

ARNOLD SCHWARZENEGGER

GOVERNOR



STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

REPORT TO THE DIRECTOR DEPARTMENT OF FINANCE: WORKLOAD LEVELS AND BACKLOG

September 15, 2010

Ana J. Matosantos
Chairperson
Director of the Department of Finance

Bill Lockyer
Vice Chairperson
State Treasurer

John Chiang
State Controller

Cathleen Cox
Acting Director
Office of Planning and Research

Paul Glaab
City Council Member
City of Laguna Niguel

J. Steven Worthley
County Supervisor
County of Tulare

Sarah Olsen
Public Member

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814
(916) 323-3562

TABLE OF CONTENTS

Page

I. 2010 Workload Levels and Considerations

Report to Director, Department of Finance	2
Background.....	2
Workload Completed in 2009-2010.....	2
Position Authority.....	3
Pending Caseload.....	4
Test Claims	5
Incorrect Reduction Claims	6

II. Tables

A. Commission Decision Making and Position Authority: 2002-2003 - 2008-2009	3
B. Complete Pending Workload as of September 15, 2010	4
C. Pending Test Claims by Fiscal Year of Filing and Claimant Type	5
D. Pending Incorrect Reductions Claims by Fiscal Year of Filing and Claimant Type	6
E. Pending IRCs and Amount of Reductions By Program	7
F. Local Agency Programs Audited and Number of Audit Reports	10
G. Potential IRC Filings by Local Agencies.....	10
H. School District Programs Audited and Number of Audit Reports	11
I. Potential IRC Filings by School Districts.....	11
J. Potential IRC Filings by Community College Districts	11

III. Exhibits

A. Pending Workload: Test Claims	13
B. Pending Workload: Incorrect Reduction Claims	25
C. Pending Workload: Parameters and Guidelines	41
D. Pending Workload: Parameters and Guidelines Amendments	45
E. Pending Workload: Statewide Cost Estimates.....	47

COMMISSION ON STATE MANDATES
2010 WORKLOAD LEVELS AND CONSIDERATIONS
REPORT TO THE DIRECTOR, DEPARTMENT OF FINANCE

The annual Budget Act requires the Commission on State Mandates (Commission) to report to the Director, Department of Finance on workload levels and backlog. The 2009 State Budget Act states:¹

The Commission on State Mandates shall, on or before September 15, 2009, and annually thereafter, submit to the Director of Finance a report identifying the workload levels and any backlog for the staff of the commission.

BACKGROUND

Commission on State Mandates

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local government for the costs of new programs or increased levels of service mandated by the state. To implement article XIII B, section 6, the Legislature created the Commission on State Mandates (Commission) to succeed the State Board of Control in making determinations whether new statutes or executive orders are state-mandated programs.² The Commission was established to render sound quasi-judicial decisions and to provide an effective means of resolving disputes over the existence of state-mandated local programs. The Commission provides the sole and exclusive procedure for local agencies and school districts (claimants) to claim reimbursement for costs mandated by the state as required by article XIII B, section 6 of the California Constitution. The Commission is required to hear and decide claims (test claims) filed by local agencies and school districts that they are entitled to be reimbursed by the state for costs mandated by the state.³

Statutory time frames were established for completing this work. Since 1998, state law has required the Commission to adopt procedures to ensure that a statewide cost estimate is adopted within 12 to 18 months after receipt of a test claim, when the Commission determines that a mandate exists. (Gov. Code, § 17553, subd. (a).) In 2004, AB 2856 (Stats. 2004, ch. 890) made modifications to the Commission's statutory authority, to, among other things, require the Commission to notify the Legislature of its mandate determinations.

The Commission is also required to hear and decide incorrect reduction claims (IRCs) by local agencies and school districts that the SCO has incorrectly reduced payments to the local agencies or school districts (Gov. Code, § 17551). There is no statutory time frame for completing IRCs.

COMMISSION WORKLOAD CONSIDERATIONS

Workload Completed in 2009-2010

In fiscal year 2009-2010, the Commission completed 18 test claims, five statewide cost estimates, and one incorrect reduction claim. The Commission also completed 62 parameters and guidelines and amendments to parameters and guidelines. Forty-nine of the parameters and guidelines completed were amendments to parameters and guidelines proposed by the State Controller's Office to include boilerplate language. Completion of these proposed amendments

¹ See Statutes 2009, chapter 1, (SBX3 1), Item 8885-001-0001, Provision 2.

² Statutes 1984, chapter 1459, Government Code section 17500, et seq.

³ Government Code section 17551.

also implemented one recommendation made by the Bureau of State Audits (BSA) in their October 15, 2009 audit report: Bureau of State Audits Report 2009-501, *State Mandates: Operational And Structural Changes Have Yielded Limited Improvements In Expediting Processes And Controlling Costs And Liabilities*.⁴

Position Authority

Like most other state agencies, during the ongoing budget crisis, Commission staffing levels have continued to decrease. The Commission was provided with three limited-term positions in 2006 to eliminate the backlog. Those positions were made permanent in 2007. In 2008 and 2009, a total of two positions were eliminated. Currently, the Commission has 11 positions. Table A shows completed workload and position authority for the past eight fiscal years.

**Table A. Commission Decision Making and Position Authority
2002-2003 through 2009-2010⁵**

	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
Test Claims Determined	19	22	17	6	30	16	18	18
Test Claims Reconsidered ⁶	NA	NA	5	9	1	2	0	0
Parameters and Guidelines and Amendments Adopted or Set Aside	7	20	6	43	24	11	11	62
Statewide Cost Estimates Adopted	10	3	14	2	7	3	11	5
Request to Review State Controller's Claiming Instructions	0	0	0	0	0	0	1	0
Incorrect Reduction Claims Determined	70	10	0	0	0	5	0	1
Positions	15 ⁷	9.7	9.7	13.6	13.6	12.0 ⁸	12.0 ⁹	11.0

⁴ The report can be found at <http://www.bsa.ca.gov/pdfs/reports/2009-501.pdf>.

⁵ This table does not reflect work completed by attorneys and administrative staff on litigation, and special projects, such as mandate reform and responding to audits performed by the Bureau of State Audits.

⁶ Directed by the Legislature.

⁷ Includes Staff Counsel III position that was authorized beginning in 2002-03 but never filled due to hiring freeze and eliminated as part of the 2002-2003 State Budget.

⁸ Positions were reduced from 13.6 to 12 by eliminating one staff counsel position and temporary help funding in the 2008-09 State Budget.

Pending Caseload

The Commission's pending caseload consists of matters filed by claimants and state agencies, including test claims, incorrect reduction claims, parameters and guidelines and proposed amendments to parameters and guidelines, reasonable reimbursement methodologies, statewide cost estimates, and requests to review claiming instructions. The caseload may also consist of regulatory actions proposed by Commission staff. We also track pending joint proposals for legislatively-determined mandates. Table B. shows the Commission's current pending caseload.

Table B. Complete Pending Workload, September 15, 2010

Type of Action	Number Pending
Test Claims ¹⁰ to be Heard and Determined ¹¹	47
Test Claims to be Reconsidered	0
Test Claims to be Reconsidered or Reinstated Based on Court Action	0
Incorrect Reduction Claims to be Heard and Determined ¹²	164
Incorrect Reduction Claims to be Reconsidered Based on Court Action	0
Reasonable Reimbursement Methodologies/Statewide Estimate of Costs	2
Proposed Parameters and Guidelines ¹³	15
Proposed Parameters and Guidelines Amendments ¹⁴	5
Parameters and Guidelines to be Amended, Set Aside, or Reinstated, as Directed by the Legislature or Court Action	0
Statewide Cost Estimates to be Adopted ¹⁵	10
Revised Statewide Cost Estimates to be Adopted	1
New Test Claim Filings to be Reviewed	0
New Incorrect Reduction Claim Filings to be Reviewed	0
Appeals of Executive Director's Decision	0
Regulatory Actions Pending	0

⁹ Includes one staff counsel position that was left vacant during fiscal year 2008-2009 to reduce General Fund operations budgets by 1.5 percent, as ordered by Governor's Executive Order S-01-08. This position was eliminated as part of the 2009-2010 State Budget.

¹⁰ This includes 31 test claims filed by school districts and 16 filed by local agencies.

¹¹ See Exhibit A.

¹² See Exhibit B.

¹³ See Exhibit C.

¹⁴ See Exhibit D.

¹⁵ See Exhibit E.

Requests to Jointly Develop Legislatively Determined Mandates

Type of Action	Number Pending
Notice of Intent to Pursue Legislatively Determined Mandates	3

Test Claims

The Commission's test claim caseload is backlogged. There are 47 test claims pending completion. Table C shows the pending test claim filings by fiscal year, and claimant type.

**Table C. Pending Test Claims
By Fiscal Year of Filing and Claimant Type**

Filing Date by Fiscal Year	Total New Filings ¹⁶	Pending School District Test Claims	Pending Local Agency Test Claims	Total Pending Test Claims
2002-2003	51	13	2	15
2003-2004	23	9	4	13
2004-2005	4	0	1	1
2005-2006	6	3	1	4
2006-2007	2	0	1	1
2007-2008	12	2	3	5
2008-2009	6	3	2	5
2009-2010	3	1	2	3
2010-2011	0	0	0	0
Totals		31	16	47

The following factors contribute to the backlog, and are evaluated by staff when assigning work and projecting workload completion:

1. Number of Filings

Prior to 2002, test claim filings averaged approximately 24 per year. In 2002, changes in the statute of limitations for filing test claims caused local agencies and school districts to file 51 test claims in one year. The Commission is still completing 2002 test claims. There are 15 2002 test claims pending before the Commission. Claimants filed 23 test claims in 2003, 13 of which are still pending. However, the test claim filings are decreasing. Because claimants now have only one year to file test claims on new statutes and executive orders, between 2004 and 2009, 33 new test claims were filed for those years combined.

2. Number and Level of Positions

The Commission's position authority has decreased over the past several fiscal years. This continual decrease in position authority is one of the major factors that causes the backlogs in the Commission's caseload. The number of test claims completed is based on the number of positions we have for a particular fiscal year, but also on the level of those positions. We have one staff counsel and two staff counsel III positions. All attorney positions complete test claims. However, a staff counsel III may also handle other workload, including litigation, which could reduce the time available to complete test claims.

¹⁶ All test claims filed prior to 2002-2003 are complete.

3. *Size of Each Test Claim*

Test claims are often thought to be filed on one individual statute. This is not correct, especially when evaluating the backlog. Test claims are filed on numerous statutes, regulations, and executive orders. For example, the 51 test claims filed in 2002 allege that nearly 500 statutes, and 400 regulatory sections and executive orders are mandated programs. By law, each statute, regulation, and executive order pled requires a finding by the Commission.

4. *Other Pending Work*

Past requests to reconsider existing test claims, incorrect reduction claims, parameters and guidelines, and litigation have contributed to the delay in eliminating the test claim backlog.

5. *Potential Work*

The October 15, 2009 BSA report also recommended that Commission staff work with the Legislature to establish a reconsideration process that will allow mandates to undergo revision when appropriate. Commission staff worked with legislative staff to draft language for a new “redetermination” process. This language is pending in a budget trailer bill. If this process is implemented, it is likely to add work to the Commission’s caseload.

6. *Number of Commission Meetings*

We also factor in how many meetings will be conducted for a particular fiscal year. The Commission is required by statute to conduct at least six public meetings per year, and we tentatively schedule two additional meetings each year.

Incorrect Reduction Claims (IRCs)

The IRC workload is also backlogged. There are currently 164 IRCs pending before the Commission that allege a total of \$85.4 million in reductions to mandate reimbursement claims. Table D shows the pending IRC caseload by fiscal year and claimant type.

**Table D. Pending Incorrect Reduction Claims
By Fiscal Year of Filing and Claimant Type**

Filing Date by Fiscal Year	Total New Filings¹⁷	Pending School District Claims	Pending Local Agency Claims	Total Pending Claims
2001-2002	7	2	0	2
2002-2003	74	0	71	71
2003-2004	7	1	0	1
2004-2005	5	4	1	5
2005-2006	30	27	2	29
2006-2007	2	1	1	2
2007-2008	28	22	2	24
2008-2009	9	9	1	10
2009-2010	17	14	3	17
2010-2011	3	3	0	3
Totals		83	81	164

IRCs are filed with the Commission based on actions taken by the State Controller’s Office. Unlike test claims, where one claimant represents all potential claimants statewide, individual

¹⁷ All incorrect reduction claims filed prior to 2001-2002 are complete.

claimants file IRCs with the Commission.¹⁸ Though the Commission may combine IRCs on the same program and similar issues for purposes of analysis, it must issue a separate decision for each claimant.

The process for resolving IRCs can be complex, and differs with each claim. For some claims, once the claimant files an IRC, an informal conference is conducted where Commission staff mediates the issues in dispute between the claimant and the SCO. If the issues are resolved in the informal conference, the IRC is settled. When the issues cannot be resolved, attorney and analytical staff prepare a detailed analysis of the legal and fiscal issues, the Commission approves or denies the IRC, and a statement of decision is prepared. Whether or not the issues are resolved at the informal conference, staff must spend time to prepare and review the record (including the original test claim record, parameters and guidelines, and claiming instructions) review detailed reimbursement claims, and determine the legal and fiscal issues. This process can be lengthy, particularly in cases where numerous IRCs are filed on one program. For example, for the *Graduation Requirements* program, the Commission adopted statements of decision on 11 IRCs in 12 months.

There are currently IRCs filed on 24 state-mandated programs. Table E shows the programs listed by type of claimant and the dollar amounts per program.

**Table E. Pending IRCs and Amount of Reductions
By Program**

	Program	Number of IRCs Filed	Amount of Reductions
		Local Agency Claims	
1.	<i>Absentee Ballots</i>	2	\$933,286
2.	<i>Child Abduction and Recovery</i>	1	\$1,268,210
3.	<i>Firefighters' Cancer Presumption</i>	1	\$516,132
4.	<i>Handicapped and Disabled Students</i>	4	\$14,515,444
5.	<i>Investment Reports</i>	70	\$1,994,905
6.	<i>Open Meetings Act</i>	1	\$4,654,917
7.	<i>Sexually Violent Predators</i>	2	\$373,643
	<i>Subtotal</i>	81	\$24,258,537
		School District Claims	
8.	<i>Collective Bargaining</i>	3	\$1,282,045
9.	<i>Emergency Procedures</i>	1	\$1,201,436
10.	<i>Emergency Procedures, Earthquake Procedures & Disasters</i>	2	\$1,941,572
11.	<i>Graduation Requirements</i>	3	\$18,776,536
12.	<i>Interdistrict Attendance Permits</i>	2	\$24,556
13.	<i>Intradistrict Attendance</i>	4	\$1,738,767
14.	<i>Mandate Reimbursement Process</i>	1	\$1,122
15.	<i>National Norm-Referenced Achievement Test</i>	1	\$160,120

¹⁸ County claims are limited to 58 potential IRCs. Mandates involving cities or school districts, \$160,120 however, create thousands of potential IRCs.

	(NNRAT)		
16.	Notification of Truancy	8	\$2,788,050
17.	Notification to Teachers: Pupils Subject to Suspension or Expulsion	1	\$354,046
18.	School Bus Safety II ¹⁹	5	\$36,171
19.	School Crimes Reporting II ²⁰	8	\$33,552
20.	School District of Choice: Transfer and Appeals	4	\$3,262,306
21.	Standardized Testing and Reporting (STAR)	1	\$1,446,786
	<i>Subtotal</i>	44	\$33,047,085
		Community College District Claims	
22.	Collective Bargaining	7	\$2,142,138
23.	Health Fee Elimination	31	\$25,940,844
24.	Mandate Reimbursement Process	1	\$10,004
	<i>Subtotal</i>	39	\$28,092,986
	TOTAL	164	\$85,398,608

The Role of the State Controller's Office

Filing IRCs is an appeals process. The State Controller is authorized, by desk review or field audit, to reduce reimbursement claims that they deem to be excessive or unreasonable. The claimant is then authorized to appeal any reduction by filing an IRC with the Commission. Following is information regarding the State Controller's process and pending IRCs:

- *Reductions Based on Desk Reviews*

Seventy of the pending IRCs are on the *Investment Reports* program. These reductions were based on desk reviews of claims. To date, the Commission decided two IRCs on this program, and is meeting with the State Controller's Office staff and claimant representatives to develop a work plan to address the remaining claims.

- *Reductions Based on Field Audits*

Fifty two of the pending IRCs are on claims that were reduced based on a field audit that resulted in a published audit report.

Completing the Pending Incorrect Reduction Claims Caseload

Despite our decreasing position authority and other pending work, Commission staff is developing a comprehensive work plan to eliminate the pending IRCs using existing resources. The Commission decided one IRC in 2009-2010, one IRC in 2010-2011, and has 13 additional IRCs scheduled for hearing on September 30, 2010.²¹ The same factors that contribute to the test

¹⁹ Scheduled for hearing on September 30, 2010.

²⁰ Scheduled for hearing on September 30, 2010.

²¹ Eighteen of the pending IRCs are also subject to the *Clovis et al v. State Controller* case that is pending in the 3rd District Court of Appeal. These incorrect reduction claims should not be

claim backlog also contribute to the IRC backlog, including number of filings, number and level of positions, number of Commission meetings, and other pending work.

Because of a number of variables it is difficult to estimate how many IRCs we can complete per year and how many new IRCs may be filed. The Commission has many options in how to address incorrect reduction claims. For example, it may be appropriate to consolidate incorrect reduction claims filed by different claimants so that one analysis and statement of decision are adopted by the Commission. However, this only works if the issues are the same, and the Controller's auditors were consistent in making claim reductions, based on similar documentation. It is also possible that once the Commission determines one incorrect reduction claim that other claims on the same program will be settled and withdrawn based on that decision. But, it may also be necessary for the Commission to adopt individual decisions on incorrect reduction claims filed on the same program because documentation and the way reimbursement claims were filed may differ. Most incorrect reduction claims involve issues of law and fact. Thus, analysis of each incorrect reduction claim requires legal, analytical, and audit review.

Caseload Projections

It is difficult to predict if a substantial number of IRCs will be filed in the future. In fact, as the number of mandated programs for which the state must reimburse local agencies and school districts grows, exposure to IRCs increases. In addition, the number of audits the State Controller conducts on reimbursement claims directly affects the number of IRCs that may be filed.

Since auditor positions have been added to the Controller's staff, the number of audits of mandate reimbursement claims has increased. While the State Controller's Office does not have current numbers, claimants report that the audits have reduced 85 percent of costs claimed for reimbursement. An increase in claim reductions will result in more IRCs.

Statute of Limitations and Potential Incorrect Reduction Claim Filings (2010-2013) Based on Final Audit Reports

Because there is no statutory provision, the Commission's regulations provide a default three-year statute of limitations to file an incorrect reduction claim with the Commission. The statute of limitations runs from the date that the claimant received notice of the reduction.

CSM staff reviewed the Controller's final audit reports that are posted on the Controller's website to determine what the highest number of potential filings would be, based on the current three-year statute of limitations. *The statute of limitations is still open on 187 audit reports (120 local agency audits, 32 school district audits, and 35 community college district audits).*

The following is an overview of the completed audits and statute of limitations by type of claimant.

- *Local Agencies (Cities, Counties, and Special Districts)*

Between September 28, 2007 and July 28, 2010, the Controller issued 123 audit reports on 22 local agency programs. The table below shows the programs and number of audit reports filed on each program. Twenty-nine of the audits are on the *Peace Officers Bill of Rights* program, 22 on *Handicapped and Disabled Students I or II* programs, and 11 on the *Seriously Emotionally*

addressed until the litigation is complete because the decision could have a binding effect on the IRC issues.

Disturbed Students: Out of State Commitments. Table F shows the programs that were audited and the number of audit reports

Table F. Programs Audited (Number of Audit Reports)

<i>Absentee Ballots (10)</i>	<i>Open Meetings Act/Brown Act Reform (4)</i>
<i>Animal Adoption (8)</i>	<i>Peace Officers Procedural Bill of Rights (29)</i>
<i>Cancer Presumption Peace Officers (2)</i>	<i>Permanent Absent Voters (2)</i>
<i>Child Abduction and Recovery (7)</i>	<i>Pesticide Use Reports (2)</i>
<i>Court Costs and Other Related Charges (2)</i>	<i>Photographic Record of Evidence (2)</i>
<i>Domestic Violence Arrest Policies & Standards (4)</i>	<i>Prisoner Parental Rights (1)</i>
<i>Domestic Violence Treatment Services (3)</i>	<i>Racial Profiling: Law Enforcement Training (1)</i>
<i>Firefighters Cancer Presumption (4)</i>	<i>Search Warrant: AIDs (1)</i>
<i>Handicapped and Disabled Students I & II (22)</i>	<i>Seriously Emotionally Disturbed Pupils: Out of State Mental Health Services (11)</i>
<i>Mentally Disordered Offenders Extended Commitment Proceedings (3)</i>	<i>Sexually Violent Predators (4)</i>
<i>Not Guilty by Reason of Insanity (2)</i>	

To date, only three IRCs have been filed on these audit reports. Therefore, local agencies may still file 120 IRCs on these audit reports. Table G shows the deadline for IRCs to be filed based on the statute of limitations.

Table G. Potential IRC Filings by Local Agencies

Statute of Limitations	Potential IRC Filings by Local Agencies Based on Field Audits
By December 21, 2010	14
By December 31, 2011	52
By December 30, 2012	31
By July 28, 2013	23
Total	120

- *School Districts (K-12 and County Offices of Education)*

Between September 26, 2007 and July 22, 2010, the Controller issued 36 audit reports on school district programs. Eighteen of these reports are based on the *Standardized Testing and Reporting* program, and eight are filed on the *Notification of Truancy* program, and five are filed on the *Collective Bargaining* program. Table H shows the programs audited and the number of audit reports.

Table H. Programs Audited (Number of Audit Reports)

<i>AIDS Prevention Instruction</i> (1)	<i>Pupil Health Screenings</i> (1)
<i>Collective Bargaining</i> (5)	<i>Pupil Promotion and Retention</i> (1)
<i>National Norm-Referenced Achievement Test</i> (1)	<i>Standardized Testing and Reporting</i> (18)
<i>Notification of Truancy</i> (8)	<i>Stull Act</i> (1)

To date, only four IRCs have been filed on these audit reports. Therefore, school districts may still file IRCs on 32 audit reports. Table G shows the deadline for IRCs to be filed based on the statute of limitations:

Table I. Potential IRC Filings by School Districts

Statute of Limitations	Potential IRC Filings by School Districts Based on Field Audits
By November 30, 2010	1
By December 31, 2011	7
By December 11, 2012	21
By July 22, 2013	3
Total	32

- *Community College Districts*

Between December 12, 2007 and September 1, 2010, the Controller issued 43 audit reports on community college district programs. Thirty five of these reports are based on the *Health Fee Elimination* program and 7 are on the *Collective Bargaining* program. Eight IRCs have been filed on these reports. Therefore, community college districts may still file 35 IRCs based on these audit reports. Table J. shows the deadline for IRCs to be filed based on the statute of limitations:

Table J. Potential IRC Filings by Community College Districts

Statute of Limitations	Potential IRC Filings by Community College Districts Based on Field Audits
By December 12, 2010	1
By December 31, 2011	7
By October 28, 2012	24
By August 28, 2013	3
Total	35