

## ITEM 2

### APPEAL OF EXECUTIVE DIRECTOR DECISION

California Code of Regulations, Title 2, Section 1181(c)

#### Denial of Request by CSBA to Postpone Item 5

Proposed Parameters and Guidelines and Statement of Decision Regarding  
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

Statutes 1992, Chapter 463 (AB 1040); Statutes 2000, Chapter 982  
(AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

#### *California Public Records Act*

02-TC-10 and 02-TC-51

County of Los Angeles and Riverside Unified School District, Claimants

Allan P. Burdick, Executive Director, CSAC SB 90 Services, Appellant

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### Executive Summary

The Commission's regulations provide that "any party in interest may appeal to the Commission for review of the actions and decisions of the executive director."<sup>1</sup> The executive director is required to schedule the appeal for hearing and vote by the Commission as soon as practicable following receipt of the appeal.<sup>2</sup>

#### Background

On April 8, 2013, Allan Burdick, Executive Director of CSAC SB 90 Services, filed an appeal to the Commission of the executive director's decision to deny a request made by the California School Boards Association (CSBA) to postpone the adoption of parameters and guidelines for the *California Public Records Act* program (Item 5 on the April 19, 2013 agenda). CSBA requested the postponement on the belief there existed a reasonable opportunity to develop a reasonable reimbursement methodology (RRM). The parties to Item 5 (the test claimants, the Department of Finance, and the State Controller's Office) have not requested that Item 5 be postponed. CSBA has not filed an appeal of the executive director's decision.

Mr. Burdick is not representing CSBA in this appeal, but rather is acting on behalf of the CSAC SB 90 Services, a contracted service between MGT of America and the California State Association of Counties (CSAC) to provide test claim assistance and related services to CSAC and its member agencies. MGT of America is a national consulting firm based in Florida with offices in five states, including California.<sup>3</sup> It is unclear whether CSAC SB 90 Services is "a

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<sup>1</sup> California Code of Regulations, title 2, section 1181(c).

<sup>2</sup> California Code of Regulations, title 2, section 1181(c)(4).

<sup>3</sup> <http://www.mgtamer.com> (Accessed April 11, 2013.)

party in interest,” with standing to file this appeal pursuant to section 1181 of the Commission’s regulations since it is not beneficially interested in the underlying matter, having no direct pecuniary stake in the test claim decision and not standing in the shoes of a statewide association of local agencies or school districts. In addition, the Commission has not received any notice or documentation that CSAC SB 90 Services is representing a local agency with respect to the *California Public Records Act* claim. However, CSAC SB 90 Services is an “interested party” as defined by the Commission’s regulations since it is “an organization” established to represent local agencies. Moreover, CSAC SB 90 Services, like all members of the public, has the right to comment at the public meetings of the Commission, and for that reason, staff has prepared a full analysis of the issue raised on appeal for the Commission’s consideration.

### **Staff Analysis**

The statutes and regulations governing the mandates process support the executive director’s decision to deny CSBA’s request. Under the law, “any party” may request a postponement of a hearing on parameters and guidelines. “Party” is defined in the regulations to mean “the test claimant, the Department of Finance, Office of State Controller, or affected state agency.” Statewide associations, such as CSBA, do not have the authority to request a postponement of the hearing.

Moreover, there has not been an adequate showing of good cause in this case to postpone the hearing on Item 5. The CSBA letter states a belief there “exists a reasonable opportunity to develop a proposed RRM with the Department of Finance and other local government associations, including the CSAC, the League of CA Cities, and the CA Special Districts Association.” The letter also suggests a benefit of delaying the adoption of the parameters and guidelines by having enough data by the May Revision to give the Governor and Legislature a better estimate of the potential costs of the program to evaluate the impact of the Governor’s proposed suspension.

The parameters and guidelines for the *California Public Records Act* claim have been pending since June 2011, and Item 5 has been set for hearing since February 13, 2013. At no time has any statewide association filed comments on the proposed parameters and guidelines. The “parties” to the claim have not proposed an RRM. Nor is there any evidence that work has been done to develop an RRM; there is only a stated belief by an association of a reasonable opportunity to develop a proposed RRM. The adoption of a proposed RRM to be included in the parameters and guidelines requires that the RRM be supported with substantial evidence in the record showing that the proposal reasonably reimburses local agencies and school districts their costs mandated the state for the reimbursable activities approved by the Commission pursuant to Government Code section 17559. A full analysis of that standard must be adopted by the Commission for an RRM to be included in the parameters and guidelines. To postpone the scheduled hearing now, when parameters and guidelines have been developed and a final staff analysis has been issued, will significantly delay this matter until at least the September or December 2013 hearing. In addition, the executive director has a statutory duty to “expedite all matters within the jurisdiction of the commission” (Gov. Code § 17530) and, given the Commission’s considerable backlog, fulfilling this duty is of paramount importance.

**Conclusion**

Staff recommends that the Commission uphold the executive director's decision to deny the CSBA request to postpone the hearing on the parameters and guidelines for the *California Public Records Act* claim, and proceed to consider Item 5 on this agenda.

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## STAFF ANALYSIS

### I. Chronology

- 05/26/2011 Statement of decision on test claim adopted
- 06/15/2011 Claimant, Riverside Unified School District submitted proposed parameters and guidelines
- 06/23/2011 Claimant, County of Los Angeles, submitted proposed parameters and guidelines
- 07/22/2011 State Controller's Office (SCO) filed comments on the proposed parameters and guidelines
- 07/25/2011 Department of Finance (Finance) filed comments on the proposed parameters and guidelines
- 12/17/2012 Corrected statement of decision on test claim issued
- 02/13/2013 Draft proposed statement of decision and parameters and guidelines issued for comment. Matter set for hearing on April 19, 2013, and comments due by March 6, 2013
- 02/21/2013 Cost Recovery Systems, Inc. filed comments on the draft proposed statement of decision and parameters and guidelines
- 03/05/2013 Claimant, County of Los Angeles, filed comments on draft proposed statement of decision and parameters and guidelines
- 03/06/2013 State Controller's Office filed comments on draft proposed statement of decision and parameters and guidelines
- 03/15/2013 California State Association of Counties (CSAC) filed a request for postponement of the April 19 hearing to file amended parameters and guidelines to include an RRM<sup>4</sup>
- 03/18/2013 Letter issued denying CSAC's request for postponement<sup>5</sup>
- 03/28/2013 California School Boards Association (CSBA) filed a request for reconsideration of the denial of CSAC's request for postponement<sup>6</sup>
- 03/29/2013 Letter issued denying CSBA's request for reconsideration of CSAC's request for postponement<sup>7</sup>
- 03/29/2013 Final analysis, proposed statement of decision and parameters and guidelines issued for the April 19, 2013 Commission hearing

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<sup>4</sup> Exhibit B.

<sup>5</sup> Exhibit C.

<sup>6</sup> Exhibit D.

<sup>7</sup> Exhibit E.

04/08/2013 Allan Burdick, Executive Director of CSAC SB 90 Services, filed a letter appealing the Executive Director's decision to deny CSBA's request for postponement<sup>8</sup>

## II. Background

This is an appeal of the executive director's decision to deny a request by CSBA to postpone the hearing on proposed parameters and guidelines for the *California Public Records Act* (02-TC-10 and 02-TC-51) program.<sup>9</sup> The appeal is filed by Allan Burdick, the executive director of CSAC SB90 Services. The parties to Item 5 (the claimants, Finance, and SCO) have not requested that the matter be postponed.

In June 2011, the claimants to the *California Public Records Act* test claim (County of Los Angeles and Riverside Unified School District) filed proposed parameters and guidelines, requiring reimbursement claims to be supported by detailed documentation of actual costs. Comments to the proposed parameters and guidelines were filed by the Finance and SCO. No other comments were received. A draft proposed statement of decision and parameters and guidelines were issued for comment on February 13, 2013, with comments due March 6, 2013. The notice that issued the draft proposed statement of decision and parameters and guidelines set the matter for hearing on the Commission's April 19, 2013 hearing calendar. Comments on the draft were filed by claimant County of Los Angeles, SCO, and Cost Recovery Systems Inc. No other comments were received. The comments filed did not discuss the proposal that the reimbursement claims be supported by detailed documentation of actual costs, or propose the adoption of a reasonable reimbursement methodology (RRM) in lieu of actual costs.

On March 15, 2013, CSAC filed a letter requesting a postponement of the April 19, 2013 hearing for the adoption of the *California Public Records Act* parameters and guidelines to file an amended set of parameters and guidelines to include an RRM. The CSAC request states the following:

The California State Association of Counties (CSAC) requests an extension of the April 19, 2013 hearing date to file an amended set of parameters and guidelines for the Public Records Act (PLA) test claim to include an RRM. The RRM will only apply to back years, either FY 2011-2012 or FY 2012-13 to the 2001-02 fiscal year and provide for actual costs claims only on a go-forward basis. The final fiscal year of the RRM will be determined by the Department of Finance. Based on our discussion with the CSAC SB90 Service staff that met with the Department of Finance and State Controller (SCO) earlier this week, we believe staff there [sees] is a reasonably opportunity to develop a proposed RRM with the Department of Finance and other local government associations. If that effort fails, it is our intention to pursue an RRM through the Commission's other option without DOF. CSAC plans to work closely with the California School Boards Association (CSBA), League of CA Cities (LCC), California Special Districts Association (CSDA) and the two test claimants on the matter.

An overview of the proposed RRM plan and schedule [are] as follows:

1. Complete Draft Survey – End of March

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<sup>8</sup> Exhibit A.

<sup>9</sup> Item 5 on the Commission's April 19, 2013 agenda.

2. Visit local agencies with the State Controller's to field test the survey instrument – April
3. Survey the participants – May
4. Analyze and calculate the survey results – Mid June
5. Negotiate with DOF staff to reach agreement on a RRM – June & July
6. Submit the proposed amendment to the CSM within a week after we reach agreement to jointly go forward or for local agencies to pursue the RRM without DOF. The local associations are committed to doing everything possible to reach agreement with DOF.

As you know, the Governor has proposed to suspend the Public Records Act (PLA) beginning with the 2013-14 fiscal year. One benefit of delaying the adoption of the Ps and Gs is to have enough data by the May Revise to give the Governor and Legislature a better estimate of the potential cost in order to evaluate the impact of the suspension. If the state suspends the Ps and Gs for the 2013-14 fiscal year, that can be noted in the final copy.

On March 18, 2013, the Commission's executive director denied the CSAC request for the following reasons:

Section 1183.01(c)(2) of the Commission's regulations provides that any party may request the postponement of a hearing on parameters and guidelines. In the Commission's regulations "Party" means the test claimant, the Department of Finance, Office of State Controller, or affected state agency. (2 CCR 1181.1(m).) If a request from the claimant is received more than 15 days before the hearing, Commission regulations (2 CCR 1183.01(c)(2)) state that the executive director *shall* grant a hearing postponement for good cause. The same section of Commission regulations state that the executive director *may* grant a hearing postponement when requested by a state agency.

However, there is no authority for interested parties (such as CSAC) to request a postponement of a hearing, although interested parties may request an extension of time to comment when it does not impact the scheduled hearing of a matter (2 CCR 1183.01(c)(1)).

Parameters and guidelines have not yet been adopted for this matter as that is what is set for hearing on April 19, 2013. As an interested party, CSAC may file a request to amend parameters and guidelines once there are parameters and guidelines to amend.

CSAC did not file an appeal of the executive director's March 18, 2013 decision.

On March 28, 2013, CSBA filed a letter requesting the Commission's executive director to reconsider the decision to deny the request made by CSAC. The CSBA letter states the following:

The CA School Boards Association (CSBA) respectfully requests that you reconsider your decision to deny the request made by the California State Association of Counties (CSAC) for an extension of the April 19, 2013, hearing date to file an amended set of parameters and guidelines for the Public Records Act (PRA) test claim to include a Reasonable Reimbursement Methodology (RRM). We believe there exists a reasonable

opportunity to develop a proposed RRM with the Department of Finance and other local government associations, including the CSAC, the League of CA Cities, and the CA Special Districts Association. Each of these associations represents the collective interests of their membership, just as CSBA represents nearly 1,000 school districts and county boards of education.

As you know, the Governor has proposed to suspend the Public Records Act (PRA) beginning with the 2013-14 fiscal year. The Legislative Analyst has recommended that the Legislature deny the Governor's proposal. One benefit of delaying the adoption of the Ps and Gs is to have enough data by the May Revision to give the Governor and Legislature a better estimate of the potential costs in order to evaluate the impact of a suspension.

On March 29, 2013, the Commission's executive director denied CSBA's request for postponement as follows:

As was mentioned in the March 18, 2013 denial of the California State Association of Counties' (CSAC's) request to postpone the hearing to develop an RRM with Finance, section 1183.01(c)(2) of the Commission's regulations provides that any "party" may request the postponement of a hearing on parameters and guidelines (Ps&Gs). The Commission's regulations define "party" to mean the test claimant(s), the Department of Finance (Finance), Office of State Controller, or affected state agency. (2 CCR 1181.1(m).) There is no authority for *interested* parties to request a postponement of a hearing, although *interested* parties may request an extension of time to comment when it does not impact the scheduled hearing of a matter. (2 CCR 1183.01(c)(1).)

While the executive director has authority to postpone a hearing on her own motion, that authority is only available for good cause shown. (2 CCR 1183.01(c)(2) and(3).) The executive director also has a statutory duty to "expedite all matters within the jurisdiction of the commission" (Gov. Code § 17530) and, given the Commission's considerable backlog, fulfilling this duty is of paramount importance.

Though reimbursement for this program is a matter of statewide concern, there has been ample opportunity for the statewide associations to participate in this matter. However, no comments have been filed by either CSAC or CSBA. In addition, this matter was set for hearing when the draft was issued on February 13, 2013, and neither the test claimants to this matter, Los Angeles County and Riverside Unified School District (both of whom are members of CSAC and CSBA, respectively), nor Finance has requested an extension of time for the purpose of coming to an agreement on a reasonable reimbursement methodology (RRM).

Please also note the statutory and regulatory limitations for adopting a joint RRM or an RRM included in original Ps&Gs. A joint RRM is governed by Government Code section 17557.1, which specifies that, within 30 days of the issuance of the test claim decision, only *the test claimant(s) and the Department of Finance* may notify the executive director of the Commission of their intent to follow the process to develop a joint RRM. The test claim decision on this matter was issued May 26, 2011. Notification has not been filed in this case and the time has now passed for utilizing the joint RRM process.

Under Government Code section 17557 and section 1183.131 of the Commission's regulations, any party or interested party may propose consideration of an RRM to be included in original Ps&Gs at any time up until the close of the comment period on the draft Ps&Gs and statement of decision on the Ps&Gs. In this case, the comment period closed on March 6, 2013, and no comments or proposed RRMs were received by either CSAC or CSBA. Your request for postponement only states that "there exists a reasonable opportunity to develop a proposed RRM." Therefore, granting this request, without evidence showing a likelihood of achieving the stated objective, would only delay this claim further. For this reason, good cause has not been established for the postponement of the hearing on the Ps&Gs, and the request is denied.

There are continuing options available for the development of an RRM after original Ps&Gs are adopted. Original Ps&Gs may later be amended to include an RRM developed by an interested party for some or all of the activities, pursuant to Government Code sections 17518.5 and 17557(d)(2)(C). Government Code section 17557(d)(1) provides, however, that only "[a] local agency, school district, or the state may file a written request with the commission to amend the parameters or guidelines." That section further provides that "A parameters and guidelines amendment submitted within 90 days of the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines..." Therefore, if an agreement is reached with Finance on an RRM and a local agency, school district, or the state is willing to file a parameters and guidelines amendment to include an RRM in the Ps&Gs within 90 days of the claiming deadline for initial claims, which is roughly seven months from the date the original Ps&Gs are adopted, the RRM can relate back to the beginning of the period of reimbursement identified in the original Ps&Gs. If an agreement on an RRM cannot be reached, or the RRM does not meet the substantial evidence requirements, there will be no further delay on this matter and all eligible claimants may seek reimbursement based on their actual costs under the parameters and guidelines.

The Commission welcomes and highly values the active participation of statewide associations in the matters under its consideration. However, approving this request to postpone the April 19, 2013 hearing would be prejudicial to the parties' interest in a timely resolution. Unless a request to postpone the hearing on this matter is made by one of the parties to this claim in accordance with section 1183.01 (c)(2) of the Commission's regulations, I do not intend to grant a hearing postponement.

CSBA did not file an appeal of the executive director's March 29 decision to deny the request to postpone the hearing on Item 5.

On April 8, 2013, Allan Burdick, Executive Director of the CSAC SB90 Services, filed an appeal of the executive director's decision to deny CSBA's request to postpone the hearing on Item 5, the parameters and guidelines for the *California Public Records Act* claim. The appeal letter states in relevant part the following:

Given the short time frame [to appeal a decision of the Commission's executive director], ten calendar days, not ten working days, the Executive Director of the CSAC SB 90 Service will provide the specific reasons for its appeal of the CSBA [request], and earlier CSAC requests to postpone the hearing, including the wasted time and both state and

local resources that would be incurred by the denial of the CSAC and CSBA requests to develop an RRM in an expeditious fashion.

In conclusion, the Executive Director's decision flies directly in the face of the provisions of AB 1222 (Laird) of 2007, that gave statewide associations like CSAC and CSBA, for the first time, the right to be considered the same way a test claimant should be when adopting parameters and guidelines. In fact, CSBA ... [and] CSAC should be given precedence over Los Angeles County and the San Diego Unified School District on this matter.

I, along, with witnesses, will provide additional commentary when the Executive Director is heard on April 19<sup>th</sup>. In the meantime, I will confer with the League of CA Cities to obtain written or testimony supporting the position that statewide associations should be given precedence to a test claimant.

### **III. Should the Commission Uphold the Executive Director's Decision to Deny CSBA's Request to Postpone the Hearing on Item 5?**

The arguments raised by the appellant are either not relevant or are not legally correct. As described below, the decision of the executive director to deny the requests by interested parties to postpone the hearing on the adoption of parameters and guidelines is consistent with the requirements of the law.

#### **A. It is unclear whether appellant has standing to appeal the executive director's decision to deny CSBA's request**

Section 1181 of the regulations allows "any party in interest" to appeal to the Commission for a review of the executive director's decisions. "Any party in interest" is not defined in the Commission's regulations. If it means the same thing as one with a "beneficial interest" in the pending matter, standing must be denied if success on the merits will provide no direct benefit or direct detriment to CSAC SB 90 Services.<sup>10</sup> This is the rule for standing in Administrative Mandamus cases. Here, CSAC SB 90 Services does not stand to directly gain or lose anything; it is not an eligible claimant under article XIII B, section 6 of the California Constitution and has provided no notice that it is representing a local agency on the *California Public Records Act* claim. Moreover, the appellant does not stand in the shoes of a statewide association of local agencies or school districts.

However, if "any party in interest" means "interested parties," as that term is defined in section 1181.1(k) of the Commission's regulations, then CSAC SB 90 Services has standing to appeal to the Commission under section 1181 of the regulations. "Interested parties" is defined to include any "an organization or association representing local agencies . . . having an interest in a specific claim or request other than the claimant." CSAC SB 90 Services is an organization that represents local agencies on mandate claims and is, thus, included as an "interested party."

Thus, the term "any party in interest" in section 1181 is vague and ambiguous because it can be subject to two different reasonable interpretations. Moreover, it is unclear from the Commission's records why the Commission used the phrase "interested party" in many places in the regulations, but chose to use a different term ("any party in interest") for an appeal of an executive director decision. The phrase "any party in interest" was included in section 1181

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<sup>10</sup> See *Parker v. Bowron* (1953) 40 C2d 344.

when the regulation was first adopted by the Commission in 1985. Nonetheless, appellant has the authority to comment at the hearing, as do all members of the public, and for that reason, staff has prepared a full analysis of the issue raised on appeal for the Commission's consideration.

**B. Only the appeal of the executive director's decision denying CSBA's request to postpone the hearing on the parameters and guidelines for the *California Public Records Act* claim has been timely filed**

Section 1181 of the Commission's regulations governs the appeal of executive director decisions and states in relevant part the following:

- (c) Any party in interest may appeal to the commission for review of the actions and decisions of the executive director.
  - (1) The appellant shall submit the appeal in writing within ten (10) days of first being served written notice of the executive director's action or decision.
  - (2) The appellant shall file and serve the appeal in accordance with section 1181.2 of these regulations.
  - (3) The appeal shall explain the basis for the appeal, state the action being requested of the commission, and include all facts and materials the applicant believes are relevant to the appeal.
  - (4) The executive director shall schedule the appeal for hearing and vote by the commission as soon as practicable following receipt of the appeal.
  - (5) Other parties may submit comments to the commission on the appeal.
  - (6) The commission shall determine whether to uphold the executive director's decision by a majority vote of the members present. The decision shall be final and not subject to reconsideration.

The request to postpone the hearing on the proposed parameters and guidelines for the *California Public Records Act* test claim was first made by CSAC on March 15, 2013. The executive director denied that request on March 18, 2013. Section 1181 of the regulations provides the authority for CSAC or any other "party in interest" to appeal that decision within ten days, or by March 28, 2013. Although the appellant requests an appeal of the decision to deny CSAC's request, an appeal was not timely filed on the CSAC request. Thus, the Commission does not have jurisdiction to consider the denial of CSAC's request.

On March 28, 2013, CSBA filed a request for reconsideration of the executive director's decision on the CSAC request. Although there is no authority in the Commission's regulations governing requests for reconsideration of executive director decisions, the letter was treated as a separate request for postponement. The executive director denied the CSBA request on March 29, 2013, triggering the ten day time limit under section 1181 to file an appeal of the decision. CSBA did not file an appeal. However, an appeal was timely filed by the appellant.

In addition, section 1181 of the regulations requires that "the appeal shall explain the basis for the appeal, state the action being requested of the commission, and include all facts and materials the applicant believes are relevant to the appeal." The appeal does not technically comply with this provision since the appellant states that CSAC SB 90 Services "will provide the specific

reasons for its appeal of the CSBA” request, presumably at the hearing. Nevertheless, the letter relies on 2007 legislation (AB 1222) to support the appellant’s position that “statewide associations like CSAC and CSBA, for the first time, [have] the right to be considered the same way a test claimant should be when adopting parameters and guidelines.” As provided below, the appellant’s reading of the statutes is not correct.

**C. The executive director’s decision to deny CSBA’s request to postpone the hearing on the parameters and guidelines on the *California Public Records Act* test claim is supported by the law and the facts of this case.**

Based on the appellant’s letter requesting an appeal, the appellant is arguing that (1) 2007 legislation (AB 1222) gave statewide associations, like CSBA, the same rights as test claimants when requesting postponements, and proposing parameters and guidelines and RRM’s; and (2) there is good cause to support the postponement of Item 5 under the executive director’s own authority to postpone this matter pursuant to section 1183.01 of the regulations. The appellant is wrong on both accounts.

**1. The law does not give statewide associations the same rights as test claimants on parameters and guidelines and RRM’s.**

Assembly Bill 1222, enacted in 2007, did make significant changes to the mandates process. As relevant here, it allowed the “*test claimant and the Department of Finance*” to jointly propose an RRM in lieu of submitting parameters and guidelines pursuant to Government Code sections 17557.1 and 17557.2. Section 17557.1 requires, *within 30 days of the adoption of the statement of decision on the test claim*, the test claimant and the Department of Finance to notify the executive director of the Commission in writing of their intent to develop a joint RRM and statewide cost estimate for the initial claiming period and budget year of the costs mandated by the state. To get a joint RRM adopted, the test claimant and the Department of Finance are required by section 17557.2 to demonstrate broad support of the joint proposal from a wide range of local agencies or school districts, which can be obtained with an *endorsement* by one or more statewide associations of local agencies or school districts. But the statewide associations do not have the authority, under this statute, to propose a joint RRM.

In this case, the 30-day time deadline for filing a notice for a joint RRM has long expired. The statement of decision on the *California Public Records Act* test claim was adopted in May 2011, and there has been no notice proposing a joint RRM filed by either the test claimants (County of Los Angeles and Riverside Unified School District) or the Department of Finance. Thus, the provisions regarding the joint RRM are not relevant to this case.

Assembly Bill 1222 also amended Government Code section 17518.5, which defines the requirements for the adoption of an RRM in the parameters and guidelines. Section 17518.5 states that an RRM “may be developed” by “an interested party,” which includes a statewide association of local agencies and school districts, such as CSBA or CSAC, pursuant to the Commission’s regulations. The RRM “shall 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.” However, a statewide association of local agencies and school districts does not have the authority to file proposed parameters and guidelines or an RRM. Pursuant to Government Code section 17557, proposed parameters and guidelines, which may include a proposed RRM, are required to be filed by the “successful test claimant” 30 days after the adoption of the test claim

statement of decision, and, by statute, the successful test claimant may request an extension of this 30 day deadline. The claimants' proposed parameters and guidelines for the *California Public Records Act* program do not contain a proposed RRM.

In addition, Government Code section 17553(a)(3) specifically requires the Commission, in its procedures for receiving claims, to "permit the hearing of a claim to be *postponed at the request of the claimant*, without prejudice, until the next scheduled hearing." There are no statutory provisions governing requests to postpone a hearing by a statewide association of local agencies or school districts.

Consistent with section 17553(a)(3), section 1183.01(c) of the Commission's regulations provide that "any party" may request a postponement of a hearing on parameters and guidelines, and "party" is defined in section 1181(m) to mean "the test claimant, the Department of Finance, Office of State Controller, or affected state agency." Section 1183.01(c)(2) of the Commission's regulations provides that a request to postpone the hearing filed by the claimant at least 15 days before the hearing *shall* be approved by the executive director for good cause. A request filed by the claimant less than 15 days before the hearing *may* be approved by the executive director for good cause. A request filed by a state agency *may* be approved by the executive director for good cause. A request filed by stipulation of the parties, including the claimant, *shall* be approved by the executive director for good cause. In addition, section 1187.9 of the Commission's regulations provides that the Commission may continue a hearing upon a "clear showing of good cause" at the request of any "party." Although interested parties, including statewide associations of local agencies and school districts, may request an extension of time to file comments under section 1183.01(c)(1), there is no authority in the Commission's regulations allowing an interested party to request a postponement of the hearing.

Accordingly, under the law, statewide associations do not have the same rights regarding the adoption of parameters and guidelines and RRM's as test claimants. As stated in the letter to CSBA, the parties to the *California Public Records Act* claim have not proposed an RRM and have not requested that the hearing on the parameters and guidelines be postponed.

## **2. Good cause does not exist to postpone Item 5 to allow the statewide associations to pursue a proposed RRM**

Section 1183.01(c)(3) of the Commission's regulations provides that the executive director, on her own motion, may postpone a hearing on parameters and guidelines for good cause. There has not been an adequate showing of good cause in this case to postpone the hearing on Item 5. The CSBA letter states a belief there "exists a reasonable opportunity to develop a proposed RRM with the Department of Finance and other local government associations, including the CSAC, the League of CA Cities, and the CA Special Districts Association." The letter also suggests a benefit of delaying the adoption of the parameters and guidelines by having enough data with an RRM by the May Revision to give the Governor and Legislature a better estimate of the potential costs of the program to evaluate the impact of the Governor's proposed suspension.

The parameters and guidelines for the *California Public Records Act* claim have been pending since June 2011, and Item 5 has been set for hearing since February 13, 2013. At no time has any statewide association filed comments on the proposed parameters and guidelines. The "parties" to the claim have not proposed an RRM. Nor is there any evidence that work has been done to develop an RRM; there is only a stated belief by an association of a reasonable opportunity to develop a proposed RRM. The adoption of a proposed RRM to be included in the

parameters and guidelines requires that the RRM be supported with substantial evidence in the record showing that the proposal reasonably reimburses local agencies and school districts their costs mandated the state for the reimbursable activities approved by the Commission pursuant to Government Code section 17559. A full analysis of that standard must be adopted by the Commission for an RRM to be included in the parameters and guidelines. To postpone the scheduled hearing now, when parameters and guidelines have been developed and a final staff analysis has been issued, will significantly delay this matter until at least the September or December 2013 Commission hearing, possibly longer. And, as stated, the executive director has a statutory duty to “expedite all matters within the jurisdiction of the commission” (Gov. Code § 17530) and, given the Commission’s considerable backlog, fulfilling this duty is of paramount importance.

Accordingly, there is no evidence of good cause to support the request to postpone this matter to work on an RRM.

### **3. There are options available to propose an RRM by requesting an amendment to the parameters and guidelines**

There are continuing options available for the development of an RRM after original parameters and guidelines are adopted. Original parameters and guidelines may later be amended to include an RRM developed by an interested party for some or all of the activities, pursuant to Government Code sections 17518.5 and 17557(d)(2)(C). Government Code section 17557(d)(1) provides, however, that only “[a] local agency, school district, or the state may file a written request with the commission to amend the parameters or guidelines.” That section further provides that “a parameters and guidelines amendment submitted within 90 days of the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines...” Therefore, if an agreement is reached with Finance on an RRM and a local agency, school district, or the state is willing to file a parameters and guidelines amendment to include an RRM in the parameters and guidelines within 90 days of the claiming deadline for initial claims, which is roughly seven months from the date the original parameters and guidelines are adopted, the RRM can relate back to the beginning of the period of reimbursement identified in the original parameters and guidelines.

## **IV. Conclusion**

Based on the foregoing, staff recommends that the Commission uphold the executive director’s decision to deny the CSBA request to postpone the hearing on the parameters and guidelines for the *California Public Records Act* claim, and proceed to consider Item 5 on this agenda.