

**COMMISSION ON STATE MANDATES**

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September 25, 2014

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

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

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

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
*Collective Bargaining, 05-4425-I-11*  
Government Code Sections 3540-3549.9  
Statutes 1975, Chapter 961  
Fiscal Year 1995-1996  
Gavilan Joint Community College District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

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

**Written Comments**

Written comments may be filed on the draft proposed decision by **October 16, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

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

**Hearing**

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

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

Sincerely,

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

Heather Halsey  
Executive Director

**ITEM \_\_**  
**INCORRECT REDUCTION CLAIM**  
**DRAFT PROPOSED DECISION**

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961

*Collective Bargaining*

Fiscal Year 1995-1996

05-4425-I-11

Gavilan Joint Community College District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This analysis addresses the incorrect reduction claim (IRC) filed by Gavilan Joint Community College District (claimant) regarding reductions made by the State Controller's Office (Controller) to its reimbursement claim for costs incurred during fiscal year 1995-1996 under the *Collective Bargaining* program.

The threshold issue in dispute is whether the IRC was timely filed in accordance with the Commission's regulations. Because the analysis concludes that it was not, the remaining substantive allegations of the IRC are not addressed.

**The *Collective Bargaining* Mandate**

On July 17, 1978, the Board of Control, predecessor to the Commission, found that Statutes 1975, chapter 961 imposed a reimbursable state mandate. On October 22, 1980, parameters and guidelines were adopted, which were later amended several times.<sup>1</sup>

The reimbursement claim at issue in this IRC was filed for the 1995-1996 fiscal year, and at the time that claim was prepared and submitted, the parameters and guidelines as amended effective July 22, 1993 were applicable. The 1993 parameters and guidelines provided for reimbursement of costs incurred to comply with sections 3540 through 3549.1, and "regulations promulgated by the Public Employment Relations Board," including:

- Determination of appropriate bargaining units for representation and determination of the exclusive representation and determination of the exclusive representatives;

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<sup>1</sup> Exhibit X, Parameters and Guidelines as amended July 22, 1993. On March 26, 1998, a second test claim decision was adopted and parameters and guidelines for the two programs were then consolidated. However, the second test claim decision and consolidated parameters and guidelines are not relevant to this IRC.

- Elections and decertification elections of unit representatives are reimbursable in the even the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot;
- Negotiations: Reimbursable functions include – receipt of exclusive representative’s initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer’s proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement;
- Impasse proceedings, including mediation, fact-finding, and publication of the findings of the fact-finding panel;
- Contract administration and adjudication of contract disputes either by arbitration or litigation, including grievances and administration and enforcement of the contract;
- Unfair labor practice adjudication process and public notice complaints.<sup>2</sup>

### **Procedural History**

In a remittance advice letter dated January 24, 1996, the Controller notified the claimant that the state would pay \$275,000 toward the claimant’s 1995-1996 estimated claim.<sup>3</sup> On “or about” November 25, 1996, the claimant submitted its fiscal year 1995-1996 annual reimbursement claim for the amount of \$348,966.<sup>4</sup> On January 30, 1997, the Controller notified the claimant that it would pay \$15,270 for the claimant’s 1995-1996 claim, bringing the total subvention for fiscal year 1995-1996 to \$290,270.<sup>5</sup> On July 30, 1998, the Controller notified the claimant that it was reducing the fiscal year 1995-1996 claim by \$184,842, leaving an approved claim of \$164,124 and resulting in \$126,146 due the state.<sup>6</sup> On August 5, 1998, the claimant notified the Controller that is “was appealing the reduction of the FY 1995-96 annual reimbursement claim.”<sup>7</sup> On August 8, 2001, the Controller offset \$487 and \$35 due to the claimant for the claimant’s 1996-1997 and 1998-1999 *Open Meetings Act* reimbursement claims in partial collection of the \$126,146 due the state on the *Collective Bargaining* test claim for fiscal year 1995-1996.<sup>8</sup> On July 10, 2002, the Controller notified the claimant of its further review of the fiscal year 1995-1996 reimbursement claim, and that it was reducing the claim by \$124,245,

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<sup>2</sup> Exhibit A, Incorrect Reduction Claim, at pp. 26-32.

<sup>3</sup> Exhibit A, Incorrect Reduction Claim, at p. 4.

<sup>4</sup> Exhibit A, Incorrect Reduction Claim, at pp. 4-5.

<sup>5</sup> Exhibit A, Incorrect Reduction Claim, at p. 5.

<sup>6</sup> Exhibit A, Incorrect Reduction Claim, at p. 5.

<sup>7</sup> Exhibit A, Incorrect Reduction Claim, at p. 5.

<sup>8</sup> Exhibit A, Incorrect Reduction Claim, at p. 5.

rather than the previously determined \$184,842.<sup>9</sup> Based on “prior collections” in the amount of \$126,146, the Controller found that \$60,597 was now due the claimant.<sup>10</sup>

On December 16, 2005, the claimant filed this IRC with the Commission.<sup>11</sup> On December 27, 2005, Commission staff notified the claimant that the IRC was not timely, and deemed it incomplete. The claimant submitted rebuttal comments, requesting that the full Commission address the statute of limitations applicable to this IRC.<sup>12</sup> On March 9, 2006, Commission staff issued a notice of complete filing and request for comments on the IRC. On March 23, 2010, the Controller submitted comments on the IRC. On September 25, 2014, Commission staff issued a draft proposed decision on the IRC.

### **Commission Responsibilities**

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>13</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>14</sup>

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>15</sup>

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>16</sup> In addition, section

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<sup>9</sup> Exhibit A, Incorrect Reduction Claim, at pp. 5-6.

<sup>10</sup> Exhibit A, Incorrect Reduction Claim, at p. 6.

<sup>11</sup> Exhibit A, Incorrect Reduction Claim, at p. 1.

<sup>12</sup> Exhibit B, Claimant Rebuttal Comments dated December 30, 2005.

<sup>13</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>14</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>15</sup> *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

1185.2(c) of the Commission’s regulations requires that any assertion of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>17</sup>

### **Staff Analysis**

#### **A. This Incorrect Reduction Claim is Barred by the Statute of Limitations**

The Controller challenges the timeliness of this IRC filing, based on the earliest remittance advice of July 30, 1998, arguing: “Pursuant to Section 1185 [of the Commission’s regulations], the time to file a claim would have expired on July 30, 2001.” The Controller further argues that “[e]ven if we accept the Claimant’s implied argument that a subsequent letter from the Controller’s Office dated July 10, 2002, started a new Statute of Limitations, the claim was still time barred.” The Controller states that “that time period would have expired on July 10, 2005, five months before this claim was actually filed.” And finally, the Controller argues, “[n]ot satisfied with two bites at the apple, Claimant asserts that the period of the Statute of Limitations ‘will be measured from the date of the last payment action...’” which the Controller states “is clearly at odds with the language of Section 1185.”<sup>18</sup>

The claimant maintains that the IRC “asserts as a matter of fact that the Controller’s July 10, 2002 letter reports an amount payable to the claimant, which means a subsequent final payment action notice occurred or is pending from which the ultimate regulatory period of limitation is to be measured, which the claimant has so alleged.” In addition, the claimant argues that any “evidence regarding the date of last payment action, notice, or remittance advice, is in the possession of the Controller.” The claimant notes that the Commission “can obtain this information from the Controller without prejudice to the tolling of the regulatory period of limitation, while the claimant would be subject to the convenience of the Controller’s response while the regulatory period was running.”<sup>19</sup>

Based on the analysis herein, staff finds that the IRC is not timely filed. Whether measured from the date of the earliest remittance advice, or the July 10, 2002 letter from the Controller to claimant, this IRC was filed well beyond the limitation for filing and there is no evidence in the record of any later notices of reductions.

Section 1185<sup>20</sup> of the Commission’s regulations, pertaining to IRCs, contained no applicable period of limitation as of July 30, 1998.<sup>21</sup> Neither is there any statute of limitations for IRC

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<sup>16</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>17</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

<sup>18</sup> Exhibit C, Controller’s Comments, at p. 2.

<sup>19</sup> Exhibit B, Claimant’s Rebuttal Comments, at pp. 1-2.

<sup>20</sup> The Commission’s regulations were amended and renumbered effective July 1, 2014. Prior section 1185 has now been renumbered as section 1185.1. However, former section 1185 applies to this IRC, as discussed in the analysis.

<sup>21</sup> Code of Regulations, title 2, section 1185 (Register 1996, No. 30).

filings found in the Government Code.<sup>22</sup> Therefore, at the time claimant received notice from the Controller of a reduction in its estimated reimbursement claim and filed the reimbursement claim, there was no applicable statute of limitations.

However, in 1999, the following was added to section 1185(b) of the Commission's regulations:

All incorrect reduction claims shall be submitted to the commission no later than three (3) years following the date of the State Controller's remittance advice notifying the claimant of a reduction.<sup>23</sup>

The courts of this state have held that "[i]t is settled that the Legislature may enact a statute of limitations 'applicable to existing causes of action or shorten a former limitation period if the time allowed to commence the action is reasonable.'"<sup>24</sup> A statute of limitation is "within the jurisdictional power of the legislature of a state," and therefore may be altered or amended at the Legislature's prerogative.<sup>25</sup> However, "[t]here is, of course, one important qualification to the rule: where the change in remedy, as, for example, the shortening of a time limit provision, is made retroactive, there must be a reasonable time permitted for the party affected to avail himself of his remedy before the statute takes effect."<sup>26</sup>

The courts have held that "[a] party does not have a vested right in the time for the commencement of an action."<sup>27</sup> And neither "does he have a vested right in the running of the statute of limitations prior to its expiration."<sup>28</sup> If a statute "operates immediately to cut off the existing remedy, or within so short a time as to give the party no reasonable opportunity to exercise his remedy, then the retroactive application of it is unconstitutional as to such party."<sup>29</sup> In other words, a party has no more vested right to the time remaining on a statute of limitation than the opposing party has to the swift expiration of the statute, but if a statute is newly imposed or shortened, due process demands that a party must be granted a reasonable time to vindicate an existing claim before it is barred. The California Supreme Court has held that approximately one

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<sup>22</sup> See Government Code section 17500 et seq.

<sup>23</sup> Code of Regulations, title 2, section 1185 (Register 1999, No. 38).

<sup>24</sup> *Scheas v. Robertson* (1951) 38 Cal.2d 119, at p. 126 [citing *Mercury Herald v. Moore* (1943) 22 Cal.2d 269, at p. 275; *Security-First National Bank v. Sartori* (1939) 34 Cal.App.2d 408, at p. 414].

<sup>25</sup> *Scheas, supra*, at p. 126 [citing *Saranac Land & Timber Co v. Comptroller of New York*, 177 U.S. 318, at p. 324].

<sup>26</sup> *Rosefield Packing Company v. Superior Court of the City and County of San Francisco* (1935) 4 Cal.2d 120, at p. 122.

<sup>27</sup> *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, at p. 773 [citing *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80].

<sup>28</sup> *Liptak, supra*, at p. 773 [citing *Mudd v. McColgan* (1947) 30 Cal.2d 463, at p. 468].

<sup>29</sup> *Rosefield Packing Co., supra*, at pp. 122-123.

year is more than sufficient, but has cited to decisions in other jurisdictions providing as little as thirty days.<sup>30</sup>

Here, the regulation imposing a period of limitation was adopted and became effective on September 13, 1999.<sup>31</sup> Applying the three year period of limitation to a July 30, 1998 initial remittance advice means the limitation period expired on July 31, 2001. Or, applying the limitation to the last letter in the record, dated July 10, 2002, means the limitation period expired on July 10, 2005. In either case, claimant had ample notice (between twenty-two and one-half months and three full years) of the limitation. Based on the cases cited above, and those relied upon by the California Supreme Court in its reasoning, that is more than sufficient notice to satisfy any due process concerns with respect to application of former section 1185 of the Commission's regulations to this IRC.

Based on the foregoing, staff finds that the regulatory period of limitation applies. Since this IRC was filed on December 16, 2005, it is not timely.

### **Staff Recommendation**

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

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<sup>30</sup> See *Rosefield Packing Co.*, *supra*, at p. 123 [“The plaintiff, therefore, had practically an entire year to bring his case to trial...”]; *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80 [thirty days to file a lien on real property]. See also *Kozisek v. Brigham* (Minn. 1926) 169 Minn. 57, at p. 61 [three months].

<sup>31</sup> Code of Regulations, title 2, section 1185 (Register 99, No. 38).

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM  
ON:

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961

Fiscal Year 1995-1996

Gavilan Joint Community College District,  
Claimant.

Case No.: 05-4425-I-11

*Collective Bargaining*

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

*(Adopted: December 5, 2014)*

**DECISION**

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

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

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

**Summary of the Findings**

This IRC was filed in response to two remittance advice letters received by Gavilan Joint Community College District (claimant) from the State Controller's Office (Controller) with respect to the claimant's fiscal year 1995-1996 reimbursement claim; one on July 30, 1998, which notified the claimant that \$126,146 was due the state, and a second on July 10, 2002, notifying the claimant that \$60,597 was now due to the claimant as a result of the Controller's review of the claim and "prior collections."

The Commission finds that this IRC was not timely filed. The time for filing an IRC, in accordance with the Commission's regulations, is three years from the date of the Controller's remittance advice or letter, or other notice to the claimant that the claim is being reduced. Here, the claimant first received a remittance advice on July 30, 1998 and received a second advice July 10, 2002 and did not file this IRC until December 16, 2005. Though the parties dispute which remittance triggers the running of the limitation, that issue need not be resolved here since this claim was filed beyond the limitation in either case. Therefore, the IRC is denied.



## COMMISSION FINDINGS

### I. Chronology

01/24/1996	Controller notified claimant of a \$275,000 payment toward estimated reimbursement for the 1995-1996 fiscal year. <sup>32</sup>
11/25/1996	Claimant submitted its fiscal year 1995-1996 reimbursement claim for \$348, 966. <sup>33</sup>
01/30/1997	Controller notified claimant that it would remit an additional \$15,270 for a total payment of \$290,270 for fiscal year 1995-1996. <sup>34</sup>
07/30/1998	Controller notified claimant of reduction to the fiscal year 1995-1996 reimbursement claim of \$184,842, resulting in \$126,146 due the state. <sup>35</sup>
08/05/1998	Claimant notified Controller that it was appealing the reduction. <sup>36</sup>
08/08/2001	Controller notified claimant that it was reducing payments for the <i>Open Meetings Act</i> mandate in partial satisfaction of the reduction for the 1995-1996 fiscal year reimbursement claim for the <i>Collective Bargaining</i> mandate. <sup>37</sup>
07/10/2002	Controller notified claimant of its review of the 1995-1996 reimbursement claim for the <i>Collective Bargaining</i> mandate, and its findings that the claim was properly reduced by \$124,245, rather than \$184,842, and that \$60, 597 was now due the claimant. <sup>38</sup>
12/16/2005	Claimant filed this IRC. <sup>39</sup>
12/27/2005	Commission staff notified claimant that the claim was not timely, and deemed it incomplete. <sup>40</sup>
12/30/2005	Claimant submitted rebuttal comments seeking the full Commission's determination on the timeliness of the claim. <sup>41</sup>

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<sup>32</sup> Exhibit A, Incorrect Reduction Claim at p. 14.

<sup>33</sup> Exhibit A, Incorrect Reduction Claim at pp. 4-5.

<sup>34</sup> Exhibit A, Incorrect Reduction Claim at p. 5.

<sup>35</sup> Exhibit A, Incorrect Reduction Claim at pp. 5; 15.

<sup>36</sup> Exhibit A, Incorrect Reduction Claim at pp. 5; 21.

<sup>37</sup> Exhibit A, Incorrect Reduction Claim at pp. 5; 17.

<sup>38</sup> Exhibit A, Incorrect Reduction Claim at pp. 5-6; 18.

<sup>39</sup> Exhibit A, Incorrect Reduction Claim at p. 1.

<sup>40</sup> See Exhibit B, Claimant Rebuttal Comments, at p. 1.

<sup>41</sup> Exhibit B, Claimant Rebuttal Comments.

03/09/2006 Commission staff deemed the IRC complete and issued a request for comments.

03/23/2010 Controller submitted comments on the IRC.<sup>42</sup>

09/25/2014 Commission staff issued the draft proposed decision.

## II. Background

On July 17, 1978, the Board of Control, predecessor to the Commission, found that Statutes 1975, chapter 961 imposed a reimbursable state mandate. On October 22, 1980, parameters and guidelines were adopted, which were amended several times.<sup>43</sup> The reimbursement claim at issue in this IRC was filed for the 1995-1996 fiscal year, and at the time that claim was prepared and submitted, the parameters and guidelines effective on July 22, 1993 were applicable.<sup>44</sup> The 1993 parameters and guidelines provided for reimbursement of costs incurred to comply with sections 3540 through 3549.1, and “regulations promulgated by the Public Employment Relations Board,” including:

- Determination of appropriate bargaining units for representation and determination of the exclusive representation and determination of the exclusive representatives;
- Elections and decertification elections of unit representatives are reimbursable in the even the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot;
- Negotiations: Reimbursable functions include – receipt of exclusive representative’s initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer’s proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement;
- Impasse proceedings, including mediation, fact-finding, and publication of the findings of the fact-finding panel;
- Contract administration and adjudication of contract disputes either by arbitration or litigation, including grievances and administration and enforcement of the contract;
- Unfair labor practice adjudication process and public notice complaints.<sup>45</sup>

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<sup>42</sup> Exhibit C, Controller’s Comments.

<sup>43</sup> Exhibit A, Incorrect Reduction Claim, Exhibit C to the IRC, pp. 3-9. On March 26, 1998, the Commission adopted a second test claim decision on Statutes 1991, chapter 1213. Parameters and guidelines for the two programs were consolidated on August 20, 1998, and have since been amended again, on January 27, 2000. However, this later decision and the consolidated parameters and guidelines are not relevant to this IRC since the IRC addressed reductions in the 1995-1996 fiscal year.

<sup>44</sup> Exhibit A, Incorrect Reduction Claim, Exhibit C to the IRC.

<sup>45</sup> Exhibit A, Incorrect Reduction Claim, Exhibit C to the IRC, pp. 3-9.

### **III. Positions of the Parties**

The issues raised in this IRC, and the comments filed in response and rebuttal, include the scope of the Controller's audit authority; the notice owed to a claimant regarding both the sufficiency of supporting documentation and the reasons for reductions; and the audit standards applied. However, the threshold issue is whether the IRC filing is timely in the first instance, with respect to which, the parties maintain opposing positions.

#### **Claimant**

The claimant argues that the Controller's reductions are not made in accordance with due process, in that the Controller "has not specified how the claim documentation was insufficient for purposes of adjudicating the claim." The letters that claimant cites "merely stated that the District's claim had 'no supporting documentation.'"<sup>46</sup> The claimant further argues that the adjustments made to the fiscal year 1995-1996 claim are "procedurally incorrect in that the Controller did not audit the records of the district..."<sup>47</sup> In addition, the claimant argues that "[t]he Controller does not assert that the claimed costs were excessive or unreasonable, which is the only mandated cost audit standard in statute." The claimant asserts that "[i]f the Controller wishes to enforce other audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act."<sup>48</sup>

Finally, addressing the statute of limitations issue, the claimant states that "the incorrect reduction claim asserts as a matter of fact that the Controller's July 10, 2002 letter reports an amount payable to the claimant, which means a subsequent final payment action notice occurred or is pending from which the ultimate regulatory period of limitation is to be measured..." The claimant asserts that any "evidence regarding the date of last payment action, notice, or remittance advice, is in the possession of the Controller."<sup>49</sup>

#### **State Controller's Office**

The Controller argues that it "is empowered to audit claims for mandated costs and to reduce those that are 'excessive or unreasonable.'" The Controller continues: "If the claimant disputes the adjustments made by the Controller pursuant to that power, the burden is upon them to demonstrate that they are entitled to the full amount of the claim."<sup>50</sup> The Controller notes that the claimant "asserts that a mere lack of documentation is an insufficient basis to reduce a claim..." but the Controller argues that "a claim that is unsupported by valid documentation is both excessive and unreasonable."<sup>51</sup> The Controller further asserts that the claimant "sought reimbursement for activities that are outside the scope of reimbursable activities as defined in the Parameters and Guidelines," including salary costs for expenses of school district officials.<sup>52</sup>

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<sup>46</sup> Exhibit A, Incorrect Reduction Claim, at p. 9.

<sup>47</sup> Exhibit A, Incorrect Reduction Claim, at p. 9.

<sup>48</sup> Exhibit A, Incorrect Reduction Claim, at p. 10.

<sup>49</sup> Exhibit B, Claimant's Rebuttal Comments, at p. 2.

<sup>50</sup> Exhibit C, Controller's Comments, at p. 1.

<sup>51</sup> Exhibit C, Controller's Comments, at pp. 1-2.

<sup>52</sup> Exhibit C, Controller's Comments, at p. 2.

Furthermore, the Controller argues that the IRC is not timely. The Controller notes that the statute of limitations pursuant to section 1185 of the Commission’s regulations is “no later than three years following the date of the Office of State Controller’s final audit report, letter, remittance advice or other written notice of adjustment...”<sup>53</sup> The Controller argues that based on the first remittance advice sent to the claimant on July 30, 1998, “the time to file a claim would have expired on July 30, 2001.”<sup>54</sup> Alternatively, “[e]ven if we accept the Claimant’s implied argument that a subsequent letter from the Controller’s Office dated July 10, 2002, stated a new Statute of Limitations, the claim was still time barred.”<sup>55</sup> The Controller concludes that “that time period would have expired on July 10, 2005, five months before this claim was actually filed.”<sup>56</sup> And finally, the Controller argues: “Not satisfied with two bites at the apple, Claimant asserts that the period of the Statute of Limitations ‘will be measured from the date of the last payment action...’” and that there is no law to support that position.<sup>57</sup>

#### **IV. Discussion**

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>58</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>59</sup>

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<sup>53</sup> Exhibit C, Controller’s Comments, at p. 2 [citing California Code of Regulations, title 2, section 1185].

<sup>54</sup> Exhibit C, Controller’s Comments, at p. 2.

<sup>55</sup> Exhibit C, Controller’s Comments, at p. 2.

<sup>56</sup> Exhibit C, Controller’s Comments, at p. 2.

<sup>57</sup> Exhibit C, Controller’s Comments, at p. 2.

<sup>58</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>59</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>60</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "<sup>61</sup>

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>62</sup> In addition, section 1185.2(c) of the Commission's regulations requires that any assertion of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>63</sup>

#### **A. This Incorrect Reduction Claim is Barred by the Statute of Limitations.**

The Controller argues that based on the earliest remittance advice, the period of limitation to file a claim would have expired July 30, 2001. The Controller further argues that even if the claimant's position were granted, and the July 10, 2002 remittance considered the triggering event for the running of the statute of limitations, the period to file would have expired July 10, 2005. Therefore, the Controller concludes, a claim filed December 16, 2005 was not timely.<sup>64</sup>

The claimant maintains that the IRC "asserts as a matter of fact that the Controller's July 10, 2002 letter reports an amount payable to the claimant, which means a subsequent final payment action notice occurred or is pending from which the ultimate regulatory period of limitation is to be measured, which the claimant has so alleged."<sup>65</sup> In addition, the claimant argues that any "evidence regarding the date of last payment action, notice, or remittance advice, is in the

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<sup>60</sup> *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>61</sup> *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at 547-548.

<sup>62</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>63</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

<sup>64</sup> Exhibit C, Controller's Comments, at p. 2.

<sup>65</sup> Exhibit B, Claimant's Rebuttal Comments, at p. 2.

possession of the Controller.”<sup>66</sup> The claimant notes that the Commission “can obtain this information from the Controller without prejudice to the tolling of the regulatory period of limitation, while the claimant would be subject to the convenience of the Controller’s response while the regulatory period was running.”<sup>67</sup>

Based on the analysis herein, the Commission finds that the IRC is not timely filed. Whether measured from the date of the earliest remittance advice, or the July 10, 2002 letter from the Controller to claimant, this IRC was filed well beyond the limitation for filing and there is no evidence in the record of any later notices of reductions.

Former section 1185<sup>68</sup> of the Commission’s regulations, pertaining to IRCs, contained no applicable period of limitation as of July 30, 1998.<sup>69</sup> Neither is there any statute of limitations for IRC filings found in the Government Code.<sup>70</sup> Therefore, at the time that the claimant in this IRC received notice from the Controller of a reduction in its reimbursement claim, there was no applicable statute of limitations.

However, in 1999, the following was added to section 1185(b) of the Commission’s regulations:

All incorrect reduction claims shall be submitted to the commission no later than three (3) years following the date of the State Controller's remittance advice notifying the claimant of a reduction.<sup>71</sup>

The courts of this state have held that “[i]t is settled that the Legislature may enact a statute of limitations ‘applicable to existing causes of action or shorten a former limitation period if the time allowed to commence the action is reasonable.’”<sup>72</sup> A statute of limitation is “within the jurisdictional power of the legislature of a state,” and therefore may be altered or amended at the Legislature’s prerogative.<sup>73</sup> However, “[t]here is, of course, one important qualification to the rule: where the change in remedy, as, for example, the shortening of a time limit provision, is made retroactive, there must be a reasonable time permitted for the party affected to avail himself of his remedy before the statute takes effect.”<sup>74</sup>

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<sup>66</sup> Exhibit B, Claimant’s Rebuttal Comments, at p. 2.

<sup>67</sup> Exhibit B, Claimant’s Rebuttal Comments, at p. 2.

<sup>68</sup> Section 1185 was amended and renumbered 1185.1 effective July 1, 2014. However, former section 1185, effective at the time the IRC was filed, is the provision applicable to this IRC.

<sup>69</sup> Code of Regulations, title 2, section 1185 (Register 1996, No. 30).

<sup>70</sup> See Government Code section 17500 et seq.

<sup>71</sup> Code of Regulations, title 2, section 1185 (Register 1999, No. 38).

<sup>72</sup> *Scheas v. Robertson* (1951) 38 Cal.2d 119, at p. 126 [citing *Mercury Herald v. Moore* (1943) 22 Cal.2d 269, at p. 275; *Security-First National Bank v. Sartori* (1939) 34 Cal.App.2d 408, at p. 414].

<sup>73</sup> *Scheas, supra*, at p. 126 [citing *Saranac Land & Timber Co v. Comptroller of New York*, 177 U.S. 318, at p. 324].

<sup>74</sup> *Rosefield Packing Company v. Superior Court of the City and County of San Francisco* (1935) 4 Cal.2d 120, at p. 122.

The courts have held that “[a] party does not have a vested right in the time for the commencement of an action.”<sup>75</sup> And neither “does he have a vested right in the running of the statute of limitations prior to its expiration.”<sup>76</sup> If a statute “operates immediately to cut off the existing remedy, or within so short a time as to give the party no reasonable opportunity to exercise his remedy, then the retroactive application of it is unconstitutional as to such party.”<sup>77</sup> In other words, a party has no more vested right to the time remaining on a statute of limitation than the opposing party has to the swift expiration of the statute, but if a statute is newly imposed or shortened, due process demands that a party must be granted a reasonable time to vindicate an existing claim before it is barred. The California Supreme Court has held that approximately one year is more than sufficient, but has cited to decisions in other jurisdictions providing as little as thirty days.<sup>78</sup>

Here, the regulation imposing a period of limitation was adopted and became effective on September 13, 1999.<sup>79</sup> As stated above, the section requires that an IRC be filed no later than three years following the date of the Controller’s remittance advice notifying the claimant of an adjustment. The courts have generally held that the date of accrual of the claim itself is excluded from computing time, “[e]specially where the provisions of the statute are, as in our statute, that the time shall be computed *after* the cause of action shall have accrued.”<sup>80</sup> Here, the applicable period of limitation states that an IRC must be filed “no later than three (3) years *following* the date...”<sup>81</sup> The word “following” should be interpreted similarly to the word “after,” and “as fractions of a day are not considered, it has been sometimes declared in the decisions that no moment of time can be said to be after a given day until that day has expired.”<sup>82</sup> Therefore, applying the three year period of limitation to the July 30, 1998 initial remittance advice means the limitation period expired on July 31, 2001 and applying the limitation to the last letter in the record, dated July 10, 2002, means the limitation period expired on July 10, 2005. In either case claimant had ample notice (between twenty-two and one-half months and three years) of the limitation. Based on the cases cited above, and those relied upon by the California Supreme

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<sup>75</sup> *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, at p. 773 [citing *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80].

<sup>76</sup> *Liptak, supra*, at p. 773 [citing *Mudd v. McColgan* (1947) 30 Cal.2d 463, at p. 468].

<sup>77</sup> *Rosefield Packing Co., supra*, at pp. 122-123.

<sup>78</sup> See *Rosefield Packing Co., supra*, at p. 123 [“The plaintiff, therefore, had practically an entire year to bring his case to trial...”]; *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80 [thirty days to file a lien on real property]. See also *Kozisek v. Brigham* (Minn. 1926) 169 Minn. 57, at p. 61 [three months].

<sup>79</sup> Code of Regulations, title 2, section 1185 (Register 99, No. 38).

<sup>80</sup> *First National Bank of Long Beach v. Ziegler* (1914) 24 Cal.App. 503, at pp. 503-504 [Emphasis Added].

<sup>81</sup> Code of Regulations, title 2, section 1185 (Register 99, No. 38).

<sup>82</sup> *First National Bank of Long Beach v. Ziegler* (1914) 24 Cal.App. 503, at pp. 503-504 [Emphasis Added].

Court in its reasoning, that period is more than sufficient to satisfy any due process concerns with respect to application of section 1185 of the Commission's regulations to this IRC.

Based on the foregoing, the Commission finds that the regulatory period of limitation applies. Since this IRC was filed on December 16, 2005, it is not timely.

**V. Conclusion**

Based on the foregoing, the Commission finds that this IRC is not timely filed, and is therefore denied.



**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On September 25, 2014, I served the:

**Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
*Collective Bargaining, 05-4425-I-11*  
Government Code Sections 3540-3549.9  
Statutes 1975, Chapter 961  
Fiscal Year 1995-1996  
Gavilan Joint Community College District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 25, 2014 at Sacramento, California.



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Heidi J. Palchik  
Commission on State Mandates  
980 Ninth Street, Suite 300  
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(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

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**Claim Number:** 05-4425-I-11

**Matter:** Collective Bargaining

**Claimant:** Gavilan Joint Community College District

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