

Item 1

Proposed Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
May 26, 2016

Present: Member Eraina Ortega, Chairperson
Representative of the Director of the Department of Finance
Member Mark Hariri, Vice Chairperson
Representative of the State Treasurer
Member Ken Alex
Director of the Office of Planning and Research
Member Richard Chivaro
Representative of the State Controller
Member Sarah Olsen
Public Member

Absent: 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.

CALL TO ORDER AND ROLL CALL

Chairperson Ortega called the meeting to order at 10:04 a.m. Executive Director Heather Halsey called the roll and announced that Member Ramirez had contacted staff to say she would not be able to make it to this meeting. Members Chivaro and Saylor were also absent at roll call.

APPROVAL OF MINUTES

Member Olsen made a motion to adopt the minutes. With a second by Member Alex, the March 25, 2016 hearing minutes were adopted by a vote of 4-0.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

Before public comment was heard, Chairperson Ortega invited Mr. Keith Petersen up and congratulated him on his retirement. Member Olsen presented Mr. Petersen with a resolution commemorating his achievements representing claimants before the Commission.

Member Chivaro joined the meeting.

The Chairperson asked if there was any public comment. There was no response. The Chairperson recommended that Item 2 be skipped in the event that Member Saylor arrived to join the meeting. The Chairperson also noted that Item 3 was withdrawn.

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

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

INCORRECT REDUCTION CLAIMS

- Item 4 *Health Fee Elimination*, 09-4206-I-24 and 10-4206-I-34
Former Education Code Section 72246 (Renumbered as 76355)
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1); and
Statutes 1987, Chapter 1118 (AB 2336)
Fiscal Years 2002-2003, 2003-2004, 2004-2005, and 2005-2006
Foothill-DeAnza Community College District, Claimant

These consolidated Incorrect Reduction Claims address the State Controller's reduction of costs claimed because authorized offsetting health fees were understated and not correctly deducted from the claims, and indirect costs were overstated during some of the fiscal years.

Commission Counsel Matt Jones presented this item and recommended the Commission adopt the Proposed Decision to deny these Incorrect Reduction Claims.

Parties were represented as follows: Keith Petersen, representing the claimant; Jim Spano and Jim Venneman, representing the State Controller's Office.

Keith Petersen stated that the claimant would stand on the written record. The State Controller concurred with the staff recommendation and there was no comment from interested parties or the public on this matter. Member Olsen made a motion to adopt the staff recommendation. With a second by Member Chivaro, the motion to deny the consolidated Incorrect Reduction Claims was adopted by a vote of 5-0.

- Item 5 *Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services*, 10-9705-I-01 and 13-9705-I-05
Government Code Section 7576, as amended by Statutes 1996, Chapter 654;
California Code of Regulations, Title 2, Division 9, Chapter 1, Sections
60100 and 60110
Fiscal Years 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2005-2006
County of San Diego, Claimant

These consolidated Incorrect Reduction Claims address the State Controller's reductions of reimbursement claims based on the finding that claimed costs are not reimbursable under the Parameters and Guidelines.

Senior Commission Counsel Julia Blair presented this item and recommended the Commission adopt the Proposed Decision to deny these Incorrect Reduction Claims.

Parties were represented as follows: Kyle Sand and Lisa Macchione, representing the claimant; Jim Spano and Chris Ryan, representing the State Controller's Office.

Ms. Macchione requested that the Commission find in favor of the county because placing the students with a for-profit entity was the most appropriate and least restrictive placement for meeting their IEPs consistent with federal law and this could be interpreted as harmonious with state law since the county contracted with a nonprofit entity which then placed the students in the for-profit facility. The State Controller concurred with the staff recommendation. Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Alex, the motion to deny these Incorrect Reduction Claims was adopted by a vote of 5-0.

Item 6 *Peace Officers Procedural Bill of Rights (POBOR)*, 12-4499-I-02
Government Code Sections 3301, 3303, 3304, 3305, and 3306
Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675
Fiscal Years 2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008
City of Los Angeles, Claimant

Ms. Halsey stated that the claimant notified Commission staff that they would not be appearing at this hearing and that they stand on their written submission for the record.

This Incorrect Reduction Claim addresses the State Controller's reduction of costs reimbursement claimed based on the finding that they are not reimbursable under the Parameters and Guidelines.

Senior Commission Counsel Eric Feller presented this item and recommended the Commission adopt the Proposed Decision to deny the Incorrect Reduction Claim.

Parties were represented as follows: Jim Spano and Masha Vorobyova, representing the State Controller's Office.

The State Controller concurred with the staff recommendation and there was no comment from interested parties or the public on this matter. Member Alex made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion to deny the Incorrect Reduction Claim was adopted by a vote of 5-0.

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

Item 2 *Appeal of Executive Director Decision*, 15-AEDD-01
County of San Diego, Appellant

Chairperson Ortega stated that this Appeal resulted in a tie vote at the last Commission meeting and, thus, no action on the item and therefore the item is before the Commission again. She invited the appellant representatives Mr. Kyle Sand and Ms. Lisa Macchione to the table but then noted that, given the members present and their likely votes (a vote of 3 to 2 by the members present which would not constitute action on the item), "it might make more sense to just defer any additional action on this item until another meeting." With no objection or response from the other members present, the matter was continued to the next regularly scheduled hearing.

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 7 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.

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, Appointment of Commission Legislative Sub-Committee Members, and Tentative Agenda Items for the July and September 2016 Meetings (info/action)

Executive Director Heather Halsey presented this item. Ms. Halsey reported on the Commission's pending caseload and incorrect reduction claim backlog. Ms. Halsey also requested that the Commission's reestablish its disbanded legislative subcommittee to address potential mandate reform legislation. Ms. Halsey recommended the Commission appoint two of its members to serve on the subcommittee. The Chairperson requested two volunteers and only Member Olsen volunteered to participate. The Chairperson suggested that Member Ramirez might be interested and Ms. Halsey suggested asking Members Ramirez and Saylor who were not present at the meeting, if they would be interested in serving. Chairperson Ortega agreed.

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. *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]
2. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*
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.]

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. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*
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]
3. *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, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404,

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California Supreme Court:

1. *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)
California Supreme Court, Case No. S214855
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]

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 10:34 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 10:50 a.m., Chairperson Ortega reconvened in open session, and 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 Ortega adjourned the meeting at 10:51 a.m.

Heather Halsey
Executive Director

ORIGINAL

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JUN 16 2016
COMMISSION ON
STATE MANDATES

PUBLIC MEETING

COMMISSION ON STATE MANDATES

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TIME: 10:00 a.m.

DATE: Thursday, May 26, 2016

PLACE: State Capitol, Room 447
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA
Representative for MICHAEL COHEN, Director
Department of Finance
(Chair of the Commission)

RICHARD CHIVARO
Representative for BETTY T. YEE
State Controller

KEN ALEX
Director
Office of Planning & Research

MARK HARIRI
Representative for JOHN CHIANG
State Treasurer

SARAH OLSEN
Public Member



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Item 10)

CAMILLE N. SHELTON
Chief Legal Counsel
(Item 9)

JULIA BLAIR
Senior Commission Counsel
(Item 5)

ERIC FELLER
Senior Commission Counsel
(Item 6)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

MATTHEW B. JONES
Commission Counsel
(Item 4)

KERRY ORTMAN
Program Analyst
(Item 8)



PUBLIC TESTIMONY

Appearing Re Item 4:

For Claimants:

KEITH B. PETERSEN
SixTen and Associates
5252 Balboa Avenue, Suite 900
San Diego, California 92117

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 5:

For Claimants:

LISA M. MACCHIONE
County of San Diego
1600 Pacific Highway Room 355
San Diego, California 92101

KYLE E. SAND
Senior Deputy County Counsel
County of San Diego
1600 Pacific Highway Room 355
San Diego, California 92101

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
State Controller's Office

CHRISTOPHER B. RYAN
Audit Manager, Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

Appearing Re Item 6:

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
Interim Chief, Financial Audits Bureau
State Controller's Office

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

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1 CHAIR ORTEGA: Okay. Thank you.

2 We will move to the minutes from the March 25th
3 meeting.

4 Are there any comments or corrections from
5 members?

6 MEMBER OLSEN: I move adoption.

7 CHAIR ORTEGA: Moved by Ms. Olsen.

8 MEMBER ALEX: Second.

9 CHAIR ORTEGA: Second by Mr. Alex.

10 All in favor of approval of the minutes, say
11 "aye."

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

13 CHAIR ORTEGA: That passes unanimously.

14 MS. HALSEY: And, now, we will take up public
15 comment for matters not on the agenda.

16 Please note that the Commission cannot take
17 action on items not on the agenda; however, it can
18 schedule issues raised by the public for consideration
19 at future meetings.

20 CHAIR ORTEGA: Okay, and before we hear the
21 public comment, I would like to ask Mr. Keith Petersen to
22 come on up.

23 We would like to congratulate Mr. Petersen on
24 his retirement; and Ms. Olsen has some comments.

25 MR. PETERSEN: Thank you.

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1 MEMBER OLSEN: I get to stand right next to you
2 and see just how tall you are -- or short I am. I don't
3 know.

4 We want to present you with this resolution.

5 MR. PETERSEN: Thank you.

6 MEMBER OLSEN: "Whereas Keith Petersen, MPA,
7 JD, is the owner and president of SixTen & Associates,
8 which he established in 1996, after seven years with
9 the San Diego Unified School District, where he was a
10 legislative finance specialist, who wrote and presented
11 numerous school-district test claims to the Commission on
12 State Mandates; and

13 "Whereas, prior to his work at the San Diego
14 Unified School District, he was a financial and internal
15 auditor, appeals hearing officer" --

16 MR. PETERSEN: Who told you this stuff?

17 MEMBER OLSEN: Okay, okay.

18 We have our sources.

19 MR. PETERSEN: I guess.

20 MEMBER OLSEN: -- "and an audit supervisor" --

21 MR. PETERSEN: I'm getting frightened.

22 MS. SHELTON: Just wait.

23 MEMBER OLSEN: -- "an audit supervisor for the
24 State of California, and he served as pro bono special
25 counsel to, and vice chair of the Education Mandated Cost

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1 Network.”

2 MR. PETERSEN: Goodness.

3 MEMBER OLSEN: “And, whereas, he is one of the
4 longest-serving and tallest claimant representatives, and
5 is recognized throughout the education mandates community
6 for his leadership in and knowledge of the mandates
7 process.

8 “And, whereas, as president of SixTen &
9 Associates, he filed at least 60” -- count them, 60 --
10 “test claims for members of the Education Mandated Cost
11 Network, including claims on most of the Education Code,
12 such as the behemoth *Minimum Conditions for State Aid*
13 for community-college districts and *Special Education* and
14 *Pupil Expulsions and Suspensions* for K-12 districts;
15 thereby keeping Commission staff painfully employed for
16 over a decade.”

17 “And, whereas, Mr. Petersen also supervised the
18 preparation of numerous annual reimbursement claims and
19 filed more incorrect reduction claims than anyone but an
20 auditor from the State Controller’s Office can count.

21 “And, whereas, when asked if his firm name,
22 SixTen, referred to his height, he replied, quote ‘I
23 wanted a name people would remember,’ end quote.

24 “And, thus, he is a literal pillar in the
25 claimant community whose shoes will be impossible to

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1 fill.

2 "And, whereas, during a hearing when
3 Mr. Petersen was thanked for saying something nice about
4 staff, he enthusiastically quipped, 'I wasn't under
5 oath.'

6 "Whereas, Keith Petersen is being honored by
7 the members and staff of the Commission on State
8 Mandates, in appreciation of his outstanding dedication,
9 leadership, and service to his clients in the State of
10 California.

11 "Now, therefore, be it resolved that the
12 members and staff of the Commission on State Mandates
13 warmly congratulate Keith Petersen upon his retirement."

14 *(Applause)*

15 MEMBER OLSEN: He is not going to leave until
16 it's all signed.

17 MR. PETERSEN: I just don't know where you got
18 all this information.

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

20 MR. PETERSEN: Well, thank you very much. It's
21 nice to be recognized and I guess pretty much we kept you
22 busy for a few years, didn't we?

23 MS. SHELTON: Yes. For sure, thank you.

24 CHAIR ORTEGA: Thank you, Mr. Petersen.

25 And please note that Mr. Chivaro has joined us.

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1 Are there any other members that want to make
2 any comments?

3 *(No response)*

4 CHAIR ORTEGA: Any public comment to come
5 before the Commission before we move into our items?

6 *(No response)*

7 CHAIR ORTEGA: Okay, seeing none, I'm going to
8 recommend that we skip Item 2 for the moment, and see if
9 Mr. Saylor joins us before we return to that item.

10 Given that it's returning to us because of a
11 tie vote, it doesn't seem productive to discuss it at
12 this moment.

13 So we will skip to Item 4 because Item 3 was
14 withdrawn.

15 MS. HALSEY: Well, there are no items proposed
16 for consent this morning. So let's move to the Article 7
17 portion of the hearing.

18 Please note that Item 3 was withdrawn by the
19 claimant after the agenda issued.

20 Will the parties and witnesses for Items 2, 4,
21 5, and 6 please rise?

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

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

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

3 (A chorus of affirmative responses was heard.)

4 MS. HALSEY: Thank you.

5 Moving on to Item 4, Commission Counsel Matt
6 Jones will present an incorrect reduction claim on *Health*
7 *Fee Elimination*.

8 MR. JONES: Good morning.

9 This analysis addresses an incorrect reduction
10 claim filed by Foothill De Anza Community College
11 District regarding reductions made by the State
12 Controller's Office to reimbursement claims for costs
13 incurred during four fiscal years under the *Health Fee*
14 *Elimination* Program.

15 Reductions in dispute pertain to the
16 Controller's findings that authorized offsetting health
17 fees were understated and not correctly deducted from the
18 claims, and indirect costs were overstated during the
19 some of the fiscal years.

20 Staff finds that Controller's audit was both
21 timely initiated and timely completed. Staff also finds
22 that the reduction of costs was correct as a matter of
23 law and not arbitrary, capricious, or entirely lacking in
24 evidentiary support. Staff, therefore, recommends the
25 Commission adopt the proposed decision to deny the IRC.

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

3 MR. PETERSEN: Keith Petersen, representing the
4 claimant, Foothill De Anza.

5 MR. SPANO: Jim Spano, State Controller's
6 Office, Division of Audits.

7 MR. VENNEMAN: Jim Venneman, State Controller's
8 Office, Division of Audits.

9 CHAIR ORTEGA: Okay, thank you.

10 Mr. Petersen?

11 MR. PETERSEN: There being no new issues, I'll
12 stand on the written submissions.

13 CHAIR ORTEGA: Okay, thank you.

14 MR. VENNEMAN: The State Controller's Office
15 concurs with staff's finding and recommendation.

16 CHAIR ORTEGA: Okay. Any comments from
17 commissioners?

18 A lot of the issues here, we've seen before.

19 *(No response)*

20 CHAIR ORTEGA: No comments?

21 *(No response)*

22 CHAIR ORTEGA: Is there any other public
23 comment on this item?

24 *(No response)*

25 CHAIR ORTEGA: All right.

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1 MEMBER OLSEN: I'll move adoption of staff
2 recommendation.

3 MEMBER CHIVARO: Second.

4 CHAIR ORTEGA: Okay, moved by Ms. Olsen, second
5 by Mr. Chivaro.

6 Please call the roll.

7 MS. HALSEY: Mr. Alex?

8 MEMBER ALEX: Aye.

9 MS. HALSEY: Mr. Chivaro?

10 MEMBER CHIVARO: Aye.

11 MS. HALSEY: Mr. Hariri?

12 MEMBER HARIRI: Aye.

13 MS. HALSEY: Ms. Olsen?

14 MEMBER OLSEN: Aye.

15 MS. HALSEY: Ms. Ortega?

16 CHAIR ORTEGA: Aye.

17 MS. HALSEY: Thank you.

18 CHAIR ORTEGA: Okay, that motion passes.

19 Item 5?

20 MS. HALSEY: Senior Commission Counsel Julia
21 Blair will present Item 5, an incorrect reduction claim
22 on *Seriously Emotionally Disturbed Pupils: Out-of-State*
23 *Mental-Health Services*.

24 MS. BLAIR: Good morning.

25 These consolidated incorrect reduction claims

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1 address the Controller's reduction of vendor costs
2 claimed for board and care and treatment services for
3 out-of-state residential placement of seriously
4 emotionally disturbed, or SED, pupils in facilities
5 organized and operated for profit.

6 The parameters and guidelines only allow vendor
7 payments for SED pupils placed in an out-of-state group
8 home organized and operated on a nonprofit basis. Since
9 the facility providing the service is a for-profit
10 facility, the costs are not reimbursable under the
11 parameters and guidelines, and the reduction is correct
12 as a matter of law.

13 Staff recommends the Commission adopt the
14 proposed decision to deny these IRCs.

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

17 MR. SAND: I'll go first.

18 Kyle Sand, Senior Deputy County Counsel from
19 the County of San Diego.

20 MS. MACCHIONE: Lisa Macchione, Senior Deputy
21 County Counsel, also from the County of San Diego.

22 MR. SPANO: Jim Spano, State Controller's
23 Office, Division of Audits.

24 MR. RYAN: Chris Ryan, Division of Audits,
25 State Controller's Office.

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1 CHAIR ORTEGA: Thank you.

2 Mr. Sand?

3 MR. SAND: Ms. Macchione.

4 CHAIR ORTEGA: Ms. Macchione?

5 MS. MACCHIONE: Yes, thank you.

6 Just in addition to the comments that are in
7 our brief, I'd just like to make a few -- say a few
8 words.

9 What is this case about? It's about seriously
10 emotionally disturbed students, pupils. They're the most
11 needy students and youth in our population, in our state.
12 The programs that we're really talking about here are
13 really the highest-end programs that we have for these
14 youth. They're being placed out of state because there
15 was an exhaustion of a search for in-state programs for
16 them. So there really was no other placement. This was
17 really the last resort, the last placement for them. And
18 their specific needs were reviewed, so that the placement
19 that the County was placing them in was really specific
20 to them and the only option for them as agreed to by
21 their IEP team.

22 Now, federal law, as you may know it in my
23 brief, requires the most appropriate and least
24 restrictive program for the student to benefit from their
25 IEP program.

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1 State law is more restrictive than that. It
2 actually requires when you're placing students in a
3 program, that that placement actually be a
4 not-for-profit. So the two don't mesh.

5 Counties had been, for many years, complying
6 with that requirement by contracting with a nonprofit
7 provider, who in turn, would contract with the program.
8 And that was an effort to really harmonize the two laws:
9 the state law, which was more restrictive, and then the
10 federal law, which really looks at what the child needs
11 and requires the state and county to really comply with
12 that, and make sure that the most appropriate program
13 is chosen and selected for that child.

14 In the mid-two-thousands, there was a budget
15 crisis, as you all know; and there, the Controller began
16 auditing costs of these programs and specifically the
17 out-of-state costs. My understanding is that the
18 Controller came across a case -- it was a specific case,
19 where a health department was basically disallowed, or
20 wasn't able to, pursuant to the Office of Administrative
21 Hearings, to place in a for-profit program. And that
22 case was interpreted -- at least my understanding is,
23 was interpreted pretty broadly against counties, that
24 they could not use the avenue that they had been using
25 to place youth in programs and comply, at the same time,

1 with both state and federal law.

2 And that was, you know, a large disallowances
3 where, you know, San Diego, L.A., I believe there are
4 other incorrect reduction claims on your schedule -- or
5 the Commission's schedule.

6 We're not asking today that you look at or make
7 new law or anything like that here. We know that that's
8 not your role. But we are asking that you interpret the
9 law, the existing law, in a way that is supportive of
10 these youth that have to be placed in a specific program,
11 that meets their specific needs; and that, you know, we
12 assist those most vulnerable children; and also honor
13 the state mandate for counties, that they are reimbursed
14 for the costs that they expended to comply with the
15 federal law and the state law.

16 Looking at the proposed decision, just like
17 any fact finder, a judge, et cetera, you're empowered to
18 follow the law, interpret the law. And here, we're
19 asking that you interpret it in favor of the youth and
20 the County, and find that what the County was doing at
21 the time, in contracting with that not-for-profit is
22 consistent with both the federal and state law.

23 Anything else?

24 CHAIR ORTEGA: Can I ask a question? Can I ask
25 a question before we move on?

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1 MS. MACCHIONE: Yes, yes.

2 CHAIR ORTEGA: So you said that the County
3 harmonizes the difference between the federal and state
4 requirements by contracting with the non-profit entity.

5 So does that mean that the County knew that the
6 non-profit was then contracting with a for-profit entity
7 to actually provide the service?

8 MS. MACCHIONE: The County was contracting with
9 the not-for-profit, what they -- and contracting with
10 programs out of state. My understanding is, the programs
11 were for-profit, yes; but they were appropriate and most
12 beneficial for each youth, and it was the program that
13 was in compliance with the federal law.

14 CHAIR ORTEGA: Okay.

15 I mean, I felt, looking at the issue, that
16 there's a question -- I could understand an argument
17 about an equity question, although that is not the issue
18 for the Commission to resolve.

19 MS. MACCHIONE: Right.

20 CHAIR ORTEGA: Okay, but I had also thought
21 that perhaps the County didn't know that that the
22 not-for-profit that it was contracting with was actually
23 procuring the program and the service from a for-profit.
24 But if the County did know that, then they would have
25 known that it was contrary to what the law required.

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1 So that's why I was focusing on the language
2 you said about the County harmonizing the differences.
3 That seems to suggest that the County knew that there
4 were these differences and that then the costs would not
5 be allowed to be reimbursed, which then addresses the
6 equity concerns that might be raised a little more
7 clearly to me.

8 MR. SAND: Well, Commissioner Ortega, I think
9 everybody agrees that it's not equitable that the County
10 shoulder the financial cost for complying with both the
11 state mandate and federal law, which trumps the state
12 law in this sort of respect, in that -- I don't think
13 that's at issue. I think everybody agrees that there's
14 an equity issue.

15 I can't say whether or not, at the staff level,
16 folks were aware, one way or the other. I think that
17 they were aware that there was a requirement to make
18 placements, they were aware that federal law required
19 that these kids, who are seriously emotionally disturbed
20 children, be placed in the most appropriate placement.

21 Now, I think that the State, in enacting this
22 requirement where there is a mandate exists, I think the
23 State -- I think we can only assume that the State
24 intended for both the State and the counties to comply
25 with federal law and federal requirements.

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1 You know, the difficulty here, of course, and
2 the position being asserted by the State Controller is,
3 “Well, that’s kind of too bad for you, counties.” So
4 I think anybody that -- where you have a conflict between
5 state and federal law, and if the intent of the State --
6 the State Legislature, anytime they pass a law, I would
7 assume that the legislative intent is to comply with
8 federal law at all times during the implementation. And
9 that’s what we were doing.

10 CHAIR ORTEGA: Mr. Alex?

11 MEMBER ALEX: So I actually don’t think there
12 is a conflict. I mean, we’re not without sympathy. I
13 understand the position you’re in. But to my mind,
14 there’s not a conflict between the state and federal law.
15 The state mandate doesn’t reimburse for a certain subset.
16 It doesn’t preclude or conflict with the obligation that
17 the federal law creates. And that’s the mandate issue,
18 from my perspective.

19 MS. MACCHIONE: So then when there is only one
20 placement for a youth and that placement happens to be
21 a not-for-profit, is the County -- or was the County
22 basically supposed to just not place the youth in a
23 program that they needed?

24 MEMBER ALEX: No, you have a federal
25 obligation. You just -- there is just no mandate to

1 recover. I mean, that's just -- it's the way the law is.

2 MS. MACCHIONE: But the entitlement and the
3 requirement was actually a requirement on the state to
4 ensure that IDEA is implemented fairly throughout the
5 state; correct? And so I don't quite understand how
6 it's an obligation on the County and not actually an
7 obligation on the State. The only reason why the County
8 had to provide this program and serve these youth, are
9 because the State requires them to -- or required them
10 to.

11 MS. SHELTON: I was just going to simply say,
12 that's all correct. Except there is also a state statute
13 that requires that the services be provided by a
14 nonprofit entity. That statute existed during the entire
15 period of reimbursement that we're talking about. And
16 the issue went before the Legislature, even after the
17 Commission adopted the parameters and guidelines, and
18 claims were filed as reflected in that decision. Many
19 times, there were two or three bills that went through
20 the Legislature, even acknowledging the situation that
21 the County of San Diego was currently in; and each time,
22 the bill did not pass. One bill did go through and was
23 vetoed by the Governor. So the Legislature is well aware
24 of the situation.

25 MR. SAND: But what the Legislature does

1 subsequently to try to remedy a situation shouldn't be
2 determinative of how we interpret state law at the time.
3 You know, these were subsequent acts, where many -- and
4 it did pass the Legislature, it was vetoed by the
5 Governor -- many recognized the equity issue and that
6 this was an issue where we did have to make sure that,
7 on paper, the state law was consistent with federal law.
8 And, you know, it is a factual issue, to some extent,
9 that that -- there's a real problem, and there still
10 continues to this day, of the ability to place certain
11 children in appropriate facilities. They're -- it's a
12 very difficult thing, especially for the workers on the
13 ground who are trying to do this.

14 In many cases, it was an impossibility, I
15 believe, to find one that was a nonprofit. You know,
16 we did contract with a nonprofit; and we had them, in a
17 sense, subcontract with a particular placement. We did
18 everything we could to comply with both state and federal
19 law, acting pursuant to a state mandate that we do this.
20 The federal requirement for the particular placement was
21 a little different than the state requirement.

22 We believe that the Commission can harmonize
23 the two. You do have the ability to interpret law. And
24 that is our request today.

25 CHAIR ORTEGA: Thank you, Mr. Sand.

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1 Mr. Spano or Mr. Ryan, anything to add?

2 MR. RYAN: The Controller's Office concurs with
3 the staff's recommendation.

4 CHAIR ORTEGA: Okay. Ms. Olsen, did you have
5 any comment?

6 MEMBER OLSEN: No.

7 CHAIR ORTEGA: Okay. All right, any --

8 MEMBER CHIVARO: I move staff recommendation.

9 CHAIR ORTEGA: Okay, there's a motion by
10 Mr. Chivaro.

11 MEMBER ALEX: I'll second.

12 CHAIR ORTEGA: Second by Mr. Alex.

13 Is there any other public comment on this item?

14 *(No response)*

15 CHAIR ORTEGA: Okay, please call the roll.

16 MS. HALSEY: Mr. Alex?

17 MEMBER ALEX: Aye.

18 MS. HALSEY: Mr. Chivaro?

19 MEMBER CHIVARO: Aye.

20 MS. HALSEY: Mr. Hariri?

21 MEMBER HARIRI: Aye.

22 MS. HALSEY: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HALSEY: Ms. Ortega?

25 CHAIR ORTEGA: Aye.

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1 MS. HALSEY: Thank you.

2 CHAIR ORTEGA: The motion passes.

3 Thank you.

4 MS. HALSEY: Moving on to Item 6, Senior
5 Commission Counsel Eric Feller will present an incorrect
6 reduction claim on *Peace Officers Procedural Bill of*
7 *Rights*, or POBOR.

8 The claimant notified Commission staff that
9 they will not be appearing at this hearing and that they
10 will stand on their written submission for the record.

11 MR. FELLER: Good morning.

12 This IRC challenges the Controller's finding
13 that the City of Los Angeles claimed unallowable costs
14 of nearly 21 and a half million dollars for the program
15 for fiscal years 2003 through 2008.

16 The sole issue is whether the claimed
17 activities are eligible for reimbursement based on the
18 parameters and guidelines on the Commission's decisions.

19 Staff finds that the reductions are correct
20 as a matter of law and not arbitrary, capricious, or
21 entirely lacking in evidentiary support.

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

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

3 MR. SPANO: Jim Spano, State Controller's
4 Office, Division of Audits.

5 MS. VOROBYOVA: Marsha Vorobyova, State
6 Controller's Office, Division of Audits.

7 CHAIR ORTEGA: Thank you.

8 Any additional comments?

9 MS. VOROBYOVA: The State Controller supports
10 the proposed decision and recommendation.

11 CHAIR ORTEGA: Okay, any comments from
12 commissioners?

13 *(No response)*

14 CHAIR ORTEGA: Any additional public comment on
15 this item?

16 *(No response)*

17 CHAIR ORTEGA: Okay.

18 MEMBER ALEX: Move the staff recommendation.

19 MEMBER OLSEN: Second.

20 CHAIR ORTEGA: Moved by Mr. Alex and second by
21 Ms. Olsen.

22 MS. HALSEY: Mr. Alex?

23 MEMBER ALEX: Aye.

24 MS. HALSEY: Mr. Chivarro?

25 MEMBER CHIVARO: Aye.

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1 MS. HALSEY: Mr. Hariri?

2 MEMBER HARIRI: Aye.

3 MS. HALSEY: Ms. Olsen?

4 MEMBER OLSEN: Aye.

5 MS. HALSEY: Ms. Ortega?

6 CHAIR ORTEGA: Aye.

7 MS. HALSEY: Thank you.

8 CHAIR ORTEGA: So I'm going to return to
9 Item 2. And you all will recall this item is before us
10 because at the last meeting, we had a tie vote.

11 MEMBER OLSEN: Well, it won't be a tie anymore.

12 CHAIR ORTEGA: It won't be a tie, but we are
13 unlikely to get the four votes -- again, making an
14 assumption that people would continue to vote the way
15 they did last time. We would not have four votes to take
16 action on the item.

17 So I know Mr. Sand and Ms. Macchione are here.
18 I think I'll invite you up.

19 If you have any additional or new information
20 to provide, I think that might be helpful. But
21 otherwise, it might make more sense to just defer any
22 additional action on this item until another meeting.

23 Please.

24 MR. SAND: Yes, that's --

25 CHAIR ORTEGA: I know it's an unusual situation

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1 but...

2 MR. SAND: We'd be willing to come back again
3 to resolve the matter.

4 CHAIR ORTEGA: Okay. Any commissioners have
5 any different thoughts on this? But it feels that we're
6 going to end up at 3-2, and that would be a no action, so
7 we would be back here either way. So we will not take
8 any additional action or discussion on this item.

9 MR. SAND: Although, if you were to entertain
10 a motion from the fourth vote, we would stick around.

11 CHAIR ORTEGA: Sure. We'll look to the
12 Treasurer and Controller representatives to speak now,
13 or we'll defer until the next meeting.

14 MS. MACCHIONE: Okay, thank you.

15 CHAIR ORTEGA: Yes, thank you.

16 MR. SAND: Thank you.

17 CHAIR ORTEGA: So Item 7.

18 MS. HALSEY: Item 7 is reserved for county
19 applications for a finding of significant financial
20 stress, or SB 1033 applications.

21 No SB 1033 applications have been filed.

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

24 MS. ORTMAN: Good morning.

25 There have been updates since we issued this

1 report.

2 We are monitoring the following bills this
3 legislative session:

4 AB 2851, "State Mandates," was introduced in
5 February 2016 as a spot bill. On March 23rd, the
6 author's office confirmed that they do not intend to
7 pursue the bill further, but Commission staff will
8 continue to monitor it.

9 We will also continue to monitor AB 575,
10 "Teachers: Best Practices teacher Evaluation System"
11 from last year. This bill, last referred to the Senate
12 Committee on Education in June of 2015, proposes to amend
13 the Government Code section 17581, relating to teacher
14 evaluation.

15 On May 13th, 2016, the Governor issued the
16 2016-17 May Revision to his Budget Bill and the Education
17 Omnibus Trailer Bill, which includes the following
18 significant changes to the mandates process and
19 state-mandated program funding:

20 The Education Omnibus Trailer Bill would affect
21 the mandates process. The May Revise adds additional
22 language to the already-proposed changes to the RRM
23 process, which the new language is in front of you on
24 the blue paper, and it's made available to the public
25 over there on the blue paper.

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1 For K-12 school districts, the May Revise
2 includes a total of \$1.4 billion in one-time Prop. 98
3 money to pay down education mandates. This is an
4 increase of \$134.8 million from the January proposal to
5 pay down approximately \$1.3 billion.

6 For community colleges, the May Revise proposes
7 an increase of \$29.2 million, one-time Prop. 98 money, to
8 pay for outstanding mandate debt. The plan also proposes
9 to decrease by \$134,000 Prop. 98 money to align the
10 mandate block grant funding.

11 CHAIR ORTEGA: Thank you.

12 MS. ORTMAN: That's all I have this morning.

13 CHAIR ORTEGA: Thank you, Ms. Ortman.

14 Any questions?

15 *(No response)*

16 CHAIR ORTEGA: Okay.

17 MS. HALSEY: Thank you.

18 Chief Legal Counsel Camille Shelton will
19 present Item 9, the Chief Legal Counsel Report.

20 MS. SHELTON: Good morning.

21 As soon as we issued this report, things
22 changed, so I do have some updates.

23 The *California School Board* decision in the
24 trial court has now been appealed to the First District
25 Court of Appeals. So there's now an appeal pending on

1 that.

2 In addition, the California Supreme Court has
3 scheduled the oral argument for the Los Angeles *Municipal*
4 *Stormwater* case for June 2nd, at 9:00 a.m.

5 CHAIR ORTEGA: Okay. Questions?

6 (No response)

7 CHAIR ORTEGA: Okay.

8 MEMBER OLSEN: And that's in L.A.?

9 MS. SHELTON: In L.A.

10 CHAIR ORTEGA: Item 10?

11 MS. HALSEY: Item 10 is the Executive
12 Director's Report.

13 After this hearing, we now have 13 test claims,
14 one parameters and guidelines, and one statewide cost
15 estimate pending, all of which are regarding *Stormwater*
16 *Permits*. And those matters are on inactive status
17 pending the resolution of that litigation in the
18 California Supreme Court which is set for hearing next
19 week.

20 In addition, we have one parameters-and-
21 guidelines amendment on inactive status pending the
22 outcome of litigation in the *CSBA* case, which is now
23 pending in the First District Court of Appeal.

24 Finally, we have four statewide cost estimates
25 and 37 incorrect reduction claims pending.

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1 Currently, Commission expects to complete that
2 IRC backlog, including all IRCs filed to date, by
3 approximately January 2017 or 2018, dependent on staffing
4 and other workload.

5 Also, I do have an action item for the members
6 this morning. Historically, the Commission's maintained
7 a legislative subcommittee to address legislation
8 effecting the mandate determination process. The last
9 proposed legislation affecting the mandates process was
10 SB 856, which was enacted in 2009; and that created the
11 mandate redetermination process. Due to the lack of
12 legislative activity affecting the Commission, the
13 Commission has since disbanded the legislative
14 subcommittee.

15 More recently, though, there have been
16 suggestions by Department of Finance and legislative
17 staff to look at comprehensive mandate reform; and though
18 no specifics have been mentioned nor introduced in
19 legislation as yet, staff believes it would be prudent to
20 reassemble the legislative subcommittee now in case the
21 subcommittee needs to meet on short notice.

22 Staff recommends the Commission appoint two of
23 its members to serve on the subcommittee.

24 CHAIR ORTEGA: Okay, so I guess we'll ask for
25 two volunteers.

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1 Anyone who is interested in being on the
2 legislative subcommittee?

3 MEMBER OLSEN: I'm happy to do it; but I'm
4 impractical because I would have to travel so much to do
5 it. So if there's two other volunteers, that should
6 happen.

7 CHAIR ORTEGA: Okay. I don't know if
8 Ms. Ramirez might also be interested.

9 Anyone else?

10 MS. HALSEY: No volunteers.

11 CHAIR ORTEGA: Well, Ms. Olsen, let's sign you
12 up for a phone-call --

13 MEMBER OLSEN: Okay.

14 CHAIR ORTEGA: -- type meetings.

15 And maybe we can ask --

16 MS. HALSEY: Put that out to Don and Carmen as
17 well, if they're interested.

18 CHAIR ORTEGA: Sure. Okay, great. All right.

19 MS. HALSEY: And then for tentative agenda
20 items, please check the agenda to see if your item is
21 coming up over the course of the next few hearings, and
22 expect to receive draft proposed decisions on these for
23 your review and comment at least eight weeks prior to the
24 hearing date; and our proposed decision, approximately
25 two weeks before the decision.

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1 That's all I have from my report.

2 CHAIR ORTEGA: Okay, any comments from
3 commissioners?

4 *(No response)*

5 CHAIR ORTEGA: Any additional public comments?

6 *(No response)*

7 CHAIR ORTEGA: All right, seeing none, we will
8 recess into closed session.

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

16 The Commission will also confer on personnel
17 matters pursuant to Government Code section 11126(a)(1).

18 We will reconvene in open session in
19 approximately 15 minutes.

20 Thank you -- or less.

21 *(The Commission met in closed executive
22 session from 10:34 a.m. to 10:50 a.m.)*

23 CHAIR ORTEGA: We will now reconvene into open
24 session.

25 The Commission met in closed executive session

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

9 With no further business to come before the
10 Commission, we will be adjourned.

11 Thank you.

12 MEMBER ALEX: Thank you.

13 MEMBER OLSEN: Thank you.

14 *(The Commission meeting concluded*
15 *at 10:51 a.m.)*

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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 13th day of June 2016.



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