

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
September 28, 2012

Present: Member Richard Gillihan, Chairperson
Representative of the Director of the Department of Finance
Member Francisco Lujano, Vice Chairperson
Representative of the State Treasurer
Member Richard Chivaro
Representative of the State Controller
Member Scott Morgan
Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member Carmen Ramirez
City Council Member
Member Don Saylor
County Supervisor

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript. Items designated by a dagger (†) were originally scheduled for the July 26, 2012 hearing.

CALL TO ORDER AND ROLL CALL

Chairperson Gillihan called the meeting to order at 9:29 a.m. Chairperson Gillihan also introduced and welcomed new Commission Assistant Executive Director Jason Hone and new Commission Counsel Matt Jones.

Executive Director Heather Halsey called the roll.

APPROVAL OF MINUTES

Item 1† May 25, 2012

Member Chivaro made a motion to adopt the minutes. With a second by Member Olsen, the May 25, 2012 hearing minutes were adopted by a vote of 5-0, with member Morgan and Chairperson Gillihan abstaining.

CONSENT CALENDAR

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

If there are no objections to any of the following action items designated by an asterisk (), the Executive Director will include each one on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

B. PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

- Item 7*† *Discrimination Complaint Procedures*, 02-TC-46 (and a portion of 02-TC-25 and 02-TC-31)
- Education Code Sections 66010.2, 66010.7, and 87102 as added or amended by Statutes 1988, Chapter 973 and Statutes 1991, Chapter 1198 California Code of Regulations, Title 5, Sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034 Register 92, Number 17; Register 96, Number 23; and Register 2002, Number 35
- (Consolidated With)
- Government Code Section 11135 as added or amended by Statutes 1992, Chapter 913; Statutes 1994, Chapter 146; Statutes 2001, Chapter 708; Statutes 2002, Chapter 1102
- California Code of Regulations, Title 5, Sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, 59340, and 59342 as added or amended by Register 81, Number 16; Register 92, Number 17; Register 96, Number 23; Register 2001, Number 6; Register 2002, Number 13; and Register 2002, Number 35
- Santa Monica Community College District, Los Rios Community College District, and West Kern Community College District, Co-Claimants
- Item 8*† *Local Agency Ethics (AB 1234)*, 07-TC-04
- Government Code Sections 53232.2(b), 53232.3(a), (b), 53235(a), and 53235.2(a) as added by Statutes 2005, Chapter 700
- City of Newport Beach, Claimant
- Item 9*† *Charter Schools IV*, 03-TC-03
- Education Code Sections 1628, 42100(a), 47605, 47605.6 as added or amended by Statutes 2002, Chapter 1058
- San Diego Unified School District, Claimant
- Item 11*† *Handicapped and Disabled Students*, 11-PGA-06
- Government Code Sections 7570-7588 as added or amended by Statutes 1984, Chapter 1747 (AB 3632) ; Statutes 1985, Chapter 1274 (AB 882) ; Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726)
- California Code of Regulations, Title 2, Sections 60000-60610 as added or amended by (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])
- Department of Finance, Requestor

- Item 12* *Interdistrict Attendance Permits*, 10-PGA-01
Education Code Sections 44601, 44601.5, and 48204 (f) renumbered to 48204 (b)
Statutes 1986, Chapter 172; Statutes 1986, Chapter 742; Statutes 1989, Chapter 853; Statutes 1990, Chapter 10; Statutes 1992, Chapter 120; Statutes 1994, Chapter 1262; Statutes 1997, Chapter 299; Statutes 1997, Chapter 417; Statutes 2003, Chapter 529
State Controller's Office, Requestor

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

A. STATEWIDE COST ESTIMATE

- Item 13*† *Modified Primary Election*, 01-TC-13
Elections Code Sections 2151 and 13102(b) as added or amended by Statutes 2000, Chapter 898 (SB 28)
County of San Bernardino, Claimant
- Item 14*† *Domestic Violence Background Checks*, 01-TC-29
Penal Code Section 273.75(a) and (c) as added or amended by Statutes 2001, Chapter 713 (AB 1129)
County of Alameda, Claimant
- Item 15*† *Identity Theft*, 03-TC-08
Penal Code Section 530.6(a) as added or amended by Statutes 2000, Chapter 956
City of Newport Beach, Claimant
- Item 16* *Permanent Absent Voters II*, 03-TC-11
Elections Code Sections 3201 and 3203(b)(2)
Statutes 2001, Chapter 922; Statutes 2002, Chapter 664; Statutes 2003, Chapter 347
County of Sacramento, Claimant

Member Olsen made a motion to adopt the consent calendar. With a second by Member Chivaro, the consent calendar was adopted by a vote of 7-0.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181(c)

- Item 2 Appeal of Executive Director Decisions.

There were no appeals to consider.

HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND GUIDELINES, AND INCORRECT REDUCTION CLAIMS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

Executive Director Heather Halsey swore in parties and witnesses participating in the hearing.

A. TEST CLAIMS

Item 3† *Reserve Peace Officer Training, 03-TC-15*

Penal Code Sections 830.6 and 832.6 as added or amended by Statutes 1977, Chapter 987; Statutes 1979, Chapter 987; Statutes 1980, Chapters 1301 and 1340; Statutes 1982, Chapter 79; Statutes 1983, Chapter 446; Statutes 1984, Chapter 761; Statutes 1986, Chapter 160; Statutes 1988, Chapter 1482; Statutes 1989, Chapters 594 and 1165; Statutes 1990, Chapter 1695; Statutes 1991, Chapter 509; Statutes 1993, Chapters 169 and 718; Statutes 1994, Chapters 117 and 676; Statutes 1993-94 Extra Session, Chapter 26; Statutes 1995, Chapter 54; Statutes 1996, Chapter 1142; Statutes 1997, Chapter 127; Statutes 1998, Chapter 190; Statutes 1999, Chapter 111; Statutes 2000, Chapter 287; and Statutes 2001, Chapter 473

Post Administrative Manual, Section B (January 2003 Version)

City of Kingsburg, Claimant

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.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the proposed final staff analysis and statement of decision denying the test claim because the test claim statutes and the POST administrative manual do not impose any mandated duties on local government.

Parties were represented as follows: Juliana Gmur, representing City of Kingsburg; Susan Geanacou and Randall Ward representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Olsen, the staff recommendation to adopt the statement of decision denying the test claim was adopted by a vote of 7-0.

Item 4 *Uniform Complaint Procedures (K-12), 03-TC-02*

Education Code Sections 200, 220, 231.5, 250, 251, 253, 260, 261, 262.3, and 262.4

Government Code Sections 11135, 11136, 11137, 11138, and 11139
Statutes 1977, Chapter 972; Statutes 1982, Chapter 1117;
Statutes 1988, Chapters 1514; Statutes 1990, Chapter 1372; Statutes 1992, Chapter 417; Statutes 1992, Chapter 906; Statutes 1992, Chapter 913; Statutes 1993, Chapter 1123; Statutes 1994, Chapter 146; Statutes 1998, Chapter 914; Statutes 1999, Chapter 587; Statutes 1999, Chapter 591; Statutes 2001, Chapter 708; Statutes 2002, Chapter 300; and Statutes 2002, Chapter 1102

California Code of Regulations, Title 5, Sections 4600, 4610, 4611, 4620, 4621, 4622, 4630, 4631, 4632, 4640, 4650, 4651, 4652, 4660, 4661, 4662, 4663, 4664, 4665, and 4670

Register 92, Number 3; Register 92; Number 18; and Register 93, Number 51

Solana Beach School District, Claimant

This test claim addresses activities associated with the procedures involved for filing, investigating, and resolving complaints arising in a school district. These procedures are used to process two types of complaints: (1) complaints that allege violations of federal or state law governing specific educational programs; and (2) complaints that allege discrimination in violation of state and federal antidiscrimination laws. This test claim also addresses the notice requirements regarding the prohibition against discrimination and the available civil remedies for discrimination complaints.

Commission Counsel Kenny Louie presented this item and recommended that the Commission adopt the staff analysis and the proposed statement of decision to partially approve the test claim for the activities that exceed federal law, and apply only to specified educational programs that districts are required to provide.

Parties were represented as follows: Art Palkowitz of the law offices of Stutz Artiano Shinoff & Holtz, representing the claimants; and Susan Geanacou representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Chivaro, the staff recommendation to adopt the staff analysis and the proposed statement of decision partially approving the test claim was adopted by a vote of 7-0.

Item 5 *Pupil Health: Oral Health Assessment, 07-TC-03*

Education Code Section 49452.8
Statutes 2006, Chapter 413 (AB 1433)

San Diego Unified School District, Claimant

This test claim addresses reimbursement for costs incurred by school districts and county offices of education resulting from a 2006 test claim statute that added section 49452.8 to the Education Code to address the oral health assessment of first-year public school children.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the staff analysis and proposed statement of decision to deny the test claim because the requirements of the test claim statutes are specifically funded by an ongoing budget appropriation.

Parties were represented as follows: Art Palkowitz of the law offices of Stutz Artiano Shinoff & Holtz, representing the claimant; and Laura Carney and Donna Ferebee, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Saylor made a motion to adopt the staff recommendation. With a second by Member Chivaro, the staff recommendation to adopt the staff analysis and proposed statement of decision denying the test claim was adopted by a vote of 7-0.

Item 6 *Instructional Materials Funding Requirements, 03-TC-07*

Education Code Sections 60000, 60002, 60045, 60048, 60119, 60200, 60242, 60242.5, 60248, 60252, 60421, 60422, 60423, 60424, 60501, 60510.5, 60521
Statutes 1976, Chapter 817, Statutes 1977, Chapter 36, Statutes 1979, Chapter 282, Statutes 1982, Chapter 1503, Statutes 1983, Chapter 498, Statutes 1985, Chapter 1440, Statutes 1985, Chapter 1470, Statutes 1985, Chapter 1546, Statutes 1985, Chapter 1597, Statutes 1986, Chapter 211, Statutes 1987, Chapter 1452, Statutes 1989, Chapter 1181, Statutes 1991, Chapter 353, Statutes 1991, Chapter 529, Statutes 1991, Chapter 1028,

Statutes 1993, Chapter 56, Statutes 1994, Chapter 927, Statutes 1995, Chapter 325, Statutes 1995, Chapter 413, Statutes 1995, Chapter 534, Statutes 1995, Chapter 764, Statutes 1996, Chapter 124, Statutes 1997, Chapter 251, Statutes 1999, Chapter 276, Statutes 1999, Chapter 646, Statutes 2000, Chapter 461, Statutes 2002, Chapter 802, Statutes 2003, Chapter 4

California Code of Regulations, Title 5, Sections 9505, 9530, 9531, 9532 and 9535

Register 77, No. 39 (Sept. 23, 1977), Register 83, No 25 (June 17, 1983), Register 95, No. 3, (Dec. 30, 1994), Register 97, No. 31 (July 31, 1997), Register 2003, No. 3 (Jan. 16, 2003)

Standards for Evaluating Instructional Materials for Social Content (2000 ed.)

Castro Valley Unified School District, Claimant

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

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt the test claim and statement of decision to deny the test claim because the statutes, regulations, and executive order do not mandate a new program or higher level of service on school districts.

Parties were represented as follows: Christian Osmena and Donna Ferebee, representing the Department of Finance. Claimant did not make an appearance at the hearing.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Morgan, the staff recommendation to adopt the test claim and statement of decision to deny the test claim was adopted by a vote of 7-0.

B. PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

Item 10 *Public Contracts (K-14)*, 02-TC-35

Public Contract Code Sections 3300, 7104, 20103.5, 20104, 20104.2, 20104.50, and 22300

Statutes 1985, Chapter 1073; Statutes 1988, Chapter 1408; Statutes 1989, Chapter 330; Statutes 1990, Chapter 1414; Statutes 1992, Chapter. 799; and Statutes 1994, Chapter 726.

Business and Professions Code Section 7028.15
Statutes 1990, Chapter 321

California Code of Regulations, Title 5, Sections 59504, 59505, 59506, and 59509

Register 1994, Number 6

Clovis Unified School District and Santa Monica Community College District, Co-Claimants

This item addresses the requirements imposed on school districts and community college districts when they contract for goods, services, and public works projects. These requirements include: (1) the requirement to specify the classification of a contractor's license in the bid proposal; (2) required contract clauses for public works involving digging trenches or other excavations; (3) the requirement to verify a bidder's license status; and (4) community college district's engaging in activities to promote minority, women, and disabled business enterprise participation in public contracts.

Commission Counsel Kenny Louie presented this item and recommended that the Commission adopt the proposed parameters and guidelines and statement of decision.

Parties were represented as follows: Ian Johnson and Donna Ferebee, representing the Department of Finance. Claimant did not make an appearance at the hearing.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Olsen, the staff recommendation to adopt the proposed parameters and guidelines and statement of decision was adopted by a vote of 7-0.

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

- Item 17 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer
Note: This item will only be taken up if an application is filed.

No applications were filed.

STAFF REPORTS

- Item 18 Legislative Update

Program Analyst Kerry Ortman presented this item.

- Item 19 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Chief Legal Counsel Camille Shelton presented this item.

- Item 20 Executive Director's Report

Executive Director Heather Halsey presented this item.

The hearing calendar for 2013 was discussed. Member Saylor moved for hearings on odd months and for the March hearing to be scheduled for April 19, 2013, due to scheduling conflicts. Member Olsen seconded. The 2013 hearing calendar was adopted by a vote of 7-0.

PUBLIC COMMENT

Member Olsen presented a resolution to Ms. Nancy Patton that gave an overview of Ms. Patton's 35-year career with the state, honored her upon her retirement, and thanked her for her dedicated service to the state.

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

A. PENDING LITIGATION

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

1. *State of California, Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]
2. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.* (petition and cross-petition), Third District Court of Appeal, Case No. C070357 (Sacramento County Superior Court Case No. 34-2010-80000604) [*Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L*]
3. *California School Board Association (CSBA) v. State of California et al.*, Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
4. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al* (petition and cross-petition). Second District Court of Appeal, Case No. B237153 (Los Angeles County Superior Court, Case No. BS130730) [*Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3*]

B. PERSONNEL

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

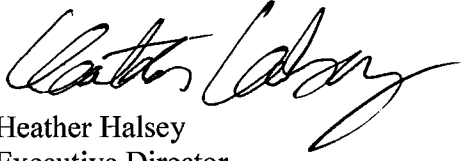
The Commission adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice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

REPORT FROM CLOSED EXECUTIVE SESSION

At 10:21 a.m., Chairperson Gillihan reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

ADJOURNMENT

Hearing no further business, Chairperson Gillihan adjourned the meeting at 10:22 a.m.

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

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



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

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
915 L Street
Sacramento, California 95814

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
915 L Street
Sacramento, California 95814

Also Present:

NANCY PATTON



ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
5	N/A	Chris Johnson Christian Osmena
34	24	Chris Johnson Christian Osmena
35	4	Chris Johnson Christian Osmena

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1 BE IT REMEMBERED that on Friday, September 28,
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 *(The following proceedings commenced with*
8 *Member Saylor absent from the hearing room.)*

9 CHAIR GILLIHAN: Good morning, everybody.

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

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

16 Welcome to both of you.

17 Heather, will you please call the roll?

18 MS. HALSEY: Mr. Morgan?

19 MEMBER MORGAN: Here.

20 MS. HALSEY: Mr. Chivaro?

21 MEMBER CHIVARO: Here.

22 MS. HALSEY: Mr. Gillihan?

23 CHAIR GILLIHAN: Present.

24 MS. HALSEY: Mr. Lujano?

25 MEMBER LUJANO: Here.

Commission on State Mandates – September 28, 2012

1 MS. HALSEY: Ms. Olsen?

2 MEMBER OLSEN: Here.

3 MS. HALSEY: Ms. Ramirez?

4 MEMBER RAMIREZ: Here.

5 MS. HALSEY: Mr. Saylor?

6 *(No response)*

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

9 MEMBER CHIVARO: Move approval.

10 CHAIR GILLIHAN: Is there a second?

11 MEMBER OLSEN: Second.

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

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

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

17 CHAIR GILLIHAN: All those opposed?

18 *(No response)*

19 CHAIR GILLIHAN: No?

20 *(No response)*

21 CHAIR GILLIHAN: Any abstentions?

22 MEMBER MORGAN: Yes.

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

25 Okay, so the minutes are adopted.

Commission on State Mandates – September 28, 2012

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

3 There are no appeals to consider under Item 2.

4 *(Member Saylor entered the hearing room.)*

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

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

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

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

15 MEMBER OLSEN: I move the consent calendar.

16 MEMBER CHIVARO: Second.

17 CHAIR GILLIHAN: Second?

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

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

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

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

24 *(No response)*

25 CHAIR GILLIHAN: The motion carries.

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

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

5 *(Parties and witnesses stood.)*

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

10 *(Parties and witnesses responded*
11 *affirmatively.)*

12 MS. HALSEY: Thank you.

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

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

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

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

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

8 Staff recommends that the Commission deny this
9 test claim.

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

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

14 MS. GEANACOU: Susan Geanacou, Department of
15 Finance.

16 MR. WARD: Randall Ward, Department of Finance.

17 MS. GMUR: Good morning, Commissioners.

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

21 CHAIR GILLIHAN: Ms. Geanacou or Mr. Ward?

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

24 Thank you.

25 MEMBER CHIVARO: I'll move the staff

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1 recommendation.

2 MEMBER OLSEN: Second.

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

5 Is there any public comment?

6 *(No response)*

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

9 MS. HALSEY: Mr. Morgan?

10 MEMBER MORGAN: Aye.

11 MS. HALSEY: Mr. Chivaro?

12 MEMBER CHIVARO: Aye.

13 MS. HALSEY: Mr. Gillihan?

14 CHAIR GILLIHAN: Aye.

15 MS. PATTON: Mr. Lujano?

16 MEMBER LUJANO: Aye.

17 MS. HALSEY: Ms. Olsen?

18 MEMBER OLSEN: Aye.

19 MS. HALSEY: Ms. Ramirez?

20 MEMBER RAMIREZ: Aye.

21 MS. HALSEY: Mr. Saylor?

22 MEMBER SAYLOR: Aye.

23 CHAIR GILLIHAN: The motion carries.

24 MR. WARD: Thank you.

25 MS. HALSEY: Commission Counsel Kenny Louie

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

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

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

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

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

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

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

1 districts.

2 The claimants have not filed comments on the
3 staff analysis.

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

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

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

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

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

16 MS. GEANACOU: Susan Geanacou, Department of
17 Finance.

18 CHAIR GILLIHAN: Thank you.

19 Mr. Palkowitz?

20 MR. PALKOWITZ: Thank you.

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

25 CHAIR GILLIHAN: Okay, Ms. Geanacou?

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

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

10 CHAIR GILLIHAN: Mr. Louie?

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

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

25 That is not the case with these specific code

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

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

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

19 CHAIR GILLIHAN: Ms. Olsen?

20 MEMBER OLSEN: I'll move the staff
21 recommendation.

22 MEMBER CHIVARO: I'll second.

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

25 *(No response)*

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1 CHAIR GILLIHAN: Are we ready for the question?
2 (No response)
3 CHAIR GILLIHAN: So we have a motion and a
4 second on the staff recommendation.
5 Heather?
6 MS. HALSEY: Mr. Morgan?
7 MEMBER MORGAN: Aye.
8 MS. HALSEY: Mr. Chivaro?
9 MEMBER CHIVARO: Aye.
10 MS. HALSEY: Mr. Gillihan?
11 CHAIR GILLIHAN: Aye?
12 MS. HALSEY: Mr. Lujano?
13 MEMBER LUJANO: Aye.
14 MS. HALSEY: Ms. Olsen?
15 MEMBER OLSEN: Aye.
16 MS. HALSEY: Ms. Ramirez?
17 MEMBER RAMIREZ: Aye.
18 MS. HALSEY: Mr. Saylor?
19 MEMBER SAYLOR: Aye.
20 CHAIR GILLIHAN: The motion is carried.
21 MS. HALSEY: Moving on to Item 5, Commission
22 Counsel Matt Jones will present Item 5 on *Pupil Health:*
23 *Oral Health Assessment.*
24 MR. JONES: Good morning.
25 This test claim alleges increased costs under

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

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

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

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

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

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

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

3 MR. PALKOWITZ: Good morning.

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

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

8 MS. FEREBEE: Donna Ferebee, Department of
9 Finance.

10 CHAIR GILLIHAN: Good morning.

11 Mr. Palkowitz?

12 MR. PALKOWITZ: Yes, thank you.

13 Good morning, everyone.

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

17 We were concerned that at some point that
18 funding may be diminished or eliminated. That has not
19 happened, and, therefore, the funding has been adequate
20 for the districts during that period of time. However,
21 the '12-13 budget has decreased the funding by
22 20 percent.

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

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

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

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

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

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

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

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

8 Thank you.

9 CHAIR GILLIHAN: Thank you.

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

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

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

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

25 Finance may have some testimony today about

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

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

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

13 MS. SHELTON: If they filed another test claim?

14 MEMBER RAMIREZ: Yes.

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

17

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

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

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

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

6 MEMBER SAYLOR: Is your question on point?

7 MEMBER OLSEN: Yes, it is.

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

10 CHAIR GILLIHAN: Ms. Olsen?

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

14 MS. SHELTON: Yes.

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

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

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

1 when?

2 MS. SHELTON: 2006.

3 MEMBER OLSEN: Okay, so '06.

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

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

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

16 MEMBER OLSEN: Okay.

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

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

21 MEMBER OLSEN: Right.

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

1 zero, if sufficient funding had been appropriated.

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

5 MEMBER OLSEN: Okay, thank you.

6 MR. PALKOWITZ: I have a question.

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

9 Are you --

10 MS. SHELTON: The declaration, Matt can
11 clarify.

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

21 CHAIR GILLIHAN: Okay, Mr. Saylor?

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

25 And there seem to be three things: One is a

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

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

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

9 MR. PALKOWITZ: Yes. Thank you.

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

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

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

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

1 those are their estimates.

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

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

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

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

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

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

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

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

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

11 MS. FEREBEE: Yes, thank you.

12 Donna Ferebee, Department of Finance.

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

16 We urge you to approve the final staff
17 analysis.

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

23 Thank you.

24 CHAIR GILLIHAN: Thank you.

25 Are there any other questions?

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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.

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1 MS. HALSEY: Ms. Ramirez?

2 MEMBER RAMIREZ: Aye.

3 MS. HALSEY: Mr. Saylor?

4 MEMBER SAYLOR: Aye.

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

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

10 MR. FELLER: Good morning.

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

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

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

24 CHRIS JOHNSON: Chris Johnson, Department of
25 Finance.

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1 MS. FEREBEE: Donna Ferebee, Department of
2 Finance.

3 CHAIR GILLIHAN: So, Department of Finance?

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

6 MEMBER CHIVARO: Move staff recommendation.

7 CHAIR GILLIHAN: So we have a motion.

8 Is there a second on the staff recommendation?

9 MEMBER MORGAN: Second.

10 CHAIR GILLIHAN: We have a motion and a second.

11 Is there any other discussion amongst the
12 Commission?

13 *(No response)*

14 CHAIR GILLIHAN: Any public comment?

15 *(No response)*

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

18 MS. HALSEY: Mr. Morgan?

19 MEMBER MORGAN: Aye.

20 MS. HALSEY: Mr. Chivaro?

21 MEMBER CHIVARO: Aye.

22 MS. HALSEY: Mr. Gillihan?

23 MEMBER GILLIHAN: Aye.

24 MS. HALSEY: Mr. Lujano?

25 MEMBER LUJANO: Aye.

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1 MS. HALSEY: Ms. Olsen?

2 MEMBER OLSEN: Aye.

3 MS. HALSEY: Ms. Ramirez?

4 MEMBER RAMIREZ: Aye.

5 MS. HALSEY: Mr. Saylor?

6 MEMBER SAYLOR: Aye.

7 CHAIR GILLIHAN: The motion carries on the
8 staff recommendation.

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

11 Item 10 is our next item.

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

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

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

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

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

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

11 IAN JOHNSON: Ian Johnson, Department of
12 Finance.

13 MS. FEREBEE: Donna Ferebee, Department of
14 Finance.

15 CHAIR GILLIHAN: The Department of Finance?

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

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

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

1 replacements to ensure that the facilities are in good
2 repair.

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

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

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

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

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

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

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

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

15 Again, it's an issue pending in court.

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

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

25 IAN JOHNSON: We would just continue to argue

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

9 CHAIR GILLIHAN: Are there any questions
10 amongst the Commission?

11 MEMBER CHIVARO: I'll move staff
12 recommendation.

13 MEMBER OLSEN: Second.

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

16 No further discussion amongst the committee?

17 *(No response)*

18 CHAIR GILLIHAN: Any public comment?

19 *(No response)*

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

22 MS. HALSEY: Mr. Morgan?

23 MEMBER MORGAN: Aye.

24 MR. HALSEY: Mr. Chivaro?

25 MEMBER CHIVARO: Aye.

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1 MS. HALSEY: Mr. Gillihan?

2 CHAIR GILLIHAN: Aye.

3 MS. HALSEY: Mr. Lujano?

4 MEMBER LUJANO: Aye.

5 MS. HALSEY: Ms. Olsen?

6 MEMBER OLSEN: Aye.

7 MS. HALSEY: Ms. Ramirez?

8 MEMBER RAMIREZ: Aye.

9 MS. HALSEY: Mr. Saylor?

10 MEMBER SAYLOR: Aye.

11 CHAIR GILLIHAN: The motion carries.

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

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

17 No SB 1033 applications have been filed.

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

20 MS. ORTMAN: Good morning.

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

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

1 proposed joint reimbursement methodology to the
2 Commission by 15 days.

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

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

12 CHAIR GILLIHAN: Thank you.

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

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

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

24 MS. HALSEY: Thanks, Camille.

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

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

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

9 We're making good headway on our backlog
10 reduction plan. We have 36 test claims still pending
11 with the Commission. And we've also greatly reduced
12 our incorrect-reduction claims from 157 last year, to
13 127 this year.

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

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

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

25 Next year, we have a scheduling conflict for

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

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

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

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

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

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

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

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1 calendar.

2 MEMBER SAYLOR: I move for odd.

3 CHAIR GILLIHAN: We have a motion.

4 MEMBER OLSEN: I'll second it.

5 CHAIR GILLIHAN: And a second.

6 Is there any other discussion amongst the

7 members?

8 *(No response)*

9 CHAIR GILLIHAN: Seeing none, any public

10 comment?

11 *(No response)*

12 CHAIR GILLIHAN: Heather, will you call the

13 roll?

14 Or do you want to just do this as -- all in

15 favor, say "aye."

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

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

18 *(No response)*

19 CHAIR GILLIHAN: Hearing none, the motion

20 carries.

21 MS. HALSEY: Thank you.

22 MEMBER RAMIREZ: May I ask a question? I'm

23 sorry.

24 CHAIR GILLIHAN: Certainly.

25 MEMBER RAMIREZ: Thank you.

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1 And it refers to the earlier part of your
2 report.

3 MS. HALSEY: Yes.

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

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

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

14 MEMBER RAMIREZ: Thank you very much.

15 MS. HALSEY: Uh-huh.

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

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

20 Ms. Sarah Olsen will now present a resolution
21 of the Commission to Nancy Patton in recognition of her
22 35 years as a dedicated State employee and public
23 servant.

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

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1 *"Before the Commission on State Mandates,*
2 *in honor of Nancy Patton, Assistant Executive*
3 *Director, Commission on State Mandates, 1997 to*
4 *2012.*

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

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

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1 *hearings; and*

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

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

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

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

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

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

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

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

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

1 *Mandates.*"

2 MS. PATTON: Thank you.

3 *(Applause)*

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

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

16 So thank you.

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

19 Thank you.

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

22 *(Applause)*

23 CHAIR GILLIHAN: Okay, the Commission will meet
24 in closed executive session pursuant to Government Code
25 section 11126(e) to confer with and receive advice from

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

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

8 We will reconvene in open session in
9 approximately 30 minutes.

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

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

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

23 MEMBER CHIVARO: So moved.

24 MEMBER SAYLOR: Second.

25 CHAIR GILLIHAN: We have a motion and a second.

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