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STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

REPORT TO THE LEGISLATURE: INCORRECT REDUCTION CLAIMS

January 1, 2012 – December 31, 2012

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Table of Contents

I. INTRODUCTION	03
II. SUMMARY OF COMPLETED INCORRECT REDUCTION CLAIMS	
A. Decided Incorrect Reduction Claims	04
B. Withdrawn Incorrect Reduction Claims	05

I. INTRODUCTION

Government Code section 17602 requires the Commission on State Mandates to report to the Legislature “the number of individual and consolidated incorrect reduction claims decided during the preceding calendar year and whether and why the reduction was upheld or overturned.” This report fulfills that requirement.

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

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the State Controller’s Office has incorrectly reduced payments to the local agency or school district (incorrect reduction claims). If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.7 of the Commission’s regulations requires the Commission to send the statement of decision to the State Controller’s Office and request that the costs in the claim be reinstated.

This report includes a summary of one incorrect reduction claim (IRC) decided by the Commission during the period from January 1, 2012 through December 31, 2012. The complete text of the Statement of Decision may be found at http://www.csm.ca.gov/leg_reports.shtml. The remaining completed IRCs in this report were settled and withdrawn as a result of the Commission’s strategic approach to prioritizing for hearing those claims with many cross cutting issues and the work of the SCO and claimants in reevaluating pending IRCs consistent with the Commission’s decisions. As a result of continued work by all of the parties, 32 IRCs were resolved in 2012, although only one claim went to hearing.

II. SUMMARY OF COMPLETED CLAIMS¹

A. Decided Incorrect Reduction Claims

Absentee Ballots

02-3713-I-01

Elections Code Section 3003

Statutes 1978, Chapter 77

Fiscal Years 1996-1997, 1997-1998, and 1998-1999

Claimant: County of Riverside

Incorrect Reduction Claim Filed: June 11, 2003

Statement of Decision Adopted: January 27, 2012

In this claim, the Claimant, County of Riverside, challenged the reductions made by the State Controller's Office to the County's reimbursement claims for costs incurred in fiscal years 1996-1997, 1997-1998, and 1998-1999. Under the *Absentee Ballots* program, local agencies are authorized to claim reimbursement for the costs associated with the increase in absentee ballot filings as determined by using one of the formulas outlined in the parameters and guidelines. The test claim statutes expanded the program to require local governments to make an absentee ballot available to any registered voter who requests one prior to an election. Under prior law, absentee ballots were provided only in the following limited circumstances; illness, absence from the precinct on the day of the election, physical handicap, conflicting religious commitments, or the voter's residence is more than ten miles from the polling place.

For fiscal year 1996-1997, the Controller's Office reduced the entire claim for salaries and benefits and overtime costs in the amount \$914,002 following a desk audit. The reduction was made on the ground that the costs claimed were not supported by documentation. The reduction of overtime costs was based on an "informal policy" of the Controller's Office that overtime is not reimbursable since the costs are incurred at the discretion of the agency.

Field audits were conducted on the County's 1997-1998 and 1998-1999 reimbursement claims. The Controller's Office continued to reject the use of the 1988 time study to support the claims for salaries and benefits. The County then kept time sheets for a six-month period in the year 2000 in an attempt to use those actual hours for the years in question. The Controller accepted the County's hours of 12,114 for use in calculating salaries and benefits for fiscal years 1997-1998 and 1998-1999 and partially approved reimbursement. For fiscal year 1997-1998, the Controller reduced the claim for salaries and benefits by \$981,270. For fiscal year 1998-1999, the Controller reduced the claim for salaries and benefits by \$537,039.² To the extent that overtime costs were supported by documentation, reimbursement was allowed for those costs for fiscal years 1997-1998 and 1998-1999.

¹ The Commission's complete Statement of Decision for the claim heard and decided may be found at http://www.csm.ca.gov/leg_reports.shtml. The remaining claims completed were settled by the parties and withdrawn, so there are no written decisions for those claims.

² For fiscal year 1997-1998, the Controller's Office allowed reimbursement in the amount of \$566,850. For fiscal year 1998-1999, the Controller's Office allowed reimbursement in the amount of \$436,737.

The County sought a determination from the Commission pursuant to Government Code section 17551(d), that the State Controller's Office incorrectly reduced the claim and requested that the Controller reinstate the full amounts reduced (\$2,432,311) for salaries and benefits based on the initial estimate of time from the 1988 time study, and for the overtime costs claimed in 1996-1997.

The Commission concluded that the State Controller's Office properly reduced the County's fiscal year 1997-1998 and 1998-1999 reimbursement claims in the amounts of \$981,270 and \$537,039, respectively.

However, the Controller's reduction of the County's reimbursement claim for the costs of regular and overtime salaries in fiscal year 1996-1997 to \$0 was arbitrary and capricious and, therefore, incorrect. The Commission remanded the 1996-1997 reimbursement claim to the State Controller's Office for further review to determine and allow reimbursement as follows:

- For the reasonable costs incurred in regular salaries and benefits on the mandated program for fiscal year 1996-1997; and
- For the costs of overtime salaries and benefits to the extent the costs are properly documented.

B. Withdrawn Incorrect Reduction Claims

The filing of an Incorrect Reduction Claim (IRC) is an appeal of a State Controller's Office (SCO) decision. The SCO is authorized, by desk review or field audit, to reduce reimbursement claims that it deems excessive or unreasonable. The claimant is then authorized to appeal any reduction by filing an IRC with the Commission. Unlike test claims, where one claimant represents all potential claimants statewide in a manner analogous to a class action lawsuit, individual claimants file IRCs with the Commission and seek redress for reductions that apply directly only to that one claimant.³ The process for resolving IRCs can be complex, and differs with each claim. For some claims, once the claimant files an IRC, an informal conference is conducted where Commission staff mediates the issues in dispute between the claimant and the SCO. If the issues are resolved in the informal conference, the IRC is settled and the claimant withdraws the IRC. The claimant and the SCO can also negotiate a resolution independent of Commission staff.

A total of 31 IRCs were withdrawn by the claimant between January 1, 2012 and December 31, 2012. Below is a breakdown of those withdrawn IRCs by mandated program.

Investment Reports (CSM 96-358-02) – 27 IRCs Withdrawn

- *Investment Reports*, 02-9635802-I-02
- *Investment Reports*, 02-9635802-I-03
- *Investment Reports*, 02-9635802-I-05
- *Investment Reports*, 02-9635802-I-08
- *Investment Reports*, 02-9635802-I-11
- *Investment Reports*, 02-9635802-I-13
- *Investment Reports*, 02-9635802-I-15
- *Investment Reports*, 02-9635802-I-19

³ California has 58 counties, so county claims are limited to 58 potential IRCs per test claim. Mandates involving cities or school districts, however, create the potential for over 1,500 IRCs per test claim.

- *Investment Reports*, 02-9635802-I-21
- *Investment Reports*, 02-9635802-I-32
- *Investment Reports*, 02-9635802-I-33
- *Investment Reports*, 02-9635802-I-35
- *Investment Reports*, 02-9635802-I-36
- *Investment Reports*, 02-9635802-I-37
- *Investment Reports*, 02-9635802-I-38
- *Investment Reports*, 02-9635802-I-39
- *Investment Reports*, 02-9635802-I-40
- *Investment Reports*, 02-9635802-I-41
- *Investment Reports*, 02-9635802-I-42
- *Investment Reports*, 02-9635802-I-43
- *Investment Reports*, 02-9635802-I-45
- *Investment Reports*, 02-9635802-I-46
- *Investment Reports*, 02-9635802-I-49
- *Investment Reports*, 02-9635802-I-59
- *Investment Reports*, 02-9635802-I-60
- *Investment Reports*, 02-9635802-I-71
- *Investment Reports*, 02-9635802-I-72

Intradistrict Attendance (CSM 4454) – Two IRCs Withdrawn

- *Intradistrict Attendance*, 08-4454-I-05
- *Intradistrict Attendance*, 11-4454-I-07

Collective Bargaining (CSM 4425) – One IRC Withdrawn

- *Collective Bargaining*, 07-4425-I-13

Health Fee Elimination (CSM 4206) – One IRC Withdrawn

- *Health Fee Elimination*, 05-4206-I-02

The Investment Reports program resulted in 70 IRCs. Several of those claims had cross cutting issues. To efficiently reduce the backlog for this program, staff prioritized hearing those claims with many cross cutting issues. Commission staff also conducted several informal conferences with the parties to encourage the informal resolution of the remaining claims. Commission staff prepared stipulations, which were signed by many of the parties, in which the SCO agreed to reevaluate the IRCs on the Investment Reports program consistent with the Commission’s decisions in the Investment Reports Incorrect Reduction Claims. The claimants also agreed to make available to the SCO, as may be requested, all documentation in support of claimed costs. As a result of continued work by all of the parties, there are now 37 remaining IRCs for this program. Commission staff expects most or all of the remaining IRCs on this program to be resolved in 2013, as the parties continue to work toward reaching settlement.

The Commission remains committed to continuing to eliminate the entire IRC backlog by adhering to the first-in-time policy, unless circumstances justify an exception. The following are strategies the Commission is employing to more efficiently decide matters, with a goal of eliminating the backlog as soon as possible: (1) claim consolidation; (2) common issues; (3) simple test claims and single-issue IRCs; (4) stakeholder requests; and (5) joint RRM’s.

1. Claim Consolidation – It may be appropriate in some cases to consolidate IRCs so that one analysis and statement of decision adopted by the Commission support multiple

claims. Government Code section 17558.8 and section 1185.2 of the Commission's regulations allow the executive director to consolidate IRCs. However, consolidation has been used sparingly for IRCs because it only works if the issues of law and fact are the same, and the Controller auditors were consistent in making claim reductions based on similar documentation. Commission staff is working closely with Controller staff and the claimant community to identify situations where claims can be consolidated.

2. Cross-cutting Issues – Commission staff is working with the Controller and members of the claimant community to identify issues that are common to multiple IRCs. If the Commission decides an issue in one matter that is contested in other matters, the time required to complete those other matters will be greatly reduced. For example, in 2010, the Commission adopted decisions on the County of Los Angeles and the City of Tustin Investment Reports IRCs. In doing so, the Commission resolved certain issues that are common to nearly all of these IRCs. It appears that many of the other issues in the remaining IRCs may be resolved informally through negotiations with claimants and Controller staff.
3. Stakeholder Requests – Commission staff occasionally receives requests from individual claimants to expedite certain matters. Naturally, all claimants would like their claims decided as quickly as possible. Though generally such requests are disfavored in the interest of fairness to other claimants, on occasion certain matters may be expedited, particularly where consolidation with an earlier filed claim is appropriate.
4. Joint Reasonable Reimbursement Methodologies (Joint RRM)s - A joint RRM and SCE is based on a settlement agreement between the Department of Finance (Finance) and the local entities pursuant to Government Code section 17557.1 and 17557.2. The RRM and SCE remain in effect for five years, unless another term is provided in the agreement or the agreement is jointly terminated by the parties. The Commission can approve a joint RRM and proposed SCE simply with a showing that an agreement between Finance and a local entity has been reached, and that the joint methodology is broadly supported by a wide range of local agencies or school districts. If more joint RRM)s and SCEs are negotiated by the parties, as was recommended in a 2009 California State Auditor's report⁴ and by others, the agreements may result in less work by Commission staff and would likely reduce auditing issues on reimbursement claims since the claim does not need to be supported with documentation of actual costs incurred. To date, the Commission has adopted only one joint RRM and SCE, which took approximately three years for the parties to negotiate. The joint RRM and SCE were in effect for three fiscal years before the program was suspended by the Legislature. Currently, there are no pending joint RRM)s.

⁴ Report 2009-501: "State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and in Controlling Costs and Liabilities." Available online at <http://www.bsa.ca.gov/pdfs/reports/2009-501.pdf>