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**COMMISSION ON  
STATE MANDATES**

**PUBLIC HEARING**

**COMMISSION ON STATE MANDATES**

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**TIME: 9:30 a.m.**

**DATE: Friday, January 27, 2012**

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

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**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

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Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomate Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

DIANA DUCAY  
(*Commission Chair*)  
Representative for ANA MATOSANTOS, Director  
State Department of Finance

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

KEN ALEX, Director  
Office of Planning & Research

FRANCISCO LUJANO  
Representative for BILL LOCKYER  
State Treasurer

SARAH OLSEN  
Public Member



PARTICIPATING COMMISSION STAFF

NANCY PATTON  
Acting Executive Director  
(*Item 11*)

ERIC FELLER  
Staff Counsel  
(*Item 5*)

CAMILLE SHELTON  
Chief Legal Counsel  
(*Items 7 and 10*)



A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 5 (Charter Schools) :**

For San Diego Unified School District:

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

For Department of Finance:

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

**Appearing Re Item 7 (Absentee Ballots) :**

For California State Association of Counties and League  
of California Cities and County of Riverside:

ALLAN BURDICK  
California State Association of Counties  
SB-90 Service  
4320 Auburn Boulevard, Suite 2000  
Sacramento, California 95841

For State Controller's Office:

JIM L. SPANO  
Chief, Mandated Cost Audits Bureau  
Division of Audits  
State Controller's Office  
300 Capitol Mall, Suite 725  
Sacramento, California 95814

JAY LAL  
Manager  
Division of Accounting and Reporting  
State Controller's Office  
300 Capitol Mall, Suite 518  
Sacramento, California 95814

ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>14</u>	<u>19</u>	<u>Page 6.1 should be Page 6</u>
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**Commission on State Mandates – January 27, 2012**

1 BE IT REMEMBERED that on Friday, January 27,  
2 2012, commencing at the hour of 9:29 a.m., thereof, at  
3 the State Capitol, Room 447, Sacramento, California,  
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,  
5 the following proceedings were held:



7 CHAIR DUCAY: Good morning.

8 I will call the Commission on State Mandates  
9 meeting for January 27<sup>th</sup>, 2012, to order.

10 The time is now 9:29.

11 Nancy, will you call the roll?

12 MS. PATTON: Mr. Alex?

13 MEMBER ALEX: Here.

14 MS. PATTON: Mr. Chivaro?

15 MEMBER CHIVARO: Here.

16 MS. PATTON: Mr. Lujano?

17 MEMBER LUJANO: Here.

18 MS. PATTON: Ms. Olsen?

19 MEMBER OLSEN: Here.

20 MS. PATTON: Ms. Ducay?

21 CHAIR DUCAY: Here.

22 Item 1 is *Election of Officers*.

23 Nancy?

24 MS. PATTON: Are there nominations for  
25 chairperson, or is there a motion for election of a new



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1 chairperson?

2 MEMBER ALEX: I would like to nominate Ana  
3 Matosantos to remain as chair.

4 MEMBER CHIVARO: Second.

5 CHAIR DUCAY: Okay, there has been a nomination  
6 for Ana Matosantos to be nominated for chairperson.

7 Are there any other nominations?

8 *(No response)*

9 CHAIR DUCAY: We have a second on that.

10 Without objection of nominations, they are  
11 closed.

12 All those in favor of electing Ana Matosantos  
13 as chairperson, please indicate by saying "aye."

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

15 CHAIR DUCAY: Those opposed?

16 *(No response)*

17 CHAIR DUCAY: Seeing none, we'll move on to the  
18 vice-president.

19 Is there any nominations?

20 MEMBER CHIVARO: I'll nominate the Treasurer,  
21 Bill Lockyer, as vice-chair.

22 MEMBER OLSEN: I'll second it.

23 CHAIR DUCAY: Okay, there has been a nomination  
24 for vice-chairperson of Bill Lockyer, the Treasurer.

25 Are there any other nominations?

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*(No response)*

CHAIR DUCAY: Okay, without objection, the nominations are closed.

All those in favor of electing the Treasurer, Bill Lockyer, as vice-chairperson, please indicate by saying "aye."

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

CHAIR DUCAY: Any opposed?

*(No response)*

CHAIR DUCAY: Seeing none, Bill Lockyer has been elected as vice-chairperson.

We'll move on to Item 2.

MS. PATTON: Item 2 is approval of the December 1, 2011, minutes.

MEMBER OLSEN: I move adoption.

MEMBER CHIVARO: Second.

CHAIR DUCAY: Okay. We have a motion and a second to adopt the minutes.

Nancy, will you call the roll?

MS. PATTON: Mr. Alex?

MEMBER ALEX: Aye.

MS. PATTON: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. PATTON: Mr. Lujano?

MEMBER LUJANO: Aye.

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1 MS. PATTON: Ms. Olsen?

2 MEMBER OLSEN: Aye.

3 MS. PATTON: Ms. Ducay?

4 CHAIR DUCAY: Abstain.

5 MS. PATTON: Okay, the next item is the  
6 *Proposed Consent Calendar*, which consists of Item 6 and  
7 Item 8.

8 CHAIR DUCAY: Are there any objections to the  
9 Proposed Consent Calendar?

10 MEMBER CHIVARO: Move approval.

11 MEMBER OLSEN: Second.

12 CHAIR DUCAY: We have a motion and a second.

13 All those in favor?

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

15 CHAIR DUCAY: Any opposed?

16 *(No response)*

17 CHAIR DUCAY: The motion carries.

18 MS. PATTON: Item 3, there are no appeals to  
19 consider under Item 3.

20 The next issue is swearing in the parties for  
21 Items 5 and 7.

22 Would you please rise?

23 *(Parties stood to be sworn in or affirmed.)*

24 MS. PATTON: Do you solemnly swear or affirm  
25 that the testimony which you are about to give is true

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1 and correct based on your personal knowledge, information  
2 or belief?

3 (A chorus of "I dos" was heard.)

4 MS. PATTON: Item 4 has been withdrawn because  
5 the test claimant withdrew the test claim.

6 Item 5, Senior Staff Counsel Eric Feller will  
7 present Item 5, *Charter Schools* test claim and proposed  
8 statement of decision.

9 MR. FELLER: Good morning.

10 This test claim addresses collective bargaining  
11 statutes for charter schools, petition requirements for  
12 charter schools, and charter-school oversight activities.

13 As indicated in the analysis, staff found that  
14 it's reasonable for school districts and county boards of  
15 education to review additional information included in  
16 the charter petition and on appeal of the petition, and  
17 to consider open-meeting proposed material revisions to  
18 an approved charter, as well as for the county board of  
19 education to receive, review, and hold a public hearing  
20 on a proposed countywide charter school, and to consider  
21 in open meeting, proposed material revisions to an  
22 already-approved charter as well as some reporting  
23 activities.

24 Although districts and county offices of  
25 educations may have fee authority for some of these

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1 activities, staff found no evidence that the fee  
2 authority was sufficient to pay for the mandated  
3 activities.

4 Staff found that the collective bargaining  
5 statutes had been adjudicated in prior test claims so the  
6 Commission does not have jurisdiction over them.

7 As to the charter school activity, staff found  
8 there was no evidence in the record of costs incurred by  
9 charter schools. There was also some petition  
10 requirements that staff found not to reimbursable because  
11 petitioners are not eligible for reimbursement under  
12 Article XIII B, Section 6.

13 Staff recommends the Commission adopt the  
14 attached proposed statement of decision to partially  
15 approve the test claim for the activities indicated.

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

18 MR. PALKOWITZ: Good morning. Art Palkowitz on  
19 behalf of the San Diego Unified School District, the  
20 claimant.

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

23 CHAIR DUCAY: Mr. Palkowitz?

24 MR. PALKOWITZ: Yes, thank you.

25 Claimant is thankful for the staff, for the

1 analysis.

2 As a little background, I just want to make  
3 sure that the Commission understands the activities and  
4 what this mandate is about.

5 The Ed. Code section requires school districts,  
6 and, in some situations, the county of education to do an  
7 exhaustive review of a charter petition.

8 The Ed. Code section has numerous requirements  
9 that are required of a school district in analyzing a  
10 petition.

11 The staff recommendation is to have  
12 reimbursement of those -- review of those activities, and  
13 when conducting a public hearing.

14 I spoke to staff prior to this meeting, and  
15 having been on a charter petition hearing this past  
16 Tuesday that consisted of all the thousands of pages of  
17 documents, we discussed clarifying some of the language  
18 in the staff analysis.

19 Specifically, on page 6.1, paragraph 1,  
20 subsection -- paragraph -- well, number one, we talked  
21 about having language that would read "*following a review*  
22 *and a public hearing.*" And Camille or Eric can respond  
23 on that clarification of language. Otherwise, the  
24 claimant has no other objections or comments at this time  
25 regarding the staff analysis.

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1 CHAIR DUCAY: Ms. Ferebee?

2 MS. FEREBEE: Well, I guess I'd like to -- I'm  
3 not sure I understand what that comment was, so I am not  
4 sure I know how to respond to it. So I'd like to hear  
5 that.

6 MS. SHELTON: What I understood is, there's a  
7 lot of language in this particular section of the code,  
8 and the proposed language does track the statutory  
9 language. But I think what Mr. Palkowitz is trying to  
10 ensure is that the review is typically done by school  
11 district or county board of education staff, and it's not  
12 done right at the hearing. So you have thousands of  
13 pages. And you will probably have a staff  
14 recommendation. So he is trying to ensure that that  
15 staff work is reimbursable. And that is consistent with  
16 the statute.

17 CHAIR DUCAY: So then just the language wasn't  
18 clear, right?

19 MS. SHELTON: Well, the language right now  
20 says, "*review and consider at a public hearing.*"

21 And he is trying to clarify, by bringing in,  
22 "*following a review and a consideration at a public*  
23 *hearing.*"

24 It's fine. It tracks the language. It's  
25 technical. That's not even a substantive change, in my

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1 opinion, so...

2 MEMBER OLSEN: Can I suggest a simpler one?

3 MS. SHELTON: Yes.

4 MEMBER OLSEN: Put a comma after "review"?

5 MS. SHELTON: You can do that, too.

6 I was going to say, Mr. Palkowitz, I think, has  
7 just made his record. But he's trying to get it clearer  
8 for parameters and guidelines and knowledge for the State  
9 to understand what activities are going into that  
10 language.

11 MR. PALKOWITZ: Thank you.

12 MS. FEREBEE: Okay, Donna Ferebee, Department  
13 of Finance.

14 We have no objections to that or to the  
15 remainder of the analysis and to the Commission's  
16 adoption of it.

17 Thank you.

18 CHAIR DUCAY: Okay, thank you.

19 Are there any questions from the Members?

20 *(No response)*

21 CHAIR DUCAY: Seeing none, if there's no other  
22 further discussion, do we have a motion?

23 MEMBER CHIVARO: I move staff recommendation.

24 MEMBER OLSEN: With the --

25 MS. SHELTON: Do you want to add in a comma?



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1 MEMBER CHIVARO: With the comma.

2 MEMBER ALEX: Second.

3 CHAIR DUCAY: Okay, we have a motion and a  
4 second to adopt the staff recommendation, with the added  
5 comma.

6 Nancy, will you call the roll?

7 MS. PATTON: Mr. Chivaro?

8 MEMBER CHIVARO: Yes.

9 MS. PATTON: Mr. Lujano?

10 MEMBER LUJANO: Yes.

11 MS. PATTON: Ms. Olsen?

12 MEMBER OLSEN: Yes.

13 MS. PATTON: Ms. Ducay?

14 MEMBER DUCAY: Yes.

15 MS. PATTON: Mr. Alex?

16 MEMBER ALEX: Yes.

17 CHAIR DUCAY: Okay, the motion has carried.

18 MR. PALKOWITZ: Thank you.

19 MS. FEREBEE: Thank you.

20 MS. PATTON: That brings us to Item 7.

21 Chief Legal Counsel Camille Shelton will  
22 present Item 7, *Absentee Ballots* incorrect reduction  
23 claim and statement of decision.

24 MS. SHELTON: This is an incorrect reduction  
25 claim filed by the County of Riverside for the *Absentee*

1     *Ballots* program, challenging the reductions made by the  
2     State Controller's Office to the County's reimbursement  
3     claims for costs incurred in three fiscal years, starting  
4     in fiscal year 1996.

5             For all years claimed, the County has sought  
6     reimbursement for the salaries and benefits of its  
7     employees to perform the mandate based on a time study  
8     conducted in 1988, and allegedly approved by the  
9     Controller's office shortly thereafter. The County does  
10    not have time sheets, payroll records, or other  
11    contemporaneous documents to support the time it took to  
12    perform the mandate for any of these fiscal years. In  
13    addition, the County claimed reimbursement for overtime,  
14    salaries, and benefits.

15            For the reasons stated in the analysis, staff  
16    finds that the Controller's audit and partial reduction  
17    of the reimbursement claims for the last two fiscal years  
18    is reasonable and supported by the evidence in the  
19    record.

20            Staff recommends that the Commission deny the  
21    incorrect reduction claim for the reimbursement claims  
22    for the last two fiscal years.

23            However, staff finds that the desk audit  
24    performed on the reimbursement claim for the first fiscal  
25    year that reduced the claim to zero is arbitrary and not

1 supported by the law, the parameters and guidelines, or  
2 the evidence in the record.

3 Staff recommends that the Commission grant the  
4 IRC with respect to the reimbursement claim for that  
5 fiscal year, and remand the claim back to the State  
6 Controller's Office for further review and reimbursement  
7 for the reasonable costs incurred and supported by  
8 documentation.

9 For the parameters and guidelines that apply to  
10 this fiscal year, the documentation supporting the claim  
11 does not have to be contemporaneous or prepared at the  
12 time the costs were incurred.

13 The State Controller's Office has filed  
14 comments on the draft staff analysis with respect to the  
15 reimbursement claim for the first fiscal year, agreeing  
16 that overtime salary should be paid to the extent  
17 supported by documentation in the record.

18 The Controller's office has also recalculated  
19 the claim for regular salaries and benefits in the same  
20 manner it audited the other two fiscal years, and as  
21 recalculated, would provide the County with partial  
22 reimbursement.

23 The County has not responded to the  
24 Controller's recalculation, and there is no evidence that  
25 any payment has been made to the County.

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1           If the County believes that the Controller's  
2 recalculation continues to result in an incorrect  
3 reduction, it may file another incorrect reduction claim  
4 with the Commission.

5           Thus, for purposes of this hearing, the  
6 Commission does not have jurisdiction to determine if  
7 the Controller's recalculation is reasonable. The  
8 Commission's jurisdiction is limited to what has been  
9 pled in the incorrect reduction claim, which challenges  
10 only the original audit performed.

11           Will the parties please state your names for  
12 the record?

13           MR. BURDICK: Yes, Allan Burdick on behalf of  
14 the CSAC SB 90 Service and also on behalf of the County  
15 of Riverside.

16           MR. SPANO: Jim Spano, State Controller's  
17 Office.

18           MR. LAL: Jay Lal, State Controller's Office.

19           CHAIR DUCAY: Mr. Burdick?

20           MR. BURDICK: Yes, thank you very much.

21           And I think this is going to be a lot simpler  
22 than it appeared.

23           First of all, I think we had a couple of  
24 statewide issues at the time. And both have been  
25 resolved to the satisfaction of the counties:

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1           One is the payment of overtime of election  
2 costs during elections. Obviously, it's very difficult  
3 to have an election without overtime costs.

4           And secondly, was the reduction to zero in  
5 those cases without going back and giving some  
6 consideration to the other evidence.

7           And so in that regard, I think counties are  
8 very pleased with the State Controller's decision and  
9 response to the incorrect reduction.

10           As it relates to the overall claim, I think the  
11 County of Riverside, it thinks they are happy.

12           The one thing is, we do have to go back -- and  
13 go back and negotiate with the State Controller, based on  
14 our prior experience. I think where we are, we feel that  
15 that's going to be satisfactory. The alternative would  
16 be, if we're not, is to come back with another IRC.

17           I do not think you're going to see that. I  
18 think we're going to resolve this successfully. And so I  
19 would like to thank the staff and the State Controller's  
20 Office, and urge adoption of the staff recommendation.

21           Thank you very much.

22           CHAIR DUCAY: Mr. Spano?

23           MR. SPANO: Related to the audit performed for  
24 1997-98 and 1988-99, we support the staff's  
25 recommendation.

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1 Mr. LAL: And we also support the staff's  
2 recommendation for the 1996-97 reduction.

3 CHAIR DUCAY: Okay, any questions from the  
4 Members?

5 MEMBER OLSEN: I'd like to move staff  
6 recommendation and adoption of the statement of decision.

7 CHAIR DUCAY: Okay.

8 We have a motion.

9 MEMBER CHIVARO: Second.

10 CHAIR DUCAY: We have a second to adopt the  
11 staff recommendation.

12 Nancy, please call the roll.

13 MS. PATTON: Mr. Alex?

14 MEMBER ALEX: Yes.

15 MS. PATTON: Mr. Chivaro?

16 MEMBER CHIVARO: Yes.

17 MS. PATTON: Mr. Lujano?

18 MEMBER LUJANO: Yes.

19 MS. PATTON: Ms. Olsen?

20 MEMBER OLSEN: Aye.

21 MS. PATTON: Ms. Ducay?

22 MEMBER DUCAY: Aye.

23 MR. BURDICK: Thank you very much.

24 MS. PATTON: That brings us to Item 10.

25 Ms. Shelton will present the Chief Legal

1 Counsel's report.

2 MS. SHELTON: Let's see, since our last  
3 meeting, the only thing really new to report is that the  
4 trial court has issued their judgment in the *San Diego*  
5 water permit case, finding that the Commission committed  
6 an error of law by not considering factual evidence in  
7 the record for the maximum extent practicable, and has  
8 issued a writ. The parties will have 60 days to decide  
9 whether or not to appeal that. So that deadline is in  
10 March.

11 That's all I've got.

12 MS. PATTON: For the ED report, I just wanted  
13 to talk about our backlog elimination plan a little bit.  
14 As you know, May last year, Drew issued a backlog  
15 elimination plan.

16 We plan to give a one-year update in May. But  
17 I did want to just let everyone know, one of the things  
18 we talked about was having, at the May hearing --  
19 actually, it was the March hearing -- all the items, like  
20 five or six claims that have proposed reasonable  
21 reimbursement methodologies. And Drew was analyzing  
22 those. And now Camille has got them all. So they're not  
23 going to make the March hearing. We're going to try to  
24 do one, and we're going to have to split them up and do  
25 them at separate hearings.

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1           We've got some legal issues that we're looking  
2 at. And Drew hadn't thought that far on them, and we  
3 just found more legal issues to look at. So I just want  
4 to let the claimants know and the parties, that they're  
5 not all going for the March hearing.

6           And that's all I have.

7           CHAIR DUCAY: Okay. Is there any public  
8 comment before we go into closed session?

9           *(No response)*

10          CHAIR DUCAY: Seeing none, the Commission will  
11 meet in closed executive session pursuant to Government  
12 Code section 11126(e), to confer and receive advice from  
13 legal counsel for consideration and action, as necessary  
14 and appropriate, upon the pending litigation listed on  
15 the published notice and agenda; and confer and receive  
16 advice from legal counsel regarding potential litigation.

17          The Commission will also confer on personnel  
18 matters pursuant to Government Code sections 11126,  
19 subdivision (a)(1).

20          And we'll reconvene in open session in  
21 approximately 30 minutes.

22          *(The Commission met in closed executive*  
23 *session from 9:45 a.m. to 9:57 a.m.)*

24          CHAIR DUCAY: The Commission met in closed  
25 executive session pursuant to Government Code section



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1 11126(e) (2), to confer and receive advice from legal  
2 counsel for consideration and action, as necessary and  
3 appropriate, upon the pending litigation listed on the  
4 published notice and agenda; and to confer with and  
5 receive advice from legal counsel regarding potential  
6 litigation.

7 The Commission also met in closed executive  
8 session pursuant to Government Code section 11126,  
9 subdivision (a) (1), to confer on personnel matters.

10 With no further business to discuss, I will  
11 entertain a motion to adjourn.

12 MEMBER CHIVARO: So moved.

13 MEMBER ALEX: Second.

14 CHAIR DUCAY: We have a motion and a second.

15 All in favor?

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

17 CHAIR DUCAY: Opposed?

18 *(No response)*

19 CHAIR DUCAY: The meeting is adjourned.

20 The time is 9:58.

21 *(The meeting concluded at 9:58 a.m.)*

22 *\*\*\*\*\**

23

24

25

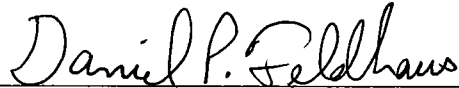
**REPORTER'S CERTIFICATE**

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 10<sup>th</sup> of February 2012.



---

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