

# Minutes

## COMMISSION ON STATE MANDATES

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
January 27, 2012

Present: Member Diana Ducay, Chairperson  
Representative of the Director of the Department of Finance  
Member Francisco Lujano, Vice Chairperson  
Representative of the State Treasurer  
Member Richard Chivaro  
Representative of the State Controller  
Member Ken Alex  
Director of the Office of Planning and Research  
Member Sarah Olsen  
Public Member

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

### CALL TO ORDER AND ROLL CALL

Chairperson Ducay called the meeting to order at 9:29 a.m. Acting Executive Director Nancy Patton called the roll.

### ELECTION OF OFFICERS

Item 1 Staff Report

Ms. Patton stated that the annual election of officers is the first order of business for the first meeting of the year and asked for nominations for chairperson.

Member Alex nominated the Director of Finance. Member Chivaro seconded. Director of Finance Ana Matosantos was elected chairperson by a vote of 5-0.

Chairperson Ducay asked for nominations for vice-chairperson. Member Chivaro nominated the Treasurer. With a second by Member Olsen, the Treasurer, Bill Lockyer was voted vice chairperson by a vote of 5-0.

### APPROVAL OF MINUTES

Item 1 December 1, 2011

With a motion for approval by Member Olsen and a second by Member Chivaro, the December 1, 2011 hearing minutes were adopted by a vote of 4-0. Member Ducay Abstained.

### CONSENT CALENDAR

HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND GUIDELINES, AND INCORRECT REDUCTION CLAIMS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

- PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS

Item 6\* *Pupil Promotion and Retention*, 10-PGA-03  
Education Code Sections 37252, 37252.2 (formerly 37252.5), 48070, and 48070.5

Statutes 1981, Chapter 100; Statutes 1982, Chapter 1388; Statutes 1983, Chapter 498; Statutes 1990, Chapter 1263; Statutes 1998, Chapters 742 and 743

State Controller's Office, Requestor

**INFORMATIONAL HEARING ON PARAMETERS AND GUIDELINES AMENDMENTS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)**

• **ADOPTION OF PROPOSED RULEMAKING CALENDAR**

Item 8\* Proposed Rulemaking Calendar, 2012

Member Chivaro made a motion to adopt the consent calendar. With a second by Member Olsen, the consent calendar was adopted by a vote of 5-0.

**APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181(c)**

Item 3 Staff Report (if necessary)

There were no appeals to consider.

**HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND GUIDELINES, AND INCORRECT REDUCTION CLAIMS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)**

Acting Executive Director Nancy Patton swore in parties and witnesses participating in the hearing.

Ms. Patton stated that Item 4: test claim on the *California Community Colleges Budget and Accounting Manual* program, was removed from the agenda because the test claim was withdrawn by the claimant.

**A. TEST CLAIMS AND STATEMENTS OF DECISION**

Item 5 *Charter Schools IV*, 03-TC-03  
Education Code Sections 1628, 42100, 47602, 47604.3, 47604.4, 47605, 47605.1, 47605.6, 47605.8, 47611.5, 47612.1, 47613.1, 47626, 47652  
Government Code Section 3540.1  
Statutes 1999, Chapter 828, Statutes 2002, Chapter 1058  
San Diego Unified School District, Claimant

This is a test claim filed by San Diego Unified School District that addresses collective bargaining statutes for charter schools, petition requirements for charter schools, and charter school oversight activities.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission partially approve the test claim.

Parties were represented as follows: Art Palkowitz, Stutz Artiano Shinoff & Holtz, representing claimant San Diego Unified School District, and Donna Ferebee representing the Department of Finance.

Mr. Palkowitz agreed with staff's recommendation that a portion of the test claim was reimbursable with the sole objection that clarifying language should be added that states "following a review and a public hearing" to page 6, paragraph 1.

Ms. Ferebee stated that Department of Finance has no objection to the staff's recommendation for partial approval of the test claim.

After further discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation and statement of decision with the addition of the clarifying language. With a second by Member Alex, the staff recommendation to partially approve the test claim and adopt the statement of decision was adopted by a vote of 5-0.

Item 7      *Absentee Ballots*, 02-3713-I-01  
Statutes 1978, Chapter 77  
Fiscal Years 1996-1997, 1997-1998, and 1998-1999  
Riverside County, Claimant

This incorrect reduction claim challenges the reductions made by the State Controller's Office to the County's reimbursement claims for costs incurred in fiscal years 1996-1997, 1997-1998, and 1998-1999 for the *Absentee Ballots* program.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission deny the incorrect reduction claim for the last two fiscal years but grant the incorrect reduction claim for the first year and remand the claim back to the Controller for further review and reimbursement for the reasonable costs incurred and supported by documentation.

Parties were represented as follows: Allan Burdick, CSAC SB 90 Service, representing claimant Riverside County; and Jim Spano and Jay Lal, State Controller's Office.

Mr. Burdick urged adoption of the staff recommendation on behalf of the claimant. Mr. Spano stated that the State Controller's Office supported the staff recommendation regarding the 1997-98 and 1998-99 audits. Mr. Lal stated that the State Controller's Office supported the staff recommendation regarding the 1996-97 audit.

Member Olsen made a motion to adopt the staff recommendation and statement of decision. With a second by Member Chivaro, the staff recommendation to partially approve the incorrect reduction claim and adopt the statement of decision was adopted by a vote of 5-0.

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

Item 8      Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer  
*Note: This item will only be taken up if an application is filed.*

No applications were filed.

**STAFF REPORTS**

Item 10      Chief Legal Counsel: Recent Decisions, Litigation Calendar

Ms. Shelton presented this item.

Item 11      Executive Director's Report

Ms. Patton presented this item.

**PUBLIC COMMENT**

There was no public comment.

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

**A. PENDING LITIGATION**

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

1. *State of California, Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]
2. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego*, et al., Sacramento County Superior Court Case No. 34-2010-80000604 [Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
3. Cross Petition Filed: *County of San Diego, and Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solano Beach, and Vista v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Control Board San Diego Region*, Sacramento County Superior Court Case No. 34-2010-80000604 [[Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
4. *California School Board Association (CSBA) v. State of California et al.*, Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
5. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al.*  
Second District Court of Appeal, Case No. B237153 (Los Angeles County Superior Court, Case No. BS130730)  
[Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

## B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a)(1):

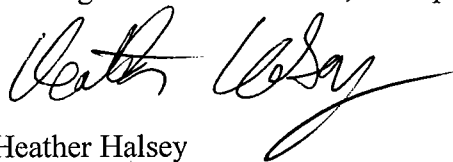
Hearing no further comments, Chairperson Ducay adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

### **REPORT FROM CLOSED EXECUTIVE SESSION**

At 9:57 a.m., Chairperson Ducay reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

### **ADJOURNMENT**

Hearing no further business, Chairperson Ducay adjourned the meeting at 9:58 a.m.



Heather Halsey  
Executive Director

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**FEB 13 2012**

**COMMISSION ON  
STATE MANDATES**

**PUBLIC HEARING**

**COMMISSION ON STATE MANDATES**

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

**DATE: Friday, January 27, 2012**

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

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**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

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Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomate Reporter, Certified Realtime Reporter

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**Daniel P. Feldhaus, C.S.R., Inc.**

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A P P E A R A N C E S

COMMISSIONERS PRESENT

DIANA DUCAY  
(Commission Chair)  
Representative for ANA MATOSANTOS, Director  
State Department of Finance

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

KEN ALEX, Director  
Office of Planning & Research

FRANCISCO LUJANO  
Representative for BILL LOCKYER  
State Treasurer

SARAH OLSEN  
Public Member



PARTICIPATING COMMISSION STAFF

NANCY PATTON  
Acting Executive Director  
(Item 11)

ERIC FELLER  
Staff Counsel  
(Item 5)

CAMILLE SHELTON  
Chief Legal Counsel  
(Items 7 and 10)



A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 5 (Charter Schools) :**

For San Diego Unified School District:

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

For Department of Finance:

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

**Appearing Re Item 7 (Absentee Ballots) :**

For California State Association of Counties and League  
of California Cities and County of Riverside:

ALLAN BURDICK  
California State Association of Counties  
SB-90 Service  
4320 Auburn Boulevard, Suite 2000  
Sacramento, California 95841

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

JAY LAL  
Manager  
Division of Accounting and Reporting  
State Controller's Office  
300 Capitol Mall, Suite 518  
Sacramento, California 95814



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ERRATA SHEET

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Line

Correction

14

19

Page 6.1 should be Page 6

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<p>VI. Hearings and Decisions on Test Claims and Statements of Decision, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7</p> <p style="padding-left: 40px;">B. Parameters and Guidelines and Statements of Decision</p> <p style="padding-left: 80px;">Item 6* <i>Pupil Promotion and Retention, 10-PGA-03</i> State Controller's Office . . . . .</p> <p style="padding-left: 40px;">C. Incorrect Reduction Claim and Statement of Decision</p> <p style="padding-left: 80px;">Item 7 <i>Absentee Ballots, 02-3713-I-01</i> Riverside County . . . . .</p> <p>VII. Informational Hearing on Parameters and Guidelines Amendments Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8</p> <p style="padding-left: 40px;">A. Adoption of Proposed Rulemaking Calendar</p> <p style="padding-left: 80px;">Item 8* <i>Proposed Rulemaking Calendar, 2012</i> . . . . .</p> <p>VIII. 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</p> <p style="padding-left: 80px;">Item 9 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commissions or to a Hearing Officer (None) . . . . .</p>	<p>11</p> <p>17</p> <p>11</p> <p>--</p>
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**Commission on State Mandates – January 27, 2012**

1 BE IT REMEMBERED that on Friday, January 27,  
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:



7 CHAIR DUCAY: Good morning.

8 I will call the Commission on State Mandates  
9 meeting for January 27<sup>th</sup>, 2012, to order.

10 The time is now 9:29.

11 Nancy, will you call the roll?

12 MS. PATTON: Mr. Alex?

13 MEMBER ALEX: Here.

14 MS. PATTON: Mr. Chivaro?

15 MEMBER CHIVARO: Here.

16 MS. PATTON: Mr. Lujano?

17 MEMBER LUJANO: Here.

18 MS. PATTON: Ms. Olsen?

19 MEMBER OLSEN: Here.

20 MS. PATTON: Ms. Ducay?

21 CHAIR DUCAY: Here.

22 Item 1 is *Election of Officers*.

23 Nancy?

24 MS. PATTON: Are there nominations for  
25 chairperson, or is there a motion for election of a new

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1 chairperson?

2 MEMBER ALEX: I would like to nominate Ana  
3 Matosantos to remain as chair.

4 MEMBER CHIVARO: Second.

5 CHAIR DUCAY: Okay, there has been a nomination  
6 for Ana Matosantos to be nominated for chairperson.

7 Are there any other nominations?

8 *(No response)*

9 CHAIR DUCAY: We have a second on that.

10 Without objection of nominations, they are  
11 closed.

12 All those in favor of electing Ana Matosantos  
13 as chairperson, please indicate by saying "aye."

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

15 CHAIR DUCAY: Those opposed?

16 *(No response)*

17 CHAIR DUCAY: Seeing none, we'll move on to the  
18 vice-president.

19 Is there any nominations?

20 MEMBER CHIVARO: I'll nominate the Treasurer,  
21 Bill Lockyer, as vice-chair.

22 MEMBER OLSEN: I'll second it.

23 CHAIR DUCAY: Okay, there has been a nomination  
24 for vice-chairperson of Bill Lockyer, the Treasurer.

25 Are there any other nominations?

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*(No response)*

CHAIR DUCAY: Okay, without objection, the nominations are closed.

All those in favor of electing the Treasurer, Bill Lockyer, as vice-chairperson, please indicate by saying "aye."

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

CHAIR DUCAY: Any opposed?

*(No response)*

CHAIR DUCAY: Seeing none, Bill Lockyer has been elected as vice-chairperson.

We'll move on to Item 2.

MS. PATTON: Item 2 is approval of the December 1, 2011, minutes.

MEMBER OLSEN: I move adoption.

MEMBER CHIVARO: Second.

CHAIR DUCAY: Okay. We have a motion and a second to adopt the minutes.

Nancy, will you call the roll?

MS. PATTON: Mr. Alex?

MEMBER ALEX: Aye.

MS. PATTON: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. PATTON: Mr. Lujano?

MEMBER LUJANO: Aye.

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1 MS. PATTON: Ms. Olsen?

2 MEMBER OLSEN: Aye.

3 MS. PATTON: Ms. Ducay?

4 CHAIR DUCAY: Abstain.

5 MS. PATTON: Okay, the next item is the  
6 *Proposed Consent Calendar*, which consists of Item 6 and  
7 Item 8.

8 CHAIR DUCAY: Are there any objections to the  
9 Proposed Consent Calendar?

10 MEMBER CHIVARO: Move approval.

11 MEMBER OLSEN: Second.

12 CHAIR DUCAY: We have a motion and a second.

13 All those in favor?

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

15 CHAIR DUCAY: Any opposed?

16 *(No response)*

17 CHAIR DUCAY: The motion carries.

18 MS. PATTON: Item 3, there are no appeals to  
19 consider under Item 3.

20 The next issue is swearing in the parties for  
21 Items 5 and 7.

22 Would you please rise?

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

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



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

3 (A chorus of "I dos" was heard.)

4 MS. PATTON: Item 4 has been withdrawn because  
5 the test claimant withdrew the test claim.

6 Item 5, Senior Staff Counsel Eric Feller will  
7 present Item 5, *Charter Schools* test claim and proposed  
8 statement of decision.

9 MR. FELLER: Good morning.

10 This test claim addresses collective bargaining  
11 statutes for charter schools, petition requirements for  
12 charter schools, and charter-school oversight activities.

13 As indicated in the analysis, staff found that  
14 it's reasonable for school districts and county boards of  
15 education to review additional information included in  
16 the charter petition and on appeal of the petition, and  
17 to consider open-meeting proposed material revisions to  
18 an approved charter, as well as for the county board of  
19 education to receive, review, and hold a public hearing  
20 on a proposed countywide charter school, and to consider  
21 in open meeting, proposed material revisions to an  
22 already-approved charter as well as some reporting  
23 activities.

24 Although districts and county offices of  
25 educations may have fee authority for some of these

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1 activities, staff found no evidence that the fee  
2 authority was sufficient to pay for the mandated  
3 activities.

4 Staff found that the collective bargaining  
5 statutes had been adjudicated in prior test claims so the  
6 Commission does not have jurisdiction over them.

7 As to the charter school activity, staff found  
8 there was no evidence in the record of costs incurred by  
9 charter schools. There was also some petition  
10 requirements that staff found not to reimbursable because  
11 petitioners are not eligible for reimbursement under  
12 Article XIII B, Section 6.

13 Staff recommends the Commission adopt the  
14 attached proposed statement of decision to partially  
15 approve the test claim for the activities indicated.

16 Would the parties and witnesses please state  
17 your names for the record?

18 MR. PALKOWITZ: Good morning. Art Palkowitz on  
19 behalf of the San Diego Unified School District, the  
20 claimant.

21 MS. FEREBEE: Donna Ferebee, Department of  
22 Finance.

23 CHAIR DUCAY: Mr. Palkowitz?

24 MR. PALKOWITZ: Yes, thank you.

25 Claimant is thankful for the staff, for the

1 analysis.

2 As a little background, I just want to make  
3 sure that the Commission understands the activities and  
4 what this mandate is about.

5 The Ed. Code section requires school districts,  
6 and, in some situations, the county of education to do an  
7 exhaustive review of a charter petition.

8 The Ed. Code section has numerous requirements  
9 that are required of a school district in analyzing a  
10 petition.

11 The staff recommendation is to have  
12 reimbursement of those -- review of those activities, and  
13 when conducting a public hearing.

14 I spoke to staff prior to this meeting, and  
15 having been on a charter petition hearing this past  
16 Tuesday that consisted of all the thousands of pages of  
17 documents, we discussed clarifying some of the language  
18 in the staff analysis.

19 Specifically, on page 6.1, paragraph 1,  
20 subsection -- paragraph -- well, number one, we talked  
21 about having language that would read "*following a review*  
22 *and a public hearing.*" And Camille or Eric can respond  
23 on that clarification of language. Otherwise, the  
24 claimant has no other objections or comments at this time  
25 regarding the staff analysis.

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1 CHAIR DUCAY: Ms. Ferebee?

2 MS. FEREBEE: Well, I guess I'd like to -- I'm  
3 not sure I understand what that comment was, so I am not  
4 sure I know how to respond to it. So I'd like to hear  
5 that.

6 MS. SHELTON: What I understood is, there's a  
7 lot of language in this particular section of the code,  
8 and the proposed language does track the statutory  
9 language. But I think what Mr. Palkowitz is trying to  
10 ensure is that the review is typically done by school  
11 district or county board of education staff, and it's not  
12 done right at the hearing. So you have thousands of  
13 pages. And you will probably have a staff  
14 recommendation. So he is trying to ensure that that  
15 staff work is reimbursable. And that is consistent with  
16 the statute.

17 CHAIR DUCAY: So then just the language wasn't  
18 clear, right?

19 MS. SHELTON: Well, the language right now  
20 says, "*review and consider at a public hearing.*"

21 And he is trying to clarify, by bringing in,  
22 "*following a review and a consideration at a public*  
23 *hearing.*"

24 It's fine. It tracks the language. It's  
25 technical. That's not even a substantive change, in my

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1 opinion, so...

2 MEMBER OLSEN: Can I suggest a simpler one?

3 MS. SHELTON: Yes.

4 MEMBER OLSEN: Put a comma after "review"?

5 MS. SHELTON: You can do that, too.

6 I was going to say, Mr. Palkowitz, I think, has  
7 just made his record. But he's trying to get it clearer  
8 for parameters and guidelines and knowledge for the State  
9 to understand what activities are going into that  
10 language.

11 MR. PALKOWITZ: Thank you.

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

14 We have no objections to that or to the  
15 remainder of the analysis and to the Commission's  
16 adoption of it.

17 Thank you.

18 CHAIR DUCAY: Okay, thank you.

19 Are there any questions from the Members?

20 *(No response)*

21 CHAIR DUCAY: Seeing none, if there's no other  
22 further discussion, do we have a motion?

23 MEMBER CHIVARO: I move staff recommendation.

24 MEMBER OLSEN: With the --

25 MS. SHELTON: Do you want to add in a comma?

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1 MEMBER CHIVARO: With the comma.

2 MEMBER ALEX: Second.

3 CHAIR DUCAY: Okay, we have a motion and a  
4 second to adopt the staff recommendation, with the added  
5 comma.

6 Nancy, will you call the roll?

7 MS. PATTON: Mr. Chivaro?

8 MEMBER CHIVARO: Yes.

9 MS. PATTON: Mr. Lujano?

10 MEMBER LUJANO: Yes.

11 MS. PATTON: Ms. Olsen?

12 MEMBER OLSEN: Yes.

13 MS. PATTON: Ms. Ducay?

14 MEMBER DUCAY: Yes.

15 MS. PATTON: Mr. Alex?

16 MEMBER ALEX: Yes.

17 CHAIR DUCAY: Okay, the motion has carried.

18 MR. PALKOWITZ: Thank you.

19 MS. FEREBEE: Thank you.

20 MS. PATTON: That brings us to Item 7.

21 Chief Legal Counsel Camille Shelton will  
22 present Item 7, *Absentee Ballots* incorrect reduction  
23 claim and statement of decision.

24 MS. SHELTON: This is an incorrect reduction  
25 claim filed by the County of Riverside for the *Absentee*

1 *Ballots* program, challenging the reductions made by the  
2 State Controller's Office to the County's reimbursement  
3 claims for costs incurred in three fiscal years, starting  
4 in fiscal year 1996.

5 For all years claimed, the County has sought  
6 reimbursement for the salaries and benefits of its  
7 employees to perform the mandate based on a time study  
8 conducted in 1988, and allegedly approved by the  
9 Controller's office shortly thereafter. The County does  
10 not have time sheets, payroll records, or other  
11 contemporaneous documents to support the time it took to  
12 perform the mandate for any of these fiscal years. In  
13 addition, the County claimed reimbursement for overtime,  
14 salaries, and benefits.

15 For the reasons stated in the analysis, staff  
16 finds that the Controller's audit and partial reduction  
17 of the reimbursement claims for the last two fiscal years  
18 is reasonable and supported by the evidence in the  
19 record.

20 Staff recommends that the Commission deny the  
21 incorrect reduction claim for the reimbursement claims  
22 for the last two fiscal years.

23 However, staff finds that the desk audit  
24 performed on the reimbursement claim for the first fiscal  
25 year that reduced the claim to zero is arbitrary and not

1 supported by the law, the parameters and guidelines, or  
2 the evidence in the record.

3 Staff recommends that the Commission grant the  
4 IRC with respect to the reimbursement claim for that  
5 fiscal year, and remand the claim back to the State  
6 Controller's Office for further review and reimbursement  
7 for the reasonable costs incurred and supported by  
8 documentation.

9 For the parameters and guidelines that apply to  
10 this fiscal year, the documentation supporting the claim  
11 does not have to be contemporaneous or prepared at the  
12 time the costs were incurred.

13 The State Controller's Office has filed  
14 comments on the draft staff analysis with respect to the  
15 reimbursement claim for the first fiscal year, agreeing  
16 that overtime salary should be paid to the extent  
17 supported by documentation in the record.

18 The Controller's office has also recalculated  
19 the claim for regular salaries and benefits in the same  
20 manner it audited the other two fiscal years, and as  
21 recalculated, would provide the County with partial  
22 reimbursement.

23 The County has not responded to the  
24 Controller's recalculation, and there is no evidence that  
25 any payment has been made to the County.



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1           If the County believes that the Controller's  
2 recalculation continues to result in an incorrect  
3 reduction, it may file another incorrect reduction claim  
4 with the Commission.

5           Thus, for purposes of this hearing, the  
6 Commission does not have jurisdiction to determine if  
7 the Controller's recalculation is reasonable. The  
8 Commission's jurisdiction is limited to what has been  
9 pled in the incorrect reduction claim, which challenges  
10 only the original audit performed.

11           Will the parties please state your names for  
12 the record?

13           MR. BURDICK: Yes, Allan Burdick on behalf of  
14 the CSAC SB 90 Service and also on behalf of the County  
15 of Riverside.

16           MR. SPANO: Jim Spano, State Controller's  
17 Office.

18           MR. LAL: Jay Lal, State Controller's Office.

19           CHAIR DUCAY: Mr. Burdick?

20           MR. BURDICK: Yes, thank you very much.

21           And I think this is going to be a lot simpler  
22 than it appeared.

23           First of all, I think we had a couple of  
24 statewide issues at the time. And both have been  
25 resolved to the satisfaction of the counties:

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1           One is the payment of overtime of election  
2 costs during elections. Obviously, it's very difficult  
3 to have an election without overtime costs.

4           And secondly, was the reduction to zero in  
5 those cases without going back and giving some  
6 consideration to the other evidence.

7           And so in that regard, I think counties are  
8 very pleased with the State Controller's decision and  
9 response to the incorrect reduction.

10           As it relates to the overall claim, I think the  
11 County of Riverside, it thinks they are happy.

12           The one thing is, we do have to go back -- and  
13 go back and negotiate with the State Controller, based on  
14 our prior experience. I think where we are, we feel that  
15 that's going to be satisfactory. The alternative would  
16 be, if we're not, is to come back with another IRC.

17           I do not think you're going to see that. I  
18 think we're going to resolve this successfully. And so I  
19 would like to thank the staff and the State Controller's  
20 Office, and urge adoption of the staff recommendation.

21           Thank you very much.

22           CHAIR DUCAY: Mr. Spano?

23           MR. SPANO: Related to the audit performed for  
24 1997-98 and 1988-99, we support the staff's  
25 recommendation.

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1 Mr. LAL: And we also support the staff's  
2 recommendation for the 1996-97 reduction.

3 CHAIR DUCAY: Okay, any questions from the  
4 Members?

5 MEMBER OLSEN: I'd like to move staff  
6 recommendation and adoption of the statement of decision.

7 CHAIR DUCAY: Okay.

8 We have a motion.

9 MEMBER CHIVARO: Second.

10 CHAIR DUCAY: We have a second to adopt the  
11 staff recommendation.

12 Nancy, please call the roll.

13 MS. PATTON: Mr. Alex?

14 MEMBER ALEX: Yes.

15 MS. PATTON: Mr. Chivaro?

16 MEMBER CHIVARO: Yes.

17 MS. PATTON: Mr. Lujano?

18 MEMBER LUJANO: Yes.

19 MS. PATTON: Ms. Olsen?

20 MEMBER OLSEN: Aye.

21 MS. PATTON: Ms. Ducay?

22 MEMBER DUCAY: Aye.

23 MR. BURDICK: Thank you very much.

24 MS. PATTON: That brings us to Item 10.

25 Ms. Shelton will present the Chief Legal

1 Counsel's report.

2 MS. SHELTON: Let's see, since our last  
3 meeting, the only thing really new to report is that the  
4 trial court has issued their judgment in the *San Diego*  
5 water permit case, finding that the Commission committed  
6 an error of law by not considering factual evidence in  
7 the record for the maximum extent practicable, and has  
8 issued a writ. The parties will have 60 days to decide  
9 whether or not to appeal that. So that deadline is in  
10 March.

11 That's all I've got.

12 MS. PATTON: For the ED report, I just wanted  
13 to talk about our backlog elimination plan a little bit.  
14 As you know, May last year, Drew issued a backlog  
15 elimination plan.

16 We plan to give a one-year update in May. But  
17 I did want to just let everyone know, one of the things  
18 we talked about was having, at the May hearing --  
19 actually, it was the March hearing -- all the items, like  
20 five or six claims that have proposed reasonable  
21 reimbursement methodologies. And Drew was analyzing  
22 those. And now Camille has got them all. So they're not  
23 going to make the March hearing. We're going to try to  
24 do one, and we're going to have to split them up and do  
25 them at separate hearings.

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1           We've got some legal issues that we're looking  
2 at. And Drew hadn't thought that far on them, and we  
3 just found more legal issues to look at. So I just want  
4 to let the claimants know and the parties, that they're  
5 not all going for the March hearing.

6           And that's all I have.

7           CHAIR DUCAY: Okay. Is there any public  
8 comment before we go into closed session?

9           *(No response)*

10          CHAIR DUCAY: Seeing none, the Commission will  
11 meet in closed executive session pursuant to Government  
12 Code section 11126(e), to confer and receive advice from  
13 legal counsel for consideration and action, as necessary  
14 and appropriate, upon the pending litigation listed on  
15 the published notice and agenda; and confer and receive  
16 advice from legal counsel regarding potential litigation.

17          The Commission will also confer on personnel  
18 matters pursuant to Government Code sections 11126,  
19 subdivision (a)(1).

20          And we'll reconvene in open session in  
21 approximately 30 minutes.

22          *(The Commission met in closed executive*  
23 *session from 9:45 a.m. to 9:57 a.m.)*

24          CHAIR DUCAY: The Commission met in closed  
25 executive session pursuant to Government Code section

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1 11126(e) (2), to confer and receive advice from legal  
2 counsel for consideration and action, as necessary and  
3 appropriate, upon the pending litigation listed on the  
4 published notice and agenda; and to confer with and  
5 receive advice from legal counsel regarding potential  
6 litigation.

7 The Commission also met in closed executive  
8 session pursuant to Government Code section 11126,  
9 subdivision (a) (1), to confer on personnel matters.

10 With no further business to discuss, I will  
11 entertain a motion to adjourn.

12 MEMBER CHIVARO: So moved.

13 MEMBER ALEX: Second.

14 CHAIR DUCAY: We have a motion and a second.

15 All in favor?

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

17 CHAIR DUCAY: Opposed?

18 *(No response)*

19 CHAIR DUCAY: The meeting is adjourned.

20 The time is 9:58.

21 *(The meeting concluded at 9:58 a.m.)*

22 *~\*\*\*~*

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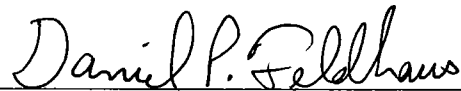
**REPORTER'S CERTIFICATE**

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 10<sup>th</sup> of February 2012.



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