

## **Minutes**

### **COMMISSION ON STATE MANDATES**

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
January 26, 2018

Present: Member Jacqueline Wong-Hernandez, Chairperson  
Representative of the Director of the Department of Finance  
Member Mark Hariri, Vice Chairperson  
Representative of the State Treasurer  
Member Lee Adams  
County Supervisor  
Member Richard Chivaro  
Representative of the State Controller  
Member Scott Morgan  
Representative of the Director of the Office of Planning and Research  
Member Sarah Olsen  
Public Member  
Member Carmen Ramirez  
City Council Member

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

#### **CALL TO ORDER AND ROLL CALL**

Chairperson Wong-Hernandez called the meeting to order at 10:00 a.m. Executive Director Heather Halsey welcomed the new Commission Chairperson, Ms. Jacqueline Wong-Hernandez, described her professional history, as relevant to the Commission's work, and called the roll.

#### **ELECTION OF OFFICERS**

Executive Director Heather Halsey announced that Chairperson Wong-Hernandez would conduct the annual election of officers.

Chairperson Wong-Hernandez asked for nominations for chairperson. Member Ramirez nominated Michael Cohen, Director of Finance, as chairperson. With a second by Member Hariri, the Director of Finance was elected chairperson by a vote of 6-0 with Member Chivaro absent.

Chairperson Wong-Hernandez then asked for nominations for vice-chairperson. Member Olsen made a motion to nominate John Chiang, State Treasurer, as vice chairperson. With a second by Member Morgan, the State Treasurer was elected vice chairperson by a vote of 6-0 with Member Chivaro absent.

#### **APPROVAL OF MINUTES**

Member Olsen made a motion to adopt the minutes. With a second by Member Ramirez, the December 1, 2017 hearing minutes were adopted by a vote of 6-0 with Member Chivaro absent.

## **PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA**

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

## **CONSENT CALENDAR**

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLES 7 AND 8 (action)

### **ADOPTION OF PROPOSED RULEMAKING CALENDAR**

Item 7\* Proposed Rulemaking Calendar, 2018

Chairperson Wong-Hernandez asked if there was any objection to the Consent Calendar. No objection was made.

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

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

### **APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181.1(c) (info/action)**

Item 3 Appeal of Executive Director Decisions

Executive Director Halsey stated that there were no appeals to consider for this hearing and swore in the parties and witnesses participating in the Article 7 portion of the hearing.

## **TEST CLAIM**

Item 4 *Cal Grant: Grade Point Average and Graduation Certification*, 16-TC-02  
Education Code Sections 69432.9(c)(2), 69432.9(c)(3), 69432.9(c)(5), 69432.9(d)(1)(d)(2)(A); Statutes 2014, Chapter 679 (AB 2160); Education Code Sections 69432.92(a) and 69432.92(b); Statutes 2015, Chapter 637 (AB 1091); and Education Code Sections 69432.9(c)(2) and (d)(1); Statutes 2016, Chapter 82 (AB 2908)

Fairfield-Suisun Unified School District, Claimant

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission partially approve this Test Claim.

Parties were represented as follows: Jolene Tollenaar and Kathryn Young, representing the claimant; and Donna Ferebee and Bijan Mehryar representing the Department of Finance.

Ms. Tollenaar thanked the Commission for hearing this matter and staff for being helpful with writing the Test Claim and stated though she would have preferred all alleged activities were approved, she is grateful that the upload of the GPAs was approved. Mr. Mehryar stated that the Department of Finance is not opposed to the Proposed Decision. Without further discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Morgan, the motion to partially approve this Test Claim was adopted by a vote of 6-0 with Member Chivaro absent.

**INCORRECT REDUCTION CLAIM**

Item 5      *Integrated Waste Management, 14-0007-I-07*

Public Resources Code Sections 40418, 40196.3, 42920-42928; Public Contract Code Sections 12167 and 12167.1; Statutes 1992, Chapter 1116 (AB 3521); Statutes 1999, Chapter 764 (AB 75); State Agency Model Integrated Waste Management Plan (February 2000)

Fiscal Years: 2000-2001, 2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008

El Camino Community College District, Claimant

Executive Director Heather Halsey stated that the claimant representative notified Commission staff that they would not be attending the hearing.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission partially approve this Incorrect Reduction Claim and request that the State Controller reinstate \$13,772 to the claimant.

Parties were represented as follows: Lisa Kurokawa, representing the State Controller’s Office.

Ms. Kurokawa stated that the State Controller’s Office agrees with the staff’s conclusion and recommendation. Following additional discussion among the Commission members, staff, and Ms. Kurokawa about the Controller’s audit of the offsetting savings for this program and the fact that there has been no consensus by the parties to settle the remaining IRCs on this program, Member Ramirez made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion to partially approve this Incorrect Reduction Claim was adopted by a vote of 6-0 with Member Chivaro absent.

**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 6      Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

No applications were filed.

Member Chivaro joined the meeting.

**STAFF REPORTS**

Item 8      Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

Item 9      Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

Item 10 Executive Director: Workload Update and Tentative Agenda Items for the March and May 2018 Meetings (info)

Executive Director Heather Halsey presented this item and reported on the Commission's pending caseload.

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (info/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):

Trial Courts:

1. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*  
Los Angeles County Superior Court, Case No. BS166734  
[*Handicapped and Disabled Students IRC*, 13-4282-I-06]
2. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*  
Los Angeles County Superior Court, Case No. BS166735  
[*Handicapped and Disabled Students II IRC*, 12-0240-I-01]
3. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*  
Los Angeles County Superior Court, Case No. BS167447  
[*Seriously Emotionally Disturbed Pupils IRC*, 12-9705-I-04]
4. ***On Remand from California Supreme Court, Case No. S214855, 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)  
Los Angeles County Superior Court, Case No. BS130730, Second District Court of Appeal, Case No. B237153 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4F3]
5. *Fresno Unified School Dist. v. Commission on State Mandates*  
Sacramento County Superior Court, Case No. 34-2017-80002768  
[*Certificated School Employees – Parental Leave*, 16-TC-01]

Courts of Appeal:

1. *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]

2. *Coast Community College District, et al. v. Commission on State Mandates*,  
Third District Court of Appeal, Case No. C080349  
Sacramento County Superior Court, Case No. 34-2014-80001842  
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31  
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737,  
66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016,  
78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975,  
Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters  
36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes  
1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983,  
Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467;  
Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes  
1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes  
1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter  
187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections  
51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022,  
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55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107,  
58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting  
Commission for Community and Junior Colleges (Summer 2002); and “Program and  
Course Approval Handbook” Chancellor’s Office California Community Colleges  
(September 2001).]
3. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of  
Finance, and Department of Water Resources*  
Third District Court of Appeal, Case No. C081929  
Sacramento County Superior Court, Case No. 34-2015-80002016  
[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code  
Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as  
added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of  
Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register  
2012, No. 28.]
4. *California School Board Association (CSBA) v. State of California et al.*  
First District Court of Appeal, Case No. A148606  
Alameda County Superior Court, Case No. RG11554698  
[2010-2011 Budget Trailer Bills; Education Code sections 42238.24 and 56523]

California Supreme Court:

1. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*  
California Supreme Court, Case No. S239907  
Fourth District Court of Appeal, Division One, Case No. D068657  
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL  
[Mandate Redetermination, *Sexually Violent Predators*, (12-MR-01, CSM-4509);  
Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes  
1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996,  
Chapter 4 (AB 1496) As modified by Proposition 83, General Election, November 7,  
2006]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126(e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members or staff.

**B. PERSONNEL**

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


The Commission adjourned into closed executive session at 10:21 a.m., pursuant to Government Code section 11126(e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

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

At 10:41 a.m., the Commission reconvened in open session, and Chairperson Wong-Hernandez reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

**ADJOURNMENT**

Hearing no further business, Chairperson Wong-Hernandez adjourned the meeting at 10:41 a.m.

  
Heather Halsey  
Executive Director

**ORIGINAL**

**RECEIVED**

FEB 16 2018  
**COMMISSION ON STATE MANDATES** MEETING OF THE  
STATE OF CALIFORNIA

**COMMISSION ON STATE MANDATES**



**TIME:** 10:00 a.m.

**DATE:** Friday, January 26, 2018

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

A P P E A R A N C E S

COMMISSIONERS PRESENT

JACQUELINE WONG-HERNANDEZ  
Representative for MICHAEL COHEN, Director  
Department of Finance  
(*Chair of the Commission*)

MARK HARIRI  
Representative for JOHN CHIANG  
State Treasurer  
(*Vice Chair of the Commission*)

LEE ADAMS III  
Sierra County Supervisor  
Local Agency Member

RICHARD CHIVARO  
Representative for BETTY T. YEE  
State Controller

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

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member  
Local Agency Member



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY  
Executive Director  
(*Item 10*)

HEIDI PALCHIK  
Assistant Executive Director



A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF PRESENT

*(continued)*

ERIC FELLER  
Senior Legal Counsel  
(Item 3 and Item 4)

JILL MAGEE  
Program Analyst

KERRY ORTMAN  
Program Analyst  
(Item 8)

CAMILLE N. SHELTON  
Chief Legal Counsel  
(Item 9)



PUBLIC TESTIMONY

**Appearing Re Item 4:**

For the Claimant Fairfield-Suisun Unified School  
District:

JOLENE TOLLENAAR  
Senior Consultant  
MGT of America  
2251 Harvard Street, Suite 134  
Sacramento, CA 95815

KATHRYN L. YOUNG  
Registrar  
Fairfield High School  
205 E. Atlantic Avenue  
Fairfield, CA 94533

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 4:**

For Department of Finance:

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

BIJAN MEHRYAR  
Finance Budget Analyst  
Education Systems  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Appearing Re Item 5:**

For the State Controller's Office:

LISA KUROKAWA  
Audit Manager, Division of Audits  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816





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**Commission on State Mandates – January 26, 2018**

1 BE IT REMEMBERED that on Friday, January 26, 2018,  
2 commencing at the hour of 10:00 a.m., thereof, at the  
3 State Capitol, Room 447, Sacramento, California, before  
4 me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the  
5 following proceedings were held:

6 --oOo--

7 CHAIR WONG-HERNANDEZ: Good morning. It's  
8 ten o'clock; and we're going to call the meeting of the  
9 Commission on State Mandates to order.

10 Heather, will you please call the roll?

11 MS. HALSEY: Sure.

12 First, please join me in welcoming our new  
13 Commission chairperson, Ms. Jacqueline Wong-Hernandez.

14 Ms. Wong-Hernandez is the Chief Deputy Director of  
15 Policy for the Department of Finance. And prior to her  
16 work at Finance, Ms. Wong-Hernandez was a principal  
17 consultant to the Senate Appropriations Committee working  
18 on K-12 and higher-education issues. And prior to that,  
19 she worked on public safety, judiciary, and human  
20 services issues -- experience that will serve the  
21 Commission well.

22 Welcome, Jacqueline.

23 CHAIR WONG-HERNANDEZ: Thank you.

24 MS. HALSEY: And now we'll call the roll.

25 CHAIR WONG-HERNANDEZ: Thank you.

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1 MS. HALSEY: Mr. Adams.

2 MEMBER ADAMS: Here.

3 MS. HALSEY: Mr. Chivaro.

4 *(No response)*

5 MS. HALSEY: Mr. Hariri.

6 MEMBER HARIRI: Here.

7 MS. HALSEY: Mr. Morgan.

8 MEMBER MORGAN: Here.

9 MS. HALSEY: Ms. Olsen.

10 MEMBER OLSEN: Here.

11 MS. HALSEY: Ms. Ramirez.

12 MEMBER RAMIREZ: Here.

13 MS. HALSEY: Ms. Wong-Hernandez.

14 CHAIR WONG-HERNANDEZ: Here.

15 MEMBER RAMIREZ: May I add some information?

16 We have a different setup today. And some people  
17 are looking puzzled why I'm sitting over here. And I  
18 just want to say that I'm very fragile and I don't want  
19 to expose myself to the flu.

20 That's not really true. I'm not really fragile.  
21 But it was recommended.

22 MEMBER OLSEN: We're feeling fragile.

23 MEMBER RAMIREZ: So we're all in solidarity with  
24 you, Heather. You have the flu; and you showed a  
25 commitment to get here. Maybe not the best decision.

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1 MEMBER HARIRI: I'm fragile, too.

2 MEMBER RAMIREZ: So try not to get it, Mark.

3 MEMBER ADAMS: You're our firewall.

4 MEMBER RAMIREZ: Be careful.

5 MS. HALSEY: Thank you.

6 The Chair of the Commission, Ms. Wong-Hernandez,

7 will conduct the annual election of officers.

8 CHAIR WONG-HERNANDEZ: So are there nominations for  
9 a new chairperson, or is there a motion for the election  
10 of a new chairperson?

11 MEMBER RAMIREZ: I will nominate Jacqueline as our  
12 new chair, Ms. Wong-Hernandez.

13 CHAIR WONG-HERNANDEZ: I think we -- go ahead,  
14 Heather. Do you want to --

15 MS. HALSEY: Yes. The nomination would be for the  
16 director of the state agency that you're nominating.  
17 So in this case, it would be Michael Cohen.

18 MEMBER RAMIREZ: Oh, I'm sorry. That is my  
19 nomination then.

20 MEMBER HARIRI: I would second that.

21 CHAIR WONG-HERNANDEZ: Great. So we have a  
22 nomination and a second for Michael Cohen to be  
23 chairperson.

24 Are there any other nominations?

25 *(No response)*



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1 CHAIR WONG-HERNANDEZ: Okay, then without objection,  
2 nominations are closed.

3 And let's do a voice vote.

4 All those in favor of electing the Director of  
5 Finance, Michael Cohen, as chairperson, please indicate  
6 by saying "aye."

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

8 CHAIR WONG-HERNANDEZ: Aye.

9 And those opposed?

10 *(No response)*

11 CHAIR WONG-HERNANDEZ: Okay, Director Michael Cohen  
12 has been elected chairperson.

13 Are there nominations for vice-chairperson, or is  
14 there a motion?

15 MEMBER OLSEN: I'll move John Chiang, Treasurer, as  
16 vice chair.

17 MEMBER MORGAN: Second.

18 CHAIR WONG-HERNANDEZ: Okay, we have a motion and  
19 a second for the Treasurer, John Chiang, to be  
20 vice-chairperson.

21 Are there any other nominations?

22 *(No response)*

23 CHAIR WONG-HERNANDEZ: Then without objection,  
24 nominations are closed.

25 And all those in favor of electing the Treasurer as

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1 vice chairperson, please indicate by saying "aye."

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

3 CHAIR WONG-HERNANDEZ: Great.

4 All those opposed?

5 *(No response)*

6 CHAIR WONG-HERNANDEZ: I'm sorry, and I should have  
7 said "aye" at that time.

8 So Treasurer John Chiang has been elected  
9 vice chairperson.

10 Next, we have Item 2.

11 Are there any objections to or corrections to the  
12 December 1<sup>st</sup>, 2017, minutes?

13 MEMBER OLSEN: I move the minutes.

14 CHAIR WONG-HERNANDEZ: Okay, great.

15 Do I have a second?

16 MEMBER RAMIREZ: Second.

17 CHAIR WONG-HERNANDEZ: We have a motion and a second  
18 for the adoption of the December 1<sup>st</sup> minutes.

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

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

22 CHAIR WONG-HERNANDEZ: Aye.

23 All those opposed?

24 *(No response)*

25 CHAIR WONG-HERNANDEZ: And any abstentions?

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1           (No response)

2           CHAIR WONG-HERNANDEZ: No? Okay.

3           The minutes are adopted.

4           MS. HALSEY: And now we will take up public comment  
5 for items not on the agenda.

6           Please note that the Commission cannot take action  
7 on items not on the agenda. However, it can schedule  
8 issues raised by the public for consideration at future  
9 meetings.

10          CHAIR WONG-HERNANDEZ: Is there any public comment?

11          (No response)

12          CHAIR WONG-HERNANDEZ: Seeing and hearing no one,  
13 we'll move to the next item.

14          MS. HALSEY: Item 7 is proposed for consent.

15          CHAIR WONG-HERNANDEZ: Are there any objections to  
16 the proposed consent calendar?

17          (No response)

18          CHAIR WONG-HERNANDEZ: Is there a motion to adopt  
19 the proposed consent calendar?

20          MEMBER OLSEN: I'll move adoption.

21          CHAIR WONG-HERNANDEZ: Great. Thank you.

22          Motion by Ms. Olsen.

23          Is there a second?

24          MEMBER RAMIREZ: Second.

25          VICE CHAIR HARIRI: I second that.

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1 CHAIR WONG-HERNANDEZ: Okay, second.

2 I don't know who got in first. You'll let me know.  
3 Great.

4 The motion to adopt, all those in favor, signify by  
5 saying "aye."

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

7 CHAIR WONG-HERNANDEZ: Aye.

8 All those opposed, signify by saying "no."

9 *(No response)*

10 CHAIR WONG-HERNANDEZ: And the motion carried.

11 MS. HALSEY: Thank you.

12 Item 3 is reserved for appeals of Executive Director  
13 decisions. There are no appeals to consider for this  
14 hearing.

15 Senior Commission Counsel -- oh, sorry, first, let  
16 us move to the Article 7 portion of the hearing.

17 Will the parties and witnesses for Items 4 and 5  
18 please rise?

19 *(Parties/witnesses stood to be sworn or affirmed.)*

20 MS. HALSEY: Do you solemnly swear or affirm that  
21 the testimony which you are about to give is true and  
22 correct, based on your personal knowledge, information,  
23 or belief?

24 *(A chorus of affirmative responses was heard.)*

25 MS. HALSEY: Thank you.

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1           Senior Commission Counsel Eric Feller will present  
2           Item 4, a test claim on *Cal Grant: Grade-Point Average*  
3           *and Graduation Certification*.

4           MR. FELLER: Good morning. The test-claim statutes  
5           at issue involve K through 12 school district activities  
6           for pupils in grades 11 and 12, regarding their  
7           opportunity to receive a Cal Grant award which provide  
8           financial assistance to students attending college who  
9           meet the eligibility criteria.

10           Staff finds that two of the activities in the  
11           test-claim statutes are reimbursable: First, to provide  
12           written notice to grade 11 or 12 pupils, stating that the  
13           pupil will be automatically deemed a Cal Grant applicant  
14           unless he or she opts out of the program; and, second,  
15           to electronically submit the GPAs of all grade-12 pupils  
16           each academic year to the Student Aid Commission, except  
17           for those who opt out of the program.

18           Staff recommends the Commission deny the remaining  
19           activities, such as certifying the GPAs for all grade-12  
20           pupils; providing Social Security numbers to the Student  
21           Aid Commission if requested; electronically verifying the  
22           high-school graduation of all former grade-12 pupils who  
23           have not opted out if requested by the Student Aid  
24           Commission.

25           These activities do not impose a state-mandated new

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1 program or higher level of service and thus are not  
2 eligible for reimbursement.

3 Staff recommends the Commission adopt the proposed  
4 decision to partially approve the test claim, and further  
5 recommends the Commission authorize staff to make any  
6 technical, non-substantive changes following the hearing.

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

9 MS. TOLLENAAR: I'm Jolene Tollenaar with MGT; and  
10 I'm representing Fairfield-Suisun Unified, the test  
11 claimant.

12 MS. HALSEY: Excuse me, are their microphones on?  
13 Thank you.

14 MS. YOUNG: This one isn't -- or maybe it is.

15 I'm Kathryn Young. I'm the registrar at Fairfield  
16 High School in the Fairfield-Suisun Unified School  
17 District.

18 MR. MEHRYAR: Bijan Mehryar with the Department of  
19 Finance.

20 MS. FEREBEE: Donna Ferebee, Department of Finance.

21 CHAIR WONG-HERNANDEZ: Thank you.

22 Is there any public -- or do you all want to start  
23 by commenting? Excuse me, sorry, Ms. Tollenaar or  
24 Ms. Young, would you like to start?

25 MS. TOLLENAAR: Thank you, yes.

1           And thank you for hearing this and for allowing us  
2 to be here this morning.

3           This is a fairly benign issue as far as it's just  
4 routine for the District to compile GPAs. However, a  
5 couple of years ago, it was the Student Aid Commission's  
6 desire that it become standardized and that they have  
7 electronically transferred information so that it was  
8 easier for them. And at that point, Fairfield reached  
9 out and said we'd like to file a test claim.

10           Katy and her cohorts met with me, and we discussed  
11 it; and so I brought her here this morning in case you  
12 had any questions.

13           I think the staff was really helpful and wonderful  
14 when we wrote the test claim.

15           I think as the test claimant we're representing,  
16 I always would like to see all of the activities  
17 approved. But I am just grateful that, really, the bulk  
18 of the work that the registrar does, which is about  
19 14 minutes to upload per student, that the Commission has  
20 agreed that that's a new program. So I'd just like to  
21 say "thank you."

22           And I didn't know if anybody had any questions about  
23 the process for Katy, so I brought her.

24           CHAIR WONG-HERNANDEZ: Thank you.

25           So I think we're going to let all -- I think we let

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1 the parties respond, and then we're doing questions? Or  
2 do we do questions at this point?

3 MS. HALSEY: At any time.

4 CHAIR WONG-HERNANDEZ: Okay. Well, I think maybe we  
5 should do some questions then.

6 Does anyone on the board or the Commission have  
7 questions?

8 MEMBER RAMIREZ: Not a question but a comment. How  
9 nice. Just no contentious morning to start off. I  
10 appreciate it.

11 Thanks to everybody, including staff -- especially  
12 staff. Thank you.

13 CHAIR WONG-HERNANDEZ: Okay, Mr. Mehryar or  
14 Ms. Ferebee, would you like to add to the conversation?

15 MR. MEHRYAR: The only thing that we would add is  
16 that we are not opposed to the proposed decision; and  
17 we are happy to answer any questions.

18 CHAIR WONG-HERNANDEZ: Thank you.

19 Does anyone have any questions for the Department of  
20 Finance?

21 Ms. Olsen?

22 MEMBER OLSEN: I'll move adoption of staff  
23 recommendation.

24 CHAIR WONG-HERNANDEZ: Great.

25 MEMBER MORGAN: I'd second.



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1 CHAIR WONG-HERNANDEZ: We have a motion for the  
2 staff recommendation and a second.

3 I'm sorry, are we okay to vote -- sorry, do we need  
4 to do public comment before we take --

5 MS. HALSEY: Yes.

6 CHAIR WONG-HERNANDEZ: So is there any public  
7 comment on this item?

8 *(No response)*

9 CHAIR WONG-HERNANDEZ: Seeing and hearing none,  
10 let's call the roll.

11 MS. HALSEY: Mr. Adams.

12 MEMBER ADAMS: Aye.

13 MS. HALSEY: Mr. Chivaro.

14 *(No response)*

15 MS. HALSEY: Mr. Hariri.

16 VICE CHAIR HARIRI: Aye.

17 MS. HALSEY: Mr. Morgan.

18 MEMBER MORGAN: Aye.

19 MS. HALSEY: Ms. Olsen.

20 MEMBER OLSEN: Aye.

21 MS. HALSEY: Ms. Ramirez.

22 MEMBER RAMIREZ: Aye.

23 MS. HALSEY: Ms. Wong-Hernandez.

24 CHAIR WONG-HERNANDEZ: Aye.

25 MS. HALSEY: Thank you.

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1 CHAIR WONG-HERNANDEZ: The motion carried.

2 MS. TOLLENAAR: Thank you very much.

3 MS. YOUNG: Thank you.

4 CHAIR WONG-HERNANDEZ: Thank you all for being here.

5 MS. HALSEY: Senior Commission Counsel Eric Feller

6 will present Item 5, an incorrect reduction claim on

7 *Integrated Waste Management*.

8 The claimant representative notified Commission

9 staff that they will not be attending the hearing today.

10 MR. FELLER: Hello again.

11 The Controller's audit reduction for this program

12 were taken because the claimant did not deduct offsetting

13 savings from its diversion of solid waste and the

14 associated reduction of disposal costs in accordance with

15 the test-claim statutes.

16 Staff finds the audit of the fiscal year 2000-2001

17 was timely initiated and the audit of all fiscal years in

18 the audit period was timely completed. Staff also finds

19 the Controller's reduction of costs claimed for all years

20 in the audit period, except the first half of fiscal year

21 2003-2004, is correct as a matter of law, and not

22 arbitrary, capricious, or without evidentiary support.

23 The Controller's audit reduction for the first half

24 of fiscal year 2003-2004, however, is incorrect as a

25 matter of law, because the Controller calculated the cost

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1 savings for this period using 50 percent required  
2 diversion rate, when the law required only 25 percent  
3 diversion. The difference between the reduction and the  
4 amount that should have been reduced is \$13,772, which  
5 has been incorrectly offset and should be reinstated to  
6 the claimant.

7 The Controller agreed with the proposed decision to  
8 reinstate this amount.

9 So the staff recommends the Commission partially  
10 approve this IRC and request the Controller reinstate  
11 \$13,772 to the claimant.

12 Staff also requests the Commission authorize staff  
13 to make any technical, non-substantive changes to the  
14 proposed decision following the hearing.

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

17 MS. KUROKAWA: My name is Lisa Kurokawa. I'm an  
18 audit manager with the State Controller's Office.

19 And Mr. Feller just stated -- and we agree with the  
20 staff's recommendation.

21 CHAIR WONG-HERNANDEZ: Great.

22 Do commissioners have any questions for the  
23 Controller's office, for Ms. Kurokawa? Or comments?

24 Go ahead.

25 MEMBER ADAMS: Thank you. Just a -- I'm curious

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1 that this is not the first one of these that we've seen  
2 where the wrong percentages were used. And just  
3 wondering, will we see more of these? And also wondering  
4 if there's not another alternative to correct these in  
5 going through this process?

6 MS. KUROKAWA: Well, like Mr. Feller said, for  
7 fiscal year '03-04, if we did an adjustment for that  
8 year, in 2003, their required diversion rate was  
9 25 percent and we calculated an offset using 50 percent.  
10 So any -- I think there's, like, five more pending IRCs  
11 for this program. Staff has already come out with a  
12 couple proposed decisions.

13 So if we adjusted fiscal year '03-04, it will be an  
14 ongoing -- it's the same issue, and we'll agree with --  
15 for the matter.

16 MS. HALSEY: I will also add, that's not the only  
17 issue that is the issue that the claimant is prevailing  
18 on. The claimant doesn't really agree with our analysis  
19 with regard to the other issues; and they're probably  
20 going to litigate these. So there is not a consensus to  
21 settle these. That's why they have to go through this  
22 process.

23 MEMBER ADAMS: Thank you. Thanks.

24 CHAIR WONG-HERNANDEZ: Any additional questions?

25 *(No response)*

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1 CHAIR WONG-HERNANDEZ: And then is there any public  
2 comment before we entertain a motion on this item?

3 *(No response)*

4 CHAIR WONG-HERNANDEZ: Seeing none, is there a  
5 motion?

6 MEMBER RAMIREZ: I make the motion to adopt the  
7 recommended action.

8 CHAIR WONG-HERNANDEZ: Ms. Ramirez moves to adopt  
9 the staff recommendation.

10 MEMBER OLSEN: And I'll second.

11 CHAIR WONG-HERNANDEZ: Okay, great.

12 Heather, go ahead and please call the roll.

13 MS. HALSEY: Mr. Adams.

14 MEMBER ADAMS: Aye.

15 MS. HALSEY: Mr. Chivaro.

16 *(No response)*

17 MS. HALSEY: Mr. Hariri.

18 VICE CHAIR HARIRI: Aye.

19 *(Mr. Chivaro entered the meeting room.)*

20 MS. HALSEY: Mr. Morgan.

21 MEMBER MORGAN: Aye.

22 MS. HALSEY: Ms. Olsen.

23 MEMBER OLSEN: Aye.

24 MS. HALSEY: Ms. Ramirez.

25 MEMBER RAMIREZ: Aye.

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1 MS. HALSEY: Mrs. Wong-Hernandez?

2 CHAIR WONG-HERNANDEZ: Aye.

3 MS. HALSEY: Thank you.

4 Item 6 is reserved for County applications for a  
5 finding of significant financial distress or SB 1033  
6 applications. No SB 1033 applications have been filed.

7 Item 7 was on the Consent Calendar.

8 Program Analyst Kerry Ortman will present Item 8,  
9 the Legislative Update.

10 MS. ORTMAN: Good morning.

11 The Legislature reconvened into session on  
12 January 3<sup>rd</sup>, 2018. At this time, there are no new bills  
13 relating to mandates. However, Commission staff  
14 continues to monitor AB 268, State Mandates, which is a  
15 spot bill from last session; and according to the  
16 author's office, they have no intention of pursuing any  
17 changes with this bill. However, should they decide to  
18 proceed with the bill, they have until January 31<sup>st</sup> to  
19 pass it out of the Assembly.

20 And we are also monitoring SB 806, Charter Schools:  
21 Operation: For-Profit Entities. This bill is noteworthy  
22 because it would extend mandate reimbursement to  
23 nonprofits, which are not local governments, and thus,  
24 not subject to the tax-and-spend limitations.

25 Additionally, it would allow individual nonprofit

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1 schools to seek mandate reimbursement, whereas only  
2 school districts may seek reimbursement on behalf of  
3 public schools.

4 On April 25<sup>th</sup>, 2017, the bill failed passage in the  
5 Senate Judiciary Committee. Reconsideration was granted.  
6 The bill was amended and re-referred to the Judiciary  
7 Committee on January 3<sup>rd</sup> of this year; and on January 4<sup>th</sup>,  
8 the bill was set for a January 9<sup>th</sup> hearing, but that  
9 hearing was canceled at the author's request.

10 Finally, on January 10<sup>th</sup>, the Governor issued his  
11 proposed 2018-09 budget. The budget proposes to build  
12 on the State's commitment to retire mandate debt by  
13 providing an additional \$1.8 billion to the block grant  
14 fund for school districts, charter schools, and county  
15 offices of education to further support local priorities.  
16 The proposed funding, coupled with previous discretionary  
17 funding, would allow the State to retire more than  
18 \$5 billion in outstanding K-12 mandate debt and reduce  
19 the amount owed to local educational agencies to less  
20 than \$1 billion.

21 That's all.

22 MS. HALSEY: Thank you.

23 MS. ORTMAN: Thank you.

24 MS. HALSEY: Chief Legal Counsel Camille Shelton  
25 will present Item 9, the Chief Legal Counsel report.

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1 MS. SHELTON: Good morning. Since the last  
2 Commission meeting, we do have one new filing filed by  
3 the Fresno Unified School District on the Commission's  
4 decision on certificated school employees' parental  
5 leave.

6 We also have a couple of recent decisions.

7 On December 19<sup>th</sup>, 2017, the Third District Court of  
8 Appeal did issue their decision in the *Stormwater* matter  
9 issue -- on the permit issue by San Diego region; and  
10 concluded that the lower court used the wrong standard  
11 of review and applied what the Supreme Court has recently  
12 adopted.

13 And with respect to that case, the Court agreed with  
14 the Commission that the activities are not expressly  
15 required by federal law. The Court further found that  
16 although the activities may have been necessary to comply  
17 with federal law, there was no evidence in the record  
18 that they were the only means by which to comply with  
19 federal law.

20 The matter is remanded back to the trial court to  
21 deal with the new program, higher level of service, and  
22 costs mandated by the state issues.

23 Also, this month, the First District Court of Appeal  
24 issued their decision in the *California School Board*  
25 *Association* case versus the Commission on State Mandates



1 and the State of California. That one is a complicated  
2 ruling, but did find that two budget trailer bill  
3 statutes that designated existing funds to be used for  
4 the *Graduation Requirements* and the *Behavioral*  
5 *Intervention Plan* programs was constitutional and has  
6 to be identified as offsetting revenue.

7 The Court also reversed the trial-court orders on  
8 some procedural matters, leaving open a number of other  
9 issues that they're challenging.

10 As you can see by the litigation calendar, we do  
11 have some hearings coming up.

12 Next week is the hearing at the trial level for the  
13 remand of the Los Angeles *Stormwater* matter, dealing with  
14 a new program, higher level of service, and cost issues.

15 Also, we are starting to brief and the hearings are  
16 set in the County of Los Angeles matters dealing with  
17 incorrect reduction claims.

18 CHAIR WONG-HERNANDEZ: Thank you.

19 MS. HALSEY: Item 10 is the Executive Director's  
20 report.

21 After this hearing, there are 15 pending test  
22 claims, all but one of which are regarding *National*  
23 *Pollutant Discharge Elimination System*, or "NPDES,"  
24 *Permits*.

25 The non-NPDES test claim is tentatively set for

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1 the May 2018 hearing; and the NPDES permit claims are  
2 tentatively set for hearing from May 2018 through  
3 July 2019.

4 We also have one parameters and guidelines and one  
5 statewide cost estimate regarding *NPDES Permits*. And  
6 those are on inactive status pending the outcome of  
7 litigation regarding the test-claim decisions underlying  
8 those matters.

9 In addition, there is one parameters and guidelines  
10 amendment on inactive status pending the outcome of  
11 litigation in the *CSBA* case.

12 And as Camille mentioned, the First District Court  
13 of Appeal has issued a decision in the case but it is not  
14 yet final. And we do not know what actions the parties  
15 will be taking with regard to potential court proceedings  
16 on this matter, so that remains on inactive status for  
17 the time being.

18 And, finally, we have 12 IRCs pending. As of today,  
19 the Commission staff expects to complete all currently  
20 pending test claims and IRCs by approximately the  
21 July 2019 Commission meeting, depending on staffing and  
22 other workload.

23 Please check the tentative agenda items on my  
24 Executive Director report to see if your item or an item  
25 you're interested in is coming up over the next few

1 hearings.

2 And we also have a pending caseload document that we  
3 post on our Web site that we update at least bi-monthly.  
4 And you can see, as things move there, you can get a  
5 sense of when things are coming up. And I actually have  
6 everything that's pending with the Commission scheduled  
7 out on there, into the future, for people's planning  
8 purposes. And expect to see draft proposed decisions on  
9 all test claims and IRCs at least eight weeks prior to  
10 the hearing date, and a proposed decision at least two  
11 weeks prior to the hearing date.

12 And that's all I have.

13 CHAIR WONG-HERNANDEZ: Thank you.

14 Does anyone have any questions?

15 Ms. Ramirez.

16 MEMBER RAMIREZ: Yes, I noticed that the City of  
17 Oxnard, my city, has got a test claim, it's Item A.4.  
18 So I will be recusing myself, from looking at this --

19 MS. SHELTON: She's talking about the *Impasse*  
20 *Procedures*.

21 MEMBER RAMIREZ: The *Impasse Procedures*.

22 So I will just --

23 MS. HALSEY: Yes, yes.

24 What, recuse from that one?

25 MEMBER RAMIREZ: I'm just going to exit myself from

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1 doing anything about that one.

2 MS. HALSEY: Okay, thank you.

3 CHAIR WONG-HERNANDEZ: Sounds good.

4 Does anyone else have any questions or comments for  
5 staff?

6 *(No response)*

7 CHAIR WONG-HERNANDEZ: Okay, then our next item of  
8 business is going to be closed executive session.

9 The Commission will meet in closed-session pursuant  
10 to Government Code section 11126(e) to confer with and  
11 receive advice from legal counsel for consideration and  
12 action, as necessary and appropriate, upon the pending  
13 litigation listed on the published notice and agenda; and  
14 to confer with and receive advice from legal counsel  
15 regarding potential litigation.

16 The Commission will also confer on personnel matters  
17 pursuant to Government Code section 11126(a)(1); and we  
18 will reconvene in open session in approximately  
19 15 minutes.

20 Thank you. Thank you, all, for taking that cue and  
21 exiting.

22 MEMBER OLSEN: They are well trained.

23 *(The Commission met in closed executive session*  
24 *at 10:21 a.m. to 10:41 a.m.)*

25 CHAIR WONG-HERNANDEZ: The Commission met in closed

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1 executive session pursuant to Government Code section  
2 11126(e)(2), to confer with and receive advice from legal  
3 counsel for consideration and action, as necessary and  
4 appropriate, upon the pending litigation listed on the  
5 published notice and agenda; and to confer with and  
6 receive advice from legal counsel regarding potential  
7 litigation; and pursuant to Government Code section  
8 11126(a)(1) to confer on personnel matters.

9 Unless anyone has any other business, the Commission  
10 is -- our agenda is done for the day; and I'll entertain  
11 a motion to adjourn.

12 MEMBER ADAMS: So moved.

13 MEMBER OLSEN: Second.

14 CHAIR WONG-HERNANDEZ: Great.

15 All of those in favor of adjourning, please say  
16 "aye."

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

18 CHAIR WONG-HERNANDEZ: Aye.

19 All those opposed?

20 *(No response)*

21 CHAIR WONG-HERNANDEZ: This meeting is adjourned.

22 *(The Commission meeting concluded at 10:41 a.m.)*

23 --oOo--

24

25

REPORTER'S CERTIFICATE

I hereby certify:

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

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

*In witness whereof*, I have hereunto set my hand on the 12<sup>th</sup> day of February 2018.



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