

COMMISSION ON STATE MANDATES

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September 26, 2014

Mr. Keith Petersen
SixTen & Associates
P.O. Box 340430
Sacramento, CA 95834-0430

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Collective Bargaining and Collective Bargaining Agreement Disclosure, 08-4425-I-15
Government Code Sections 3540-3549.9
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
Fiscal Year 2001-2002, 2002-2003, 2003-2004
Contra Costa Community College District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **October 17, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, December 5, 2014**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about November 21, 2014. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Please contact Heidi Palchik at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM ___
INCORRECT REDUCTION CLAIM
DRAFT PROPOSED DECISION

Government Code sections 3540-3549.9
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
Collective Bargaining and Collective Bargaining Agreement Disclosure
Fiscal Years 2001-2002 2002-2003, and 2003-2004
08-4425-I-15
Contra Costa Community College District, Claimant

EXECUTIVE SUMMARY

Overview

This analysis addresses an incorrect reduction claim (IRC) filed by Contra Costa Community College District (claimant) regarding the State Controller's Office's (Controller's) reductions to reimbursement claims totaling \$494,564 for costs incurred during fiscal years 2001-2002, 2002-2003 and 2003-2004 under the consolidated *Collective Bargaining and Collective Bargaining Agreement Disclosure* program.

The threshold issue is whether the Controller's audit of the reimbursement claim was timely completed. Because the analysis concludes that it was not, the remaining substantive allegations of the IRC are not addressed.

Collective Bargaining and Collective Bargaining Agreement Disclosure Mandates

On July 17, 1978, the Board of Control, predecessor to the Commission, found that Statutes 1975, chapter 961 imposed a reimbursable state mandate. On October 22, 1980, parameters and guidelines were adopted, which were amended several times.¹ Then, on March 26, 1998, the Commission adopted a second test claim decision on Statutes 1991, chapter 1213.² Parameters and guidelines for the two programs were consolidated on August 20, 1998, and have since been amended again, on January 27, 2000.

This IRC was filed for reimbursement claims for fiscal years 2001-2002, 2002-2003, and 2003-2004. At the time the claims were prepared and submitted to the Controller, the last amended version of the parameters and guidelines, adopted on January 27, 2000, were applicable. These parameters and guidelines authorize reimbursement for costs incurred to comply with sections

¹ Exhibit X, Parameters and Guidelines, *Collective Bargaining and Collective Bargaining Agreement Disclosure*, August 20, 1998; and Amended parameters and guidelines, January 27, 2000.

² Exhibit X, Test Claim Statement of Decision, 97-TC-08.

3540 through 3549.1, and “regulations promulgated by the Public Employment Relations Board,” including:

- Determination of appropriate bargaining units for representation and determination of the exclusive representation and determination of the exclusive representatives;
- Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot;
- Negotiations: reimbursable functions include – receipt of exclusive representative’s initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer’s proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement;
- Impasse proceedings, including mediation, fact-finding, and publication of the findings of the fact-finding panel;
- Collective bargaining agreement disclosure before the adoption of the agreement by the governing body;
- Contract administration and adjudication of contract disputes either by arbitration or litigation, including grievances and administration and enforcement of the contract; and
- Unfair labor practice adjudication process and public notice complaints.³

Procedural History

Claimant filed reimbursement claims with the Controller for the 2001-2002, 2002-2003, and 2003-2004 fiscal years on December 24, 2002, January 13, 2004, and January 14, 2005, respectively. The Controller conducted an entrance conference on July 8, 2005 to initiate an audit of the reimbursement claims. On July 19, 2007, the Controller issued its final audit report concluding that claimant had overstated its costs for the program for salaries and benefits and contracted services. Claimant filed this IRC on July 18, 2008.⁴ On September 26, 2014, Commission staff issued the draft proposed decision for comment.

Commission Responsibilities

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission’s regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

³ Exhibit X, Amended Parameters and Guidelines, January 27, 2000.

⁴ Exhibit A, Incorrect Reduction Claim.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁵ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁶

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.⁷

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.⁸ In addition, section 1185.2(c) of the Commission’s regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.⁹

Staff Analysis

A. The Controller’s Audit Was Completed Beyond the Two Year Deadline and is Void.

The reimbursement claims at issue in this case were filed with the Controller on December 24, 2002, January 13, 2004, and January 14, 2005. During this time period, three different versions of Government Code section 17558.5 existed. The first version of section 17558.5 was added in 1995 and was in effect when the first reimbursement claim for fiscal year 2001-2002 was filed on December 24, 2002.¹⁰ Section 17558.5, as added in 1995, required that a reimbursement claim was subject to audit if funds were appropriated, “no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended.”

⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁶ *County of Sonoma*, supra, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁷ *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

⁸ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

¹⁰ Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)).

The Commission has determined that the phrase “subject to audit,” when read in the context of the whole statute and as clarified by the Legislature in 2002, means that the Controller has no later than two years after the calendar year in which the reimbursement claim is filed to initiate an audit. Thus, under the 1995 version of section 17558.5, the deadline to initiate an audit of the reimbursement claim for fiscal year 2001-2002 was December 31, 2004.

Effective January 1, 2003, Statutes 2002, chapter 1128, amended the statute of limitations for audits to clarify that when funds are appropriated, the claim is subject “to the initiation of an audit...” for the statutory period. The 2002 statute also changed the requirement to initiate the audit from *two years after the end of the calendar year* in which the reimbursement claim is filed or last amended, to *three years after the date that the actual reimbursement claim is filed* or last amended.¹¹

The Controller gets the benefit of the additional time provided by the 2002 version of section 17558.5 to initiate the audit of the 2001-2002 reimbursement claim, because the audit period for that claim had not expired when the 2002 statute became effective on January 1, 2003. As stated above, the audit period for the 2001-2002 reimbursement claim remained pending until December 31, 2004. Under the law, any enlargement of a statute of limitations that is made by a statutory amendment that becomes effective after a reimbursement claim is filed, but the audit period is still pending and not already barred, applies to those claims already filed.¹² Thus, under the 2002 version of section 17558.5, the deadline to initiate the audit of the 2001-2002 reimbursement claim was extended from December 31, 2004, to December 24, 2005 (three years after the reimbursement claim was filed).

The 2002 version of section 17558.5 was in effect when the claimant filed the reimbursement claim for fiscal year 2002-2003 on January 13, 2004, and, thus, the deadline to initiate the audit for the 2002-2003 claim was January 13, 2007. Finally, the reimbursement claim for fiscal year 2003-2004 was filed on January 14, 2005, and at that time, the statutory deadline in section 17558.5 to initiate an audit when funds are appropriated or payments made continued to be three years after the date that the actual reimbursement claim is filed or last amended. Thus, with respect to the 2003-2004 reimbursement claim, the deadline to initiate the claim was January 14, 2008.

On June 28, 2005, the Controller sent a letter to claimant confirming that an entrance conference to initiate the audit of all three fiscal year claims would be held on July 8, 2005. The entrance conference was held on July 8, 2005.¹³ Staff finds that the audit was timely initiated at the latest on July 8, 2005, well before the deadlines expired to initiate the audits for all three reimbursement claims.

However, effective January 1, 2005 (before the audit for these reimbursement claims was initiated), Statutes 2004, chapter 313 amended section 17558.5, to add a statutory deadline for the Controller to complete the audit “in any case” no later than two years after the audit is commenced. The two-year completion deadline applies to the audit in this case. The courts have

¹¹ Government Code section 17558.5 (Stats. 2002, ch. 1128 (AB 2834)).

¹² *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 465.

¹³ Exhibit A, Incorrect Reduction Claim, at 24.

held that where the state gives up a right previously possessed by it or one of its agencies (like the Controller's having no statutory deadline to complete an audit before January 1, 2005), the restriction in the new law becomes effective immediately upon the operative date of the change in law for all pending claims.¹⁴

Since the audit in this case was initiated at the latest on July 8, 2005, the Controller had until July 8, 2007 to complete the audit pursuant to section 17558.5 as amended in 2004. The only evidence in this case of when the audit was completed is the final audit report, which is dated July 19, 2007 – eleven days *after* the deadline.¹⁵ Thus, the Controller did not comply with completion deadline of section 17558.5.

Although section 17558.5 does not specify the consequences for failing to meet the deadlines imposed by the statute, staff finds that the deadlines in section 17558.5 are jurisdictional and the failure to meet the deadlines makes the audit findings void. Courts have ruled that, when a deadline is for the protection of a person or class of persons, and the language of the statute as a whole indicates the Legislature's intent to enforce the deadline, the deadline is mandatory. In addition, the California Supreme Court specifically rejected the notion that a statute could only be mandatory if it included a means of enforcement. Rather, the Court ruled that the important analysis is whether the purpose of the statute is to require an act.¹⁶ Here, the Legislature specifically amended section 17558.5 to require an audit be completed within two years, stating “[i]n any case, an audit shall be completed not later than two years after the date that the audit is commenced.” (Emphasis added.) The Controller had more than seven months notice that section 17558.5 had been amended to require completion of an audit within two years when the audit was initiated. The Controller failed to meet that statutory deadline. In these circumstances, failure to complete the audit within the two-year completion deadline is a jurisdictional bar to the Controller's reduction of claimant's reimbursement claims.

Accordingly, staff finds that the final audit of the 2001-2002, 2002-2003, and 2003-2004 fiscal year reimbursement claims was not timely completed pursuant to Government Code section 17558.5, as amended by Statutes 2004, chapter 213, and is therefore void.

Conclusion

Based on the foregoing, staff concludes that the Controller incorrectly reduced the reimbursement claims filed for fiscal years 2001-2002, 2002-2003, and 2003-2004. Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, staff recommends that the Commission request that the Controller reinstate all costs incorrectly reduced, totaling \$494,564, to the claimant.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision to approve the IRC, and authorize staff to make any technical, non-substantive changes following the hearing.

¹⁴ *California Employment Stabilization Commission v. Payne* (1948) 1931 Cal.2d 210, 215-216.

¹⁵ Exhibit A, Incorrect Reduction Claim, page 66.

¹⁶ *People v. McGee* (1977) 19 Cal.3d 948, 962, citing *Morris v. County of Marin* (18 Cal.3d 901, 909-910).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961; Statutes 1991,
Chapter 1213

Fiscal Years 2001-2002, 2002-2003, 2003-
2004

Contra Costa Community College District,
Claimant.

Case No.: 08-4425-I-15

*Collective Bargaining and Collective
Bargaining Agreement Disclosure*

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500 ET
SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5. ARTICLE 7

(Adopted December 5, 2014)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on December 5, 2014. [Witness list will be included in the adopted decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed decision to [approve/partially approve/deny] the IRC at the hearing by a vote of [vote count will be included in the adopted decision].

Summary of the Findings

The Commission approves this IRC, filed by Contra Costa Community College District (claimant) finding that the audit of the 2001-2002, 2002-2003, and 2003-2004 fiscal year reimbursement claims was not timely completed by the State Controller's Office (Controller) pursuant to Government Code section 17558.5, as amended by Statutes 2004, chapter 313, and is therefore void. Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Commission requests that the Controller reinstate all costs reduced in the amount of \$494,564, to the claimant.

COMMISSION FINDINGS

I. Chronology

- 12/24/02 Claimant filed a reimbursement claim for fiscal year 2001-2002.¹⁷
- 01/13/04 Claimant filed a reimbursement claim for fiscal year 2002-2003.¹⁸
- 01/14/05 Claimant filed a reimbursement claim for fiscal year 2003-2004¹⁹.
- 06/28/05 The Controller sent a letter to claimant confirming that an entrance conference to initiate the audit of all three fiscal year claims would be held on July 8, 2005.²⁰
- 07/08/05 The entrance conference was held.²¹
- 05/30/07 The Controller issued a draft audit report.²²
- 06/14/07 Claimant filed comments on the draft audit report.²³
- 07/19/07 The Controller issued the final audit report.²⁴
- 07/18/08 Claimant filed this IRC.²⁵
- 07/28/08 Commission staff issued the notice of complete filing and request for comments.
- 09/26/14 Commission staff issued the draft proposed decision.

II. Background

Collective Bargaining and Collective Bargaining Agreement Disclosure Mandates

On July 17, 1978, the Board of Control, predecessor to the Commission, found that Statutes 1975, chapter 961 imposed a reimbursable state mandate. On October 22, 1980, parameters and guidelines were adopted, which were amended several times. Then, on March 26, 1998, the Commission adopted a second test claim decision on Statutes 1991, chapter 1213.²⁶ Parameters and guidelines for the two programs were consolidated on August 20, 1998, and have since been amended again, on January 27, 2000.²⁷

¹⁷ Exhibit A, Incorrect Reduction Claim, Exhibit F Reimbursement Claim for FY 2001-2002.

¹⁸ Exhibit A, Incorrect Reduction Claim, Exhibit F Reimbursement Claim for FY 2002-2003.

¹⁹ Exhibit A, Incorrect Reduction Claim, Exhibit F Reimbursement Claim for FY 2003-2004.

²⁰ Exhibit A, Incorrect Reduction Claim, Exhibit E, p.92.

²¹ Exhibit A, Incorrect Reduction Claim, at 24.

²² Exhibit A, Incorrect Reduction Claim, Exhibit D.

²³ Exhibit A, Incorrect Reduction Claim, Exhibit D.

²⁴ Exhibit A, Incorrect Reduction Claim, Exhibit D.

²⁵ Exhibit A, Incorrect Reduction Claim.

²⁶ Exhibit X, Test Claim Statement of Decision, 97-TC-08.

²⁷ See Exhibit X, Amended Parameters and Guidelines, January 27, 2000.

The reimbursement claim at issue in this IRC was filed for the 2001-2002, 2002-2003, and 2003-2004 fiscal years, and at the time that claim was prepared and submitted, the last amended version of the parameters and guidelines, adopted on January 27, 2000, were applicable. These parameters and guidelines authorize reimbursement for costs incurred to comply with sections 3540 through 3549.1, and “regulations promulgated by the Public Employment Relations Board,” including:

- Determination of appropriate bargaining units for representation and determination of the exclusive representation and determination of the exclusive representatives;
- Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot;
- Negotiations: reimbursable functions include – receipt of exclusive representative’s initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer’s proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement;
- Impasse proceedings, including mediation, fact-finding, and publication of the findings of the fact-finding panel;
- Collective bargaining agreement disclosure before the adoption of the agreement by the governing body;
- Contract administration and adjudication of contract disputes either by arbitration or litigation, including grievances and administration and enforcement of the contract; and
- Unfair labor practice adjudication process and public notice complaints.²⁸

The Audit Findings of the Controller

The Controller reduced the reimbursement claims by a total of \$494,564, on the following grounds:

- Claimant failed to provide supporting documentation for claimed salary, benefit, and related indirect costs.
- Claimant claimed unallowable contracted services for activities not permitted in the parameters and guidelines.²⁹

²⁸ Exhibit X, Amended Parameters and Guidelines, January 27, 2000.

²⁹ Exhibit A, Incorrect Reduction Claim, p. 68.

III. Positions of the Parties

Contra Costa Community College District, Claimant

Claimant argues that the Controller did not complete its final audit within the deadline provided in Government Code section 17558.5. Claimant also asserts that the reimbursement costs claimed for salaries and benefits and related indirect costs and contract services costs were eligible for reimbursement under the parameters and guidelines and reasonable.³⁰

State Controller's Office

The Controller has not filed comments on this IRC.

IV. Discussion

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the statement of decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.³¹ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."³²

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.³³ Under this standard, the courts have found that:

³⁰ This draft decision does not reach these issues as the statute of limitations issue is jurisdictional.

³¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

³² *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

³³ *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”³⁴

The Commission must review also the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.³⁵ In addition, section 1185.2(c) of the Commission’s regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.³⁶

A. The Controller did not complete the audit of the reimbursement claims within the deadline imposed by Government Code section 17558.5.

Claimant raises several issues regarding the statute of limitations applicable to audits, found in Government Code section 17558.5, with respect to the audit of these reimbursement claims. For the reasons below, the Commission finds that the Controller did not complete the audit of these reimbursement claims within the deadline imposed by Government Code section 17558.5, as last amended in 2004 (eff. January 1, 2005).

The reimbursement claims at issue in this case were filed with the Controller on December 24, 2002, January 13, 2004, and January 14, 2005. During this time period, three different versions of Government Code section 17558.5 existed. The first version of section 17558.5 was added in 1995 and was in effect when the first reimbursement claim for fiscal year 2001-2002 was filed on December 24, 2002.³⁷ Section 17558.5, as added in 1995, required that a reimbursement claim was subject to audit if funds were appropriated, “no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended” as follows:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an

³⁴ *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

³⁵ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

³⁶ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

³⁷ Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)).

audit shall commence to run from the date of initial payment of the claim.
(Emphasis added.)

The Commission has determined that the phrase “subject to audit,” when read in the context of the whole statute and as clarified by the Legislature in 2002, means that the Controller has no later than two years after the calendar year in which the reimbursement claim is filed to initiate an audit. Thus, under the 1995 version of section 17558.5, the deadline to initiate an audit of the reimbursement claim for fiscal year 2001-2002 was December 31, 2004.

Effective January 1, 2003, Statutes 2002, chapter 1128, amended the statute of limitations for audits again by clarifying that when funds are appropriated, the claim is subject “to *the initiation of an audit...*” for the statutory period. The 2002 statute also changed the requirement to initiate the audit from *two years after the end of the calendar year* in which the reimbursement claim is filed or last amended, to *three years after the date that the actual reimbursement claim is filed or last amended*. As amended by Statutes 2002, chapter 1128 (AB 2834), effective January 1, 2003, section 17558.5 stated the following:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than ~~two~~three years after the ~~end of the calendar year in which date that~~ the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is ~~made~~filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.³⁸

The Controller’s Office gets the benefit of the additional time provided by the 2002 version of section 17558.5 to initiate the audit of the 2001-2002 reimbursement claim because the audit period for that claim had not expired when the 2002 statute became effective on January 1, 2003. As stated above, the audit period for the 2001-2002 reimbursement claim remained pending until December 31, 2004. Under the law, any enlargement of a statute of limitations that is made by a statutory amendment that becomes effective after a reimbursement claim is filed, but the audit period is still pending and not already barred, applies to those claims already filed. In *Douglas Aircraft*, the court stated the general rules as follows:

The extension of the statutory period within which an action must be brought is generally held to be valid if made before the cause of action is barred. (*Weldon v. Rogers*, 151 Cal. 432.) The party claiming to be adversely affected is deemed to suffer no injury where he was under an obligation to pay before the period was lengthened. This is on the theory that the legislation affects only the remedy and not a right. (*Mudd v. McColgan*, 30 Cal.2d 463; *Davis & McMillan v. Industrial Acc. Com.*, 198 Cal. 631; 31 Cal.Jur.2d 434.) An enlargement of the limitation period by the Legislature has been held to be proper in cases where the period had not run against a corporation for additional franchise taxes (*Edison Calif. Stores, Inc. v. McColgan*, 30 Cal.2d 472), against an individual for personal income taxes (*Mudd v. McColgan, supra*, 30 Cal.2d 463), and against a judgment debtor

³⁸ Government Code section 17558.5 (Stats. 2002, ch. 1128 (AB 2834)).

(*Weldon v. Rogers, supra*, 151 Cal. 432). It has been held that unless the statute expressly provides to the contrary any such enlargement applies to matters pending but not already barred. (*Mudd v. McColgan, supra*, 30 Cal.2d 463.)³⁹

Therefore, under the 2002 version of section 17558.5, the deadline to initiate the audit of the 2001-2002 reimbursement claim was extended from December 31, 2004, to December 24, 2005 (three years after the reimbursement claim was filed).

The 2002 version of section 17558.5 was in effect when the claimant filed the reimbursement claim for fiscal year 2002-2003 on January 13, 2004, and, thus, the deadline to initiate the audit for the 2002-2003 claim was January 13, 2007.

Finally, the reimbursement claim for fiscal year 2003-2004 was filed on January 14, 2005, and at that time, the statutory deadline in section 17558.5 to initiate an audit when funds are appropriated or payments made remained three years after the date that the actual reimbursement claim is filed or last amended. With respect to the 2003-2004 reimbursement claim, then, the deadline to initiate the claim was January 14, 2008.

On June 28, 2005, the Controller sent a letter to claimant confirming that an entrance conference to initiate the audit of all three fiscal year claims would be held on July 8, 2005. The entrance conference was held on July 8, 2005.⁴⁰ Therefore, the audit was timely initiated, at the latest, on July 8, 2005, well before the deadlines expired to initiate the audits for all three reimbursement claims.

However, effective January 1, 2005 (before the audit for these reimbursement claims was initiated), Statutes 2004, chapter 313 amended section 17558.5, to add a statutory deadline for the Controller to complete the audit no later than two years after the audit is commenced as follows:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.⁴¹

The two-year completion deadline applies to the audit in this case. The courts have held that where the state gives up a right previously possessed by it or one of its agencies (like the Controller's having no statutory deadline to complete an audit before January 1, 2005), the restriction in the new law becomes effective immediately upon the operative date of the change in law for all pending claims. In *California Employment Stabilization Commission v. Payne* (1948) 1931 Cal.2d 210, 215-216, the court stated the following:

³⁹ *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 465.

⁴⁰ Exhibit A, Incorrect Reduction Claim, at 24.

⁴¹ Statutes 2004, chapter 313.

Accordingly, the power of the Legislature to lessen a statute of limitations is subject to the restriction that an existing right cannot be cut off summarily without giving a reasonable time after the act becomes effective to exercise such right. (See *Davis & McMillan v. Ind. Acc. Comm.*, 198 Cal. 631, 637, 246 P. 1046, 46 A.L.R. 1095.) This principle, however, does not apply where the state gives up a right previously possessed by it or by one of its agencies. Except where such an agency is given powers by the Constitution, it derives its authority from the Legislature, which may add to or take away from those powers and therefore a statute which adversely affects only the right of the state is not invalid merely because it operates to cut off an existing remedy of an agency of the state. The case of *Superior Oil Co. v. Superior Court*, 6 Cal.2d 113, 56 P.2d 950, is distinguishable since the court was there concerned with the operation of a statute which applied to private persons as well as the state. This distinction was not noted in *Calif. Emp. Stab. Comm. v. Chichester etc. Co.*, 75 Cal.App.2d 899, 172 P.2d 100, which relied on the *Superior Oil* case and assumed without discussion that the same rule would apply where the state alone would be adversely affected. It was held in the *Chichester* case that the amendment of section 45.2 in 1943 could not operate to deprive the commission of the right to sue on existing causes of action until a reasonable time had passed after the statute became effective. The commission was created by, and derives its powers from, the Legislature, and it does not have rights which are superior to the legislative will. By the enactment in 1939 of section 45.2, the three-year limitation contained in section 338 was rendered inapplicable, and the commission was given the right without limit as to time to enforce contributions where no return had been filed. Thereafter in 1943 the Legislature determined that it was unwise and perhaps unfair to allow the commission an unlimited time within which to enforce contributions where there was no intent to evade the act, and as to those cases, the three-year limitation was restored and the right of action was cut off if the period had run. Thus the Legislature had the power to do insofar as the constitutional requirement of due process is concerned, and the holding to the contrary in the *Chichester* case, 75 Cal.App.2d 899, 172 P.2d 100, is disapproved.

Since the audit in this case was initiated at the latest on July 8, 2005,⁴² the Controller had until July 8, 2007 to complete the audit pursuant to section 17558.5 as amended in 2004. The only evidence in this case of when the audit was completed is the final audit report, which is dated July 19, 2007 – eleven days *after* the deadline.⁴³ Thus, the Controller did not comply with completion deadline of section 17558.5.

Although section 17558.5 does not specify the consequences for failing to meet the deadlines imposed by the statute, the Commission finds that the deadlines in section 17558.5 are jurisdictional and the failure to meet the deadlines makes the audit findings void. Courts have ruled that, when a deadline is for the protection of a person or class of persons, and the language

⁴² This is assuming the initiation date is the date of the entrance conference.

⁴³ Exhibit A, Incorrect Reduction Claim, page 66.

of the statute as a whole indicates the Legislature’s intent to enforce the deadline, the deadline is mandatory.

[T]he intent must be gathered from the terms of the statute construed as a whole, from the nature and character of the act to be done, and from the consequences which would follow the doing or the failure to the particular act at the required time. (Citation.) When the provision is to serve some public purpose, the provision may be held directory or mandatory as will best accomplish that purpose (citation)....⁴⁴

The California Supreme Court specifically rejected the notion that a statute could only be mandatory if it included a means of enforcement. Rather, the Court ruled that the important analysis is whether the purpose of the statute is to require an act.⁴⁵ Here, the Legislature specifically amended section 17558.5 to require an audit be completed within two years, stating “[i]n any case, an audit shall be completed not later than two years after the date that the audit is commenced.” (Emphasis added.) The Controller had more than seven months notice that section 17558.5 had been amended to require completion of an audit within two years when the audit was initiated. The Controller failed to meet that statutory deadline. In these circumstances, failure to complete the audit within the two-year completion deadline is a jurisdictional bar to the Controller’s reduction of claimant’s reimbursement claims.

Accordingly, the Commission finds that the final audit of the 2001-2002, 2002-2003, and 2003-2004 fiscal year reimbursement claims was not timely completed pursuant to Government Code section 17558.5, as amended by Statutes 2004, chapter 213, and is therefore void.

V. Conclusion

Based on the foregoing, the Commission concludes that the Controller incorrectly reduced the reimbursement claims filed for fiscal years 2001-2002, 2002-2003, and 2003-2004. Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission’s regulations, the Commission requests that the Controller reinstate all costs incorrectly reduced, totaling \$494,564, to the claimant.

⁴⁴ *People v. McGee* (1977) 19 Cal.3d 948, 962, citing *Morris v. County of Marin* (18 Cal.3d 901, 909-910).

⁴⁵ *Id.*

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 26, 2014, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Collective Bargaining and Collective Bargaining Agreement Disclosure, 08-4425-I-15
Government Code Sections 3540-3549.9
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
Fiscal Year 2001-2002, 2002-2003, 2003-2004
Contra Costa Community College District, Claimant

State Controller's Office, Requester by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 26, 2014 at Sacramento, California.



Heidi J. Palchik
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/26/14

Claim Number: 08-4425-I-15

Matter: Collective Bargaining and Collective Bargaining Agreement Disclosure

Claimant: Contra Costa Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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