to thank staff for their hard work on that, and the parties.

And then moving on, we have one information action item on the Executive Director's Report, and that is at Roman numeral II, and it's the meeting calendar for this next year.

Traditionally, our Commission meetings have been held on the fourth Fridays, or in some years, Thursdays of odd months. The November meeting is usually set for the first Friday of December, and that's to avoid the holidays.

Next year, we have a scheduling conflict for

the March meeting. So if we stick with our odd months' calendar, we would need to move that to April 19th. And if we maintain the fourth Friday of odd months -- if we maintain this current schedule, otherwise, we would go with even months, and we would continue with the fourth Fridays for that.

I have a little drop list here of fourth Fridays -- of even months or odd months. You can see all the dates, and make sure you don't have any conflicts. And also I think if the parties wanted to comment, that might be good, too, if they have some things in their schedules that might affect the decision of the Commission.

CHAIR GILLIHAN: So is there any discussion or comments from the members on the calendar for the next year?

MEMBER SAYLOR: Are we asked to make a stated preference between odd --

MS. HALSEY: Even or odd, basically. Those two calendars, there are the choices.

MEMBER SAYLOR: I prefer odd, if that's what you're looking for.

MS. HALSEY: Okay. Well, if someone -- so the thing to do, if no one has any comments, would be for one of the members to make a motion, and then to adopt the

calendar.

MEMBER SAYLOR: I move for odd.

CHAIR GILLIHAN: We have a motion.

MEMBER OLSEN: I'll second it.

CHAIR GILLIHAN: And a second.

Is there any other discussion amongst the members?

(No response)

CHAIR GILLIHAN: Seeing none, any public comment?

(No response)

CHAIR GILLIHAN: Heather, will you call the roll?

Or do you want to just do this as -- all in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR GILLIHAN: All opposed, say "no."

(No response)

CHAIR GILLIHAN: Hearing none, the motion carries.

MS. HALSEY: Thank you.

MEMBER RAMIREZ: May I ask a question? I'm sorry.

CHAIR GILLIHAN: Certainly.

MEMBER RAMIREZ: Thank you.

And it refers to the earlier part of your report.

MS. HALSEY: Yes.

MEMBER RAMIREZ: Could you just review very briefly the incorrect-reduction claims matter, just with a bit of description?

MS. HALSEY: So incorrect-reduction claims are claims filed with the Commission that the Controller incorrectly reduced the reimbursement claim, so that it's inconsistent with our statement of decision. That's the argument. And we hear and decide those.

We also facilitate negotiations between the parties and the State Controller's to settle those.

MEMBER RAMIREZ: Thank you very much.

MS. HALSEY: Uh-huh.

CHAIR GILLIHAN: Is that all, Heather, for your report?

MS. HALSEY: Moving on, one more piece. I'm getting too many papers here.

Ms. Sarah Olsen will now present a resolution of the Commission to Nancy Patton in recognition of her 35 years as a dedicated State employee and public servant.

MEMBER OLSEN: Nancy, this gives me great pleasure to do this.

"Before the Commission on State Mandates, in honor of Nancy Patton, Assistant Executive Director, Commission on State Mandates, 1997 to 2012.

"Whereas, Nancy Patton, Assistant Executive Director, has distinguished herself as an outstanding State employee and dedicated public servant for 35 years, beginning her state career in 1977, working swing shift as a file clerk, then promoting to undercover agent, and later assistant to Attorney General George Deukmejian for the Department of Justice; she later served Governors Deukmejian and Pete Wilson for 16 years at the Governor's Office of Planning and Research, working her way up from junior analyst to chief deputy director, and tracking over 1,200 local government bills each year; and

"Whereas, in 1997, Ms. Patton was appointed OPR's designee for the Commission on State Mandates before coming to the Commission in 1999, where she served as the Assistant Executive Director for over eight years, and briefly as the Acting Executive Director, and participated in 94 Commission meetings and

hearings; and

"Whereas, Ms. Patton has weathered the Laird mandate reform process, BSA audits of the Commission, the 2002-2003 reduction of Commission staff, and conducted SB 1033 hearings; and

"Whereas, she provided expert and invaluable assistance and advice to the Governor's office, Legislature, Commission members, and school district and local agency representatives, and is recognized throughout the state for her leadership in the knowledge of the mandates process; and

"Whereas, Nancy Patton, throughout her career, mentored numerous analysts, specialists, and technicians, and provided truly caring and expert advice which influenced many successful careers -- and as an aside, also mentored many commissioners -- and

"Whereas, Nancy is loved by the mandates community due in no small part to her unique ability to listen to the needs of all parties coming before the Commission, as well as for her gift of chatting in a friendly, yet persuasive manner to get what she really wants,

or simply to straighten people out, even providing staff training on the 'art of schmoozing'; and

"Whereas 'Fancy Nancy,' as she's known by the Starbucks baristas that serve her coffee twice a day, knows that the way to most people's hearts is through their stomachs, and has been become famous for her delicious hors d'oeuvres, which she brings to feed Commission and Starbucks staff; and

"Whereas, Ms. Patton will now enjoy the transition from governing to gardening, code books to cookbooks, mandates to play dates, budget drills to meadering through the rolling hills, working to volunteering, and travel claims to just plain travel.

"Now, therefore, be it resolved that upon her retirement, the members of staff of the Commission on State Mandates are honoring Nancy Patton in appreciation of her 35 years of outstanding dedication, leadership, and service to the State of California.

"Done this 28th day of September 2012, County of Sacramento, State of California, in witness thereof, by the Commission on State

Mandates."

MS. PATTON: Thank you.

(Applause)

MS. PATTON: I just wanted to say thank you, first of all. As I transition into my "play dates," which I started already and I am having a fantastic time.

I am here to say that I am very proud to have been a state employee for 35 years. I know not everyone can say that, or we get a lot of grief for that sometimes. But I am very proud to have worked with the State for all these years, and also very proud to have worked with every single person in this room. I've been able to work with a lot of unbelievably talented people, and a lot of those talented people are sitting here today.

So thank you.

And I'll keep in touch, hopefully from another country.

Thank you.

CHAIR GILLIHAN: Thank you for 35 years of public service.

(Applause)

CHAIR GILLIHAN: Okay, the Commission will meet 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 published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation.

The Commission will also confer on personnel matters pursuant to section 11126, subdivision (a)(1).

We will reconvene in open session in approximately 30 minutes.

(The Commission met in executive closed session from 10:12 a.m. to 10:21 a.m.)

CHAIR GILLIHAN: 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 published notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation and pursuant to Government Code section 11126, subdivision (a)(1), to confer on personnel matters.

With no further business to discuss, I'll entertain a motion to adjourn.

MEMBER CHIVARO: So moved.

MEMBER SAYLOR: Second.

CHAIR GILLIHAN: We have a motion and a second.

All those in favor of adjourning, say "aye."

(A chorus of "ayes" was heard.)

CHAIR GILLIHAN: All those opposed, say "no."

(No response)

CHAIR GILLIHAN: The meeting is adjourned.

(The meeting concluded at 10:22 a.m.)

REPORTER'S CERTIFICATE

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on the 18th of October 2012.

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