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COMMISSION ON  
STATE MANDATES

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## **PUBLIC HEARING**

### **COMMISSION ON STATE MANDATES**



**TIME: 9:30 a.m.**

**DATE: Friday, September 28, 2012**

**PLACE: State Capitol, Room 447  
Sacramento, California**



### **REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:

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

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**Daniel P. Feldhaus, C.S.R., Inc.**  
Certified Shorthand Reporters  
8414 Yermo Way, Sacramento, California 95828  
Telephone 916.682.9482 Fax 916.688.0723  
FeldhausDepo@aol.com

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

SCOTT MORGAN  
Representative for KEN ALEX, Director  
Office of Planning & Research

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

FRANCISCO LUJANO  
Representative for BILL LOCKYER  
State Treasurer

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member

DON SAYLOR  
Yolo County Supervisor  
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER HALSEY  
Executive Director  
(Items 2, 17, and 20)

JASON HONE  
Assistant Executive Director

CAMILLE SHELTON  
Chief Legal Counsel  
(Items 3 and 19)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

*continued*

ERIC FELLER  
Senior Staff Counsel  
(Item 6)

MATT JONES  
Commission Counsel  
(Item 5)

KENNY LOUIE  
Staff Counsel  
(Items 4 and 10)

KERRY ORTMAN  
Program Analyst  
(Item 18)



PUBLIC TESTIMONY

**Appearing Re Item 3:**

For City of Kingsburg:

JULIANA F. GMUR  
Manager, Financial Services  
MAXIMUS  
625 Coolidge Drive, Suite 100  
Folsom, California 95630

For Department of Finance:

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance  
915 L Street  
Sacramento, California 95814

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 Solana Beach School District:

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

For Department of Finance:

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Appearing Re Item 5:**

For San Diego Unified School District:

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

For Department of Finance:

LAURIE CARNEY  
Department of Finance  
915 L Street  
Sacramento, California 95814

DONNA FEREBEE  
Staff Counsel III  
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 6:**

For Department of Finance:

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

DONNA FEREBEE  
Staff Counsel III  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Appearing Re Item 10:**

IAN JOHNSON  
Finance Budget Analyst  
Education Unit  
Department of Finance  
915 L Street  
Sacramento, California 95814

DONNA FEREBEE  
Staff Counsel III  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Also Present:**

NANCY PATTON





I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Call to Order and Roll Call . . . . .	11
II. Approval of Minutes	
Item 1 May 25, 2012 . . . . .	12
III. Proposed Consent Calendar	
Items 7, 8, 9, 11, 12, 13, 14, 15, and 16 . . . . .	13
IV. Appeal of Executive Director Decisions Pursuant to California Code of Regulations Title 2, Section 1181(c)	
Item 2 Appeal of Executive Director's Decision (none) . . . . .	13
V. Hearings and Decisions on Test Claims and Statements of Decision, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Test Claims and Statements of Decision	
Item 3 <i>Reserve Peace Officer Training</i> 03-TC-15 City of Kingsburg . . . . .	14
Item 4 <i>Uniform Complaint Procedures</i> (K-12), 03-TC-02 Solana Beach School District . . . . .	17
Item 5 <i>Pupil Health: Oral Health</i> <i>Assessment</i> 07-TC-03 San Diego Unified School District . . . . .	21

I N D E X

Proceedings

Page

VI. Hearings and Decisions on Test Claims and Statements of Decision, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7

A. Test Claims and Statements of Decision

Item 6 *Instructional Materials Funding Requirements*  
03-TC-07  
Castro Valley Unified School District . . . . . 34

B. Parameters and Guidelines and Statements of Decision

Item 7\* *Discrimination Complaint Procedures*  
02-TC-46 (and a portion of 02-TC-25 and 02-TC-31)  
Santa Monica Community College District, Los Rios Community College District, and West Kern Community College District. 13

Item 8\* *Pupil Health: Oral Health Assessment*  
07-TC-03  
San Diego Unified School District . . . . . 13

Item 9\* *Local Agency Ethics (AB 1234)*  
07-TC-04  
City of Newport Beach . . . . . 13

Item 10 *Public Contracts (K-14)*  
02-TC-35  
Clovis Unified School District and Santa Monica Community College District . . . . . 36



I N D E X

<u>Proceedings</u>	<u>Page</u>
VI. Hearings and Decisions on Test Claims and Statements of Decision, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
B. Parameters and Guidelines and Statements of Decision <i>continued</i>	
Item 11* <i>Handicapped and Disabled Students,</i> 11-PGA-06 Department of Finance . . . . .	13
Item 12* <i>Interdistrict Attendance Permits</i> 10-PGA-01 State Controller's Office . . . . .	13
VI. Informational Hearing on Parameters and Guidelines Amendments Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8	
A. Statewide Cost Estimate	
Item 13* <i>Modified Primary Election</i> 01-TC-13 County of San Bernardino . . . . .	13
Item 14* <i>Domestic Violence Background Checks</i> 01-TC-29 County of Alameda . . . . .	13
Item 15* <i>Identity Theft</i> 03-TC-08 City of Newport Beach . . . . .	13
Item 16* <i>Permanent Absentee Voter II</i> 03-TC-11 County of Sacramento . . . . .	13

I N D E X

<u>Proceedings</u>	<u>Page</u>
VII. Hearings on County Applications for Findings of Significant Financial Distress Pursuant to Welfare and Institutions Code Section 17000.6 and California Code of Regulations, Title 2, Article 6.5	
Item 17 Assignment of County Application to Commission, a Hearing Panel, of One or More Members of the Commissions or to a Hearing Officer (None) . . . . .	41
VIII. Reports	
Item 18 Legislative Update . . . . .	41
Item 19 Chief Legal Counsel: Recent Decisions, Litigation Calendar.	42
Item 20 Executive Director: Budget, Workload, Workplan Update, and Next Meetings/Hearings . . . . .	42
IX. Public Comment . . . . .	45
Presentation of Resolution to Nancy Patton .	46
X. Closed Executive Session . . . . .	51
XI. Report from Closed Executive Session . . . . .	51
Adjournment . . . . .	52
Reporter's Certificate . . . . .	53



**Commission on State Mandates – September 28, 2012**

1 BE IT REMEMBERED that on Friday, September 28,  
2 2012, commencing at the hour of 9:29 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



7

*(The following proceedings commenced with*

8

*Member Saylor absent from the hearing room.)*

9

CHAIR GILLIHAN: Good morning, everybody.

10

This meeting on the Commission on State

11

Mandates will come to order.

12

First, I'd like to introduce two new commission

13

employees: Jason Hone, Assistant Executive Director,

14

sitting here to the right; and Matt Jones, Commission

15

counsel.

16

Welcome to both of you.

17

Heather, will you please call the roll?

18

MS. HALSEY: Mr. Morgan?

19

MEMBER MORGAN: Here.

20

MS. HALSEY: Mr. Chivaro?

21

MEMBER CHIVARO: Here.

22

MS. HALSEY: Mr. Gillihan?

23

CHAIR GILLIHAN: Present.

24

MS. HALSEY: Mr. Lujano?

25

MEMBER LUJANO: Here.

Commission on State Mandates – September 28, 2012

1 MS. HALSEY: Ms. Olsen?  
2 MEMBER OLSEN: Here.  
3 MS. HALSEY: Ms. Ramirez?  
4 MEMBER RAMIREZ: Here.  
5 MS. HALSEY: Mr. Saylor?  
6 *(No response)*  
7 CHAIR GILLIHAN: Okay, are there any  
8 objections, corrections to the May 25<sup>th</sup>, 2012, minutes?  
9 MEMBER CHIVARO: Move approval.  
10 CHAIR GILLIHAN: Is there a second?  
11 MEMBER OLSEN: Second.  
12 CHAIR GILLIHAN: So there's a motion and a  
13 second for adopting the minutes.  
14 All those in favor of adopting the minutes,  
15 signify by saying "aye."  
16 *(A chorus of "ayes" was heard.)*  
17 CHAIR GILLIHAN: All those opposed?  
18 *(No response)*  
19 CHAIR GILLIHAN: No?  
20 *(No response)*  
21 CHAIR GILLIHAN: Any abstentions?  
22 MEMBER MORGAN: Yes.  
23 CHAIR GILLIHAN: And I'll be abstaining as  
24 well.  
25 Okay, so the minutes are adopted.

**Commission on State Mandates – September 28, 2012**

1 MS. HALSEY: Item 2 is reserved for appeals of  
2 the Executive Director's decisions.

3 There are no appeals to consider under Item 2.

4 *(Member Saylor entered the hearing room.)*

5 MS. HALSEY: We'll give Don a moment to sit  
6 down.

7 The next item is the *Proposed Consent Calendar*,  
8 which consists of Items 7, 8, 9, 11, 12, 13, 14, 15, and  
9 16.

10 Please note Item 7 was originally agendized as  
11 not being on the consent calendar, but all of the parties  
12 have since agreed to place it on consent.

13 CHAIR GILLIHAN: Are there any objections to  
14 the proposed consent calendar?

15 MEMBER OLSEN: I move the consent calendar.

16 MEMBER CHIVARO: Second.

17 CHAIR GILLIHAN: Second?

18 So it's been moved and seconded to adopt the  
19 proposed consent calendar.

20 All those in favor, signify by saying "aye."

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

22 CHAIR GILLIHAN: All those opposed, signify by  
23 saying "no."

24 *(No response)*

25 CHAIR GILLIHAN: The motion carries.

**Commission on State Mandates – September 28, 2012**

1 MS. HALSEY: Let's move to the Article VII  
2 portion of the hearing.

3 Will the parties and witnesses for Items 3, 4,  
4 5, 6, and 10 please rise?

5 *(Parties and witnesses stood.)*

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

10 *(Parties and witnesses responded*  
11 *affirmatively.)*

12 MS. HALSEY: Thank you.

13 Chief Counsel Camille Shelton will present  
14 Item 3, a test claim on *Reserve Peace Officer Training*.

15 MS. SHELTON: This test claim addresses the  
16 basic and continuing professional training requirements  
17 for reserve peace officers appointed by local  
18 law-enforcement agencies of cities, counties, special  
19 districts, and school districts. Reserve officers  
20 generally work as volunteers and perform a number of  
21 general and specialized assignments, depending on their  
22 level of training.

23 The test-claim statutes and POST Administrative  
24 Manual identify the training requirements and  
25 responsibilities for each level of reserve officer.

**Commission on State Mandates – September 28, 2012**

1 Staff finds that the claim statutes in the POST  
2 manual do not impose any mandated duties on local  
3 government.

4 The obligation to get training is on the  
5 individual seeking reserve peace-officer status and on  
6 those individuals seeking to continue their designation  
7 or appointment as a reserve officer.

8 Staff recommends that the Commission deny this  
9 test claim.

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

12 MS. GMUR: Juliana Gmur on behalf of test  
13 claimant, City of Kingsburg.

14 MS. GEANACOU: Susan Geanacou, Department of  
15 Finance.

16 MR. WARD: Randall Ward, Department of Finance.

17 MS. GMUR: Good morning, Commissioners.

18 The test claimant would like to thank staff for  
19 their thorough job on this matter, and we concur with the  
20 staff analysis.

21 CHAIR GILLIHAN: Ms. Geanacou or Mr. Ward?

22 MR. WARD: Yes, we concur with the statement of  
23 decision -- the draft statement of decision as well.

24 Thank you.

25 MEMBER CHIVARO: I'll move the staff

Commission on State Mandates – September 28, 2012

1 recommendation.

2 MEMBER OLSEN: Second.

3 CHAIR GILLIHAN: So the motion's been -- the  
4 staff recommendation has been moved and seconded.

5 Is there any public comment?

6 *(No response)*

7 CHAIR GILLIHAN: Seeing none, Heather, will you  
8 please call the roll?

9 MS. HALSEY: Mr. Morgan?

10 MEMBER MORGAN: Aye.

11 MS. HALSEY: Mr. Chivaro?

12 MEMBER CHIVARO: Aye.

13 MS. HALSEY: Mr. Gillihan?

14 CHAIR GILLIHAN: Aye.

15 MS. PATTON: Mr. Lujano?

16 MEMBER LUJANO: Aye.

17 MS. HALSEY: Ms. Olsen?

18 MEMBER OLSEN: Aye.

19 MS. HALSEY: Ms. Ramirez?

20 MEMBER RAMIREZ: Aye.

21 MS. HALSEY: Mr. Saylor?

22 MEMBER SAYLOR: Aye.

23 CHAIR GILLIHAN: The motion carries.

24 MR. WARD: Thank you.

25 MS. HALSEY: Commission Counsel Kenny Louie



1 will present Item 4, a test claim on *Uniform Complaint*  
2 *Procedures, K through 12.*

3 MR. LOUIE: This claim addresses activities  
4 associated with the procedures of filing, investigating,  
5 and resolving complaints alleging violations of specified  
6 educational programs and allegations of unlawful  
7 discrimination.

8 The claim also addresses notice requirements  
9 regarding the prohibition against discrimination and the  
10 availability of civil remedies for discrimination  
11 complaints.

12 Staff recommends the partial approval of this  
13 test claim for the activities starting on page 49 of the  
14 analysis.

15 These activities exceed federal law, and apply  
16 only to specified educational programs that districts are  
17 required to provide. However, staff recommends that the  
18 Commission deny some of the notice and complaint  
19 procedures because they are mandated by federal law.

20 In addition, staff found some of the  
21 educational programs subject to the complaint procedures  
22 to be voluntary.

23 As a result, staff recommends the Commission  
24 deny reimbursement for the complaint procedures for the  
25 educational programs voluntarily provided by school

1 districts.

2 The claimants have not filed comments on the  
3 staff analysis.

4 Yesterday afternoon, the Department of Finance  
5 filed late comments on the analysis.

6 Staff will address any questions that arise  
7 from these comments. And I believe that the Commission  
8 members have received a copy of the filing.

9 Staff recommends the Commission adopt the staff  
10 analysis and proposed statement of decision to partially  
11 approve the test claim.

12 Will the parties and witnesses state their  
13 names for the record?

14 MR. PALKOWITZ: Good morning. Art Palkowitz on  
15 behalf of the claimant.

16 MS. GEANACOU: Susan Geanacou, Department of  
17 Finance.

18 CHAIR GILLIHAN: Thank you.

19 Mr. Palkowitz?

20 MR. PALKOWITZ: Thank you.

21 We're willing to submit on the staff analysis.  
22 And I'd like to have an opportunity to respond to the  
23 Department of Finance's comments that I received  
24 yesterday.

25 CHAIR GILLIHAN: Okay, Ms. Geanacou?

**Commission on State Mandates – September 28, 2012**

1 MS. GEANACOU: The Department of Finance does  
2 not have any additional comments to add. We acknowledge  
3 that the filing yesterday was a late filing.

4 My only request is that we have an opportunity  
5 to hear the Commission staff on that late filing, those  
6 issues, as well as the request to have the various  
7 appropriations listed in the Schedule A -- I believe it's  
8 called "Attachment A" -- as possible offsets to  
9 claimant's costs, should this test claim be approved.

10 CHAIR GILLIHAN: Mr. Louie?

11 MR. LOUIE: In regard to Finance's argument  
12 that adult education is voluntary as a whole, generally  
13 speaking, that's true. However, as the code sections are  
14 laid out, code sections specifically involving  
15 citizenship and English adult education are laid out to  
16 specifically require, regardless of whether or not there  
17 is an existing program, to provide those services if  
18 requested by a certain number of the citizenship in that  
19 area.

20 Now, if you look at the statutory scheme in the  
21 Ed. Code, there are instances in which the Legislature  
22 has stated "if a district is maintaining an adult  
23 education program, then they may provide," or "then they  
24 shall provide" certain activities.

25 That is not the case with these specific code

**Commission on State Mandates – September 28, 2012**

1 sections that require adult education citizenship or  
2 English. And as a result, based on the plain language of  
3 the statute, they are required to provide those services.  
4 And this is consistent with our prior test claim that we  
5 found to require adult education for these specific  
6 classes. That would have been adult enrollment,  
7 education reporting.

8 In regards to the funding situation, to the  
9 extent that local agencies can use those funds for the  
10 purposes of complaint procedures, and if you use those  
11 funds, then we can mark them as possible offsetting of  
12 funds. And that can be handled at the P's and G's stage.

13 However, once again, the claimants need to be  
14 authorized to use it, and they must use it for that -- or  
15 in those instances, the claimants have to use it for that  
16 to be offsetting, unless there's a requirement that the  
17 claimants use it for the specific purposes of the  
18 complaint procedures.

19 CHAIR GILLIHAN: Ms. Olsen?

20 MEMBER OLSEN: I'll move the staff  
21 recommendation.

22 MEMBER CHIVARO: I'll second.

23 CHAIR GILLIHAN: Is there any other discussion  
24 amongst the Commission?

25 *(No response)*

Commission on State Mandates – September 28, 2012

1 CHAIR GILLIHAN: Are we ready for the question?

2 (No response)

3 CHAIR GILLIHAN: So we have a motion and a  
4 second on the staff recommendation.

5 Heather?

6 MS. HALSEY: Mr. Morgan?

7 MEMBER MORGAN: Aye.

8 MS. HALSEY: Mr. Chivaro?

9 MEMBER CHIVARO: Aye.

10 MS. HALSEY: Mr. Gillihan?

11 CHAIR GILLIHAN: Aye?

12 MS. HALSEY: Mr. Lujano?

13 MEMBER LUJANO: Aye.

14 MS. HALSEY: Ms. Olsen?

15 MEMBER OLSEN: Aye.

16 MS. HALSEY: Ms. Ramirez?

17 MEMBER RAMIREZ: Aye.

18 MS. HALSEY: Mr. Saylor?

19 MEMBER SAYLOR: Aye.

20 CHAIR GILLIHAN: The motion is carried.

21 MS. HALSEY: Moving on to Item 5, Commission  
22 Counsel Matt Jones will present Item 5 on *Pupil Health:*  
23 *Oral Health Assessment.*

24 MR. JONES: Good morning.

25 This test claim alleges increased costs under

**Commission on State Mandates – September 28, 2012**

1 Education Code section 49452.8, which requires public  
2 school pupils in kindergarten or in the first grade, if  
3 not previously enrolled in kindergarten, to obtain an  
4 oral-health assessment from a licensed dentist or other  
5 dental health professional.

6 Staff finds that section 49452.8 requires  
7 school districts to notify parents or legal guardians of  
8 the oral-health assessment requirement, to receive and  
9 retain the assessments and waiver forms from parents, and  
10 to report aggregated statistical results to the county  
11 office of education.

12 These requirements, however, are specifically  
13 funded by an ongoing budget appropriation, at  
14 line 6110-268-0001, in the amount of \$4.4 million  
15 annually.

16 Government Code section 17556(e) prescribes a  
17 finding of cost by the Commission where an appropriation  
18 is made in the test-claim statute or in other bills  
19 specifically intended to fund a mandate and in an amount  
20 sufficient to fund the mandate.

21 The claimant has not demonstrated any basis for  
22 a finding that this appropriation is not sufficient to  
23 cover the costs of the mandated activities.

24 Staff, therefore, recommends that the  
25 Commission deny this test claim.

**Commission on State Mandates – September 28, 2012**

1 Will the parties and the witnesses please state  
2 your names for the record?

3 MR. PALKOWITZ: Good morning.

4 Art Palkowitz on behalf of the claimant,  
5 San Diego Unified School District.

6 MS. CARNEY: Laurie Carney on behalf of the  
7 Department of Finance.

8 MS. FEREBEE: Donna Ferebee, Department of  
9 Finance.

10 CHAIR GILLIHAN: Good morning.

11 Mr. Palkowitz?

12 MR. PALKOWITZ: Yes, thank you.

13 Good morning, everyone.

14 Looking back to, I think it was '06, when we  
15 filed this test claim, we knew at the time there was  
16 funding in the budget for these activities.

17 We were concerned that at some point that  
18 funding may be diminished or eliminated. That has not  
19 happened, and, therefore, the funding has been adequate  
20 for the districts during that period of time. However,  
21 the '12-13 budget has decreased the funding by  
22 20 percent.

23 The districts, now that we're in the school  
24 year of '12-13, have not determined yet how that will  
25 impact their activities, and whether they will have a

1 deficiency, in that the amount of money they will receive  
2 from the budget will be less than the costs of those  
3 activities.

4 I believe in the past it was a unit rate. And  
5 I don't really know how that's going to be impacted on  
6 the '12-13 for the schools.

7 So staff is correct, there has not been any  
8 evidence provided for the last year, since this statute  
9 was enacted, up until now, because there has been no  
10 evidence submitted regarding the District's request for  
11 reimbursement of their costs because the funding has been  
12 adequate.

13 But we have a situation here that in '12-13  
14 there is a decrease of 20 percent. And based on that  
15 decrease and the possibility of an increased decrease,  
16 the funding for the activities may be deficient as years  
17 go forward.

18 In speaking to Camille about this earlier  
19 today, though I don't like to propose putting this off  
20 for a while, I really don't see how else we could handle  
21 this as opposed to filing a new test claim and having the  
22 claimants incur that expense, and waiting years until  
23 that's heard.

24 So I would like to propose that this test claim  
25 be continued, probably for about a year, which will



**Commission on State Mandates – September 28, 2012**

1 provide the claimants an opportunity to review the  
2 activities, and see what the costs are that have been put  
3 in the budget, and give them an opportunity to provide  
4 any evidence to this body. Because the reason this test  
5 claim is being denied is not because it's not necessarily  
6 a mandate but, rather, that the funding has been provided  
7 for all these years and is adequate.

8 Thank you.

9 CHAIR GILLIHAN: Thank you.

10 Before we go to the Department of Finance,  
11 Ms. Ramirez?

12 MEMBER RAMIREZ: As a relatively new  
13 commissioner, I'd like to just be informed of the  
14 procedure and precedent for continuing claims in the  
15 manner that counsel has stated.

16 MS. SHELTON: It's within the discretion of the  
17 Commission if they want to continue an item. You can  
18 certainly do that.

19 With respect to the issues here, there is a  
20 Government Code section that Matt has that listed in the  
21 analysis, at 17556, that does require the Commission to  
22 deny a claim when there is no evidence of costs mandated  
23 by the State when there has been a specific appropriation  
24 sufficient to fund the cost of the mandate.

25 Finance may have some testimony today about

**Commission on State Mandates – September 28, 2012**

1 that 20 percent reduction. But we still don't have  
2 evidence in the record today. So if you were to decide  
3 it today on this record, we would continue to recommend  
4 that the claim be denied.

5 If you don't -- in that case, if you were to  
6 take action on the item today, consistent with the staff  
7 recommendation, like Mr. Palkowitz was suggesting, he can  
8 file another test claim because the government does allow  
9 them to file a test claim within one year of first  
10 incurring costs.

11 MEMBER RAMIREZ: And when might it be likely to  
12 return to us, if they did do that?

13 MS. SHELTON: If they filed another test claim?

14 MEMBER RAMIREZ: Yes.

15 MS. SHELTON: You would know your costs after  
16 the fiscal year -- after this '12-13 fiscal year, right?

17  
18 MR. PALKOWITZ: Right. But I think the concern  
19 you should have is that based on past history, it could  
20 take four or five years after we file our test claim to  
21 be heard by the Commission. And maybe that's an  
22 incorrect estimate.

23 MS. HALSEY: Based on our current backlog  
24 reduction plan, we should be done with all test claims in  
25 two years. And that's assuming the water cases are

Commission on State Mandates – September 28, 2012

1 actually resolved in the next year, which is unlikely.  
2 So we'll actually probably be able to get it done within  
3 less than two years.

4 CHAIR GILLIHAN: Mr. Saylor was first, and then  
5 Ms. Olsen.

6 MEMBER SAYLOR: Is your question on point?

7 MEMBER OLSEN: Yes, it is.

8 MEMBER SAYLOR: Then I'll wait. It's on a  
9 different line.

10 CHAIR GILLIHAN: Ms. Olsen?

11 MEMBER OLSEN: Ms. Shelton, you said that a  
12 test claim needs to be filed within one year of incurring  
13 costs.

14 MS. SHELTON: Yes.

15 MEMBER OLSEN: So do we really have the ability  
16 to set this off, since this test claim was filed,  
17 theoretically, within one year of something that proved  
18 to not happen?

19 MS. SHELTON: You're raising a good point.  
20 On this record, as I said, there is nothing in the record  
21 that suggests that the claim should be approved. We have  
22 nothing here. And still, the burden is on the claimant  
23 to prove those elements.

24 MEMBER OLSEN: So if we were to put it off, as  
25 Mr. Palkowitz suggests, okay -- this test claim was filed

1 when?

2 MS. SHELTON: 2006.

3 MEMBER OLSEN: Okay, so '06.

4 So we put it off, and we come back in a year or  
5 two. Presumably, they would have shown if it's going to  
6 be able to be shown, that they had some costs relative to  
7 the budget reductions. I don't know if that actually  
8 will come to pass. But let's just use that as a starting  
9 point. But the claim would not have been filed within  
10 one year of those costs being incurred.

11 So would we still have to deny the claim,  
12 having put it off because the claim had not been filed  
13 within one year of those costs being incurred?

14 MS. SHELTON: No, the body can choose to  
15 maintain jurisdiction over a claim.

16 MEMBER OLSEN: Okay.

17 MS. SHELTON: You can choose to maintain  
18 jurisdiction over that.

19 If there was absolutely no funding, this claim  
20 would be recommended as an approval.

21 MEMBER OLSEN: Right.

22 MS. SHELTON: If there is a subsequent finding  
23 after that Commission decision, then those appropriations  
24 would be listed as an offset in the P's & G's. And then  
25 it's possible that the Controller would deny down to

1 zero, if sufficient funding had been appropriated.

2 But here, because we do have 17556 right now on  
3 this record, there is nothing to show any increased costs  
4 beyond the amount appropriated.

5 MEMBER OLSEN: Okay, thank you.

6 MR. PALKOWITZ: I have a question.

7 In the test claim, there was a declaration that  
8 stated the claimant incurred costs.

9 Are you --

10 MS. SHELTON: The declaration, Matt can  
11 clarify.

12 MR. JONES: Based on the test claim, as I read  
13 it, at page 22 of the exhibits, or page 18, if you're  
14 looking at the test-claim numbers, paragraph 4 suggests  
15 that the claimant's statewide cost estimate is drawn  
16 directly from the California Department of Education's  
17 estimate, which, in turn, seems, on the basis of this  
18 record, to be drawn from the Budget Act itself. There  
19 seems to be no other basis for the claimant's estimate of  
20 costs that I can see on this record.

21 CHAIR GILLIHAN: Okay, Mr. Saylor?

22 MEMBER SAYLOR: So my question actually goes  
23 to the nature of the costs that might be claimed at some  
24 point in the future.

25 And there seem to be three things: One is a

1 notice; second is a compilation and keeping of the  
2 records; and third is a report.

3 I'm puzzled as to how those costs will continue  
4 into the future. It seems that the notice, once  
5 established, will not be a major cost because it's just  
6 an ongoing part of the procedure.

7 Can you describe, Mr. Palkowitz, the  
8 cost-driver in this?

9 MR. PALKOWITZ: Yes. Thank you.

10 The test claim includes, for this claimant,  
11 San Diego Unified, they estimated \$1,400 for training  
12 staff; \$13,000 to implement the assessment program, which  
13 includes distributing forms.

14 This program is going to continue every year as  
15 incoming students come in. And so it's -- I don't think  
16 some of these might be considered one-time, like,  
17 training staff might be; but I don't believe obtaining  
18 the forms, answering questions, collecting and inputting  
19 the data, that, to me, would seem to be ongoing versus  
20 one-time.

21 They estimate \$45,000 to distribute and collect  
22 the assessment of waiver forms to the parents, and then  
23 also an expense to annually report the compliance  
24 results.

25 I don't know if that answers your question, but

1 those are their estimates.

2 And getting back to staff's comments, those  
3 estimates are driven or arrived at based on the budget as  
4 opposed to what they're actually -- her declaration is  
5 saying, I would -- you know, to me, I don't really -- I  
6 wouldn't agree with that.

7 MS. SHELTON: Except when you read the test  
8 claim as a whole, they have -- San Diego -- I think it's  
9 San Diego -- has acknowledged that they've received full  
10 funding.

11 MR. PALKOWITZ: Well, I guess this -- we're  
12 dealing with a couple issues.

13 One issue is saying that they didn't submit any  
14 costs. And we're not denying they haven't received  
15 funding. That's not the issue here.

16 If the recommendation is to deny the test claim  
17 because no costs have been submitted, we have a  
18 declaration that, to me, would be acceptable evidence on  
19 what the costs were for a year, that year '06-07.

20 So if that's the basis to deny the test claim,  
21 it seems to me that's not accurate.

22 If you want to dispute her declaration to some  
23 effect, to the value that she's putting on there, but to  
24 have a statement, "We're denying this because there are  
25 no costs submitted," I would like clarification on that.

**Commission on State Mandates – September 28, 2012**

1 MS. SHELTON: The recommendation is to deny  
2 this test claim based on 17556(e). There has been an  
3 appropriation specifically targeted for this program,  
4 which was sufficient to cover the costs of the mandate.  
5 And the claimant has the burden of proof to show that  
6 they have increased costs mandated by the State; and  
7 there is no evidence of any increased costs beyond that,  
8 which has already been appropriated.

9 CHAIR GILLIHAN: Can we go to the Department of  
10 Finance?

11 MS. FEREBEE: Yes, thank you.

12 Donna Ferebee, Department of Finance.

13 Finance believes that the comments offered by  
14 Mr. Palkowitz were and have been largely addressed in the  
15 final staff analysis in here today.

16 We urge you to approve the final staff  
17 analysis.

18 And further, we also agree with Ms. Shelton's  
19 comments about the possibilities of a later filing by the  
20 claimant as a possibility. But today, we would urge you  
21 to adopt the final staff analysis as opposed to  
22 continuing the test claim.

23 Thank you.

24 CHAIR GILLIHAN: Thank you.

25 Are there any other questions?



**Commission on State Mandates – September 28, 2012**

1 Mr. Saylor?

2 MEMBER SAYLOR: I move approval of the  
3 recommended position.

4 CHAIR GILLIHAN: We have a motion.

5 Is there a second?

6 MEMBER CHIVARO: Second.

7 CHAIR GILLIHAN: So we have a motion and a  
8 second on the staff recommendation.

9 Is there any public comment?

10 *(No response)*

11 CHAIR GILLIHAN: Any other discussion amongst  
12 the Commission?

13 *(No response)*

14 CHAIR GILLIHAN: Heather, will you call the  
15 roll, please?

16 MS. HALSEY: Mr. Morgan?

17 MEMBER MORGAN: Aye.

18 MS. HALSEY: Mr. Chivaro?

19 MEMBER CHIVARO: Aye.

20 MS. HALSEY: Mr. Gillihan?

21 MEMBER GILLIHAN: Aye.

22 MS. HALSEY: Mr. Lujano?

23 MEMBER LUJANO: Aye.

24 MS. HALSEY: Ms. Olsen?

25 MEMBER OLSEN: Aye.

**Commission on State Mandates – September 28, 2012**

1 MS. HALSEY: Ms. Ramirez?

2 MEMBER RAMIREZ: Aye.

3 MS. HALSEY: Mr. Saylor?

4 MEMBER SAYLOR: Aye.

5 CHAIR GILLIHAN: The motion is approved on the  
6 staff recommendation.

7 MS. HALSEY: Item 6, Senior Staff Counsel Eric  
8 Feller will present Item 6, a test claim on *Instructional*  
9 *Materials Funding Requirements*.

10 MR. FELLER: Good morning.

11 This test claim requests reimbursement for  
12 activities performed by K-through-12 school districts to  
13 review, select, order, and dispose of textbooks and  
14 instructional materials, as well as activities related to  
15 categorical funding programs for the purchase of these  
16 materials.

17 For the reasons stated in the analysis, staff  
18 recommends the Commission deny this test claim because  
19 the statutes, regulations, and executive order do not  
20 mandate a new program or higher level of service on  
21 school districts.

22 Would the parties and witnesses please state  
23 your names for the record?

24 CHRIS JOHNSON: Chris Johnson, Department of  
25 Finance.

**Commission on State Mandates – September 28, 2012**

1 MS. FEREBEE: Donna Ferebee, Department of  
2 Finance.

3 CHAIR GILLIHAN: So, Department of Finance?

4 CHRIS JOHNSON: We concur with the staff  
5 analysis and the proposed statement of decision.

6 MEMBER CHIVARO: Move staff recommendation.

7 CHAIR GILLIHAN: So we have a motion.

8 Is there a second on the staff recommendation?

9 MEMBER MORGAN: Second.

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

11 Is there any other discussion amongst the  
12 Commission?

13 *(No response)*

14 CHAIR GILLIHAN: Any public comment?

15 *(No response)*

16 CHAIR GILLIHAN: Seeing none, Heather, will you  
17 please call the roll?

18 MS. HALSEY: Mr. Morgan?

19 MEMBER MORGAN: Aye.

20 MS. HALSEY: Mr. Chivaro?

21 MEMBER CHIVARO: Aye.

22 MS. HALSEY: Mr. Gillihan?

23 MEMBER GILLIHAN: Aye.

24 MS. HALSEY: Mr. Lujano?

25 MEMBER LUJANO: Aye.

Commission on State Mandates – September 28, 2012

1 MS. HALSEY: Ms. Olsen?

2 MEMBER OLSEN: Aye.

3 MS. HALSEY: Ms. Ramirez?

4 MEMBER RAMIREZ: Aye.

5 MS. HALSEY: Mr. Saylor?

6 MEMBER SAYLOR: Aye.

7 CHAIR GILLIHAN: The motion carries on the  
8 staff recommendation.

9 MS. HALSEY: Items 7, and 8, and 9 are on the  
10 Consent Calendar.

11 Item 10 is our next item.

12 Commission Counsel Kenny Louie will present  
13 Item 10, *Public Contracts, K-14, Parameters and*  
14 *Guidelines and Proposed Statement of Decision.*

15 MR. LOUIE: This item proposes adoption of the  
16 parameters and guidelines for the *Public Contracts*  
17 program. The *Public Contracts* program addresses the  
18 requirements imposed on school districts and community  
19 college districts when they are contracting for goods,  
20 services, and public works projects, including the  
21 requirement to specify the classification of contractor's  
22 license in a bid proposal, the required contract clauses  
23 for public works involving digging trenches or other  
24 excavation, the requirement to verify a bidder's license  
25 status, and community college districts engaging in

**Commission on State Mandates – September 28, 2012**

1 activities to promote minority, women, and disabled  
2 business enterprise participation in public contracts.

3 There are some issues in the P's & G's that may  
4 be complicated. Staff is here to answer any questions if  
5 those arise.

6 Staff recommends the Commission adopt the  
7 proposed parameters and guidelines and the statement of  
8 decision.

9 Will the parties and witnesses state their  
10 names for the record?

11 IAN JOHNSON: Ian Johnson, Department of  
12 Finance.

13 MS. FEREBEE: Donna Ferebee, Department of  
14 Finance.

15 CHAIR GILLIHAN: The Department of Finance?

16 IAN JOHNSON: Yes, we would limit our comments  
17 on the proposed parameters and guidelines to Section 7,  
18 the offsetting revenues and reimbursements.

19 Finance notes that as a requirement for school  
20 district participation in the *School Facilities* program,  
21 districts must set aside a percentage of their general  
22 fund each year in a routine restricted maintenance  
23 account.

24 Funding in this account is solely for the  
25 purpose of making necessary repairs, renewals, and

1 replacements to ensure that the facilities are in good  
2 repair.

3 We would argue that for school districts that  
4 are participating in the *School Facilities* Program, any  
5 funding in the routine restricted maintenance account  
6 should be deducted as offsetting revenue for reimbursable  
7 activities.

8 We believe this should apply for all school  
9 facilities program, participating districts, even if the  
10 site on which the reimbursable activities are being  
11 performed was not funded through the *School Facilities*  
12 Program directly.

13 We would also argue that because the routine  
14 restricted maintenance account is derived from districts'  
15 revenue limits, all revenue and that funding is available  
16 to school districts for the purpose of offsetting the  
17 costs of these reimbursable activities.

18 MR. LOUIE: I'm sorry, these are kind of a  
19 twist on some of the arguments that were proposed  
20 earlier.

21 We kind of addressed Finance's original  
22 argument on page 10 of the analysis, which does open up  
23 the possibility -- or exclude certain districts and  
24 certain projects that do participate in *SFP* funding.  
25 Pursuant to the plain language of the code sections, they

1 agree to -- or cover the cost of the repairs.

2           However, to the extent that revenue limit  
3 funding and things of that nature are to be used for  
4 purposes of other projects, this is kind of a new  
5 argument here that we haven't fully had the time to  
6 analyze or address.

7           MS. SHELTON: On that issue of revenue limit  
8 funding, it is an issue pending in litigation in the  
9 *Grad Requirements* parameters and guidelines. In that  
10 claim, the Commission denied that as an offsetting  
11 revenue because revenue limit funding is their proceeds  
12 of taxes and their general revenue, which, when you look  
13 at the purpose of Article XIII B, section 6, cannot be  
14 used as an offset.

15           Again, it's an issue pending in court.

16           MS. HALSEY: Also, in recent budgets -- and  
17 I haven't looked at every one of them, but I looked at  
18 several -- there has been authority given to use deferred  
19 maintenance account money for any educational purpose.  
20 I think it's being used for textbooks and other kinds of  
21 things lately. So it might not be available for that  
22 purpose.

23           CHAIR GILLIHAN: Any additional follow-up  
24 comments from Finance?

25           IAN JOHNSON: We would just continue to argue

**Commission on State Mandates – September 28, 2012**

1 that, you know, while there are several revenue sources  
2 listed under Section 7 of the proposed parameters and  
3 guidelines, we would continue to argue that especially  
4 the routine restricted maintenance account which, again,  
5 is a requirement to be set aside by school districts for  
6 the purposes of maintaining facilities, we would argue  
7 that that should be also considered in these sources for  
8 offsetting revenue for reimbursable activities.

9 CHAIR GILLIHAN: Are there any questions  
10 amongst the Commission?

11 MEMBER CHIVARO: I'll move staff  
12 recommendation.

13 MEMBER OLSEN: Second.

14 CHAIR GILLIHAN: So we have a motion and a  
15 second on the staff recommendation.

16 No further discussion amongst the committee?

17 *(No response)*

18 CHAIR GILLIHAN: Any public comment?

19 *(No response)*

20 CHAIR GILLIHAN: Seeing none, Heather, will you  
21 call the roll, please?

22 MS. HALSEY: Mr. Morgan?

23 MEMBER MORGAN: Aye.

24 MR. HALSEY: Mr. Chivaro?

25 MEMBER CHIVARO: Aye.



**Commission on State Mandates – September 28, 2012**

1 MS. HALSEY: Mr. Gillihan?

2 CHAIR GILLIHAN: Aye.

3 MS. HALSEY: Mr. Lujano?

4 MEMBER LUJANO: Aye.

5 MS. HALSEY: Ms. Olsen?

6 MEMBER OLSEN: Aye.

7 MS. HALSEY: Ms. Ramirez?

8 MEMBER RAMIREZ: Aye.

9 MS. HALSEY: Mr. Saylor?

10 MEMBER SAYLOR: Aye.

11 CHAIR GILLIHAN: The motion carries.

12 MS. HALSEY: Items 11 through 16 are all on the  
13 consent calendar.

14 Item 17 is reserved for county applicants for  
15 a finding of significant financial distress, or SB 1033  
16 applications.

17 No SB 1033 applications have been filed.

18 Moving on to Item 18, Program Analyst Kerry  
19 Ortman will present the *Legislative Update*.

20 MS. ORTMAN: Good morning.

21 There were two bills relating to the mandates  
22 process introduced this year.

23 The first was SB 1112, introduced by Senator  
24 Liu. This bill would have reduced the deadline for local  
25 governments and the Department of Finance to submit a

1 proposed joint reimbursement methodology to the  
2 Commission by 15 days.

3 And the second was SB 1147, also introduced by  
4 Liu. Under this one, existing law requires that the  
5 statewide cost estimates be completed within 12 months  
6 after receipt of a test claim, and allows this 12-month  
7 deadline to be extended for six months upon the request  
8 of the claimant or the Commission. This bill would have  
9 reduced the six-month extension period to four months.

10 Both of these bills were spot bills that never  
11 made it out of committee and they are now dead.

12 CHAIR GILLIHAN: Thank you.

13 MS. HALSEY: Item 19, Chief Legal Counsel  
14 Camille Shelton will present the *Chief Legal Counsel's*  
15 *Report*.

16 MS. SHELTON: As noted on the report, the *Grad*  
17 *Requirements* parameters and guidelines litigation has  
18 been continued again until February 15<sup>th</sup>.

19 One more item to add: On the litigation  
20 brought by the California School Boards Association, they  
21 have filed a motion to amend their complaint to add  
22 challenges to the education block grant for mandates.  
23 And that motion will be heard on January 17<sup>th</sup>.

24 MS. HALSEY: Thanks, Camille.

25 Item 20 is the *Executive Director's Report*.

**Commission on State Mandates – September 28, 2012**

1           This is our year-end report, since we did not  
2 have our July hearing. So just an update on where we are  
3 at with regard to workload.

4           We completed 14 test claims, 35 incorrect  
5 reduction claims, eight parameters and guidelines, eight  
6 parameters and guidelines amendments, six statewide cost  
7 estimates, and one request to review claiming  
8 instructions this year.

9           We're making good headway on our backlog  
10 reduction plan. We have 36 test claims still pending  
11 with the Commission. And we've also greatly reduced  
12 our incorrect-reduction claims from 157 last year, to  
13 127 this year.

14           And so I wanted to thank staff for their hard  
15 work on that, and the parties.

16           And then moving on, we have one information  
17 action item on the Executive Director's Report, and that  
18 is at Roman numeral II, and it's the meeting calendar for  
19 this next year.

20           Traditionally, our Commission meetings have  
21 been held on the fourth Fridays, or in some years,  
22 Thursdays of odd months. The November meeting is usually  
23 set for the first Friday of December, and that's to avoid  
24 the holidays.

25           Next year, we have a scheduling conflict for

**Commission on State Mandates – September 28, 2012**

1 the March meeting. So if we stick with our odd months'  
2 calendar, we would need to move that to April 19<sup>th</sup>. And  
3 if we maintain the fourth Friday of odd months -- if we  
4 maintain this current schedule, otherwise, we would go  
5 with even months, and we would continue with the fourth  
6 Fridays for that.

7 I have a little drop list here of fourth  
8 Fridays -- of even months or odd months. You can see all  
9 the dates, and make sure you don't have any conflicts.  
10 And also I think if the parties wanted to comment, that  
11 might be good, too, if they have some things in their  
12 schedules that might affect the decision of the  
13 Commission.

14 CHAIR GILLIHAN: So is there any discussion or  
15 comments from the members on the calendar for the next  
16 year?

17 MEMBER SAYLOR: Are we asked to make a stated  
18 preference between odd --

19 MS. HALSEY: Even or odd, basically. Those two  
20 calendars, there are the choices.

21 MEMBER SAYLOR: I prefer odd, if that's what  
22 you're looking for.

23 MS. HALSEY: Okay. Well, if someone -- so the  
24 thing to do, if no one has any comments, would be for one  
25 of the members to make a motion, and then to adopt the

Commission on State Mandates – September 28, 2012

1 calendar.

2 MEMBER SAYLOR: I move for odd.

3 CHAIR GILLIHAN: We have a motion.

4 MEMBER OLSEN: I'll second it.

5 CHAIR GILLIHAN: And a second.

6 Is there any other discussion amongst the  
7 members?

8 *(No response)*

9 CHAIR GILLIHAN: Seeing none, any public  
10 comment?

11 *(No response)*

12 CHAIR GILLIHAN: Heather, will you call the  
13 roll?

14 Or do you want to just do this as -- all in  
15 favor, say "aye."

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

17 CHAIR GILLIHAN: All opposed, say "no."

18 *(No response)*

19 CHAIR GILLIHAN: Hearing none, the motion  
20 carries.

21 MS. HALSEY: Thank you.

22 MEMBER RAMIREZ: May I ask a question? I'm  
23 sorry.

24 CHAIR GILLIHAN: Certainly.

25 MEMBER RAMIREZ: Thank you.

**Commission on State Mandates – September 28, 2012**

1           And it refers to the earlier part of your  
2 report.

3           MS. HALSEY: Yes.

4           MEMBER RAMIREZ: Could you just review very  
5 briefly the incorrect-reduction claims matter, just with  
6 a bit of description?

7           MS. HALSEY: So incorrect-reduction claims are  
8 claims filed with the Commission that the Controller  
9 incorrectly reduced the reimbursement claim, so that it's  
10 inconsistent with our statement of decision. That's the  
11 argument. And we hear and decide those.

12           We also facilitate negotiations between the  
13 parties and the State Controller's to settle those.

14           MEMBER RAMIREZ: Thank you very much.

15           MS. HALSEY: Uh-huh.

16           CHAIR GILLIHAN: Is that all, Heather, for your  
17 report?

18           MS. HALSEY: Moving on, one more piece. I'm  
19 getting too many papers here.

20           Ms. Sarah Olsen will now present a resolution  
21 of the Commission to Nancy Patton in recognition of her  
22 35 years as a dedicated State employee and public  
23 servant.

24           MEMBER OLSEN: Nancy, this gives me great  
25 pleasure to do this.

**Commission on State Mandates – September 28, 2012**

1           *"Before the Commission on State Mandates,*  
2           *in honor of Nancy Patton, Assistant Executive*  
3           *Director, Commission on State Mandates, 1997 to*  
4           *2012.*

5           *"Whereas, Nancy Patton, Assistant*  
6           *Executive Director, has distinguished herself*  
7           *as an outstanding State employee and dedicated*  
8           *public servant for 35 years, beginning her*  
9           *state career in 1977, working swing shift as a*  
10          *file clerk, then promoting to undercover agent,*  
11          *and later assistant to Attorney General George*  
12          *Deukmejian for the Department of Justice; she*  
13          *later served Governors Deukmejian and Pete*  
14          *Wilson for 16 years at the Governor's Office of*  
15          *Planning and Research, working her way up from*  
16          *junior analyst to chief deputy director, and*  
17          *tracking over 1,200 local government bills each*  
18          *year; and*

19          *"Whereas, in 1997, Ms. Patton was*  
20          *appointed OPR's designee for the Commission on*  
21          *State Mandates before coming to the Commission*  
22          *in 1999, where she served as the Assistant*  
23          *Executive Director for over eight years, and*  
24          *briefly as the Acting Executive Director, and*  
25          *participated in 94 Commission meetings and*

1           *hearings; and*

2                     *"Whereas, Ms. Patton has weathered the*  
3           *Laird mandate reform process, BSA audits of*  
4           *the Commission, the 2002-2003 reduction of*  
5           *Commission staff, and conducted SB 1033*  
6           *hearings; and*

7                     *"Whereas, she provided expert and*  
8           *invaluable assistance and advice to the*  
9           *Governor's office, Legislature, Commission*  
10          *members, and school district and local agency*  
11          *representatives, and is recognized throughout*  
12          *the state for her leadership in the knowledge*  
13          *of the mandates process; and*

14                    *"Whereas, Nancy Patton, throughout her*  
15          *career, mentored numerous analysts,*  
16          *specialists, and technicians, and provided*  
17          *truly caring and expert advice which influenced*  
18          *many successful careers -- and as an aside,*  
19          *also mentored many commissioners -- and*

20                    *"Whereas, Nancy is loved by the mandates*  
21          *community due in no small part to her unique*  
22          *ability to listen to the needs of all parties*  
23          *coming before the Commission, as well as for*  
24          *her gift of chatting in a friendly, yet*  
25          *persuasive manner to get what she really wants,*



1 or simply to straighten people out, even  
2 providing staff training on the 'art of  
3 schmoozing'; and

4 "Whereas 'Fancy Nancy,' as she's known by  
5 the Starbucks baristas that serve her coffee  
6 twice a day, knows that the way to most  
7 people's hearts is through their stomachs, and  
8 has been become famous for her delicious hors  
9 d'oeuvres, which she brings to feed Commission  
10 and Starbucks staff; and

11 "Whereas, Ms. Patton will now enjoy the  
12 transition from governing to gardening, code  
13 books to cookbooks, mandates to play dates,  
14 budget drills to meadering through the rolling  
15 hills, working to volunteering, and travel  
16 claims to just plain travel.

17 "Now, therefore, be it resolved that upon  
18 her retirement, the members of staff of the  
19 Commission on State Mandates are honoring  
20 Nancy Patton in appreciation of her 35 years  
21 of outstanding dedication, leadership, and  
22 service to the State of California.

23 "Done this 28<sup>th</sup> day of September 2012,  
24 County of Sacramento, State of California, in  
25 witness thereof, by the Commission on State

1           *Mandates.*"

2           MS. PATTON: Thank you.

3           *(Applause)*

4           MS. PATTON: I just wanted to say thank you,  
5 first of all. As I transition into my "play dates,"  
6 which I started already and I am having a fantastic time.

7           I am here to say that I am very proud to have  
8 been a state employee for 35 years. I know not everyone  
9 can say that, or we get a lot of grief for that  
10 sometimes. But I am very proud to have worked with the  
11 State for all these years, and also very proud to have  
12 worked with every single person in this room. I've been  
13 able to work with a lot of unbelievably talented people,  
14 and a lot of those talented people are sitting here  
15 today.

16           So thank you.

17           And I'll keep in touch, hopefully from another  
18 country.

19           Thank you.

20           CHAIR GILLIHAN: Thank you for 35 years of  
21 public service.

22           *(Applause)*

23           CHAIR GILLIHAN: Okay, the Commission will meet  
24 in closed executive session pursuant to Government Code  
25 section 11126(e) to confer with and receive advice from

Commission on State Mandates – September 28, 2012

1 legal counsel for consideration and action, as necessary  
2 and appropriate, upon the pending litigation listed on  
3 the published notice and agenda; and to confer with and  
4 receive advice from legal counsel regarding potential  
5 litigation.

6 The Commission will also confer on personnel  
7 matters pursuant to section 11126, subdivision (a)(1).

8 We will reconvene in open session in  
9 approximately 30 minutes.

10 *(The Commission met in executive closed*  
11 *session from 10:12 a.m. to 10:21 a.m.)*

12 CHAIR GILLIHAN: The Commission met in closed  
13 executive session pursuant to Government Code section  
14 11126(e)(2) to confer with and receive advice from legal  
15 counsel, for consideration and action, as necessary and  
16 appropriate, upon the pending litigation listed on the  
17 published notice and agenda, and to confer with and  
18 receive advice from legal counsel regarding potential  
19 litigation and pursuant to Government Code section 11126,  
20 subdivision (a)(1), to confer on personnel matters.

21 With no further business to discuss, I'll  
22 entertain a motion to adjourn.

23 MEMBER CHIVARO: So moved.

24 MEMBER SAYLOR: Second.

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

**Commission on State Mandates – September 28, 2012**

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All those in favor of adjourning, say "aye."

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

CHAIR GILLIHAN: All those opposed, say "no."

*(No response)*

CHAIR GILLIHAN: The meeting is adjourned.

*(The meeting concluded at 10:22 a.m.)*

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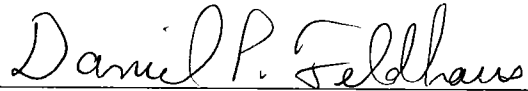
**REPORTER'S CERTIFICATE**

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 18<sup>th</sup> of October 2012.



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