

## **Item 1**

### **Proposed Minutes**

#### **COMMISSION ON STATE MANDATES**

Location of Meeting: Department of Finance,  
Redwood Room, 915 L Street, Sacramento, California  
May 25, 2018

- Present:** Member Jacqueline Wong-Hernandez, Chairperson  
Representative of the Director of the Department of Finance  
Member Mark Hariri, Vice Chairperson  
Representative of the State Treasurer  
Member Lee Adams  
County Supervisor  
Member Ken Alex  
Director of the Office of Planning and Research  
Member Richard Chivaro  
Representative of the State Controller
- Absent:** Member Sarah Olsen  
Public Member  
Member Carmen Ramirez  
City Council Member

*NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.*

#### **CALL TO ORDER AND ROLL CALL**

Chairperson Wong-Hernandez called the meeting to order at 10:00 a.m. Executive Director Heather Halsey called the roll.

#### **APPROVAL OF MINUTES**

Member Adams made a motion to adopt the minutes. With a second by Member Alex, the March 23, 2018 hearing minutes were adopted by a vote of 4-0 with Members Chivaro, Olsen, and Ramirez absent.

#### **PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA**

The Chairperson asked if there was any public comment. There was no response.

Chairperson Wong-Hernandez invited the Commission's court reporter, Mr. Daniel Feldhaus, and his wife, Cathy, to come forward and congratulated him on his new position as court reporter for the South Dakota Third Judicial Circuit Court.

Assistant Executive Director Palchik presented him with a resolution commemorating his service as the court reporter for the Commission.

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

Executive Director Halsey swore in the parties and witnesses participating in the Article 7 portion of the hearing.

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

Item 2      Appeal of Executive Director Decisions

Executive Director Halsey stated that there were no appeals to consider for this hearing.

**TEST CLAIM**

Item 3      *Local Agency Employee Organizations: Impasse Procedures II*, 16-TC-04  
Government Code Sections 3505.4, 3505.5, and 3505.7; Statutes 2011, Chapter 680 (AB 646) and Statutes 2012, Chapter 314 (AB 1606)  
City of Oxnard, Claimant

Commission Counsel Matt Jones presented this item and recommended that the Commission partially approve this Test Claim.

Parties were represented as follows: Patrick Dyer, representing the claimant; Chris Hill, representing the Department of Finance; and Andy Nichols, Interested Person.

Mr. Dyer thanked the Commission and Commission staff for their work and stated that the Claimant agrees with the staff recommendation. Mr. Nichols stated that he agrees with the staff's conclusion and recommendation. Mr. Hill stated that the Department of Finance disagrees with the staff's recommendation and that the Department of Finance does not believe this creates a new program and a higher level of service to the public.

Without further discussion among the Commission members, staff, and parties, Member Alex made a motion to adopt the staff recommendation. With a second by Member Hariri, the motion to partially approve this Test Claim was adopted by a vote of 4-0 with Members Chivaro, Olsen, and Ramirez absent.

**PARAMETERS AND GUIDELINES**

Item 4      *Cal Grant: Opt-Out Notice and Grade Point Average Submission*, 16-TC-02  
Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and Education Code Section 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908)  
Fairfield-Suisun Unified School District, Claimant

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt this Decision and Parameters and Guidelines.

Parties were represented as follows: Patrick Dyer, representing the claimant; and Donna Ferebee, representing the Department of Finance.

Mr. Dyer stated that staff from the District agree with the staff recommendation and the Parameters and Guidelines. Ms. Ferebee stated that the Department of Finance has no objections to the Parameters and Guidelines.

Without further discussion among the Commission members, staff, and parties, Member Adams made a motion to adopt the staff recommendation. With a second by Member Hariri, the motion to adopt this Decision and Parameters and Guidelines was adopted by a vote of 4-0 with Members Chivaro, Olsen, and Ramirez absent.

**INCORRECT REDUCTION CLAIM**

Item 5      *Integrated Waste Management, 14-0007-I-10*

Public Resources Code Sections 40148, 40196.3, 42920-42928; Public Contract Code Sections 12167 and 12167.1; Statutes 1992, Chapter 1116 (AB 3521); Statutes 1999, Chapter 764 (AB 75); State Agency Model Integrated Waste Management Plan (February 2000)

Fiscal Years: 1999-2000, 2000-2001, 2003-2004, 2004-2005, and 2005-2006

Redwoods Community College District, Claimant

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission partially approve this Incorrect Reduction Claim and request that the State Controller reinstate \$2,431 to the claimant.

Lisa Kurokawa, appeared on behalf of the State Controller’s Office. The claimant notified Commission staff that they would not be attending the hearing and would stand on the written record.

Ms. Kurokawa stated that the State Controller’s Office agrees with the staff’s conclusion and recommendation. Without further discussion among the Commission members, staff, and parties, Member Hariri made a motion to adopt the staff recommendation. With a second by Member Alex, the motion to partially approve this Incorrect Reduction Claim was adopted by a vote of 4-0 with Members Chivaro, Olsen, and Ramirez absent.

**INCORRECT REDUCTION CLAIM**

Item 6      *Integrated Waste Management, 14-0007-I-11*

Public Resources Code Sections 40148, 40196.3, 42920-42928; Public Contract Code Sections 12167 and 12167.1; Statutes 1992, Chapter 1116 (AB 3521); Statutes 1999, Chapter 764 (AB 75); State Agency Model Integrated Waste Management Plan (February 2000)

Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, and 2010-2011

San Bernardino Community College District, Claimant

Executive Director Heather Halsey stated that Commission staff were notified that the District would not be sending representation to the hearing.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission partially approve this Incorrect Reduction Claim and request that the State Controller reinstate \$22,884 to the claimant.

Parties were represented as follows: Lisa Kurokawa, representing the State Controller's Office.

Ms. Kurokawa stated that the State Controller's Office agrees with the staff's conclusion and recommendation. Without further discussion among the Commission members, staff, and parties, Member Adams made a motion to adopt the staff recommendation. With a second by Member Hariri, the motion to partially approve this Incorrect Reduction Claim was adopted by a vote of 4-0 with Members Chivaro, Olsen, and Ramirez absent.

**HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)**

- Item 7 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

No applications were filed.

**STAFF REPORTS**

- Item 8 Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

- Item 9 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 10 Executive Director: Budget, Workload Update, and Tentative Agenda Items for the July and September 2018 Meetings (info)

Executive Director Heather Halsey introduced the newest staff attorney, Ms. Elena Wilson, and described her previous legal experience.

Member Chivaro joined the meeting.

Executive Director Halsey also explained that another attorney had accepted a position with the Commission and then, right before he was to start work at the Commission after providing 30-days' notice to his prior employer, notified Commission staff that he had taken a more lucrative position outside of state service therefore Commission staff will be recruiting again for that position.

Executive Director Heather Halsey presented this item.

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (info/action)**

**A. PENDING LITIGATION**

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126(e)(1):

Trial Courts:

1. ***On Remand from California Supreme Court, Case No. S214855, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al*** (petition and cross-petition)  
Los Angeles County Superior Court, Case No. BS130730, Second District Court of Appeal, Case No. B237153 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]
2. ***On Remand from the Third District Court of Appeal, Case No. C070357 State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.*** (petition and cross-petition)  
Sacramento County Superior Court Case No. 34-2010-80000604  
[*Discharge of Stormwater Runoff*, Order No. R9-207-000 (07-TC-09), California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
3. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*  
Los Angeles County Superior Court, Case No. BS166734  
[*Handicapped and Disabled Students IRC*, 13-4282-I-06]
4. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*  
Los Angeles County Superior Court, Case No. BS166735  
[*Handicapped and Disabled Students II IRC*, 12-0240-I-01]
5. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*  
Los Angeles County Superior Court, Case No. BS167447  
[*Seriously Emotionally Disturbed Pupils IRC*, 12-9705-I-04]
6. *Fresno Unified School Dist. v. Commission on State Mandates*  
Sacramento County Superior Court, Case No. 34-2017-80002768  
[*Certificated School Employees – Parental Leave*, 16-TC-01]

Courts of Appeal:

1. *Coast Community College District, et al. v. Commission on State Mandates*,  
Third District Court of Appeal, Case No. C080349  
Sacramento County Superior Court, Case No. 34-2014-80001842  
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31  
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes

1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]

2. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*  
Third District Court of Appeal, Case No. C081929  
Sacramento County Superior Court, Case No. 34-2015-80002016  
[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register 2012, No. 28.]

California Supreme Court:

1. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*  
California Supreme Court, Case No. S239907  
Fourth District Court of Appeal, Division One, Case No. D068657  
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL  
[Mandate Redetermination, *Sexually Violent Predators*, (12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496) As modified by Proposition 83, General Election, November 7, 2006]
2. *California School Board Association (CSBA) v. State of California et al.*  
California Supreme Court, Case No S247266  
First District Court of Appeal, Case No. A148606  
Alameda County Superior Court, Case No. RG11554698  
[2010-2011 Budget Trailer Bills; Education Code sections 42238.24 and 56523]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126(e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members or staff.

#### **B. PERSONNEL**

To confer on personnel matters pursuant to Government Code section 11126(a).

The Commission adjourned into closed executive session at 10:26 a.m., pursuant to Government Code section 11126(e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

#### **RECOVENE IN PUBLIC SESSION REPORT FROM CLOSED EXECUTIVE SESSION**

At 10:35 a.m., the Commission reconvened in open session, and Chairperson Wong-Hernandez reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

#### **ADJOURNMENT**

Hearing no further business, Chairperson Wong-Hernandez adjourned the meeting at 10:35 a.m.

Heather Halsey  
Executive Director



**ORIGINAL**

**MEETING OF THE  
STATE OF CALIFORNIA  
COMMISSION ON STATE MANDATES**



**TIME:** 10:00 a.m.

**DATE:** Friday, May 25, 2018

**PLACE:** Department of Finance  
Redwood Room  
915 L Street  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:

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

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**Daniel P. Feldhaus, C.S.R., Inc.**  
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A P P E A R A N C E S

COMMISSIONERS PRESENT

JACQUELINE WONG-HERNANDEZ  
Representative for MICHAEL COHEN, Director  
Department of Finance  
(Chair of the Commission)

MARK HARIRI  
Representative for JOHN CHIANG  
State Treasurer  
(Vice Chair of the Commission)

LEE ADAMS III  
Sierra County Supervisor  
Local Agency Member

KEN ALEX  
Director  
Office of Planning & Research

RICHARD CHIVARO  
Representative for BETTY T. YEE  
State Controller



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY  
Executive Director  
(Item 10)

HEIDI PALCHIK  
Assistant Executive Director

ERIC FELLER  
Senior Legal Counsel  
(Items 4, 5, and 6)

MATTHEW B. JONES  
Commission Counsel  
(Item 3)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF PRESENT

*(continued)*

KERRY ORTMAN  
Program Analyst  
(Item 8)

CAMILLE N. SHELTON  
Chief Legal Counsel  
(Item 9)

ELENA WILSON  
Commission Staff



PUBLIC TESTIMONY

**Appearing Re Item 3:**

For Claimant City of Oxnard:

PATRICK J. DYER  
Vice President  
MGT Consulting Group  
2251 Harvard Street, Suite 134  
Sacramento, California 95815

For Department of Finance:

CHRIS HILL  
Department of Finance  
915 L Street  
Sacramento, California 95814

Interested Party:

ANDY NICHOLS  
President  
Nichols Consulting  
1857 44<sup>th</sup> Street  
Sacramento, California 95819

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 4:**

For Claimant Fairfield-Suisun Unified School District:

PATRICK J. DYER  
Vice President  
MGT Consulting Group

For Department of Finance:

DONNA FEREBEE  
Legal Office  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Appearing Re Item 5 and Item 6:**

For the State Controller's Office:

LISA KUROKAWA  
Bureau Chief, Compliance Audits Bureau  
Division of Audits  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816

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**Commission on State Mandates – May 25, 2018**

1 BE IT REMEMBERED that on Friday, May 25, 2018,  
2 commencing at the hour of 10:00 a.m., thereof, at the  
3 Department of Finance, Redwood Room, 915 L Street,  
4 Sacramento, California, before me, DANIEL P. FELDHAUS,  
5 CSR #6949, RDR and CRR, the following proceedings were  
6 held:

7 --oOo--

8 CHAIR WONG-HERNANDEZ: Okay, it's ten o'clock; and  
9 the meeting of the Commission on State Mandates will come  
10 to order.

11 Heather, can you please call the roll?

12 MS. HALSEY: Mr. Adams.

13 MEMBER ADAMS: Here.

14 MS. HALSEY: Mr. Alex.

15 MEMBER ALEX: Here.

16 MS. HALSEY: Mr. Chivaro.

17 *(No response)*

18 MS. HALSEY: Mr. Hariri.

19 MEMBER HARIRI: Here.

20 MS. HALSEY: Ms. Wong-Hernandez.

21 CHAIR WONG-HERNANDEZ: Here.

22 Great. We have a quorum.

23 Are there any objections to -- I'm sorry, Item 1 is  
24 the minutes.

25 Are there any objections to or corrections to the



**Commission on State Mandates – May 25, 2018**

1 March 23<sup>rd</sup>, 2018, minutes? Or any questions from board  
2 members?

3 MEMBER ADAMS: I would move to approve.

4 CHAIR WONG-HERNANDEZ: Okay, we have a motion.

5 MEMBER ALEX: Second.

6 CHAIR WONG-HERNANDEZ: And a second.

7 And any public comment before we vote?

8 *(No response)*

9 CHAIR WONG-HERNANDEZ: Okay, we have a motion and a  
10 second.

11 All those in favor of adopting the minutes, signify  
12 by saying "aye."

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

14 CHAIR WONG-HERNANDEZ: All those opposed?

15 *(No response)*

16 CHAIR WONG-HERNANDEZ: And any abstentions?

17 *(No response)*

18 CHAIR WONG-HERNANDEZ: Okay, the minutes are  
19 adopted.

20 MS. HALSEY: And now we will take up public comment  
21 for matters not on the agenda.

22 Please note that the Commission cannot take action  
23 on items not on the agenda. However, it can schedule  
24 issues raised by the public for consideration at future  
25 meetings.

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1 CHAIR WONG-HERNANDEZ: Great.

2 Any public comment?

3 *(No response)*

4 CHAIR WONG-HERNANDEZ: Okay, seeing none, before we  
5 continue with Commission business, I'd like to ask our  
6 court reporter, Mr. Daniel Feldhaus, and his wife, Cathy,  
7 to come forward, as the Commission would like to  
8 congratulate him on his new position as court reporter  
9 for the South Dakota Third Judicial Circuit Court.

10 MS. SHELTON: You can't report.

11 CHAIR WONG-HERNANDEZ: You can't report during this  
12 time.

13 *(Ms. Palchik read the Commission resolution, and  
14 presented the resolution to Daniel Feldhaus.)*

15 CHAIR WONG-HERNANDEZ: Thank you again for your  
16 service.

17 I guess we have to do business now, Heather.

18 MS. HALSEY: Since there are no items on consent  
19 today, let's move to the Article 7 portion of the  
20 hearing.

21 Will the parties and witnesses for Items 3, 4, 5,  
22 and 6 please rise?

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

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

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

3 *(A chorus of affirmative responses was heard.)*

4 MS. HALSEY: Thank you.

5 Item 2 is reserved for appeals of Executive Director  
6 decisions; and there are no appeals to consider for this  
7 hearing.

8 Commission Counsel Matt Jones will present Item 3,  
9 a test claim on *Local Agency Employee Organizations:*  
10 *Impasse Procedures II.*

11 MR. JONES: Good morning.

12 This test claim alleges reimbursable state-mandated  
13 activities arising from amendments to the  
14 Meyers-Milias-Brown Act by statutes enacted in 2011 and  
15 2012, which added a fact-finding procedure after a local  
16 agency and an employee organization reached an impasse  
17 in their collective bargaining negotiations.

18 The Commission does not have jurisdiction to  
19 reconsider the 2011 statute since that statute was the  
20 subject of a prior final decision of the Commission in  
21 *Local Agency Employee Organizations: Impasse Procedures,*  
22 15-TC-01, which denied that claim.

23 Staff finds, however, that the 2012 test-claim  
24 statute, construed in the context of the overall  
25 statutory scheme, imposes state-mandated activities and

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1 costs when the employee organization requests  
2 fact-finding as specified in the proposed decision.

3 Accordingly, staff recommends the Commission adopt  
4 the proposed decision partially approving the test  
5 claim, and authorize staff to make any technical,  
6 non-substantive changes following the hearing.

7 Will the parties and witnesses please state your  
8 names for the record?

9 MR. DYER: Patrick Dyer with MGT Consulting,  
10 representing the test claimant, City of Oxnard.

11 MR. NICHOLS: Andy Nichols, state-mandated cost  
12 consultant, as an interested party.

13 MR. HILL: Chris Hill, California Department of  
14 Finance.

15 CHAIR WONG-HERNANDEZ: Great.

16 Who wants to start?

17 MR. DYER: Oh, I can start.

18 I just wanted to thank the Commission, Madam Chair,  
19 and Members, for having a quorum on a Friday before a  
20 three-day weekend. I was a little worried for a minute.

21 I'd also like to thank the Chief Counsel of the  
22 Commission and all the Commission staff that worked on  
23 this.

24 We filed a doozy. This was not straightforward. It  
25 involved complicated issues with timeliness, a prior

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1 decision by this Commission, as well as a very complex  
2 program. So thank you, all, for your work on this; and  
3 the Claimant agrees with the staff recommendation and  
4 would like the Commission to adopt the proposed decision.

5 CHAIR WONG-HERNANDEZ: Okay. Mr. Hill and  
6 Mr. Nichols, anything to add?

7 MR. NICHOLS: I just wanted to actually make two  
8 points of emphasis and just an observation.

9 Regarding -- I think it's on page 10, if I'm not  
10 mistaken, towards the bottom third -- I just wanted to  
11 support the Commission in the fact that staff, in its  
12 analysis, noted the *City of Richmond* example that  
13 Finance gave. That particular case in 1998, which was  
14 the Fourth Appellate Court, that decision was based and  
15 dealt with workers' compensation and also a death-benefit  
16 situation. This test claim does not address that issue  
17 at all. It's nowhere near involved. This is strictly  
18 an employee-employer relationship.

19 And the Commission also noted the fact that not only  
20 was that the case, that they have repeatedly -- this  
21 Commission has approved, and I believe before, the Board  
22 of Control, in the early eighties -- whether it was the  
23 school and college district test claim that was  
24 approved -- *Collective Bargaining*, which is still in  
25 existence as a reimbursable mandate, *Peace Officer*

1     *Procedural Bill of Rights, Local Government Employee*  
2     *Relations*, and I would even add to it, *Binding*  
3     *Arbitration*, all deal with employee-employer relations  
4     and are not subject to the *City of Richmond* appellate  
5     case.

6             In fact, I would even state, regarding the fact that  
7     this is essentially an add-on activity to the existing  
8     requirements -- fact finding, that is -- to the already  
9     approved *Local Employee Government Relations* -- because  
10    both of those involved MMBA, Meyers-Milias-Brown Act,  
11    and also PERB, the Public Employment Relations Board.

12            Lastly, one thing I do agree with Finance in their  
13    letter dated April 13, is the fact that they state the  
14    statute merely adds a new fact-finding element to the  
15    Collective Bargaining program.

16            I actually believe that's the Commission's position,  
17    and I would agree with that as well, that this is an  
18    add-on activity that's new and unique, and therefore  
19    state-mandated cost reimbursable.

20            Thank you very much.

21            CHAIR WONG-HERNANDEZ: Thank you.

22            Mr. Hill?

23            MR. HILL: I would just added that we respectfully  
24    disagree with the committee staff's recommendation, the  
25    Commission staff recommendation. The Department of

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1 Finance does not believe this creates a new program, and  
2 we also do not believe it requires provision of a higher  
3 level of service to the public.

4 CHAIR WONG-HERNANDEZ: Thank you.

5 Okay, any questions from members of the Commission?

6 *(No response)*

7 CHAIR WONG-HERNANDEZ: Okay, seeing none, any other  
8 further discussion or public comment before we -- or do  
9 I wait for the motion on that?

10 Okay, we'll take public comment on this issue.

11 *(No response)*

12 CHAIR WONG-HERNANDEZ: Seeing none, I'd be willing  
13 to entertain a motion to adopt staff recommendation to --  
14 where are folks?

15 MEMBER ALEX: I'll move staff recommendation.

16 MEMBER HARIRI: I'll second.

17 CHAIR WONG-HERNANDEZ: Okay. We have a motion and  
18 a second to approve the staff recommendation.

19 MS. HALSEY: Call the roll?

20 CHAIR WONG-HERNANDEZ: Yes, please.

21 MS. HALSEY: Mr. Adams.

22 MEMBER ADAMS: Aye.

23 MS. HALSEY: Mr. Alex.

24 MEMBER ALEX: Aye.

25 MS. HALSEY: Mr. Hariri.

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1 MEMBER HARIRI: Aye.

2 MS. HALSEY: Mr. Wong-Hernandez.

3 CHAIR WONG-HERNANDEZ: Aye.

4 MS. HALSEY: Thank you.

5 MR. NICHOLS: Thank you.

6 CHAIR WONG-HERNANDEZ: The motion carries.

7 MS. HALSEY: Senior Commission Counsel Eric Feller  
8 will present Item 4, the parameters on *Cal-Grant Opt-Out*  
9 *Notice and Grade-Point Average Submission*.

10 MR. FELLER: Good morning.

11 The proposed parameters and guidelines address the  
12 mandated activities performed by K through 12 school  
13 districts for pupils in grades 11 and 12, to assist the  
14 California Student Aid Commission in determining their  
15 eligibility for Cal Grant A or B awards through which the  
16 State provides financial assistance to college students  
17 who meet eligibility criteria.

18 Proposed parameters and guidelines identified the  
19 mandated activities approved by the Commission and the  
20 test-claim decision and clarify activities that are not  
21 eligible for reimbursement.

22 The State Controller's Office submitted comments  
23 concurring with the draft expedited parameters and  
24 guidelines.

25 The Claimant and the Department of Finance have not



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1 submitted comments.

2 Staff recommends the Commission adopt the decision  
3 and proposed parameters and guidelines and recommends the  
4 Commission to -- that the Commission authorize staff to  
5 make technical non-substantive changes following the  
6 hearing.

7 Will the parties and witnesses please state your  
8 name for the record?

9 MR. DYER: Patrick Dyer from MGT Consulting,  
10 representing the claimant, Fairfield-Suisun Unified  
11 School District.

12 MS. FEREBEE: Donna Ferebee, Department of Finance.

13 CHAIR WONG-HERNANDEZ: Okay, great.

14 Mr. Dyer, go ahead.

15 MR. DYER: Yes, the staff, although were able to  
16 make the trip for the Statement-of-Decision part of this  
17 process -- we had a high-school registrar that was here  
18 to answer questions about the program -- they were not  
19 able to make it, as it's the end of the school year.

20 Staff from the District agree with the staff  
21 recommendation and the proposed parameters and  
22 guidelines. They wanted a few more activities; but  
23 understand the position of Commission staff and the State  
24 Controller. So we support the draft P's and G's.

25 CHAIR WONG-HERNANDEZ: Thank you, Mr. Dyer.

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1 Ms. Ferebee?

2 MS. FEREBEE: Yes, thank you.

3 The Department of Finance has no objections to the  
4 draft P's and G's.

5 Thank you.

6 CHAIR WONG-HERNANDEZ: Okay. Any questions or  
7 comments from members on the P's and G's?

8 *(No response)*

9 CHAIR WONG-HERNANDEZ: No?

10 Any public comment on this item?

11 *(No response)*

12 CHAIR WONG-HERNANDEZ: All right, I'd be willing to  
13 entertain a motion.

14 MEMBER ADAMS: Madam Chair, I'd move the staff  
15 recommendation.

16 MEMBER HARIRI: I'll second.

17 CHAIR WONG-HERNANDEZ: A motion and a second.

18 MS. HALSEY: Mr. Adams.

19 MEMBER ADAMS: Aye.

20 MS. HALSEY: Mr. Alex.

21 MEMBER ALEX: Aye.

22 MS. HALSEY: Mr. Chivaro.

23 *(No response)*

24 MS. HALSEY: Mr. Hariri.

25 MEMBER HARIRI: Aye.

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1 MS. HALSEY: Ms. Wong-Hernandez.

2 CHAIR WONG-HERNANDEZ: Aye.

3 MS. HALSEY: Thank you.

4 CHAIR WONG-HERNANDEZ: Okay, the motion carries.

5 MS. HALSEY: Senior Commission Counsel Eric Feller  
6 will present Item 5, an incorrect reduction claim on  
7 *Integrated Waste Management*.

8 MR. FELLER: Good morning again.

9 The Controller's audit reductions were taken because  
10 the claimant did not deduct offsetting savings from its  
11 diversion of solid waste and the associated reduction of  
12 disposal costs in accordance with the test-claim  
13 statutes.

14 Staff finds the Controller timely initiated the  
15 audit of fiscal year 2003-04 reimbursement claim and  
16 timely completed the audit for all years. Staff also  
17 finds that the Controller's reduction of costs claimed  
18 for all years in the audit period except the first half  
19 of fiscal year 2003-04 is correct as a matter of law, and  
20 not arbitrary, capricious, or without evidentiary  
21 support.

22 But the Controller's audit reduction for the first  
23 half of fiscal year 2003-2004 is incorrect as a matter of  
24 law because the Controller calculated the cost savings  
25 using a 50 percent required diversion rate, when the law

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1 required only 25 percent.

2 The difference between the reduction and the amount  
3 that it should have been reduced is \$2,431, which was  
4 incorrectly offset and should be reinstated to the  
5 claimant.

6 The Controller agreed with the proposed decision to  
7 reinstate this amount.

8 Staff recommends the Commission partially approve  
9 this IRC and requests the Controller reinstate \$2,431 to  
10 the claimant. Staff also requests the Commission  
11 authorize staff to make any technical, non-substantive  
12 changes to the proposed decision following the hearing.

13 Will the parties and witnesses please state your  
14 names for the record?

15 MS. KUROKAWA: My name is Lisa Kurokawa. I'm the  
16 Bureau Chief of the Compliance Audits Bureau. And like  
17 Mr. Feller just stated, we do agree with the Commission's  
18 recommendations.

19 CHAIR WONG-HERNANDEZ: Okay, thank you,  
20 Ms. Kurokawa.

21 Is there any public comment on this item?

22 *(No response)*

23 CHAIR WONG-HERNANDEZ: I'm going out of order now.

24 And any questions from Commission members?

25 *(No response)*

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1 CHAIR WONG-HERNANDEZ: No? Okay, well, I would  
2 entertain a motion to approve staff recommendation -- or,  
3 you know, whatever other crazy things you all want to do  
4 on Dan's last day.

5 MEMBER HARIRI: Move approval.

6 CHAIR WONG-HERNANDEZ: Move approval? Okay.

7 MEMBER ALEX: Second.

8 CHAIR WONG-HERNANDEZ: And a second.

9 Go ahead.

10 MS. HALSEY: Mr. Adams.

11 MEMBER ADAMS: Aye.

12 MS. HALSEY: Mr. Alex.

13 MEMBER ALEX: Aye.

14 MS. HALSEY: Mr. Hariri.

15 MEMBER HARIRI: Aye.

16 MS. HALSEY: Mr. Wong-Hernandez.

17 CHAIR WONG-HERNANDEZ: Yes.

18 Great. Motion carries.

19 MS. HALSEY: Senior Commission Counsel Eric Feller  
20 will present Item 6, an incorrect reduction claim on  
21 *Integrated Waste Management*.

22 We have been notified that the District will not  
23 have a representative present for this item.

24 MR. FELLER: So, again, the audit reductions were  
25 taken because the claimant did not deduct offsetting

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1 savings from its diversion of solid waste and the  
2 associated reduction of disposal cost in accordance with  
3 the test-claim statutes.

4 Staff finds that the Controller's reduction of costs  
5 claimed for all years in the audit period, except  
6 calendar years 2002 and 2003, is correct as a matter of  
7 law and not arbitrary, capricious, or without evidentiary  
8 support. However, the Controller's finding that the  
9 claimant did not exceed the mandated diversion rate in  
10 2002 is incorrect as a matter of law because the  
11 requirement to divert 50 percent of solid waste did not  
12 become operative until January 1<sup>st</sup> of 2004. And the  
13 Controller did not allocate the diversion rate for this  
14 year as it had for other years in the audit period; so  
15 that was arbitrary, capricious, and entirely lacking in  
16 evidentiary support.

17 For 2003, the Controller's use of 50 percent to  
18 calculate the allocated rate is incorrect as a matter of  
19 law. The difference between the reduction and the amount  
20 that should have been reduced for these years is \$22,884;  
21 and that amount should be reinstated to the claimant  
22 because it was incorrectly offset.

23 The Controller agreed with the proposed decision  
24 to reinstate this amount. So staff recommends the  
25 Commission partially approve this IRC and requests the

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1 Controller reinstate \$22,884 to the Claimant, and also  
2 requests the Commission authorize staff to make any  
3 technical, non-substantive changes to the proposed  
4 decision following the hearing.

5 Again, will the parties and witnesses please state  
6 your name for the record?

7 MS. KUROKAWA: My name is Lisa Kurokawa. I'm the  
8 Bureau Chief of the Compliance Audits Bureau.

9 And like Mr. Feller just stated, we do agree with  
10 the Commission's recommendation.

11 CHAIR WONG-HERNANDEZ: Thank you.

12 Questions from Commission members?

13 *(No response)*

14 CHAIR WONG-HERNANDEZ: Any public comment on this  
15 item?

16 *(No response)*

17 CHAIR WONG-HERNANDEZ: Seeing none, is there a  
18 motion?

19 MEMBER ADAMS: I would move the staff  
20 recommendation.

21 CHAIR WONG-HERNANDEZ: Okay, thank you.

22 MEMBER HARIRI: Second.

23 CHAIR WONG-HERNANDEZ: Motion and a second.

24 Go ahead and take roll.

25 MS. HALSEY: Mr. Adams.

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1 MEMBER ADAMS: Aye.

2 MS. HALSEY: Mr. Alex.

3 MEMBER ALEX: Aye.

4 MS. HALSEY: Mr. Hariri.

5 MEMBER HARIRI: Aye.

6 MS. HALSEY: Ms. Wong-Hernandez.

7 CHAIR WONG-HERNANDEZ: Aye.

8 MS. HALSEY: Item 7 is reserved for County  
9 applications for a finding of significant financial  
10 distress, or SB 1033 applications.

11 No SB 1033 applications have been filed.

12 Program Analyst Kerry Ortman will present Item 8,  
13 the Legislative Update.

14 MS. ORTMAN: Good morning.

15 SB 1498, the Local Government Omnibus Act of 2018,  
16 was introduced by the Senate Governance and Finance  
17 Committee on March 1<sup>st</sup>, 2018. This is an omnibus bill  
18 which, among other things, proposes amending Government  
19 Code section 17551 to specify that, for purposes of  
20 filing a test claim based on the date of first incurring  
21 increased costs, "within 12 months" means by June 30<sup>th</sup> of  
22 the fiscal year following the fiscal year in which  
23 increased cost were first incurred by the test claimant.  
24 On May 10<sup>th</sup>, 2018, this bill passed to the Assembly.

25 We'll continue to monitor this bill.



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1           On May 11<sup>th</sup>, 2018, the Governor issued the 2018  
2           May Revision to his budget, which includes the following  
3           changes to state-mandated program funding:

4           The May Revision includes \$286 million in additional  
5           funds, providing more than \$2 billion in one-time  
6           discretionary funding to schools in 2018-19. The  
7           funding, among other things, will be used to offset any  
8           applicable mandates claims owed to school districts,  
9           charter schools, and county offices of education.

10          It is anticipated that these resources, coupled with  
11          more than \$5.8 billion in one-time Prop. 98 funding  
12          provided to schools from 2014-15 to 2017-18 for the same  
13          purposes, will reduce the outstanding mandate debt owed  
14          to local educational agencies to \$972 million.

15          The May Revision also includes a one-time payment of  
16          \$312.2 million General Fund to repay local agencies for  
17          costs incurred for 14 mandates that have been identified  
18          by the Legislature as expired or repealed.

19          The repayment amount represents the retirement of  
20          state obligations to local agencies for costs incurred  
21          between 2004 and 2011.

22          The majority of the repayment is owed as a result  
23          of mandates associated with mental health services for  
24          seriously emotionally disturbed children.

25          MS. HALSEY: Thank you, Kerry.

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1 CHAIR WONG-HERNANDEZ: Thank you.

2 Any questions for Kerry on the update?

3 *(No response)*

4 CHAIR WONG-HERNANDEZ: Okay, any public comment on  
5 this item?

6 *(No response)*

7 CHAIR WONG-HERNANDEZ: Do we need to take public  
8 comment at this time?

9 MS. HALSEY: No.

10 CHAIR WONG-HERNANDEZ: All right, well, then we'll  
11 continue.

12 MS. HALSEY: Okay. Chief Legal Counsel Camille  
13 Shelton will present Item 9, the Chief Legal Counsel  
14 Report.

15 MS. SHELTON: Good morning.

16 Since our last hearing, we've had several recent  
17 decisions issued by the Court.

18 The first one, the California Supreme Court has  
19 denied the State's petition for review on the mandate  
20 issue on the challenge to the Commission's decision in  
21 *Discharge of Stormwater Runoff* test claim. So that case  
22 goes back to the trial court now on the new-program,  
23 higher-level-of-service, and the fee-authority issues.

24 Number two, the California Supreme Court has granted  
25 CSBA's petition for review in the CSBA case on the

1 following two issues:

2           Number 1, does the State violate Article 13B,  
3 section 6, of the California Constitution when it  
4 identifies general education funding it already provides  
5 to school districts and county offices of education as  
6 offsetting revenue for the purpose of reimbursing state  
7 mandates; and number 2, does the State violate  
8 separation-of-powers principles when it allows general  
9 education funding or special education funding to be  
10 identified as offsetting revenues for state-mandated  
11 purposes.

12           Number three, the Los Angeles County Superior Court  
13 has upheld the Commission's decisions on the incorrect  
14 reduction claims for *Handicapped and Disabled*, and  
15 specifically found that the Commission does have  
16 authority under its completeness regulations to determine  
17 if an IRC is timely filed, even though the issue is not  
18 initially raised by the State Controller's Office.

19           And the last, the Los Angeles County Superior Court  
20 has granted the State's petition for writ of mandate on  
21 the *Municipal Stormwater and Urban Runoff Discharge* claim  
22 on remand from the California Supreme Court, finding that  
23 the permit did not impose a new program or higher level  
24 of service. The Court found that, although the permit  
25 applied only to local government and was unique, the

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1 relevant state policy implemented by the permit is the  
2 federal and state law prohibition against unlawful  
3 discharges. That policy applies generally to all  
4 residents and entities in the state.

5 We do have a litigation calendar coming up. Two  
6 hearings.

7 On July 10<sup>th</sup>, the hearing in Los Angeles County  
8 Superior Court on the *Seriously Emotionally Disturbed*  
9 *Pupils* incorrect reduction claim will be heard.

10 On August 17<sup>th</sup>, 2018, the Sacramento County Superior  
11 Court will hear the challenge from Fresno Unified School  
12 District on the test claim for *Certificated Employee*  
13 *School Employees' Parental Leave* program.

14 CHAIR WONG-HERNANDEZ: Thank you.

15 Any questions for Camille on any of this?

16 *(No response)*

17 CHAIR WONG-HERNANDEZ: Okay.

18 MS. HALSEY: Item 10 is the Executive Director  
19 report.

20 Before I present my report, I would like to  
21 introduce our newest staff attorney, Ms. Elena Wilson.

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

23 MS. HALSEY: Elena has extensive legal writing and  
24 research experience, and is coming to us from a two-year  
25 clerkship with the U.S. Attorney's office, where she

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1 worked on complex investigations of potential violations  
2 of the Financial Institutions Reform, Recovery, and  
3 Enforcement Act.

4 Ms. Wilson has also worked as a foreign-language  
5 litigation specialist and has held several positions as  
6 a judicial extern, research assistant, and legal intern.  
7 And prior to attending law school in the U.S., Elena was  
8 a practicing attorney in Russia and worked for the U.S.  
9 Agency for International Development, focusing on  
10 anti-corruption and judicial reform issues.

11 Welcome, Elena.

12 MS. WILSON: Thank you.

13 CHAIR WONG-HERNANDEZ: Welcome.

14 MS. HALSEY: In addition, I had planned to announce  
15 that we had also hired another attorney who was to start  
16 with the Commission next week. Unfortunately, though,  
17 he has just informed us that he has taken another, more  
18 lucrative position outside of state service and will not  
19 be coming to the Commission. So we'll be recruiting  
20 again for that position.

21 CHAIR WONG-HERNANDEZ: I'm sorry to hear that.

22 MS. HALSEY: Me, too.

23 But on the bright side, the Commission's budget was  
24 approved by both budget subcommittees as proposed, and is  
25 expected to be enacted as proposed; and the Governor's

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1 May Revision reflects that proposed budget.

2 After this hearing, there are 19 pending test  
3 claims, 15 of which are regarding *Stormwater NPDES*  
4 *Permits*; and we have one parameters and guidelines and  
5 one statewide cost estimate also regarding *Stormwater*  
6 *NPDES Permits*. And those are also on inactive status  
7 pending the outcome of litigation regarding the  
8 test-claim decisions underlying those matters.

9 In addition, there is one parameters and guidelines  
10 amendment on inactive status pending the outcome of  
11 litigation in the *CSBA* case, which is currently pending  
12 before the California Supreme Court.

13 And finally, we have eight IRCs pending, four of  
14 which were filed this fiscal year. So we're getting much  
15 better about hearing these more timely.

16 As of today, Commission staff expects to complete  
17 all currently pending test claims and IRCs by  
18 approximately the January 8, 2020, Commission meeting,  
19 depending on staffing and other workload.

20 And that's all I have.

21 CHAIR WONG-HERNANDEZ: Okay, thanks.

22 Any questions for Heather?

23 *(No response)*

24 CHAIR WONG-HERNANDEZ: All right, then we're going  
25 to be recessing to closed executive session.

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1           We're going to meet in closed session pursuant to  
2           Government Code section 11126(e) to confer with and  
3           receive advice from legal counsel for consideration and  
4           action, as necessary and appropriate, upon the pending  
5           litigation listed on the published notice and agenda;  
6           and to confer with and receive advice from legal counsel  
7           regarding potential litigation.

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

10          And we'll reconvene in open session in approximately  
11          15 minutes.

12          *(The Commission met in closed executive session*  
13          *from 10:26 a.m. to 10:35 a.m.)*

14          CHAIR WONG-HERNANDEZ: We have reconvened in open  
15          session.

16          The Commission on State Mandates met in closed  
17          executive session pursuant to Government Code section  
18          11126(e)(2), to with confer with and receive advice from  
19          legal counsel for consideration and action, as necessary  
20          and appropriate, upon the pending litigation listed on  
21          the published notice and agenda; and to confer with and  
22          receive advice from legal counsel regarding potential  
23          litigation; and pursuant to Government Code section  
24          11126(a)(1) to confer on personnel matters.

25          With no further business to discuss, I will

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entertain a motion to adjourn.

Those in favor of adjourning, say "aye."

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

CHAIR WONG-HERNANDEZ: All those opposed, say "no."

*(No response)*

CHAIR WONG-HERNANDEZ: This meeting is adjourned.

*(The Commission meeting concluded at 10:35 a.m.)*

--oOo--



**REPORTER' S CERTIFICATE**

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

*In witness whereof*, I have hereunto set my hand on the 14<sup>th</sup> day of June 2018.



---

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