

ITEM 14
EXECUTIVE DIRECTOR’S REPORT
Workload, Budget, 2012 Meeting Calendar, Update on Backlog Reduction Plan, and
Tentative Agenda Items for Next Meeting (info/action)

I. WORKLOAD

A. PENDING COMMISSION CASELOAD

Type of Action	Pending on 5/1/2012	Received Since 5/1/2012	Total as of 5/11/2012	Pending on 5/1/2011
Test Claims ¹ to be Heard and Determined	40	0	40	51
Test Claims to be Reconsidered	0	0	0	0
Test Claims to be Reconsidered or Reinstated Based on Court Action	0	0	0	0
Incorrect Reduction Claims to be Heard and Determined	130	0	130	163
Incorrect Reduction Claims to be Reconsidered Based on Court Action	0	0	0	0
Requests for Redetermination	0	0	0	0
Joint Reasonable Reimbursement Methodologies/Statewide Estimates of Costs	0	0	0	0
Proposed Parameters and Guidelines	10	0	10	11
Proposed Parameters and Guidelines Amendments	15	0	15	7
Requests to Review Claiming Instructions	0	0	0	1
Parameters and Guidelines to be Amended, Set Aside, or Reinstated, as Directed by the Legislature or Court Action	0	0	0	0
Statewide Cost Estimates to be Adopted	7	0	7	9
New Test Claim Filings to be Reviewed	0	0	0	0

¹ This includes 17 test claims filed by school districts and 23 filed by local agencies.

New Incorrect Reduction Claim Filings to be Reviewed	1	0	0	0
Appeals of Executive Director's Decisions	0	0	0	0
Regulatory Actions Pending	0	0	0	2

B. PENDING REQUESTS TO JOINTLY DEVELOP LEGISLATIVELY DETERMINED MANDATES

Type of Action	
Notice of Intent to Pursue Legislatively Determined Mandates	0

C. APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS

Type of Action	
Applications for Findings of Significant Financial Distress Pending	0

D. COMPLETED WORKLOAD

Type of Caseload	Completed in 2011	Completed in 2012
Test Claims	18	2
Incorrect Reduction Claims*	12	5
Parameters & Guidelines	6	2
Parameters and Guidelines Amendments	0	5
Statewide Cost Estimates	10	0

*This includes withdrawn IRCs.

II. 2012-2013 BUDGET

On May 14, 2012, the Governor and the Director of Finance issued the May Revision to the proposed 2012-2013 budget. The proposed Commission budget now includes a re-appropriation of \$79,000 from 2011-2012 to 2012-2013 for staff retirement pay-out and related employees costs, for a total operating budget of \$1,599,000.

The May Revision also proposes employee savings equivalent to a five percent reduction in pay. In the coming weeks, the Administration will work with labor organizations to achieve these savings. It is the Administration's intention to avoid a furlough program and to mitigate layoffs. To this end, the Administration is pursuing implementation of a four-day, 38-hour, work week.

Implementation of the Administration's proposal will likely mean that state offices will be closed on Fridays, and thus would require the rescheduling of Commission meetings.

Three major program changes proposed in the budget are as follows:

- **Suspend/Repeal State Mandates** - A decrease of \$728.8 million in 2012-2013 as a result of suspending most mandates not related to law enforcement or property taxes. In addition, the Administration is proposing trailer bill language to repeal or make permissive many of the mandates that have been suspended for the past two years or more.

- **Deferral of Pre-2004 Mandate Obligations** - A one-time reduction of \$99.5 million in 2012-2013 as a result of deferring the 2012-2013 payment for costs incurred prior to 2004-05, which are statutorily required to be completely paid by 2020-21.
- **Mandates Block Grant** – The Governor’s Budget proposed to eliminate nearly half of the existing K-12 and community college mandates and provide \$200 million to fund a mandates block grant incentive program to reimburse K-12 schools and community colleges for all remaining mandated activities. The May Revision proposes the following changes to the proposed block grant program:
 1. *Distribute Funding Equally on a Per-Student Basis* - The block grant would distribute funding to school districts, county offices of education, charter schools, and community colleges equally based on average daily attendance for K-12 schools and funded full-time equivalent students for community colleges. Of the \$200 million proposed for the block grant, \$166.6 million would be available for K-12 schools and \$33.4 million would be available for community colleges, providing a uniform funding rate of approximately \$28 per student.
 2. *Eliminate the Existing Mandates Claiming Process* – The existing claiming process would be eliminated as an option for K-12 schools and community colleges to seek reimbursement for the mandates funded in the block grant. Eliminating this option will ensure that K-12 schools and community colleges are reimbursed at the same rate for performing the same mandated activities.
 3. *Add Mandates to Block Grant and Suspension List (Community Colleges)* – The Commission on State Mandates recently determined that significant portions of the Minimum Conditions for State Aid, Community College Construction, and Discrimination Complaint Procedures test claims contained reimbursable state-mandated activities. The May Revision proposed to add the Minimum Conditions for State Aid and Community College Construction mandates to the list of eligible mandates to be funded from the block grant while the state reviews the policy and fiscal implications. Additionally, the May Revision proposed to suspend the Discrimination Complaint Procedures mandate because nearly all of these mandated activities are based on regulations issued by the Board of Governors of the California Community Colleges. These actions would save millions of dollars in Proposition 98 General Fund.
 4. *Repeal High-Cost Mandates (K-12)* – The six highest cost mandates would be permanently repealed. These programs include Graduation Requirements (Second Science Course); Behavioral Intervention Plans; Habitual Truants; Notification of Truancy; Notification to Teachers and Pupil Discipline Records; and Pupil Suspensions, Expulsions, and Expulsion Appeals. The remaining mandates slated for elimination will be suspended in 2012-13 until subsequent legislation is introduced to permanently repeal those activities.

III. 2012 MEETING CALENDAR (action)

The Commission has adopted the following meeting calendar for the remainder of 2012:

- Friday, July 27, 2012
- Friday, September 28, 2012
- Friday, October 26, 2012 (tentative)
- Friday, December 2, 2012

If the Administration’s proposal to move to a four-day, Monday-Thursday work week is implemented, staff recommends that Commission meetings be moved to the Thursday prior to the currently scheduled dates.

Staff recommends that the Commission adopt the following alternate meeting calendar for the remainder of 2012 to replace the current calendar, only if the Administration's 4-day work week proposal is implemented.

- Thursday, July 26, 2012
- Thursday, September 27, 2012
- Thursday, October 25, 2012 (tentative)
- Thursday, December 1, 2012

IV. UPDATE ON BACKLOG REDUCTION PLAN

Staff has completed the first annual update of the Backlog Reduction Plan. (See attached.)

V. TENTATIVE AGENDA ITEMS

The tentative agenda items are subject to change based on Commission workload, litigation, requests for extensions of time to file comments on draft staff analyses, hearing postponements, pre-hearing conferences, and the complexity of the statutes and executive orders that are pled.

July or September Meetings

A. TEST CLAIMS

1. *Reserve Peace Officer Training*, 03-TC-15
City of Kingsburg, Claimant
2. *Instructional Materials Funding Requirements*, 03-TC-07
Castro Valley Unified School District, Claimant
3. *Uniform Complaint Procedures*, 03-TC-02
Solana Beach School District, Claimant
4. *Teacher Credentialing*, 03-TC-09
San Diego County Office of Education, Claimant
5. *Parental involvement Program*, 03-TC-16
San Jose Unified School District, Claimant

B. PARAMETERS AND GUIDELINES AND REQUESTS TO AMEND PARAMETERS AND GUIDELINES

1. *Discrimination Complaint Procedures*, 02-TC-46
Los Rios, Santa Monica, and West Kern Community College Districts
2. *Minimum Conditions for State Aid*, 02-TC-25, 02-TC-31
Los Rios and Santa Monica Community College Districts
3. *California Public Records Act*, 02-TC-10, 02-TC-51
County of Los Angeles and Riverside Unified School District, Claimants
4. *Interdistrict Attendance Permits*, 10-PGA-01
State Controller's Office, Requestor
5. *Handicapped and Disabled Students*, 11-PGA-06
Department of Finance, Requestor
6. *Habitual Truants*, 09-PGA-01, 00-PGA-06
Clovis and San Jose Unified School Districts, Requestors

7. *Interagency Child Abuse and Neglect (ICAN) Investigation Reports*
(00-TC-22)
County of Los Angeles, Claimant

C. STATEWIDE COST ESTIMATES

1. *Domestic Violence Background Checks, 01-TC-29*
County of Alameda, Claimant
2. *Identity Theft, 03-TC-08*
City of Newport Beach, Claimant
3. *Modified Primary election, 01-TC-13*
County of San Bernardino, Claimant
4. *Permanent Absent Voters, 03-TC-11*
County of Sacramento, Claimant

Commission on State Mandates

Backlog Reduction Plan

Annual Update

A Comprehensive Plan Prepared by Staff
to Complete The Backlog

May 25, 2012

I. Executive Summary

As of May 25, 2012, the Commission on State Mandates (Commission) has a backlog of 36 test claims and 129 incorrect reduction claims.¹ Last year, Commission staff developed a plan to reduce the backlog of both test claims and incorrect reduction claims (IRCs). This document is the first annual update of the Backlog Reduction Plan.

The plan describes several tools Commission staff are employing to expeditiously reduce the backlog. The plan contemplates presenting all of the largest test claims, which pled statutes and regulations dating back to 1975 (the remaining 2003 claims), to the Commission for decision by the end of the 2012 calendar year. The remaining backlogged test claims, with the exception of the 10 National Pollutant Discharge Elimination System (NPDES) permit test claims, would be completed by the end of the 2013 calendar year. Pending the outcome of litigation regarding the NPDES permit test claims, staff believes these remaining 10 test claims could be eliminated in 2014. However, the time it will take to complete the NPDES permit claims will depend on the how long it takes the courts to resolve the pending litigation, the courts' interpretation of the state-mandate issue, and, its directions to the Commission on any remand of the pending claims being litigated.

Of the 129 pending IRCs, 90 involve just two programs, *Health Fee Elimination* and *Investment Reports*. Commission staff believes by continuing to work closely with the State Controller's Office (Controller) and the claimant community, the backlog of IRCs could be eliminated by the end of 2014.

Additionally, the caseload of the Commission includes the preparation of statewide cost estimates (SCEs) and parameters and guidelines (Ps&Gs) and amendments thereto (PGAs). Though the backlog on these items is much smaller than for test claims and IRCs, they are included in the plan to provide a fuller understanding of the Commission's caseload and priorities.

II. Overview

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local government for the costs of new programs or increased levels of service mandated by the state. The Legislature created the Commission to make determinations on whether new statutes or executive orders impose state-mandated programs.² The Commission

¹ These numbers are accurate pending Commission decisions at the May 25, 2012 hearing. They also include new filings received in the 2011-2012 fiscal year.

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

is required to hear and decide claims filed by local agencies and school districts that they are entitled to be reimbursed for costs mandated by the state.³

Local agencies and school districts are authorized by law to file test claims with the Commission alleging that a statute or executive order imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. If the Commission finds that there is a reimbursable state-mandated program, the Commission is required to determine the amount to be subvended by adopting Ps&Gs for the program. Following the adoption of the Ps&Gs, the Commission adopts a SCE which serves as the basis for the Legislature's appropriation of funds to the Controller to pay reimbursement claims. Within 90 days of the adoption of the Ps&Gs, the Controller prepares and issues claiming instructions to local agencies and school districts to notify them of the right to file reimbursement claims for the fiscal years eligible for reimbursement.

The Controller is authorized to reduce reimbursement claims it deems excessive or unreasonable. If the Controller reduces a reimbursement claim, a local agency or school district may file an IRC with the Commission alleging that the Controller incorrectly reduced the claim. The Commission is required to hear these claims and determine if they were incorrectly reduced.

Statutory time frames have been established for completing much of the Commission's work. Since 1998, state law has required the Commission to adopt procedures to ensure that a SCE is adopted within 12 to 18 months after receipt of a test claim, when the Commission determines that a mandate exists. (Gov. Code, § 17553(a).) As discussed above, a SCE can be adopted only after a test claim decision and Ps&Gs have been adopted. Therefore, the test claim decision, Ps&Gs, and SCE are required by statute to be adopted within 12 to 18 months of a test claim filing. However, there is no statutory time frame for completing IRCs.

Despite having a small staff of only 10.5 positions, the Commission has completed a substantial amount of work. Between fiscal years 2002-2003 and 2011-2012, the Commission decided a total of 160 test claims, reconsidered another 17 test claims, adopted or set aside 196 Ps&Gs (and PGAs), adopted 62 SCEs, and decided 106 IRCs. During this time, Commission staff also worked on numerous litigation matters and a host of special projects such as the mandate reform process and the audits performed by the Bureau of State Audits.

Nevertheless, over time, a backlog of matters accumulated. Preparing staff analyses for test claims and IRCs is the most time-consuming and labor-intensive activity for Commission staff, and is also the primary area of focus to reduce the backlog. The oldest test claims, filed in 2003, are much larger than claims from any subsequent year because in 2002 AB 3000 amended the law to impose a statute of limitations that only allowed claimants to allege mandates going back three years. Prior to this amendment, claimants could allege mandates going all the way back to 1975.⁴ Under this amendment, however, the Legislature included a grandfather provision that allowed local agencies and school districts to continue to file test claims on statutes and regulations going back to 1975 until September 30, 2003. The test claims filed in 2002 and 2003 alleged that nearly 500 statutes and 400 regulatory sections and executive orders are mandated

³ Government Code section 17551.

⁴ The statute of limitations has since been reduced to require the filing of a test claim within one year of either the statute or executive order being enacted or of an entity first incurring costs.

programs. As of May 25, 2012, five test claims from 2003 are still pending with the Commission.

The Commission also has 129 pending IRCs. In October 2009, the Bureau of State Audits published a report (BSA 2009 Report⁵) regarding the Commission on State Mandates and the mandates process. The BSA paid particular attention to IRCs and recommended that the Commission accelerate its efforts to complete IRCs. The report stated:

Until the incorrect reduction claims are resolved, the Controller may continue to make similar field-audit reductions that are reversed later by the Commission. Conversely, if the Commission ultimately finds the Controller's reductions to be correct, local entities will have continued to submit inappropriate claims until the time the Commission makes its decision. Either way, speedier resolution of outstanding incorrect reduction claims would allow the Controller to conduct audits with an awareness of the Commission's decisions and to incorporate those results into its audit findings and outreach efforts. (BSA 2009 Report, p. 40.)

In its September 15, 2010 Report⁶ to the Director of the Department of Finance (Finance), the Commission stated that it would prepare a plan to reduce and ultimately eliminate the backlog of IRCs. Because of limited staff resources, shifting efforts from test claims to IRCs could increase the time it takes to reduce the test claim backlog. Accordingly, Commission staff decided to assemble a plan to comprehensively address the problem by focusing on both IRCs and test claims. Staff issued its Backlog Reduction Plan in May 2011. This is the first annual update to the plan. This document is divided into three sections. The first section describes the nature of the backlog, with tables that illustrate the types of claims before the Commission. The second section describes the challenges the Commission faces in trying to reduce this backlog. The third section articulates Commission staff's plan to reduce and ultimately eliminate the backlog.

III. Backlog of Claims

The Commission's pending caseload consists of matters filed by claimants and state agencies, including test claims, IRCs, Ps&Gs, PGAs, reasonable reimbursement methodologies (RRMs), SCEs, and requests to review claiming instructions. Commission staff also tracks pending joint proposals for legislatively-determined mandates. Table A shows the Commission's current pending caseload and the number of proposed legislatively determined mandates.

⁵ The full title of the report is *State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and in Controlling Costs and Liabilities, October 2009, Report 2009-501*. It can be found at <http://www.bsa.ca.gov/pdfs/reports/2009-501.pdf>

⁶ The Commission is required to annually submit a caseload report to Department of Finance. This document can be found at <http://www.csm.ca.gov/docs/091510b.pdf>

Table A. Complete Pending Caseload, May 25, 2012

Type of Action	Number Pending
Test Claims to be Heard and Determined	36
Test Claims to be Reconsidered	0
Test Claims to be Reconsidered or Reinstated Based on Court Action	0
Incorrect Reduction Claims to be Heard and Determined	129
Incorrect Reduction Claims to be Reconsidered Based on Court Action	0
Reasonable Reimbursement Methodologies/Statewide Estimate of Costs	0
Proposed Parameters and Guidelines	11
Proposed Parameters and Guidelines Amendments	13
Parameters and Guidelines to be Amended, Set Aside, or Reinstated, as Directed by the	0
Statewide Cost Estimates to be Adopted	9
Revised Statewide Cost Estimates to be Adopted	0
Requests to Review Claiming Instructions	0
New Test Claim Filings to be Reviewed	0
New Incorrect Reduction Claim Filings to be Reviewed	0
Appeals of Executive Director's Decision	0
Regulatory Actions Pending	0
Requests for Redetermination	0
Notice of Intent to Pursue Legislatively Determined Mandates	0

A. Pending Test Claims

There are 36 pending test claims. Table B shows the pending test claim filings by fiscal year and claimant type.

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

Filing Date by Fiscal Year	Total Claims Filed ⁷	Pending School District Test Claims (K-14)	Pending Local Agency Test Claims	Total Pending Test Claims
2003-2004	23	4	1	5
2004-2005	4	0	0	0
2005-2006	6	3	1	4
2006-2007	2	0	1	1
2007-2008	12	1	3	4
2008-2009	6	3	2	5
2009-2010	3	0	2	2*
2010-2011	12	1	11	12*
2011-2012	3	1	2	3*
Totals		13	23	36

⁷ All test claims filed prior to 2003-2004 are complete; however, there are still outstanding parameters and guidelines for some of those test claims.

* Ten of the pending test claims filed between 2009 and 2012 are NPDES permit claims that will not be completed until pending litigation is complete.

B. Pending Parameters and Guidelines Determinations

Currently, there are ten pending Ps&Gs. Though the backlog of Ps&Gs is small compared to test claims and IRCs, it is important to note because a SCE cannot be completed until after the Ps&Gs are adopted. As noted above, there is a statutory requirement to adopt a SCE within 12 to 18 months of a test claim filing. For that reason, Ps&Gs are high priority for the Commission. Generally, the most common reasons for delay of these items is litigation relating to the test claim decision, disputes regarding the activities claimed to be reasonably necessary to comply with the mandate, pending agreements between the parties on a RRM, or pending requests by one of the parties to include an RRM in the Ps&Gs. Table C shows the pending Ps&Gs.

**Table C. Parameters and Guidelines Determinations
By Fiscal Year of Filing and Claimant Type**

Date Statement of Decision Adopted by Fiscal Year	Pending School District Ps&Gs (K-14)	Pending Local Agency Ps&Gs	Total Pending Ps&Gs
2000-2001	1		1
2007-2008	0	1	1
2009-2010	0	1	1
2010-2011	2	1	3 ⁸
2011-2012	2	3	5
Totals	5	6	11

C. Pending Statewide Cost Estimates

Existing law requires the Commission to adopt a SCE within 12 to 18 months of a test claim filing, when the Commission determines that a state mandate exists. The SCE may be developed using initial reimbursement claims data filed with the Controller or other methodology based on recommendations from the test claimant, the Finance or other interested parties. The Commission's practice is to use the actual reimbursement claims filed by the claimants to develop the SCE. Commission staff typically sets SCEs for the first hearing after the claims data is received from the Controller. Table D shows the current SCE caseload pending before the Commission.

**Table D. Statewide Cost Estimates
By Fiscal Year and Claimant Type**

Date Parameters and Guidelines Adopted by Fiscal Year	Pending School District Statewide Cost Estimates (K-14)	Pending Local Agency Statewide Cost Estimates	Total Pending Statewide Cost Estimates
2010-2011	0	1 ⁹	1
2011-2012	3	5	8
Totals	3	6	9

⁸ Two of the claims have K-14 and local agency co-claimants.

⁹ Pending Court Action – Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 19, 20, and 21.

D. Pending IRCs

As the BSA 2009 Report noted, the IRC backlog grew “from 77 in December 2003 to 146 in June 2009.” In fact, as of May 1, 2011, there were 163 IRCs pending before the Commission that allege a total of \$91,753,912 million in reductions to mandate reimbursement claims. The Commission reduced the IRC backlog to 129 claims by assisting the Controller and claimants in settling IRCs, and consolidating IRCs for analysis and hearing. The Commission determined 11 IRCs in 2011-2012. In addition, 23 IRCs were withdrawn by claimants. The following two tables provide an overview of the 129 IRCs pending before the Commission as of May 25, 2012. Table E shows the pending IRC caseload by fiscal year and claimant type.

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

Filing Date by Fiscal Year	Total New Filings ¹⁰	Pending School District Claims (K-14)	Pending Local Agency Claims	Total Pending Claims
2002-2003	73	0	62	62
2003-2004	7	0	0	0
2004-2005	5	2	1	3
2005-2006	30	20	1	21
2006-2007	2	1	1	2
2007-2008	28	6	2	8
2008-2009	9	8	1	9
2009-2010	17	7	1	8
2010-2011	13	11	2	13
2011-2012	3	1	2	3
Totals	187	56	73	129

There are currently IRCs filed on 21 state-mandated programs. Table F shows the programs listed by type of claimant and the dollar amount per program.

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

	Program	Number of IRCs Filed	Amount of Reductions
		Local Agency Claims	
1.	<i>Absentee Ballots</i>	1	\$19,284
2.	<i>Animal Adoption</i>	1	1,339,152
3.	<i>Child Abduction and Recovery</i>	1	\$1,268,210
4.	<i>Firefighters' Cancer Presumption</i>	1	\$516,132
5.	<i>Handicapped and Disabled Students</i>	1	\$3,232,423
6.	<i>Investment Reports</i>	62	\$1,867,625
7.	<i>Open Meetings Act</i>	1	\$4,653,917
8.	<i>Peace Officers Bill of Rights (POBOR)</i>	1	\$526,802
9.	<i>Seriously Emotionally Disturbed Pupils</i>	2	\$4,953,214
10.	<i>Sexually Violent Predators</i>	2	\$373,643
	Subtotal	73	\$18,753,402
		School District Claims	
11.	<i>Emergency Procedures, Earthquake and Disasters</i>	2	\$1,941,572

¹⁰ All incorrect reduction claims filed prior to 2002-2003 are complete.

12.	<i>Graduation Requirements</i>	2	\$8,054,465
13.	<i>Interdistrict Attendance Permits</i>	2	\$24,556
14.	<i>National Norm-Referenced Achievement Test (NNRAT)</i>	1	\$160,120
15.	<i>Notification of Truancy</i>	10	\$3,246,985
16.	<i>Notification to Teachers: Pupils Subject to Suspension or Expulsion</i>	1	\$354,046
17.	<i>School District of Choice: Transfer and Appeals</i>	1	\$25,081
18.	<i>Standardized Testing and Reporting (STAR)</i>	1	\$1,446,786
	Subtotal	20	\$23,306,096
		Community College District Claims	
19.	<i>Collective Bargaining</i>	7	\$2,119,937
20.	<i>Health Fee Elimination</i>	28	\$21,229,649
21.	<i>Mandate Reimbursement Process</i>	1	\$10,004
	Subtotal	36	\$23,359,590
	TOTAL	129	\$65,419,088

IV. Challenges to Reducing the Backlog

The Commission faces a wide range of challenges and factors that may cause completion of the caseload to be delayed, as discussed below.

A. Multiple Statutory Requirements

The Commission is charged by law with multiple responsibilities in addition to hearing test claims and IRCs. Government Code section 17500 et seq. also requires the Commission to adopt Ps&Gs, hear requests to amend Ps&Gs, prepare SCEs, hear requests to review the Controller's claiming instructions, hear requests to re-determine and issue a new test claim decision, and review county applications for a finding of severe financial distress.

In 2010, SB 856 was enacted that would establish a new "redetermination" process to allow mandates to undergo revision when appropriate. SB 856 was signed into law on October 19, 2010, and became effective on January 1, 2011. As of May 25, 2012, the Commission has not received any redetermination requests. However, if requests are received, this will increase the Commission's caseload.

While the Commission has not received a county application for a finding of significant financial distress since 2005, state law is clear that when these applications are filed, the county is entitled to a final decision by the Commission within 90 days. If the Commission receives an application, substantial staff resources will need to be shifted to conduct the required investigation, hearing, and determination.

Parties are authorized to request the continuance of the filing of comments or postponement of an item set for hearing. Under specified conditions, when good cause is shown, the executive director is required to grant the request. The Commission frequently receives requests for continuances that may result in items on the proposed calendar being postponed.

The Commission also periodically amends its regulations. In 2011, Commission staff completed two sets of amendments to the Commission's regulations, and is drafting a third set of regulatory amendments in the 2012-2013 fiscal year to clarify the mandates process.

B. Litigation

The Commission is also involved in four significant litigation matters. In 2011 and the first half of 2012, Commission staff was involved in two litigation matters that address NPDES permits issued by the Regional Water Quality Control Boards under the Porter-Cologne Act with complaints and cross-complaints filed by the State and the local agencies subject to the permits. These cases present many issues of first impression relating to whether a state-mandated program exists and whether local agencies can collect fees for the services provided. While Commission staff is not briefing these matters, staff is actively monitoring the cases and answering questions from the court and the parties. In addition, two other litigation matters have been filed, both of which have required, and will require the commitment of substantial staff time. These matters address the Commission's authority to adopt a reasonable reimbursement methodology for the *Graduation Requirements* program. The briefing and court hearing on this matter are set for late summer/early fall 2012. The last case involves a challenge from the California School Boards' Association, challenging the entire mandates process with respect to K-12 school districts and county offices of education, the process governing the redetermination of prior test claim decisions, and the budget trailer bills enacted in October 2010 that affect the reimbursement for mandated programs imposed on school districts.

C. Number and Complexity of Filings

As previously noted, the most labor-intensive activity for Commission staff is preparing staff analyses for test claims and IRCs.

1. Test Claims

The oldest test claims were filed in 2002 and 2003. Collectively, those claims are much larger than claims from any subsequent year because in 2002 AB 3000 amended the law to impose a statute of limitations that only allowed claimants to allege mandates going back three years. Prior to this amendment, claimants could allege mandates going all the way back to 1975.¹¹ Under these amendments, however, the Legislature included a grandfather provision that allowed local agencies and school districts to continue to file test claims on statutes and regulations going back to 1975 until September 30, 2003. The pleading of alleged mandates going all the way back to 1975 requires staff to research and analyze statutes and regulations going back over more than a quarter century. Such research is very time consuming since older statutes must be researched at the State Archives in paper and microfiche files. Many older regulation packages cannot even be found at State Archives, and require extensive research to locate. This grandfather provision caused local agencies and school districts to file 51 test claims in 2002 and 23 in 2003. As of May 2012, the 2002 test claims are complete. There are five 2003 test claims still pending with the Commission.

Additionally, the NPDES permit claims may significantly impact workload. The time that these claims will require depends on the courts' interpretation of the state-mandate issue and its direction to the Commission on any remand of the pending claims being litigated. In one of the cases, the trial court found that the Commission needs to make a factual determination of whether the permit requirements exceed the federal maximum extent practicable (MEP)

¹¹ The statute of limitations has since been reduced to require the filing of a test claim within one year of either the statute or executive order being enacted or of an entity first incurring costs.

standard. If the trial court's ruling is upheld, the factual determinations will require the analysis of substantial evidence in the record in accordance with Government Code section 17559, and will have significant implications for Commission caseload.

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

2. Reasonable Reimbursement Methodologies and Parameters and Guidelines

A request to include an RRM in Ps&Gs is a request made by a local entity claimant, an interested party, the Finance, the Controller, or an affected state agency, pursuant to Government Code section 17557 and 17518.5. Under this proceeding, the Commission is required to make additional factual determinations, based on substantial evidence in the record, that the proposed formula or unit cost fairly represents the costs mandated by the state for all eligible claimants in the state. The proposed RRM must be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs; and shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner. If these findings are made and an RRM is adopted by the Commission in the Ps&Gs, then the claiming is based on the adopted formula or unit cost, in lieu of requiring detailed documentation of actual costs incurred. While the adoption of an RRM pursuant to Government Code sections 17557 and 17518.1 may reduce the auditing issues on reimbursement claims filed with the Controller, the process increases the responsibility of the Commission when adopting or amending Ps&Gs, by requiring the additional factual finding that the proposal reasonably represents the mandated costs incurred by all eligible claimants in the state pursuant to article XIII B, section 6 of the California Constitution. There are eight proposed RRMs in Ps&Gs pending in requests to amend Ps&Gs for the Commission's consideration. To date, the Commission has adopted two proposed RRMs in Ps&Gs and has denied one proposal based on a lack of evidence.

2. Incorrect Reduction Claims

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.¹² The process for resolving IRCs can be complex and differs with each claim. Most IRCs involve issues of law and fact. Thus, analysis of each IRC requires legal, analytical, and review of the Controller's audit. 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 Controller. If the issues are resolved in the informal conference, the IRC may be settled.

When the issues cannot be resolved, Commission staff prepares a detailed analysis of the legal and fiscal issues. The Commission approves or denies the IRC, and a statement of decision is

¹² 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.

prepared. Whether or not the issues are resolved at the informal conference, Commission staff must spend time to prepare and review the record (including the original test claim record, Ps&Gs, and claiming instructions), review detailed reimbursement claims, and determine the legal and fiscal issues. This process can be lengthy, particularly in cases where numerous IRCs are filed on one program.

D. Future IRC Filings that Could Increase the Backlog

The Controller is authorized, by desk review or field audit, to reduce reimbursement claims that it deems to be excessive or unreasonable. The claimant is then authorized to appeal any reduction by filing an IRC with the Commission. Since May 1, 2008, the Controller issued over 250 audit reports on 39 mandated programs. However, to date, less than 40 IRCs have been filed on the audit reports issued during this period. Therefore, the IRC caseload could increase significantly if IRCs are filed on the audit reports.

E. Number and Level of Positions

As of May 2012, the Commission employs four full-time attorneys: one chief counsel, two staff counsel IIIs, and one staff counsel.¹³ Some staff analyses take one attorney many months to research and write. Larger staff analyses can exceed 200 pages. This is particularly true for the 2003 test claims still pending before the Commission. As discussed above, these test claims were filed when state law allowed claimants to file test claims that allege mandates going all the way back to 1975.

The Commission's position authority has decreased over the past several fiscal years. In addition, between 2009 and 2011, Commission staff, like staff from other state offices, were also subject to furloughs. This naturally made it more difficult to complete the backlog.

Vacancies can also affect the Commission's caseload. The executive director position was vacant for four months in 2011-2012. This left the Commission with fewer attorneys to prepare and review staff analyses. As a result, Commission staff was unable to meet the goal of completing all 2002 and 2003 test claims by June 30, 2012. While the Commission completed all 2002 test claims in 2011-2012, there are five 2003 test claims still pending before the Commission.

All of the challenges described above could impact staffs ability to complete the backlog within the planned timeline.

V. Backlog Reduction Strategy

The Commission has had a long-standing practice of hearing each matter in the order filed with the Commission. This first-in-time approach is a core policy that has served the Commission well. Over the years, however, the Commission has made exceptions to this policy in certain circumstances. For example, when a court has ruled on a matter before the Commission, the Commission has consistently responded by moving that matter ahead in the queue even though the courts have not ordered the Commission to do so.

¹³ There is currently a vacancy for the staff counsel position, however, staff intends to fill this vacancy shortly.

The Commission has also taken matters out of order for staff development purposes. As discussed above, the oldest pending test claims are also among the largest and time-consuming. Commission management has on occasion assigned one or more less-complicated matters out of order to a staff person who has just completed a difficult assignment that required that staff's complete focus for a year or more. This increases the opportunities for staff to gain experience in a wide variety of legal matters and prevents staff burnout.

The Commission remains committed to continuing to eliminate the 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 to consolidate test claims and IRCs filed by different claimants so that one analysis and statement of decision adopted by the Commission support multiple claims. This is a very efficient way to complete multiple claims with essentially the same amount of staff time required to complete just one.

Pursuant to California Code of Regulations, title 2, section 1183.06, the executive director may, subject to appeal, “consolidate part or all of any test claim, if necessary to ensure the complete, fair, or timely consideration of any test claim.” Similarly, Government Code section 17558.8 and section 1185.2 of the Commission's regulations allow the executive director to consolidate IRCs. To date, the Commission has consolidated numerous test claims. 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. *Common 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. Of the 129 pending IRCs, 62 are filed on this program. It appears that many of the other issues in the remaining IRCs may be resolved informally through negotiations with claimants and Controller staff. Commission staff has been working with Controller staff and representatives of the claimants who have filed IRCs for the *Investment Reports* program to try to resolve as many of these IRCs as possible. As of May 25, 2012, eight *Investment Reports* IRCs have been settled and withdrawn.
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 and SCE) - A joint RRM and SCE is based on a settlement agreement between the 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 the 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 and SCEs are negotiated by the parties, as was recommended in the 2009 BSA Report 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 and SCEs.

VI. Plan of Action

Despite the uncertainty caused by all of these factors, only some of which are within the Commission's control, Commission staff believes that the following updated plan to reduce the backlog can be achieved.

A. Complete All 2003 Test Claims in 2012

Commission staff plans to present the Commission with staff analyses for the five remaining 2003 test claims by the end of 2012. As discussed above, the 2003 test claims are not only the oldest; collectively, they represent the largest group of test claims before the Commission. Focusing on the oldest test claims is consistent with the Commission's long-standing first-in-time policy.

B. Continue to Support the State Controller's Office and Claimants in Settling Incorrect Reduction Claims

Government Code section 17553 directs the Commission to complete SCEs within 12 to 18 months. No such deadline exists for IRCs. Accordingly, while the Commission has had difficulty meeting the statutory deadline, Commission staff has historically prioritized test claims, Ps&Gs and SCEs over IRCs based on the specific legal requirement to have these matters decided within 12-18 months of a test claim filing.

The BSA 2009 Report, however, shined light on the negative impacts both to the state and to local governments and school districts posed by delays in deciding incorrect reduction claims. In 2011, Commission staff redoubled its efforts to complete staff analyses for IRCs and to work with stakeholders to resolve IRCs. Commission staff will continue to work with the Controller and claimants to resolve these IRCs.

Staff is working with the parties to encourage the settlement of the outstanding IRCs with a particular focus on the 62 *Investment Reports* Incorrect Reduction Claims and 28 *Health Fee Elimination* Incorrect Reduction Claims. To encourage informal resolution of these claims, staff has been focusing on the completion of IRC with cross cutting issues. For example, the Commission made a determination on seven consolidated *Health Fee Elimination* IRCs in 2011.

Following this determination, Commission staff met with Controller staff and the claimants' representative to discuss how to proceed with the remaining *Health Fee* IRCs. Staff is recommending that four of these IRCs be consolidated, and set for hearing in January 2013. These particular four IRCs contain issues that are included in many of the remaining IRCs. Completion of these claims could resolve many of the issues in the remaining claims, and could result in speedier resolution of all *Health Fees Elimination* IRCs.

Similarly, Commission decisions on some single issue IRCs may clarify the Commission's position on those single issues so that claimants can evaluate and consider the merits of claims prior to filing. Therefore, staff may strategically select some of these IRCs for hearing in the near future.

C. Complete All Non-NPDES Related Test Claims by the end of 2013

If all goes as planned, Commission staff believes that the 26 pending non-NPDES test claims could be completed by the end of 2013.

E. 2014 and Beyond

Pending the outcome of litigation, Commission staff expects to be fully immersed in NPDES test claims throughout the 2014 calendar year and beyond. Assuming the Commission does not receive a spike in test claim filings or a reduction in staff, the entire currently pending backlog of test claims could be eliminated by the end of 2014.

Commission staff intends this plan to be a living document that will be amended as all involved learn more about what approaches produce the best results. If Commission staff succeeds in meeting the targets set forth above, it will continue to employ the same strategies in fiscal year 2013-2014.

If the strategies discussed above prove to be effective, the IRC backlog could also be eliminated by 2014. Completing the 62 IRCs related to the *Investment Reports* program will nearly halve the number of outstanding IRCs. Similarly, the 28 IRCs related to the *Health Fee Elimination* program may be resolved much more quickly than if each one was decided independent of every other IRC.

VII. Conclusion

Over the years, a backlog of test claims and IRCs has accumulated up at the Commission. This plan represents Commission staff's approach to reducing and ultimately eliminating that backlog as quickly as possible. It is important to note, however, that this ambitious plan is only an *estimate* of what can be completed in the coming years based on what staff knows as of May 2012. Many factors beyond the control of Commission staff could increase the time it takes to eliminate the backlog.