

PUBLIC MEETING
COMMISSION ON STATE MANDATES



TIME: 10:00 a.m.
DATE: Friday, April 19, 2013
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



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A P P E A R A N C E S

COMMISSIONERS PRESENT

RICHARD GILLIHAN
(*Commission Chair*)
Representative for ANA MATOSANTOS, Director
State Department of Finance

KEN ALEX, Director
Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

ANDRÉ RIVERA
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

DON SAYLOR
Yolo County Supervisor
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER HALSEY
Executive Director
(Items 2, 11, and 14)

JASON HONE
Assistant Executive Director
(Item 12)

CAMILLE SHELTON
Chief Legal Counsel
(Items 2, 8, and 13)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

ERIC FELLER
Senior Commission Counsel
(Item 3)

MATTHEW JONES
Commission Counsel
(Items 4, 6, and 7)



PUBLIC TESTIMONY

Appearing Re Item 2 (Re Item 5):

For CSAC SB-90 Service:

ALLAN BURDICK
CSAC SB-90 Service
2001 P Street, Suite 200
Sacramento, California 95811

Appearing Re Item 3:

For Claimant San Diego Office of Education:

ARTHUR PALKOWITZ
Stutz, Artiano, Shinoff & Holtz
2488 Historic Decatur Road, Suite 200
San Diego, California 92106

For Department of Finance:

RANDALL WARD
Budget Analyst
Department of Finance
915 L Street
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4:

For Claimant County of Santa Barbara:

ANNE M. RIERSON
Deputy County Counsel
County of Santa Barbara
105 E Anapamu Street, Room 201
Santa Barbara, CA 93101

For Department of Finance:

CARLA SHELTON
Department of Finance
915 L Street
Sacramento, California 95814

Appearing Re Item 6:

For Claimants San Diego Unified School District,
San Joaquin County Office of Education, Butte County
Office of Education:

DIANA McDONOUGH
Fagen Friedman & Fulfrost LLP
70 Washington Street, Suite 205
Oakland, California 94607

For Department of Finance:

CHRISTIAN OSMEÑA
Education Systems
Department of Finance
915 L Street, 7th Floor
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6:

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
Division of Audits
State Controller's Office
300 Capitol Mall, Suite 725
Sacramento, California 95814

JILL KANEMASU
Assistant Division Chief
Division of Accounting and Reporting
State Controller's Office
3301 C Street
Sacramento, California 95816

Appearing Re Item 7:

For Claimants San Diego Office of Education and
Sweetwater Union High School District:

ARTHUR PALKOWITZ
Stutz, Artiano, Shinoff & Holtz
2488 Historic Decatur Road, Suite 200
San Diego, California 92106

For Department of Finance:

CHRISTIAN OSMEÑA
Education Systems
Department of Finance
915 L Street, 7th Floor
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 8:

For Claimants Los Rios Community College District,
Santa Monica Community College District, and West Kern
Community College District:

KEITH B. PETERSEN
SixTen and Associates
5252 Balboa Avenue, Suite 900
San Diego, California 92117

For Department of Finance:

CHRISTIAN OSMEÑA
Education Systems
Department of Finance
915 L Street, 7th Floor
Sacramento, California 95814

Appearing Re Public Comment:

ALLAN BURDICK
CSAC SB-90 Service
2001 P Street, Suite 200
Sacramento, California 95811



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1 BE IT REMEMBERED that on Friday, April 19,
2 2013, commencing at the hour of 10:00 a.m., thereof, at
3 the State Capitol, Room 447, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:

6 --oOo--

7 *(The gavel was sounded.)*

8 CHAIR GILLIHAN: Good morning.

9 The meeting of the Commission on State Mandates
10 will come to order.

11 Heather, can you call the roll?

12 MS. HALSEY: Mr. Chivaro?

13 *(No response)*

14 MS. HALSEY: Mr. Gillihan?

15 CHAIR GILLIHAN: Present.

16 MS. HALSEY: Mr. Alex?

17 MEMBER ALEX: Here.

18 MS. HALSEY: Ms. Olsen?

19 MEMBER OLSEN: Present.

20 MS. HALSEY: Ms. Ramirez?

21 *(No response)*

22 MS. HALSEY: Mr. Rivera?

23 MEMBER RIVERA: Present.

24 MS. HALSEY: Mr. Saylor?

25 MEMBER SAYLOR: Here.

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1 CHAIR GILLIHAN: So we're going to delay action
2 on the minutes then?

3 MS. HALSEY: Yes.

4 CHAIR GILLIHAN: And we're also going to --

5 MS. HALSEY: Are you ready for Item 2?

6 MR. BURDICK: Yes.

7 CHAIR GILLIHAN: Just procedurally, so people
8 understand, we're going to be delaying action on the
9 Consent Calendar as well.

10 MR. BURDICK: Mr. Chairman and Members, I'm
11 Allan Burdick with the CSAC SB-90 Service.

12 They're putting together the handouts I want to
13 give the Commission. I just need about three or four
14 more minutes. So if you could take another item up and
15 let me go, I'd appreciate it.

16 CHAIR GILLIHAN: Any objections?

17 MEMBER ALEX: No objections.

18 MEMBER SAYLOR: None.

19 MEMBER RIVERA: None.

20 MEMBER OLSEN: None.

21 CHAIR GILLIHAN: All right, we will move to
22 Item 3 and come back to Item 2.

23 MS. HALSEY: First, I need to swear in the
24 witnesses.

25 Let's move to the Article 7 portion of the

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1 hearing.

2 Will the parties and witnesses for Items 3, 4,
3 5, 6, 7, and 8 please rise?

4 *(Parties and witnesses stood to be sworn.)*

5 MS. HALSEY: Do you solemnly swear or affirm
6 that the testimony you are about to give is true and
7 correct based on your personal knowledge, information, or
8 belief?

9 *(Chorus of "I dos.")*

10 MS. HALSEY: Thank you.

11 Item 3, Senior Commission Counsel Eric Feller
12 will present Item 3, a test claim on *Teacher*
13 *Credentialing*.

14 MR. FELLER: Good morning.

15 This test claim requests reimbursement for
16 activities of school districts related to credentialing
17 teachers and other general employment.

18 For reasons discussed in the analysis, staff
19 recommends that the Commission approve the test claim for
20 the regulations regarding professional growth advisors
21 but deny the statutes and remaining regulations because
22 they do not mandate a new program or higher level of
23 service.

24 The statutes and most of the regulations
25 provide school districts with authority to use several

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1 alternatives for certificating and employing teachers.

2 (Mr. Chivaro entered the meeting room.)

3 MR. FELLER: In addition, with respect to
4 several statutes and regulations designed to remedy
5 emergency staffing issues, the claimant has not made a
6 showing of practical compulsion.

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

9 MR. PALKOWITZ: Good morning. Arthur Palkowitz
10 on behalf of the claimant, San Diego County of Education.

11 CHAIR GILLIHAN: Mr. Palkowitz?

12 MR. PALKOWITZ: Thank you.

13 This test claim involves activities that are
14 pertaining to *Teacher Credentialing*.

15 As pointed out by the executive summary,
16 teachers must be certified by the California Commission
17 on Teacher Credentialing in order to be employed in a
18 California public school district. This requirement is
19 not a local requirement. This is a requirement by the
20 State, by the Legislature.

21 Throughout this analysis, which I commend the
22 staff on their thorough analysis, there seems to be a
23 focus on hiring; and that hiring is a local discretionary
24 decision.

25 To me, the claimants feel that the hiring is

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1 the downstream activity that is done by the school
2 districts. However, when that downstream activity takes
3 place, it must be followed and in compliance with teacher
4 credentialing as required by the State.

5 It is well settled in case law that when the
6 State passes law that requires and dictates standards of
7 "must," that those type of legislation have been approved
8 as state mandates.

9 I would like to go through some of the more
10 pertinent sections that talk about specific activities.

11 One of the first activities it refers to, is
12 the basic skills assessment. Staff has denied this
13 activity by saying that, once again, it's required by the
14 person who employs these persons that they have these
15 assessments.

16 It is our position that these assessments are
17 required by the State. The locals did not establish what
18 these requirements were; it was the State that required
19 them. Rather, it's the locals that are following the
20 State while they are providing a service required by the
21 State of educating the students.

22 There's requirements that you have to have a
23 college degree. There's requirements that you have to
24 pass the CBEST test.

25 Once again, these requirements were not decided

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1 locally by the schools. They were requirements that were
2 set by the State, and with their direction to be followed
3 by the school districts.

4 Specifically, Ed. Code section 44830 requires
5 school districts to be employed by persons who possess
6 these qualifications. It prohibits hiring someone that
7 hasn't passed the CBEST.

8 Now, that may be interpreted that that isn't a
9 requirement to have that. But the fact that by
10 prohibiting it, it's our interpretation by the claimant
11 that you are giving clear direction that must be followed
12 by the local school district.

13 One of the activities that is also included is
14 the special administration of CBEST, to arrange for that
15 process when you have emergency employment. Now, the
16 code section points out that the school districts can
17 look at other alternatives for emergency employment, and
18 that is needed to be supported by board minutes.

19 Staff has recommended that there has not been a
20 showing of practical compulsion. We submit when a board
21 makes a decision and is supported by board minutes, that
22 is evidence of the practical compulsion that they are
23 acting on to require them to have this emergency
24 employment.

25 So we submit that there is a showing by the

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1 State on the requirement that they are practically
2 compelled. Once again, this is another example of a
3 downstream activity that is a result of legislation
4 requiring certain standards.

5 Another example is the employment of
6 out-of-state. The staff analysis has recommended that
7 that activity be denied because it involves individuals
8 located out of the state.

9 The situation is that, that is again the hiring
10 decision. It is not the decision to what the individual
11 who will be providing the services must possess in skills
12 and education.

13 It's well-supported by case law that when you
14 have a downstream activity that is, in essence, a nexus
15 to the requirement, that is a mandate that should be
16 approved.

17 Another example is the special ed. requirements
18 under the California Code of Regulations 80047.2. There,
19 staff has determined that the holder is providing the
20 service; and, therefore, that is not passed on to the
21 locals.

22 We would submit that it's the locals that are
23 providing the service and that the holder is the
24 individual chosen to do that.

25 The focus is, throughout this analysis on the

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1 activities denied, is focusing on the employee aspect and
2 who is being hired. And to me and to the claimants, we
3 believe the focus is really on the school districts
4 providing that service, and in lieu of the person that's
5 actually chosen to do that service.

6 Another example on page 12 in the Ed. Code,
7 12 of the staff analysis and the Ed. Code, 44326 talks
8 about a district intern. And in that analysis, the code
9 allows the district intern to be present if the teacher
10 is not available.

11 And, once again, that's a similar analysis as
12 with the evidence of the board meeting. There has been a
13 determination by the local that there is a need for that
14 individual. And once the board makes that determination,
15 that based on there not being an availability of a
16 teacher, they need to take the step -- a drastic step,
17 mind you -- of hiring a district intern, that would be
18 the evidence that an individual or the entity is
19 practically compelled, and should be considered also as
20 a downstream activity that should be reimbursed by the
21 State and be approved as a state mandate.

22 I feel those were the most compelling
23 activities that the claimant feels should be looked at by
24 the Commission, and taken a view of a different
25 conclusion than staff analysis.

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1 I would like to reserve the rest of my time to
2 respond to any questions.

3 CHAIR GILLIHAN: Thank you.

4 Before I take any questions, is there a
5 representative from the Department of Finance that would
6 like to speak on this?

7 MR. WARD: Mr. Chair, Randy Ward with the
8 Department of Finance.

9 We are still awaiting the education staff to
10 come here; and I have not had the opportunity to look at
11 their response.

12 CHAIR GILLIHAN: Thank you.

13 So we will turn it over, if there are any
14 questions the Commissioners may have.

15 And in the meantime, if the appropriate parties
16 from the Department of Finance arrive while we're still
17 on this topic, we can provide them an opportunity to
18 discuss.

19 CAMILLE SHELTON: I was just going to mention
20 that the draft on this claim was issued in January, and
21 no comments were filed by either the claimant or the
22 Department of Finance on the draft.

23 CHAIR GILLIHAN: Interesting. Thank you.

24 Mr. Feller, would you like to respond to the
25 points made?

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1 MR. FELLER: The requirements to employ only
2 persons who possess qualifications prescribed by law has
3 been in effect since before 1975. So while Mr. Palkowitz
4 points out that they must be certificated, that's been a
5 long requirement that is not subject to reimbursement.

6 The authority to provide the CBEST examination
7 is a local decision that's not required by the State.
8 There is no requirement for local districts to request
9 that administration. But it's authorized -- and as far
10 as practical compulsion to make that request, there is
11 no concrete evidence of that in the record which is
12 required.

13 CAMILLE SHELTON: I was going to say, just on
14 that point, too, the State administers the CBEST test
15 many times during the year. Typically, it's the State
16 issuing that test to people that wanted to have that
17 credential. This statute allows a district to administer
18 it under certain situations. But it's authority provided
19 and not a mandate.

20 MR. FELLER: As far as the district internship
21 program goes, again, that's a program that school
22 districts are authorized to -- but not required -- to use
23 to recruit new teachers into the program. But if there
24 is practical compulsion to do that, that there is not
25 evidence of that in this record of the test claim.

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1 CAMILLE SHELTON: Just also I want to mention,
2 Mr. Palkowitz talked about the special ed. permit, or
3 these credentials for special ed., which on page 7 that's
4 discussed. That regulation ceased to be a requirement
5 in June 1998. So that is before the period of
6 reimbursement.

7 MEMBER CHIVARO: Okay, I'll move the staff
8 recommendation.

9 MEMBER OLSEN: I'll second.

10 CHAIR GILLIHAN: We have a motion and a second.

11 Is there any more discussion or debate amongst
12 the commissioners?

13 *(No response)*

14 CHAIR GILLIHAN: Seeing none..

15 MS. HALSEY: Mr. Chivaro?

16 MEMBER CHIVARO: Aye.

17 MS. HALSEY: Mr. Gillihan?

18 CHAIR GILLIHAN: Aye.

19 MS. HALSEY: Mr. Alex?

20 MEMBER ALEX: Aye.

21 MS. HALSEY: Ms. Olsen?

22 MEMBER OLSEN: Aye.

23 MS. HALSEY: Mr. Rivera?

24 MEMBER RIVERA: Aye.

25 MS. HALSEY: Mr. Saylor?

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1 MEMBER SAYLOR: Aye.

2 CHAIR GILLIHAN: The motion carries the staff
3 recommendation.

4 MS. HALSEY: Moving on to Item 2, Appeals of
5 Executive Director Decisions.

6 Camille Shelton will present this item.

7 CAMILLE SHELTON: Item 2 is an appeal to the
8 Commission filed by CSAC SB-90 Services with respect to
9 a decision by the Executive Director to deny a request
10 made by the California School Boards Association to
11 postpone the hearing on Item 5, the adoption of
12 parameters and guidelines for the *California Public*
13 *Records Act Program*.

14 The California School Boards Association
15 requested a postponement after the matter was set for
16 hearing and comments on the draft analysis were received,
17 based on a belief that a reasonable reimbursement
18 methodology could be developed with the Department of
19 Finance.

20 The parties to the *California Public Records*
21 *Act* claim have not proposed an RRM and have not requested
22 a postponement.

23 In addition, the California School Boards
24 Association has not appealed the Executive Director's
25 decision.

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1 The Executive Director denied the request on
2 the ground that neither the statutes governing the
3 mandates process nor the Commission's regulations provide
4 authority to approve a request for postponement of a
5 hearing made by a statewide association. The authority
6 to request a postponement is given only to the parties of
7 a claim.

8 In addition, although the Executive Director
9 has the authority to postpone a hearing on her own motion
10 for good cause, there has not been an adequate showing of
11 good cause in this case to postpone Item 5.

12 For these reasons, staff recommends that the
13 Commission uphold the Executive Director's decision to
14 deny the request to postpone, and to proceed with the
15 hearing on Item 5.

16 Will the appellant and any witnesses please
17 state your names for the record?

18 MR. BURDICK: Allan Burdick on behalf of the
19 CSAC SB-90 Service.

20 So, anyway, Jason is handing out the handouts.

21 While he does that, I will thank you for giving
22 me the extra time.

23 This matter came out -- I didn't see the
24 Executive Director until Tuesday of this week. This has
25 been a crazy week for me. We had my CSAC League of

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1 Cities meeting that I staff, and so I didn't get to this
2 until last night, and I'm making copies this morning.

3 So as you can see the cover page, I even
4 misspelled the second "request" to delay the hearing
5 wrong. So I thought I did a spellcheck on everything,
6 but apparently I didn't.

7 Secondly, there's some stuff in the Executive
8 Director's position which is legalese. And I have
9 learned since Gary Hori, who was the Commission's Chief
10 Legal Counsel, said I was arbitrary and capricious, that
11 he was using it as a legal term; and he didn't really
12 mean, I think, what I would typically think as a
13 non-attorney, somebody trying to tell me I was arbitrary
14 and capricious.

15 I'd also like to point out that I have worked
16 with every executive director since the Board of Control,
17 and am probably the only one in this room who knows who
18 the first Executive Director of the Board of Control was
19 in 1978.

20 The current process is pretty much patterned on
21 the process. It was created by AB 90 -- or excuse me,
22 SB 90 of 1977, Arlen Gregorio. And part of that was a
23 commitment from CSAC to help create the process. And I
24 was fortunate enough to staff a committee of CAOs that
25 essentially created about 80 percent of the process that

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1 you now have.

2 We created the Commission in 1984. It became
3 effective on January 1 of 1985.

4 At that time, we added a bunch of -- you know,
5 some additional legal provisions in there in order
6 particularly to protect the State. Because at that time
7 CSAC had a lawsuit pending before the Court of Appeals.
8 And the Legislative Council and the Attorney General
9 called a joint session of the California Legislature in
10 June to inform them if they didn't do something, they
11 were going to be paying a lot of mandated costs. And so
12 the Commission was created in about a two-week period of
13 time in order to provide legal protection to the State.

14 So with that, since we have a number of new
15 members here, for those that are here for -- haven't been
16 here a number of times, I wanted to give you a little
17 overview of that, and also kind of establish my
18 credentials, I think, as my knowledge and expertise.

19 By the way, does anybody know who the first
20 executive director of the Board of Control was that
21 oversaw Commission mandates?

22 *(No response)*

23 MR. BURDICK: Mr. Norm Miller.

24 Okay, if we turn the page, the first thing is
25 the issues. And from my standpoint, the number-one issue

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1 is the standing of local government associations,
2 particularly those representing the governing boards.
3 And what I'm talking about is CSAC, the League of Cities,
4 the California School Boards Association. Those
5 associations that represent all of the member cities and
6 counties.

7 And part of this issue, I think the most
8 important one to me, as a former CSAC employee and as a
9 contractor with CSAC over the years, is what I feel is
10 the Commission's failure to recognize those associations
11 as representing all the members, and thinking of them as
12 something other than just an interested party.

13 I don't think -- and we'll get into that when
14 we talk about AB 1222 by John Laird of 2007. I think
15 you'll see, when we put standing in, and we put the
16 statewide associations in, that the intent of that was to
17 begin to move and have associations much more involved,
18 instead of having a single agency.

19 You know, the question is: Would you rather
20 have the League do it, or would you rather have the City
21 of Bell? So those are the kinds of issues that I think
22 are before you.

23 Number two, I think, is the need to delay the
24 adoption for an RRM -- is to delay the adoption of the
25 RRM.

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1 For years, if you did that, by moving forward
2 today on adopting actual cost claims, I think we'd have a
3 lot of confusion, a number of legal issues, probably some
4 lawsuits, substantial costs, and a number of things all
5 incurred because you were unwilling to wait for a few
6 months to adopt an RRM, so..

7 And, again, let me apologize for this
8 presentation. As you can see, I didn't have a chance to
9 spellcheck, go over it. I was really behind the curve.
10 And as I say, you know, the Executive Director -- I don't
11 know, whether it came out on Monday or Tuesday. But I've
12 had little time, and my week has been crazy, my daughter
13 just moved down to my house, and it's just been a zoo.
14 So I apologize, once again, for the fact the presentation
15 is not a little more organized than it is.

16 I think one of the key issues are the
17 provisions -- oh, I can see, I've got a space in
18 "provision" -- the intent of AB 1222, Laird, of 2007.
19 And this, for the first time, gave statewide associations
20 standing. You know, prior to that, associations weren't
21 able to file or do things.

22 Since then, and as an example, CSAC has filed
23 five requests to amend parameters and guidelines, to
24 include RRMs.

25 And prior to that, they would have to get an

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1 individual city or county to do that. That also meant
2 that the CSAC staff would have to work with that agency,
3 at arm's length, versus doing it themselves. And so I
4 think this was clearly the intent of AB 1222.

5 I had hoped to have the key staff member here
6 for AB 1222 and the key staff person in the Legislature
7 representing the Speaker here today. But Mr. Reyes is
8 not here today; and so we don't have the opportunity to
9 have Mr. Reyes weigh in on AB 1222, because he was very
10 heavily involved in this discussion with John Laird and
11 John's staff.

12 The key thing on here really, again, I think is
13 those associations, particularly those that represent
14 governing boards.

15 Now, in some cases, as an example, we're
16 dealing with a claim called *Sexually Violent Predators*
17 that affects the D.A. So the D.A.'s association is very
18 important in weighing in on that because that affects
19 them specifically. And D.A.s, as Commissioner Saylor
20 knows, are separate, like officials; and they like to do
21 what they want to do, and the board can't really direct
22 D.A.s as to what they do. They can control their budget,
23 but they really can't direct them in terms of what they
24 do or not do.

25 Let me give you a little bit of background.

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1 And, first of all, let me just stop at this
2 point and say, this is a very large mandate. And so
3 taking a little time now is critical. This could be in
4 excess of a hundred-million-dollar mandate, these initial
5 filings.

6 Now, we don't know what that example is. Some
7 have said \$100 million. Some have said \$2 million.
8 Maybe it's \$50 million; but we're talking about a lot of
9 money. So I want to make sure we take the time today so
10 you fully understand the issue before you. So it's a
11 very critical issue.

12 Also, it has a lot of precedent-setting
13 matters. Although I know you're not -- you know, you do
14 not have to be governed by your actions -- your prior
15 actions; but, obviously, you will be. I mean, once you
16 do things, you say, "Yes, we've kind of decided that,"
17 and particularly if it's done unanimously.

18 So in terms of a little background for this,
19 you know, the problem we had is the *Public Records Act*,
20 is that CSAC requested on March 15th, barely a month ago,
21 asked for a delay of this hearing in order to prepare an
22 RRM.

23 Now, RRM's under AB 1222 can be prepared two
24 ways.

25 The first way, and the best way, is jointly

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1 between local governments and the Department of Finance.
2 And that's the goal.

3 If that happens, the Commission staff's role is
4 minimized to reviewing that. And Camille can give you
5 the details. But it's a much easier process.

6 If we can't reach agreement -- by that, I mean,
7 local government associations -- with the Department of
8 Finance, in that matter, then we go to -- we go to you,
9 the Commission, with the evidence, and you decide. And
10 that requires substantially more staff time from the
11 Commission in order to be able to analyze that. So, you
12 know, that is the issue.

13 So in that letter, CSAC outlined its proposed
14 schedule to develop an RRM. And this was after
15 discussions with the Department of Finance and the State
16 Controller's Office. So this wasn't CSAC -- and let's
17 back it up. It's my letter. CSAC signed it in good
18 faith. Now, whether that was right or wrong, they
19 trusted me. So this is my letter.

20 When I say -- in any way CSAC had the time and
21 effort given to do this, to be able to analyze it. I
22 think they're still four-square behind it. But, you
23 know, at this point, they sent the letter. But, you
24 know, they don't -- we have an issue with Los Angeles
25 County in this, obviously. And as the member and the

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1 largest member, you don't like to get into disputes in
2 associations with your largest member. And so, you know,
3 I'm trying to avoid that. But I need to couch my
4 comments a little bit.

5 So what we did is, we suggested -- this was in
6 March -- that we complete the draft survey in March.

7 In April, one of Jim Spano's staff and I were
8 going to go out and visit a series of cities, counties,
9 and special districts, including our proposal to go to
10 the great County of Yolo, the City of Davis, the County
11 of Sacramento, the City of Sacramento, the County of
12 L.A., LAUSD, L.A. County, and some school districts. And
13 our thought was, we'd try to get those to minimize the
14 travel and cost, get to them as quick as we can, take our
15 survey instrument, and really kind of validate it, expand
16 it, see how it was.

17 Then what we do is, we would go out and do our
18 survey in May. The survey we do -- and, again, if this
19 is given some urgency by the Commission to do this, we
20 would put pressure, and hopefully get -- the director of
21 CSAC has a supervisor, who is the director from every
22 county, and try to get those directors to urge their
23 counties to complete the survey within that month.

24 So this would be, you know, special efforts to
25 do.

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1 Next is, we would analyze the results. And by
2 that, that would be myself and a staff. And I've got
3 three people assigned to help work with me on that. I
4 may have more -- to analyze that, put all the results
5 together and everything, and provide both the Controller
6 and the SCO all the data and all the databases. This is
7 a, "You get everything, here's what we got, here's the
8 analysis, and let's talk about it."

9 Then what we hope -- then what we would do is
10 complete and analyze those calculations by the end of
11 June.

12 Then we would negotiate with the Department of
13 Finance first, to see if we could develop an RRM.

14 I don't think that would take too long, based
15 on that. I mean, Finance, I think, would either come to
16 an agreement within a week or two, or they'd tell us,
17 "Sorry, you know, we don't want to do it."

18 And I can tell you that the Public Records Act
19 is a challenge. It's a very good model, but it's also
20 going to be a challenge. And I'll comment on that in a
21 minute.

22 Then the other thing is that, you know, in
23 terms of this, is that as soon as we reached agreement,
24 within a week, I would submit a request or CSAC would
25 submit or the California School Boards Association would,

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1 or some association would, that I'm working with -- would
2 submit a proposed P and G amendment with an RRM.

3 Now, the way the Commission staff's position
4 is, you either have actual cost claims or you have an
5 RRM; you can't have both.

6 Locals would love to have both. Camille and
7 Heather won't give us both. If you would give us both,
8 that would be wonderful.

9 Unfortunately, the only one we have like that,
10 really, for the most part, is the POBR claim, the Peace
11 Officer Procedure Bill of Rights. And they've kind of
12 said, you know, that's the last time that's going to
13 happen. And so we'll see. I don't think I'm putting any
14 words in staff's mouth.

15 CSAC did comment in their letter that all the
16 local government associations, you know, at this point,
17 particularly the school boards, the League was a little
18 dragging their feet in understanding the issue; and CSAC
19 at that time are all committed to going forward.

20 Now, we hadn't talked to the Special Districts
21 Association; and my kind of feeling with the Special
22 Districts Association is, if they want to have an RRM,
23 they've got to do the surveying and bring it in
24 themselves because there are several thousand special
25 districts. And for them to do it and how they do it,

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1 that's an issue themselves.

2 So the P's & G's that I submit -- you know,
3 that CSAC would submit or School Boards -- and I drafted
4 the letter for the School Boards Association that Dennis
5 Meyers signed. So I can't -- I tried to get ahold of
6 Dennis this morning to make sure that I could represent
7 him, but I couldn't get ahold of him. So in the short
8 period of time, I'm not speaking on behalf of Dennis
9 because I haven't got his okay to do that.

10 So, anyway, I think we would essentially reach
11 that agreement relatively quickly. But with the Special
12 Districts Association, we could have an RRM for cities,
13 counties, and schools; or you can have an RRM for cities
14 and counties only, and the others do actual costs. You
15 know, there's all kinds of opportunities.

16 It just means that one group of
17 jurisdictions -- cities, counties, special districts,
18 school districts, community colleges or whatever -- all
19 have to be treated the same; but it doesn't mean all of
20 the local governments have to be treated the same. They
21 could all be different. And you have different RRMs and
22 different methodologies for each of those.

23 At this point, I'm only interested in working
24 with the cities, counties, and the school districts. And
25 particularly the school districts, because they are in

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1 probably the worst position to be able to comply with
2 actual cost claims.

3 Anyway, one of the things I commented -- I've
4 been meeting with Finance, they wanted to know what were
5 the risks and so forth. And I said, "Well, the one thing
6 is, the Governor has proposed suspension of the *Public*
7 *Records Act* mandate in his budget. The Legislative
8 Analyst has come out and opposed that suspension. So we
9 have a significant issue about it.

10 One of the issues is, right now we really don't
11 know what the cost is. And I'm hoping that at least
12 before the May Revise comes out in early May, we may have
13 a much better estimate we can give to Finance; so when
14 they decide whether they want to suspend it or not,
15 clearly before the budget is adopted on the 15th, we
16 should have a much better idea of what the statewide cost
17 is and what the --

18 (*Cell phone sounded.*)

19 MR. BURDICK: Excuse me, I didn't turn my phone
20 off. I apologize. It's been a crazy morning, as you can
21 see.

22 So I think that's one of the benefits of this
23 for Finance is -- and for the Legislature -- is to have
24 some idea, "What are we talking about? Is this
25 \$50 million, is this \$100 million, is this \$200 million,

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1 is this \$10 million? What is it?"

2 There are 13 years of claims. There's several
3 thousand agencies that can file claims; so that we know
4 the number's going to be big, whatever it is. So this is
5 a very big, important fiscal issue. And it kind of gets
6 back eventually to the cost issue that was raised by the
7 Commission.

8 On the rest of the background, the Executive
9 Director denied the request on March 18th. So CSAC filed
10 it, what did I say, two days before, the 15th -- three
11 days later it was denied.

12 Then I asked the School Boards Association if
13 they would file a request to reconsider the CSAC
14 position.

15 Actually, the School Boards was going to ask to
16 request to delay the hearing; but they got a little
17 behind the curve. So by the time I got there, I said,
18 "Hey, wait a minute, don't ask to delay it, ask to
19 consider the CSAC one."

20 So this all has to happen very quickly, and so
21 they submitted their request.

22 The Commission Executive Director denied that
23 request to extend it, the CSAC request, on March 27th.
24 They denied the CSAC on the 27th.

25 Anyway, as you can see, it all happened very

1 quickly.

2 And then after that, I had ten days -- and it's
3 ten calendar days, not ten business days. I thought it
4 was ten business days, but I should have known it was
5 ten calendar days. And we had a couple of weekends in
6 between. So I really only had six business days to file
7 the request for this appeal. And that's why the request
8 was not -- you know, I called Camille just before noon on
9 Monday, which was the last day after the weekend, and
10 said, "You know, how many days?" And she said, "Well,
11 it's ten business days," and Monday was the tenth day.
12 So I had essentially just a few hours to put something
13 together and get it filed. And so I didn't even check
14 with CSAC or anybody else. I just did it on the basis
15 that I need to get this in and I need to get it filed.

16 And I should have probably known it was ten
17 calendar days, not ten business days. But I want to give
18 you some sense of the timing of this and how quickly
19 things take place.

20 The Executive Director then, as you know,
21 denied earlier this week -- I don't remember if it was
22 Monday or Tuesday -- that request, essentially, and
23 putting this on as the first item.

24 And again, thank you very much for allowing me
25 to get this together.

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1 The Executive Director's response filed earlier
2 this week included a challenge to my not representing
3 CSBA and CSAC, and whether the CSAC Service is a party of
4 interest to file the appeal; and made some comments about
5 "not standing in the shoes of a statewide association,
6 having no pecuniary interest in a test claim." I can't
7 even pronounce it. But later on, I have a definition.
8 And that essentially means financial interest or
9 something. I know that an attorney's got to talk in
10 attorneys' terms. It's not the kind of stuff we use
11 walking around in the budget and other kinds of things.
12 That's a newer term to me that I've had.

13 And at this point, the next comment is, I said
14 "I think you can ask the Chair." However, it won't be
15 Richard you could ask. I was assuming that was going to
16 be Pedro who I've worked with for over 30 years on
17 mandate issues when he was with the Department of
18 Finance.

19 If I've ever done anything over the 30 years,
20 that would bring anybody to give any thought to the fact
21 that I'm not the most, probably strongest, clearest local
22 government mandate advocate there is walking the halls of
23 the Capitol. I mean, you know, that's not bragging,
24 that's just fact. You know, I don't think there's
25 anybody here -- I wish Marianne O'Malley from the

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1 Legislative Analyst's office was here or Pedro was here.
2 And they'll tell you, I've been invited to meetings
3 simply because it's a mandate issue, even though I was
4 not directly involved simply because they know my passion
5 for mandates. And you can probably see that coming
6 through in my presentation. And hopefully, that doesn't
7 dissuade you from my arguments.

8 I clearly think the members have a financial
9 interest in this. Those members, including the great
10 County of Los Angeles, the largest member of CSAC, have
11 an interest in it. And I think L.A.'s going forward is
12 only doing what they think is in the best interests of
13 Los Angeles County. Even though I would disagree with
14 that, you know, that is Los Angeles County's issue to
15 decide.

16 You know, it appears to me that on this whole
17 thing, that the Executive Director's take on what I say
18 is the quasi, of the quasi judicial process. I don't
19 look at this as being a legal issue. This should be:
20 Is this a practical, reasonable thing to do? Should the
21 Commission say, it's in the best interests of local
22 government and state government to give local agencies
23 time to develop an RRM?

24 And I'm going to later ask Heather whether or
25 not -- excuse me, Ms. Halsey -- whether or not she will

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1 comment on the estimated length of time, the delays it
2 would take once a survey is presented to her. And both
3 either with the Department of Finance or without the
4 Department of Finance. So it's kind of a pre-warning. I
5 hope that she would respond to that.

6 The next thing that I have is just a definition
7 of "pecuniary," which was a new term for me.

8 The time-line on this is -- my question, is a
9 few months going to matter? I mean, at this point in
10 time, we are -- it's nearly ten years since Los Angeles
11 County filed this test claim. Ten years. And would a
12 few more months of this matter, in order to save state
13 and local government hundreds of thousands or millions
14 of dollars, eventually -- and I think that number could
15 be maybe \$10 million, but that's just a best guess -- in
16 order to provide time to do that.

17 So the question is, what is a good cause?
18 Well, the first thing as I looked at my good friend --
19 I hoped that Mr. Chivaro, Commissioner Chivaro takes
20 that, because I've known the commissioner for a long,
21 long time. And I consider him an adversary in many
22 cases, but also a friend, and also very often on the same
23 side. But it's going to save the State Controller
24 millions of dollars of staff time for both their audit
25 and their desk review, their Division of Accounting and

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1 Reporting, and their Division of Audits.

2 And I'd like to have, if Commissioner Chivaro
3 would do it, is to ask his staff members to come up and
4 comment on this afterwards, as to whether or not my
5 accusations -- or not accusations, but my comments --
6 are correct or not.

7 And that's going to clearly save local
8 government millions of dollars that would be required if
9 you adopt actual cost claims. And each of those would
10 have to conduct time studies, detailed time studies that
11 meet the State Controller's guidelines in order to file
12 actual cost claims.

13 Now, the other thing I want to point out is,
14 the *Public Records Act* as an RRM model. We have not had
15 very good success -- and by that, I mean, both local
16 government and the Commission -- has not had very good
17 success in developing RRM's. And I think that the
18 Legislature, AB 1222, which was really authored -- or
19 drafted, I guess -- or sponsored by Mike Genest when he
20 was director of Finance -- I'm not sure where Finance is
21 today, but at that time, he went to John Laird, to
22 Assembly Member Laird, and asked him to introduce the
23 bill -- or he asked for the language. Actually, we had
24 the bill introduced. And we agreed -- by "we," I mean,
25 CSAC agreed to go along with him an on an RRM process

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1 which at that time left the Controller out.

2 Actually, CSAC's preferences would be to have
3 this -- wanted to have the Controller as a mediator in
4 part of the process.

5 Mr. Genest at that time didn't look very
6 favorably on the State Controller and did not allow us to
7 have the State Controller as the third party, because we
8 wanted the Controller to be the mediator. Because while
9 we sometimes disagree, we think that they're very often,
10 you know, very fair and reasonable people.

11 So, first of all, I want to thank the
12 Department of Finance and also the State Controller's
13 Office for being so cooperative on developing this model.

14 What we did, we've had two meetings since CSAC
15 filed its request to develop the survey. And one of the
16 things we've kind of decided is, we went in -- and the
17 position was, the public agencies at that time, the
18 associations, the school boards, CSAC and the others --
19 would follow the methodology and process defined by those
20 state agencies.

21 The Department of Finance at that time first
22 looked at the State Controller and said, "You're the
23 expert. We want you to do it."

24 Then the Department of Finance talked to their
25 own research staff; and their own research staff had some

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1 really good ideas. And as a result, we now have a new
2 model and approach based on input from the Department of
3 Finance research staff, and also from the State
4 Controller's Office.

5 And I think we have a new model that we plan to
6 use for the *Public Records Act*, one way or the other,
7 whether you adopt the actual cost claims or not, to go
8 forward with.

9 Now, the key thing is that if the Commission
10 should decide today to proceed with actual cost claims,
11 that's going to delay the urgency of getting the RRM
12 done. Because at that point, even though if we went
13 forward with the survey, it would be filed, it would go
14 to the bottom of the box.

15 CSAC has five proposed RRM's pending. I'm
16 assuming this goes below those five.

17 The first one was filed in June 2010. So I'm
18 saying, we're probably not going to get back to this for
19 five years, and we're probably going to have all new
20 players, and also there's no real urgency.

21 Now, both Finance and the Controller have
22 agreed to move forward on this; but the problem is, there
23 is no urgency. You know, we're not going to get to this
24 for a long, long period of time.

25 CHAIR GILLIHAN: Mr. Burdick, if you could

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1 bring this to a landing, I'd appreciate it.

2 MR. BURDICK: I'll bring it to a landing.

3 But I will say this: You're looking at what could be a
4 hundred-million-dollar issue. So I should appreciate it.

5 But let me do it real quickly.

6 Next, I want to use *POBOR* as an example. This
7 is the largest, most complicated claim that we had.

8 The initial claims had to be actual cost
9 claims. Cities and counties filed claims, well over
10 \$20 million, probably \$30 million.

11 The State Controller went out and did a whole
12 series of audits and stuff, spent a lot of time, a lot of
13 trouble. We spent -- you could ask Mr. Spano, I would
14 ask him to comment on that, how much time they spent on
15 this, to do the actual cost claims.

16 And after that, a couple of years later, this
17 issue was revisited by the Commission to amend the
18 P's & G's. And one of the things they did is, they added
19 an RRM option. So as I mentioned before, this is the
20 only claim that has an RRM option.

21 The RRM option, it's a reimbursement
22 methodology; but I would not put the "reasonable" in
23 there. It is not reasonable. It's an unreasonable
24 number. And I have planned to get that number fixed.
25 But right now, it's an RRM.

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1 I would say 99 percent of the local agencies
2 now use that unreasonable RRM to file their claims
3 instead of actual cost claims. And I think every one of
4 those agencies, except for the small ones -- the big ones
5 would probably tell you they could get far more money if
6 they wanted to take the time and effort to do time
7 studies and filed actual cost claims. They just don't
8 want to do it.

9 The costs, I just put it in the next thing.
10 You can look at the number of cities, counties, special
11 districts, and others. Each would have to do time
12 studies, if you had to do that. You multiply that cost
13 and look at what kind of costs it would be.

14 One of the things that was brought to my
15 attention yesterday is that the State Controller's
16 Office's position would be that unless you file an actual
17 cost claim on the initial claim -- so if you adopted the
18 actual cost claim RRM today, that any -- if,
19 subsequently, you adopted an RRM, that only the agencies
20 that file actual cost claims could go back and re-file
21 using the RRM.

22 So I don't buy that position; but that's just
23 something that came up.

24 Here are the expected supporters on there.

25 Now, I list on there the City of Oxnard and the

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1 County of Yolo's auditor. I had tried to get to Howard
2 Newens today, and I didn't. But I can tell Commissioner
3 Saylor that I feel 90 percent certain that Howard, who is
4 responsible in your county for filing these claims, would
5 take the RRM a mile over doing the time study. I mean,
6 I don't have any question about it.

7 We talked to the City of Oxnard today. They
8 said they preferred the RRM. But, you know, it was quick
9 and dirty for them. And I don't know them well enough,
10 so I can't really speak for them. But I'm pretty sure
11 that if I talked to them a while, they would.

12 I think all of these other groups, I would
13 expect to be supporters. Now, I say "expect." I don't
14 know.

15 So with that, I will close, although I would
16 appreciate having the Controller staff come up and
17 comment about the difference between desk reviewing and
18 auditing actual cost versus RRM claims. And also, if the
19 Executive Director's staff could comment on, once we file
20 our survey results, how long they would think it would
21 take to schedule a hearing to adopt the RRM.

22 Thank you.

23 CHAIR GILLIHAN: Thank you.

24 Would staff comment on the relevant points of
25 the testimony?

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1 CAMILLE SHELTON: Just a couple of things.

2 One, for housekeeping purposes, Mr. Burdick,
3 we do need a copy of that for purposes of the record. We
4 did not receive enough copies. The public also needs a
5 copy of your handout.

6 A couple of things. One, this is a legal
7 process. If action is taken that is not authorized by
8 statute or regulation, that action could be determined to
9 be void. And in this case, the Executive Director
10 followed the statutes and regulations exactly as stated,
11 and does not have authority to postpone a matter on the
12 request of an interested party or a statewide
13 association. That authority is given only to the parties
14 to a claim. And parties under the Commission's
15 regulations include only the test claimant and the
16 Department of Finance and the State Controller's Office.
17 And none of them have requested that Item 5 be postponed,
18 and none of them have identified a proposed RRM for that
19 item.

20 MR. BURDICK: Can I ask? I thought the thing
21 was, she had the authority on good cause.

22 CAMILLE SHELTON: The Executive Director --

23 MR. BURDICK: Are you saying she's no
24 authority?

25 CAMILLE SHELTON: The Executive Director has

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1 authority to postpone a matter on good cause. But in
2 this case, there is no showing of good because the
3 parties have not requested that the item be postponed.

4 We were prepared and ready to go to Commission
5 hearing by the time that the original request came. That
6 request came after the draft was issued, after the matter
7 was set for hearing, and after comments came in on the
8 draft.

9 And that matter had been pending since
10 June 2011.

11 MR. BURDICK: Could I comment on that?

12 CHAIR GILLIHAN: Briefly, sir.

13 MR. BURDICK: Okay, briefly.

14 The other thing I'd say, the reason we waited
15 until the draft staff analysis was done is because the
16 Commission staff has repeatedly asked us not to submit
17 and do an RRM or to do a survey until after they have
18 submitted their draft -- their final staff analysis that
19 lists what they think are the eligible activities.

20 So I would like Mr. Kaye to come forward and to
21 clarify. Because, as you know, he's been there -- that,
22 time and time again, the Commission staff has said, "Wait
23 for our draft staff analysis." And that is why we
24 waited.

25 CAMILLE SHELTON: And that is absolutely true.

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1 If Mr. Kaye or Mr. Petersen on behalf of the other test
2 claimant came forward and requested a postponement, it
3 would have been approved.

4 Under the Commission's regulations, a statewide
5 association does not have the authority to request a
6 postponement of the hearing. It has to be a party. And
7 that has not changed for years. I mean, that's been that
8 way since the beginning.

9 MR. BURDICK: Now, I'm confused. Does she or
10 does she not have the right on good cause to do it? I
11 mean --

12 CAMILLE SHELTON: An Executive Director is not
13 just going to postpone a hearing when the parties are not
14 requesting it if we're ready to go.

15 CHAIR GILLIHAN: Thank you. I think we've got
16 a pretty good comprehension of this issue.

17 MEMBER OLSEN: Yes.

18 CHAIR GILLIHAN: Is there anybody from the
19 Department of Finance or State Controller's Office who
20 would like to speak on this topic?

21 *(No response)*

22 CHAIR GILLIHAN: Any questions from the
23 Commission?

24 CAMILLE SHELTON: Can I just also --

25 MR. BURDICK: Can I make a final comment?

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1 CAMILLE SHELTON: I was also going to suggest
2 something: That there are options available for those
3 agencies that do want to work on the development of an
4 RRM.

5 You can do that fairly quickly if the
6 Commission goes forward with Item 5 today.

7 If you can do it within seven months and file
8 a -- local agency file a request to amend the P's & G's
9 within about seven months of the hearing today, that
10 would relate all the way back to the initial period of
11 reimbursement without any interruption.

12 MR. BURDICK: I'd just like to comment on that.

13 I've done that five times. And the first one
14 is now almost three years old before it's even being
15 considered.

16 So this not seven months. You have seven
17 months to file it, then it goes to the bottom of the box.
18 And I'm still waiting on all five of those to be heard.
19 So the chances are, we would not be hearing that for
20 somewhere between four or five years from now. So it's
21 not seven months, it's four or five years.

22 CAMILLE SHELTON: It's seven months because
23 it's the filing date that triggers the period of
24 reimbursement, not when the Commission hears.

25 MR. BURDICK: No, no, you'll go for

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1 reimbursement, but the Commission would not be taking up
2 and hearing it and deciding on the RRM for probably five
3 years.

4 CHAIR GILLIHAN: Thank you.

5 Is there any questions from the commissioners?

6 Mr. Saylor?

7 MEMBER SAYLOR: Just simply, the appeal is
8 regarding the Executive Director's ruling that the matter
9 not be postponed?

10 CAMILLE SHELTON: Correct.

11 MEMBER SAYLOR: And the reason for the action
12 by the Executive Director, your decision, was based on
13 the standing of the parties?

14 MR. BURDICK: No, not good cause, right?

15 MS. HALSEY: Well, both, actually.

16 It was based on the lack of standing of the
17 requester, and also the lack of good cause.

18 There was no -- there's no indication that an
19 RRM is more likely to be reached in this matter than in
20 any other matter that's outstanding based on what we have
21 submitted to us.

22 Yes, I do understand that Mr. Burdick has met
23 with Finance; but I don't know that that means it's going
24 to go anywhere. And this has been pending for a very
25 long time, and the parties would like to submit their

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1 reimbursement claims and get reimbursed for these.

2 MEMBER SAYLOR: Right. And none of the
3 parties -- neither of the two claimants or the state
4 agencies have requested a delay.

5 MS. HALSEY: Right.

6 MEMBER SAYLOR: They're ready to proceed.

7 MS. HALSEY: And not only that, they've asked
8 for this to be moved to consent.

9 MEMBER SAYLOR: All right, well, I would move
10 that we uphold the Executive Director's decision on the
11 postponement request.

12 MEMBER OLSEN: I will second that.

13 CHAIR GILLIHAN: We have a motion and a second.
14 Any more discussion or debate?

15 *(No response)*

16 CHAIR GILLIHAN: Heather, please call the roll.

17 MS. HALSEY: Mr. Chivaro?

18 MEMBER CHIVARO: Yes.

19 MS. HALSEY: Mr. Gillihan?

20 CHAIR GILLIHAN: Yes.

21 MS. HALSEY: Mr. Alex?

22 MEMBER ALEX: Yes.

23 MS. HALSEY: Ms. Olsen?

24 MEMBER OLSEN: Yes.

25 MS. HALSEY: Mr. Rivera?

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1 MEMBER RIVERA: Yes.

2 MS. HALSEY: And Mr. Saylor?

3 MEMBER SAYLOR: Yes.

4 CHAIR GILLIHAN: The motion carries.

5 Thank you.

6 MR. BURDICK: Thank you very much.

7 CHAIR GILLIHAN: Thank you, Mr. Burdick.

8 MR. BURDICK: Please put in a request for some
9 more auditors for the State Controller's Office.

10 *(Ms. Olsen stepped out of the meeting room.)*

11 CHAIR GILLIHAN: So we skipped over the Consent
12 Calendar.

13 Do you want to go back to that now?

14 MS. HALSEY: Yes. The next item is the
15 proposed Consent Calendar, which consists of Items 5, 9,
16 and 10.

17 CHAIR GILLIHAN: So we have a request from the
18 parties to move Item 5 to the Consent Calendar.

19 Is there any objection amongst the
20 commissioners?

21 *(Chorus of noes.)*

22 CHAIR GILLIHAN: Seeing none --

23 MEMBER CHIVARO: So moved.

24 CHAIR GILLIHAN: We have a motion.

25 MEMBER SAYLOR: Second.

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1 CHAIR GILLIHAN: We have a second on the
2 Consent Calendar.

3 Any public comment?

4 *(No response)*

5 CHAIR GILLIHAN: Heather, please call the roll.

6 MS. HALSEY: Mr. Chivaro?

7 MEMBER CHIVARO: Yes.

8 MS. HALSEY: Mr. Gillihan?

9 CHAIR GILLIHAN: Yes.

10 MS. HALSEY: Mr. Alex?

11 MEMBER ALEX: Yes.

12 MS. HALSEY: Ms. Olsen?

13 *(No response)*

14 MS. HALSEY: Mr. Rivera?

15 MEMBER RIVERA: Yes.

16 MS. HALSEY: Mr. Saylor?

17 MEMBER SAYLOR: Aye.

18 CHAIR GILLIHAN: The motion carries. The
19 Consent Calendar is approved.

20 So that brings us to...?

21 MS. HALSEY: Item 4.

22 CHAIR GILLIHAN: Item 4.

23 MS. HALSEY: Item 4 is a claim on *County*
24 *Formation Cost Recovery*, which will be presented by
25 Commission Counsel Matt Jones.

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1 MR. JONES: Good morning. This test claim
2 arises from the failed attempt to partition the north
3 area of Santa Barbara County into a separate county,
4 Mission County.

5 The test claim statutes require the formation
6 of a County Formation Review Commission which conducts a
7 fiscal and economic study, and the holding of an
8 election, a popular election to determine whether to form
9 the new county.

10 Staff recommends denial of this test claim for
11 several reasons.

12 First, because costs shifted from one local
13 entity to another are not reimbursable absent a new
14 program or higher level of service.

15 Second, the statutes as pled were enacted in
16 1974, most of which were never amended.

17 Third, substantive amendments post 1975 did not
18 impose a new program or higher level of service.

19 Staff recommends adoption of the proposed
20 decision with modification, as necessary, and requests
21 that the Commission authorize staff to make technical
22 non-substantive changes after the hearing.

23 Will the parties and the witnesses please state
24 your names for the record?

25 MS. RIERSON: Good morning. I'm Anne Rierson,

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1 I'm the Deputy County Counsel for Santa Barbara. And I
2 appreciate the opportunity to state the County of
3 Santa Barbara's position on its *Formation Cost Recovery*
4 test claim.

5 The County has submitted written comments dated
6 January 18th, 2013. I draw your attention to those
7 comments.

8 My comments today focus primarily on some areas
9 of disagreement with the final staff analysis and
10 proposed statement of decision and subsequent hearing,
11 assuming we get there. We would anticipate bringing
12 witnesses to discuss the specific costs for which we seek
13 reimbursement.

14 We request that the Commission consider these
15 comments today and approve the test claim.

16 *(Ms. Olsen returned to the meeting room.)*

17 MS. RIERSON: As described in the test claim,
18 the County incurred substantial costs required by the
19 County Formation law in connection with the failed
20 petition to split the County into two counties. And as
21 described, these costs include the staffing of a county
22 formation commission appointed by the Governor, the
23 determination of 11 economic impact and feasibility
24 criteria, and the conduct of an election to determine if
25 the new county should be created.

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1 The County incurred these costs because they
2 are mandated by the State, and the activities under the
3 County Formation law were mandated by the State.

4 Now, importantly, the Court of Appeal has
5 already decided in a published decision that the County
6 Formation law is a reimbursable state mandate. The case
7 is *County of Los Angeles versus State of California* from
8 1984, and the County of Santa Barbara was a party to that
9 lawsuit.

10 Commission staff argues that there is a change
11 in the law repealing Revenue and Taxation Code 2207 since
12 that time. So there is no right of subvention as to
13 pre-1975 statutes. However, the Court of Appeal
14 addressed this issue and the *Los Angeles Unified School*
15 *District versus State of California* case from 1991, which
16 involved a test claim for the 1973 Cal-OSHA legislation.

17 The Court said in that case that when a right
18 of action depends solely upon a statute, the repeal of
19 the statute destroys the right, but here is the critical
20 point: Unless the right has been reduced to final
21 judgment.

22 In the County's circumstance, the County's
23 right to reimbursement for the costs under the County
24 Formation law has been reduced to final judgment in the
25 1984 case that I mentioned earlier.

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1 So we think you should find the County
2 Formation law to be a reimbursable state mandate as to
3 the County of Santa Barbara because the Court of Appeal
4 has already decided that, and the right to reimbursement
5 has been reduced to final judgment.

6 Also in the County's comments, the County
7 identified several statutes amended post 1975 tied to
8 costs for which the County seeks reimbursement. As an
9 example, Government Code section 23332, as amended in
10 1984, to require determination of boundaries of
11 supervisory districts in the proposed county which
12 results in equal population in each district. And this
13 is a considerable effort.

14 Commission staff argues that several amendments
15 are alleged to have imposed activities and costs upon the
16 formation commission, which is not an eligible claimant
17 before the Commission on State Mandates; and that those
18 costs are shifted from one local entity to another and,
19 therefore, not reimbursable according to the case law.

20 First, the County is the claimant in this test
21 claim, not the formation commission. And we don't think
22 of it as a shift in costs from one local entity to
23 another, like in the cases that the Commission staff
24 points out. And I'll discuss those cases in a minute.

25 First, there is not really a shift in costs,

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1 like in the cases. The County has to staff the
2 Commission and perform functions requested by the
3 Commission. And Government Code section 23343 says, "If
4 the proposed county is not created, then the county bears
5 the cost of the Commission."

6 Second, we don't view the formation commission
7 as a local entity, like the ones discussed in the case
8 law. Local entities discussed in the cases are cities,
9 counties, and school districts.

10 So let's talk about the case law.

11 There's the City of *San José versus the state*
12 *of California* case from 1996. That case involved a claim
13 regarding legislation authorizing counties to charge
14 cities for the costs of booking arrestees into the county
15 jail. So the Court said that counties and cities are
16 both local government, and that nothing in Article XIII B
17 prohibits the shifting of costs between them.

18 So that involved the county's option to charge
19 fees to a city.

20 The *City of El Monte versus the Commission on*
21 *State Mandates* involved state legislation requiring
22 redevelopment agencies to contribute a portion of their
23 tax increment funds to ERAF for distribution to schools
24 and community college districts. The Court found that
25 the ERAF legislation was simply an exercise of the

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1 Legislature's authority to apportion property tax
2 revenues between RDAs and schools. So it wasn't a
3 reimbursable state mandate.

4 And then the third case cited is *Grossmont*
5 *Union High School District versus State Department of*
6 *Education* from 2008. In that case, the counties provided
7 mental health services to special ed. students; and when
8 the Legislature slashed the funding for those services
9 statewide, the county obtained a judgment, holding that
10 because this was an unfunded state mandate, the county
11 didn't have to provide those services. In response, the
12 State Department of Education required local school
13 districts to absorb the cost of these services.

14 There were no new services. There's just a
15 change regarding which local government was responsible
16 for the services. And the Court found there that the
17 school district did not exhaust its administrative
18 remedies because it did not file with the Commission on
19 State Mandates. So that involved school districts versus
20 counties.

21 We think that it would produce a huge loophole
22 and absurd results to apply these cases in the way that
23 staff is proposing because it would be saying that the
24 State could simply avoid any responsibility for
25 reimbursing local agencies by doing this.

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1 If the legislation says the State appoints a
2 Commission that can't get reimbursed by the State, and
3 which has to undertake a series of activities with no way
4 of raising taxes to fund those activities, and then those
5 costs are borne by a city or county, you know, the State
6 could simply just insert a commission into the process
7 and thereby avoid the responsibility of reimbursing. And
8 we don't think that's what those cases mean.

9 Further, the Court of Appeal previously decided
10 that the County Formation law is a reimbursable state
11 mandate. And this idea of cost shifting did not prevent
12 that decision.

13 Commission staff states that the costs are
14 shifted pursuant to provisions of statutes from 1974,
15 which were enacted prior to January 1st, 1975, and never
16 amended. But the post 1975 amendments impose new
17 requirements and new tasks that were still new state
18 mandates, regardless of when the provision stating the
19 county absorbs the costs was enacted.

20 Staff asserts that any costs during the
21 extension of the term of the formation commission cannot
22 be considered state-mandated because the extension of
23 time was discretionary. The extension of the term of the
24 commission is irrelevant. The mandate is in the tasks
25 that were required by state law to be completed. So the

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1 time frame in which they completed the task does not
2 matter. It's the activities that they were required to
3 undertake.

4 I also have been told that with the enormity of
5 the work required, it was not possible to complete all
6 the tasks without obtaining the extension.

7 With regard to the formation commission's
8 hiring of outside counsel, staff says this is not
9 reimbursable because the statute says the commission may
10 hire outside counsel. But the formation commission did,
11 in fact, hire expert legal counsel so they could be in
12 compliance with the County Formation law; and the county
13 was mandated by state law to pay the costs. So there is
14 no discretion in that.

15 Again, we request that the Commission approve
16 the County's test claim in its entirety.

17 Alternatively, if the Commission does not
18 approve the County's test claim as to the pre-1975
19 statutes, the County requests that the Commission approve
20 the County's test claim as to the statutes amended since
21 1975 as specified in the County's comment letter.

22 Thank you for your time.

23 CHAIR GILLIHAN: Thank you.

24 Department of Finance?

25 CARLA SHELTON: Carla Shelton with the

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1 Department of Finance.

2 We concur with the Commission's staff analysis
3 to deny the test claim. And primarily because the
4 test-claim statutes were enacted prior to January 1975,
5 and for the additional reasons they reiterated in the
6 analysis.

7 CHAIR GILLIHAN: Thank you.

8 Mr. Jones?

9 MR. JONES: I'll respond briefly to just a
10 couple of points, and then if the members have any
11 questions regarding the analysis.

12 First of all, this pre-'75 statutes issue that
13 pervades the analysis, the L.A. case -- both the County
14 of L.A. and the L.A. Unified School District cases that
15 the claimant relies on, the County of L.A. case was
16 relying on Revenue and Tax Code provisions when they
17 ruled that this was a reimbursable mandate, as was the
18 Legislature in section 3 of the 1974 statute, wherein the
19 Legislature states that this bill creates a reimbursable
20 state mandate.

21 In both cases, both the Legislature and the
22 Court were relying on a law that no longer exists. And
23 we have plenty of case law saying that as Article XIII B,
24 Section 6, says that the Legislature may, but not need,
25 reimburse statutes enacted prior to January 1, 1975, and

1 we have plenty of case law saying that the Legislature
2 has exercised that discretion in the current form of the
3 Government Code, and has decided under 17514 that the
4 Legislature will choose not -- instead of "may" -- but
5 not to reimburse those costs.

6 So I can appreciate the County's position that
7 the *L.A. Unified School District* case would seem to
8 suggest that this right to reimbursement has been reduced
9 to final judgment. Unfortunately, it's been reduced to
10 final judgment on the basis of a law that has been
11 repealed. And the Legislature has the discretion to
12 determine under Article XIII B, Section 6, whether or not
13 it will extend reimbursement beyond 1975. And it has
14 chosen not since the *County of L.A.* case.

15 I would also respond briefly to the cost-
16 shifting elements that the claimant raises.

17 There isn't clean case law on the idea of
18 something other than -- an entity other than a school
19 district or county or city shifting costs to another
20 local entity. But we do have some test claims prior to
21 this time that just haven't made their way to a Court of
22 Appeal decision that's been published.

23 But even the city and school district cases
24 that we have to rely on, I think, are pretty clear that
25 cost-shifting from one local to another, absent a new

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1 program or higher level of service accompanying that
2 cost-shifting, is not reimbursable under the Government
3 Code, under 17514. It simply doesn't fit the definition
4 of costs mandated by the State.

5 And then finally, just briefly, the
6 discretionary costs that the claimant mentions, the
7 extension of time that was taken by the county formation
8 review commission, staff didn't mean to imply that the
9 extension of time itself somehow imposed costs; but,
10 rather, that any costs that were incurred, including
11 things like staff time and, you know, room rentals or
12 what have you -- electricity, utility bills, whatever
13 the expenses are that occur after that discretionary
14 extension of time that was undertaken by the Mission
15 County Formation Review Commission. Any of those costs
16 that were undertaken after that point would not be
17 reimbursable even if the Commission determined that the
18 law itself is reimbursable.

19 And then finally, hiring of outside counsel.
20 Yes, the Government Code requires you to pay outside
21 counsel, if you hire outside counsel; but the Government
22 Code does not require you to hire outside counsel if
23 you're a county formation review commission. In fact,
24 it says "in lieu of using the county counsel's office."

25 You know, I certainly don't intend to argue

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1 that the county counsel's office doesn't have its hands
2 full, but it is clearly discretionary under the statute.
3 The plain language of the statute does not require them
4 to hire outside counsel. It only requires them to pay
5 them if they hire them.

6 And beyond that, I would stand on the staff
7 analysis and proposed statement of decision, unless the
8 members have questions.

9 CHAIR GILLIHAN: Thank you.

10 What is the pleasure of the Commission?

11 MEMBER SAYLOR: It strikes me that the language
12 that presents the greatest issue was prior to 1975, and
13 that the amendments to that code subsequent to 1975 were
14 not substantial or were allowed authorities and options.
15 So I would support the recommendation that we have from
16 our staff on this matter.

17 MEMBER ALEX: I'll move the staff report.

18 MEMBER CHIVARO: Second.

19 CHAIR GILLIHAN: We have a motion and a second.

20 Any other discussion or debate?

21 *(No response)*

22 CHAIR GILLIHAN: Seeing none, any public
23 comment on this?

24 *(No response)*

25 CHAIR GILLIHAN: Seeing none, Heather, please

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1 call the roll.

2 MS. HALSEY: Mr. Chivaro?

3 MEMBER CHIVARO: Yes.

4 MS. HALSEY: Mr. Gillihan?

5 CHAIR GILLIHAN: Yes.

6 MS. HALSEY: Mr. Alex?

7 MEMBER ALEX: Yes.

8 MS. HALSEY: Ms. Olsen?

9 MEMBER OLSEN: Yes.

10 MS. HALSEY: Mr. Rivera?

11 MEMBER RIVERA: Yes.

12 MS. HALSEY: Mr. Saylor?

13 MEMBER SAYLOR: Aye.

14 CHAIR GILLIHAN: Motion carries.

15 MS. HALSEY: Moving back, can we go ahead and
16 go back to the minutes, Item 1?

17 CHAIR GILLIHAN: We delayed action on the
18 minutes because we --

19 MS. HALSEY: We didn't have a quorum. Yes.

20 CHAIR GILLIHAN: We didn't have quite the
21 quorum we needed.

22 So is there a motion to approve the minutes?

23 MEMBER CHIVARO: I'll move the minutes.

24 CHAIR GILLIHAN: The motion -- we have a
25 motion.

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MEMBER RIVERA: Second.

CHAIR GILLIHAN: We have a second.

All in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR GILLIHAN: All opposed, say "no."

(No response)

CHAIR GILLIHAN: And then please record me as
an abstention.

MS. HALSEY: Thank you.

Moving on to Item 6, *BIPs, Behavior
Intervention Plans.*

Matt Jones will be presenting this item.

MR. JONES: Item 6, *Behavioral Intervention
Plans.* The only issue before the Commission at this
hearing is what was intended by the Commission's vote at
the January 25th hearing.

At the last hearing, staff offered the
Commission members a choice of adopting either a
reasonable reimbursement methodology -- that is, an RRM -
- to reimburse special education local plan areas and
school districts for the costs of conducting *Behavioral
Intervention Plan* mandate activities; or staff offered
the Commission members a choice of an actual cost
reimbursement.

The Commission adopted portions of both

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1 analyses and both methodologies for reimbursement,
2 requiring staff to redraft the proposed statement of
3 decision to reflect an RRM for some initial period of
4 time, and actual-cost claiming thereafter.

5 Unfortunately, there was some confusion over
6 the date to which the RRM should apply and the time when
7 actual-cost claiming should begin.

8 There was reference made in the hearing in
9 January to an initial reimbursement period, or the
10 2011-2012 year, or the current year, or the 2013 year.
11 And so ultimately, staff was left not knowing exactly
12 what the Commission intended.

13 So staff respectfully recommends that the
14 Commission make a motion today that should take one of
15 the following two forms: Either "I move that the
16 Commission adopt parameters and guidelines and statement
17 of decision approving the RRMs for July 1, 1993, to
18 June 30th, 2012, and approving actual-cost reimbursement
19 for prospective claims beginning July 1, 2012"; or
20 "I move that the Commission adopt the parameters and
21 guidelines and statement of decision, approving the RRMs
22 from July 1, 1993, to June 30th, 2013; and approving
23 actual-cost reimbursement for prospective claims
24 beginning July 1, 2013."

25 Staff further recommends that the Commission

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1 authorize staff to insert the appropriate dates in the
2 proposed statement of decision, and to make
3 non-substantive technical corrections to the parameters
4 and guidelines and statement of decision following the
5 hearing on this matter.

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

8 MS. McDONOUGH: Diana McDonough of Fagen,
9 Friedman & Fulfrost, representing Claimants Butte County
10 Office of Education, San Joaquin County Office of
11 Education, San Diego Unified School District, and
12 Interested Party California School Boards Association and
13 its Educational Legal Alliance.

14 MR. SPANO: Jim Spano, State Controller's
15 Office, Division of Audits, Bureau Chief.

16 MS. KANEMASU: Jill Kanemasu, State
17 Controller's Office, Assistant Division Chief, Accounting
18 and Reporting.

19 MR. OSMEÑA: Christian Osmeña, Department of
20 Finance.

21 CHAIR GILLIHAN: Thank you.

22 Ms. McDonough?

23 MS. McDONOUGH: It will come as no surprise to
24 the Commission that we favor Motion 2. That is, we favor
25 the 2012-2013 period be included in the RRM.

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1 I also want to say that when we left the
2 hearing in January, we had thought that the Commission
3 took action to include 1993-94 through 2011-12; and that
4 they expected actual costs to apply beginning 2012-13.
5 However, when we looked at the record and then we
6 contemplated how this actually was unfolding in relation
7 to the initial claim period, we saw the confusion. And
8 I just would like to say this to you about how this
9 affects our clients.

10 You may know that the rule is that the
11 Controller issues claiming instructions within 90 days of
12 receiving authorization from the Commission.

13 If the Commission takes action today and the
14 Commission informs the Controller's office, assuming the
15 Controller takes the 90 days, that those instructions
16 would issue in July. By statute, school districts must
17 file for all years in the initial claim period, 120 days
18 after that claiming instruction issues. That means that
19 late November, we would be required to file for -- that
20 is, 120 days after this presumed claiming instruction is
21 coming out -- we believe we would be required to file for
22 all 20 years, so from 1993-94 through 2012-13.

23 We would plead with you to bifurcate that
24 initial claiming period, so that 19 years are under the
25 RRM, and one requires actual costs for 2012-13; and to

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1 require us to do that in that short amount of time would
2 be very, very difficult.

3 I note one other item, and perhaps the
4 Controller's office can provide clarity on this: A
5 further confusing element is that for ongoing annual
6 claims, school districts are required to file that by
7 February 15th of 2014. So this could put us in a
8 situation that we have to file actual claims for *BIP* for
9 2012-13 in November, when all other actual claiming is
10 due February 15th.

11 Now, the Controller may say, "Oh, no, here's
12 the way this is really supposed to operate." But what
13 we know for sure is that the Commission has the
14 possibility here to clarify all this by saying, "The RRM
15 should run through 2012-13, and actual costs commence
16 2013-14."

17 And we'd like you to take that action.

18 CHAIR GILLIHAN: Thank you.

19 Controller's?

20 MR. SPANO: If the intent is just to clarify
21 what was decided at the January hearing, we have no
22 comments.

23 If the Commission wants to reconsider what was
24 decided and consider actual costs for 2012-13, I have
25 some comments just for clarification purposes only.

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1 Okay, basically -- I got the acknowledgment to
2 go forward on it.

3 CHAIR GILLIHAN: Please.

4 MR. SPANO: Currently, the Commission staff is
5 proposing, as indicated, what was intended during the
6 January hearing, whether it included the RRM through
7 2012 -- 2011-12, and actual costs for '12-13; or to
8 consider the RRM through '12-13.

9 So without making any recommendation, my
10 comments are intended just to provide additional
11 information for the Commission members to consider if the
12 use of RRM for '12-13 is being considered. And that is,
13 the Commission on State Mandates -- the Commission final
14 staff analysis states that restrictive resources apply
15 toward mandated expenditures are required to be
16 identified as offsetting revenues. And that's, for
17 instance, special education funding.

18 For fiscal year 2010-2011 and subsequent years,
19 the Budget Act requires that state funding provided for
20 purposes of special education -- and there is a line item
21 in the budget -- shall first be used to directly offset
22 any mandated costs. So basically, prior to 2010-2011, it
23 wasn't required to be spent first.

24 The California School Accounting Manual
25 standardized account code structure requires districts to

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1 code specific expenditures to restrictive resources. So
2 every time you have an expenditure, it identifies the
3 related funding source of the expenditure, whether it be
4 general fund or restricted resources.

5 Reporting of actual costs facilitates the
6 district identifying which restricted resource is funded,
7 mandate expenditures consistent with the accounting
8 requirements of the California School Accounting Manual.
9 However, reporting on the RRM only requires districts to
10 apply unit cost on average daily attendance numbers
11 without identifying which expenditure are being claimed
12 under the mandated program. So at this point, it's
13 uncertain to what extent districts will report applicable
14 offsetting revenues for special education funding for
15 fiscal years prior to 2010-2011, or any other restricted
16 resources in each of the fiscal years.

17 So without taking any position, I just want to
18 provide clarification from our perspective.

19 CHAIR GILLIHAN: Thank you.

20 Department of Finance?

21 MR. OSMEÑA: We have no additional comments.

22 MS. KANEMASU: Could I comment on that filing
23 period?

24 CHAIR GILLIHAN: Sure.

25 MS. KANEMASU: No matter what years the

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1 Commission decides to have the RRM or actual cost,
2 whether the RRM -- no matter if you choose '11-12 or
3 '12-13 -- the filing period for initial claims would end
4 '11-12, and then we'd have a subsequent filing period
5 just for that '12-13, which would be due February of
6 2014. So we'd have two filing periods no matter what
7 method you choose.

8 CHAIR GILLIHAN: Thank you.

9 So I, obviously, wasn't here for the hearing.
10 But as I read the transcript, it seemed pretty clear to
11 me that the Commission was contemplating the RRM only
12 going through '11-12; and that it would be actual costs
13 in '12-13, and on an ongoing basis.

14 But I would defer to my fellow commissioners
15 who are here and engaged in the discussion, if I've
16 interpreted the transcript incorrectly.

17 Mr. Saylor?

18 MEMBER SAYLOR: First of all, I apologize to
19 the world for being so unclear in our last action. But
20 I think -- I've forgotten your name.

21 MS. McDONOUGH: Diana McDonough.

22 MEMBER SAYLOR: -- Ms. McDonough's
23 interpretation of our action, I think, is accurate, that
24 we did take an action to do the RRM through '11-12, and
25 to do actual costs for '12-13 and forward.

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1 But the passage of time changes the
2 circumstance, it seems to me. So my question now is, is
3 there a practical approach at this point, given the
4 passage of three months?

5 CAMILLE SHELTON: A couple of things are going
6 on here.

7 First, the information in your executive
8 summary about how the initial claiming period works is
9 wrong. And it's wrong because I guess what I said on the
10 record at the last hearing was actually right. So the
11 passage of time has nothing to do with -- of the three
12 months -- has nothing to do with that.

13 So the '11-12 date would be considered part of
14 the initial claim. But as everybody has said, it doesn't
15 really matter what the initial claim period is; it only
16 matters what you voted for in January.

17 You don't have the ability now to change that
18 vote. It's just what did you intend by that motion and
19 that vote.

20 MEMBER SAYLOR: Well, my understanding of the
21 intention is that it was the RRM through '11-12 and
22 actual costs for '12-13 and forward.

23 Is that the -- I'd like to know if that's what
24 others...

25 MEMBER OLSEN: As the member who seconded the

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1 motion, that was my understanding as well.

2 CHAIR GILLIHAN: So what is the pleasure of the
3 Commission?

4 MEMBER SAYLOR: Given that there is not a
5 material difference in the way the world would work from
6 when we were in January, based on what Ms. Shelton has
7 just reported -- what?

8 MEMBER OLSEN: Well, I think from the
9 claimant's point of view, there is a material difference.

10 MEMBER SAYLOR: Okay, but from the Controller's
11 office and our counsel --

12 MEMBER OLSEN: Right.

13 MEMBER SAYLOR: -- there is not an
14 impracticable --

15 MS. McDONOUGH: I would just like to confirm,
16 if I could, with the Controller's office, that, in fact,
17 '12-13 would be due February 15th, 2014?

18 MS. KANEMASU: Yes, that's correct.

19 MEMBER SAYLOR: Okay, so that's consistent.

20 So I'd move number 1 -- Motion Number 1, which
21 is the clearly stated action that the Commission took in
22 January.

23 MR. JONES: Member Saylor, can I repeat the
24 motion for the record?

25 MEMBER SAYLOR: Yes. Good idea.

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1 MR. JONES: Let's get it right this time, shall
2 we?

3 "I move that the Commission adopt the proposed
4 parameters and guidelines and statement of decision
5 approving the RRM from July 1, 1993, to June 30th, 2012;
6 and approving actual-cost reimbursement for claims
7 beginning July 1, 2012."

8 Does that reflect your motion?

9 MEMBER SAYLOR: It reflects what I understood
10 our action in January to be, and I would move that we
11 clarify and adopt that motion.

12 MR. JONES: Thank you.

13 CHAIR GILLIHAN: So we have a motion.

14 But before we go further, we have a request for
15 public comment.

16 MR. BURDICK: Yes, I just -- I'd like just a
17 clarification because I'm a little confused, because this
18 could deal with other claims as well, school decisions as
19 well.

20 I thought the staff said you had the choice to
21 do -- to cover '12-13. And then I thought Camille said
22 no, you didn't.

23 CAMILLE SHELTON: It was unclear what the date
24 was of the motion. But they don't have the ability to
25 rehear and redetermine or reconsider it.

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1 So the question was whether they -- what was
2 their original decision. Was it '11-12 or '12-13?

3 MR. BURDICK: So didn't you say that one of
4 their choices was to make a motion to do RRM's for '12-13?

5 MR. JONES: I believe what I said, more or
6 less, was staff respectfully recommends that the
7 Commission adopt one of the following two motions.

8 MR. BURDICK: And what was -- but wasn't one of
9 them '12-13?

10 MEMBER ALEX: Let me jump in here because it's
11 clear that the issue is to clarify what happened at the
12 previous determination.

13 MR. BURDICK: Okay, I just want to make sure
14 that my understanding was right.

15 MEMBER ALEX: Hang on.

16 Once the Commission very clearly recognized
17 that the intent previously was through '11-12, there is
18 no more option. That was what was meant.

19 MR. BURDICK: Okay, I just thought he had
20 suggested you had that option; and I was wondering
21 whether you did or not. And if that's it, then I have no
22 comment.

23 CHAIR GILLIHAN: Thank you, Mr. Burdick.

24 All right, so I believe we have a motion before
25 us.

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1 MEMBER RIVERA: I second the motion.

2 CHAIR GILLIHAN: We have a motion and a second
3 as read by Mr. Jones.

4 Heather, please call the roll.

5 MS. HALSEY: Mr. Chivaro?

6 MEMBER CHIVARO: Yes.

7 MS. HALSEY: Mr. Gillihan?

8 CHAIR GILLIHAN: Yes.

9 MS. HALSEY: Mr. Alex?

10 MEMBER ALEX: Yes.

11 MS. HALSEY: Ms. Olsen?

12 MEMBER OLSEN: Yes.

13 MS. HALSEY: Mr. Rivera?

14 MEMBER RIVERA: Yes.

15 MS. HALSEY: Mr. Saylor?

16 MEMBER SAYLOR: Yes.

17 CHAIR GILLIHAN: The motion carries.

18 MS. HALSEY: Moving on to Item 7, Commission
19 Counsel Matt Jones will present Item 7, parameters and
20 guidelines on *Williams Case Implementation, I, II, and*
21 *III.*

22 MR. JONES: Item 7, *Williams Case*
23 *Implementation.* These parameters and guidelines arise
24 from the *Williams* test claim adopted in December last
25 year. The test-claim statutes approved impose new

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1 mandated activities with respect to annual compliance
2 audits of school districts, school accountability report
3 cards, fiscal oversight by county offices of education,
4 and a new Williams complaint process.

5 Staff recommends adoption of the proposed
6 statement of decision and attached parameters and
7 guidelines, and asks that the Commission authorize staff
8 to make technical non-substantive changes following the
9 hearing.

10 Will the parties and witnesses please state
11 your names for the record?

12 MR. PALKOWITZ: Good morning. Art Palkowitz on
13 behalf of the claimant.

14 MR. OSMEÑA: Christian Osmeña, Department of
15 Finance.

16 CHAIR GILLIHAN: Thank you.

17 Mr. Palkowitz?

18 MR. PALKOWITZ: Good morning.

19 We have an opportunity to review the second
20 revised parameters and guidelines, and we are satisfied
21 with what is included in those guidelines.

22 CHAIR GILLIHAN: Thank you.

23 Department of Finance?

24 MR. OSMEÑA: We also reviewed the revised
25 parameters and guidelines, and we have no further

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1 comments.

2 CHAIR GILLIHAN: Thank you.

3 MEMBER OLSEN: I move adoption.

4 MEMBER ALEX: Second.

5 CHAIR GILLIHAN: We have a motion and a second
6 on the staff recommendation.

7 Any other discussion amongst -- or questions
8 amongst the commissioners?

9 *(No response)*

10 CHAIR GILLIHAN: Seeing none, any other public
11 comment?

12 *(No response)*

13 CHAIR GILLIHAN: Seeing none, Heather, please
14 call the roll.

15 MS. HALSEY: Mr. Chivaro?

16 MEMBER CHIVARO: Yes.

17 MS. HALSEY: Mr. Gillihan?

18 CHAIR GILLIHAN: Yes.

19 MS. HALSEY: Mr. Alex?

20 MEMBER ALEX: Yes.

21 MS. HALSEY: Ms. Olsen?

22 MEMBER OLSEN: Aye.

23 MS. HALSEY: Mr. Rivera?

24 MEMBER RIVERA: Yes.

25 MS. HALSEY: Mr. Saylor?

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1 MEMBER SAYLOR: Aye.

2 MS. HALSEY: The motion carries.

3 Thank you.

4 MS. HALSEY: The next item is Item 8.

5 Chief Legal Counsel Camille Shelton will
6 present Item 8, parameters and guidelines on *Minimum*
7 *Conditions for State Aid*.

8 CAMILLE SHELTON: The *Minimum Conditions for*
9 *State Aid* program addresses standards for the formation
10 of basic operation of the California community colleges.

11 On May 26th, 2011, the Commission adopted a
12 statement of decision finding that activities in seven
13 program areas were eligible for reimbursement.

14 Staff issued draft proposed parameters and
15 guidelines and received comments from the State
16 Controller's Office and the claimant.

17 The Controller's Office requested that we
18 clarify whether the reimbursable activities are one-time
19 or ongoing.

20 The proposed parameters and guidelines makes
21 that clarification and finds that the activities to adopt
22 policies and procedures are one-time activities. Most of
23 the other activities are designated as ongoing
24 activities.

25 In addition, the claimant raised several

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1 substantive issues regarding the reimbursable activities
2 which does require interpretation of the approved statute
3 and regulation and of the Commission's decision on the
4 test claim.

5 The proposed statement of decision analyzes
6 those issues. And I can address those issues as they
7 come up in the hearing today.

8 Staff recommends that the Commission adopt the
9 proposed statement of decision and parameters and
10 guidelines for this program, and authorized staff to make
11 any non-substantive technical corrections to the
12 documents, if necessary, following a hearing.

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

15 MR. PETERSEN: Keith Petersen representing the
16 test claimants.

17 MR. OSMEÑA: Christian Osmeña, representing
18 Department of Finance.

19 CHAIR GILLIHAN: Thank you.

20 Mr. Petersen?

21 MR. PETERSEN: I'm here today because I did not
22 want this to go down on the record as a consent item.

23 I'll stand on the written record and respond to
24 any questions.

25 CHAIR GILLIHAN: Thank you.

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1 Department of Finance?

2 MR. OSMEÑA: We have no comments at this time.

3 MEMBER ALEX: I'm just curious why it wouldn't
4 be a consent item.

5 MR. PETERSEN: We're going to litigate.

6 MEMBER ALEX: Okay, thank you.

7 MR. PETERSEN: We'll be back five or six years
8 from now, and we'll do this again.

9 MEMBER ALEX: Yes. Understood.

10 *(Mr. Saylor stepped out of the meeting room.)*

11 CHAIR GILLIHAN: Is there any other public
12 comment on this?

13 *(No response)*

14 CHAIR GILLIHAN: Any questions from the
15 commissioners?

16 *(No response)*

17 CHAIR GILLIHAN: What is the Commission's
18 preference?

19 MEMBER OLSEN: I will move the staff
20 recommendation.

21 MEMBER RIVERA: Second.

22 CHAIR GILLIHAN: We have a motion and a second
23 on the staff recommendation.

24 Heather, please call the roll.

25 MS. HALSEY: Mr. Chivaro?

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1 MEMBER CHIVARO: Yes.

2 MS. HALSEY: Mr. Gillihan?

3 CHAIR GILLIHAN: Yes.

4 MS. HALSEY: Mr. Alex?

5 MEMBER ALEX: Yes.

6 MS. HALSEY: Ms. Olsen?

7 MEMBER OLSEN: Aye.

8 MS. HALSEY: Mr. Rivera?

9 MEMBER RIVERA: Yes.

10 MS. HALSEY: Mr. Saylor?

11 *(No response)*

12 MS. HALSEY: He stepped out.

13 CHAIR GILLIHAN: The motion carries.

14 MR. PETERSEN: So neither one of us can retire

15 for at least five or six years, or move on or anything.

16 Thank you.

17 CHAIR GILLIHAN: Thank you.

18 MS. HALSEY: Item 11 is reserved for county

19 applications for a finding of significant financial

20 distress, or SB 1033 applications.

21 No SB 1033 applications have been filed.

22 Item 12, Assistant Executive Director Jason

23 Hone will present the legislative update.

24 MR. HONE: Good morning.

25 Staff has identified two bills introduced this

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1 session related to the mandates process. Those would be
2 AB 392 and AB 1292.

3 AB 1292 is a spot bill. And staff will
4 continue to monitor the legislation for any amendments or
5 other action.

6 AB 392 is sponsored by the State Controller and
7 proposes changes to the allocation method and reporting
8 requirement for prorated state mandated claims.

9 Existing law requires the Controller to prorate
10 claims if the amount appropriated for reimbursement is
11 not sufficient to pay all of the claims approved by the
12 Controller. Existing law also requires the Controller
13 to report to the Department of Finance and various
14 legislative entities when it is necessary to prorate
15 claims.

16 This bill would delete the reporting
17 requirement and would require the Controller to determine
18 the most cost-effective allocation method, if a thousand
19 dollars or less is appropriated for a program.

20 This bill was passed out of the assembly
21 Committee on Local Government on April 10th and referred
22 to the Committee on Appropriations.

23 Staff will continue to monitor this
24 legislation.

25 CHAIR GILLIHAN: Thank you.

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1 Questions from the commissioners?

2 (No response)

3 MS. HALSEY: Item 13, Chief Legal Counsel
4 Camille Shelton will present the Chief Legal Counsel's
5 Report.

6 CAMILLE SHELTON: Just a couple of items to
7 report.

8 On March 20th, the Sacramento County Superior
9 Court did uphold the Commission's actions in adopting the
10 RRM for *Grad Requirements*. And that has a judgment
11 pending on that.

12 Also, in the L.A. County *Stormwater* case, the
13 Second District Court of Appeal has set the hearing, and
14 has moved it to May 22nd.

15 CHAIR GILLIHAN: Thank you.

16 Any questions?

17 (No response)

18 CHAIR GILLIHAN: Seeing none.

19 MS. HALSEY: Item 14 is the Executive
20 Director's Report. It's pretty short this time.

21 Just an update on workload.

22 One thing to point out is, my report says we
23 completed six test claims, but it's actually eight. So
24 that needed to be corrected.

25 But we are moving along on working our backlog.

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1 (Mr. Saylor returned to the meeting room.)

2 MS. HALSEY: And also as of this writing -- or
3 actually as of now, both of our Assembly budget hearings
4 are set. One is set for May 7th in the Senate, and for
5 April 25th for -- I'm sorry, I'm reading that wrong.
6 Assembly, May 7th; and Senate, April 25th.

7 And we have our tentative agenda items listed
8 for May or July hearings at the bottom. So these should
9 be coming shortly.

10 So for representatives that are working on
11 these claims, it might be a good time to review them,
12 particularly if you think you might want to amend them or
13 something; to do that before they're set for hearing.
14 And that's it.

15 CHAIR GILLIHAN: Thank you.

16 Is there any public comment at this time?

17 (No response)

18 CHAIR GILLIHAN: Mr. Burdick?

19 MR. BURDICK: Yes, Allan Burdick, and just as a
20 member of the public. I'm not representing anybody at
21 this point in time, except the public.

22 I didn't realize you put the *Public Records Act*
23 on consent. I apparently had stepped out after my
24 session; and apparently you added it to the Consent
25 Calendar.

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1 I wanted to comment on that, not to ask for an
2 extension, but to get clarification of comments. Because
3 once you adopt it, the Commission staff will no longer
4 clarify what it meant. You know, they ruled that as an
5 advisory opinion, and so they can't clarify the language.
6 So I had hoped to have some language clarified.

7 Also, we have a representative here who filed a
8 letter in opposition to the proposed P's & G's. And I
9 thought that she should have been given an opportunity to
10 be heard. She is still here. And I would request she be
11 heard.

12 Now, the problem may be, I don't know whether
13 you can reconsider this or not, or you can hear comments
14 or I can get clarification. But the problem is that if
15 we don't get clarification now, if it's allowable, then
16 we can't get the -- the staff cannot comment.

17 You know, the current Executive Director's
18 opinion is that staff cannot give advisory -- it would
19 be an advisory opinion; and, therefore, if we have a
20 question about language or wording, they're not able to
21 comment on that. And so I was hoping to get some
22 clarification.

23 So I don't know what can be done or how it can
24 be -- you know, whether it can reheard or not, or whether
25 the staff is precluded from commenting on the language;

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1 or whether -- and I was referring to Ms. Chinn -- her
2 letters, questioning the accuracy of the P's & G's and
3 the conflict with the statement of decision.

4 But I was just surprised that it was placed on
5 consent, given the fact that, you know, those P's & G's,
6 there was a letter requesting -- indicating that the
7 staff's analysis was inconsistent with the statement of
8 decision.

9 So I don't know what can be done now at this
10 point; but I just wanted to kind of put that before you.

11 CHAIR GILLIHAN: Thank you.

12 Camille or Heather?

13 CAMILLE SHELTON: Just to clarify, on Item 2, I
14 think it was mentioned -- the Chair mentioned that the
15 item was proposed by consent by both the test claimants
16 and the Department of Finance, and they have the ability
17 to put something on consent.

18 The Chair also asked for public comment when
19 the consent calendar was adopted. It's been adopted, and
20 they don't have the authority to go back.

21 Now, if you have questions, we can point you to
22 the areas in the staff analysis that would answer your
23 questions.

24 MR. BURDICK: Thank you very much.

25 CHAIR GILLIHAN: Thank you.

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1 So I believe that brings us to closed session.
2 The Commission will meet in closed session
3 pursuant to Government Code section 11126(e) to confer
4 and receive advice from legal counsel for consideration
5 and action, as necessary and appropriate, upon the
6 pending litigation listed on the published notice and
7 agenda, and to confer with and receive advice from legal
8 counsel regarding potential litigation.

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

11 We will reconvene in open session in
12 approximately 30 minutes.

13 *(The Commission met in executive closed*
14 *session from 11:39 a.m. to 11:54 a.m.)*

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

24 With no further business to discuss, I'll
25 entertain the motion to adjourn.

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MEMBER OLSEN: So moved.

MEMBER RIVERA: Second.

CHAIR GILLIHAN: All in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR GILLIHAN: All opposed?

(No response)

CHAIR GILLIHAN: Hearing none, this meeting is
adjourned.

(The meeting concluded at 11:55 a.m.)



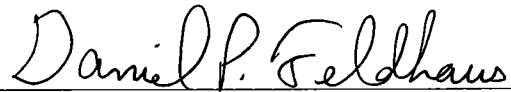
REPORTER' S CERTIFICATE

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 10th of May 2012.



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