

## **Minutes**

### **COMMISSION ON STATE MANDATES**

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
January 27, 2017

Present: Member Eraina Ortega, Chairperson  
Representative of the Director of the Department of Finance  
Member Richard Chivaro, Vice Chairperson  
Representative of the State Controller  
Member Mark Hariri  
Representative of the State Treasurer  
Member Scott Morgan  
Representative of the Director of the Office of Planning and Research  
Member Sarah Olsen  
Public Member  
Member Carmen Ramirez  
City Council Member  
Member Don Saylor  
County Supervisor

*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 Ortega called the meeting to order at 10:01 a.m. Executive Director Heather Halsey called the roll.

#### **ELECTION OF OFFICERS**

Executive Director Heather Halsey stated that Chairperson Ortega will conduct the annual election of officers. Chairperson Ortega asked for nominations for the vice chairperson.

Member Olsen made a motion to nominate Betty Yee, State Controller for vice chairperson. With a second by Member Ramirez, the State Controller was elected vice chairperson by a vote of 7-0.

Chairperson Ortega asked for nominations for chairperson. Member Olsen nominated Michael Cohen, Director of Finance for chairperson. With a second by Member Hariri, the Director of Finance was elected chairperson by a vote of 7-0.

#### **APPROVAL OF MINUTES**

Member Chivaro made a motion to adopt the minutes. With a second by Member Olsen, the October 28, 2016 hearing minutes were adopted by a vote of 7-0.

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

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

## **CONSENT CALENDAR**

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,  
TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

### STATEWIDE COST ESTIMATE

Item 11\* *California Assessment of Student Performance and Progress (CAASPP),  
14-TC-01 and 14-TC-04*

Education Code Section 60640, as amended by Statutes 2013, Chapter 489  
(AB 484) and Statutes 2014, Chapter 32 (SB 858); California Code of  
Regulations, Title 5, Sections 850, 852, 853, 853.5, 857, 861(b)(5), and 864,  
as added or amended by Register 2014, Nos. 6, 30, and 35

Plumas County Office of Education, Plumas Unified School District,  
Porterville Unified School District, Santa Ana Unified School District, and  
Vallejo City Unified School District, Claimants

### ADOPTION OF PROPOSED RULEMAKING CALENDAR

Item 13\* Proposed Rulemaking Calendar, 2017

Executive Director Halsey stated that Items 11 and 13 were proposed for consent and that after the revised agenda issued, Item 12 was removed from consent by Commission Staff to correct two technical errors discovered when preparing for the hearing.

Chairperson Ortega asked if there was any objection to the Consent Calendar. No objection was made.

Member Ramirez made a motion to adopt the Consent Calendar. With a second by Member Chivaro, the Consent Calendar was adopted unanimously.

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

Executive Director Heather Halsey noted that after the revised agenda issued, Items 5, 6, 7, and 9 were withdrawn by the claimants. Ms. Halsey swore in the parties and witnesses participating in the hearing.

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

Item 3 Appeal of Executive Director Decisions

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

## **TEST CLAIM**

Item 4 *Local Agency Employee Organizations: Impasse Procedures, 15-TC-01*  
Government Code Sections 3505.4, 3505.5, and 3505.7;  
Statutes 2011, Chapter 680 (AB 646)  
City of Glendora, Claimant

Senior Commission Counsel Paul Karl Lukacs presented this item. Mr. Lukacs recommended that the Commission adopt the proposed decision to deny this Test Claim because the 2011 statute states that fact-finding can only occur after mediation; and that mediation is voluntary.

Parties were represented as follows: Melanie Chaney and Annette Chinn, representing the claimant; Andy Nichols, Interested Party, and Danielle Brandon and Susan Geanacou representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Morgan made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion to deny this Test Claim was adopted by a vote of 4-1 with two members abstaining.

### **INCORRECT REDUCTION CLAIM**

Item 8      *Animal Adoption, 14-9811-I-03*

Civil Code Sections 1834 and 1846; Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003; As Added or Amended by Statutes 1998, Chapter 752 (SB 1785)

Fiscal Years 2001-2002, 2002-2003, 2006-2007, 2007-2008, and 2008-2009

Southeast Area Animal Control Authority, Claimant

Executive Director Heather Halsey stated that the claimant notified Commission staff that they stand on the record, and disagree with portions of the Proposed Decision but consent to its adoption.

Senior Commission Counsel Paul Karl Lukacs presented this item and recommended that the Commission partially approve this Incorrect Reduction Claim and request that the State Controller reinstate cost to the extent that the claimant has documentation.

Parties were represented as follows: Masha Vorobyova and Lisa Kurokawa representing the State Controller's Office; Annette Chinn, representing the claimant.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Hariri, the motion to partially approve this Incorrect Reduction Claim was adopted by a vote of 7-0.

### **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 10      Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

No applications were filed.

### **INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)**

## STATEWIDE COST ESTIMATE

- Item 12     *Immunization Records – Mumps, Rubella, and Hepatitis B,*  
98-TC-05 (14-MR-04)

Education Code Section 48216 and Health and Safety Code Sections 120325, 120335, 120340, and 120375 as added or amended by Statutes 1978, Chapter 325; Statutes 1979, Chapter 435; Statutes 1982, Chapter 472; Statutes 1991, Chapter 984; Statutes 1992, Chapter 1300; Statutes 1994, Chapter 1172; Statutes 1995, Chapters 291 and 415; Statutes 1996, Chapter 1023; and Statutes 1997, Chapters 855 and 882;

California Code of Regulations, Title 17, Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075 (Register 90, No. 35; Register 80, Nos. 16, 34, 40; Register 86, No. 6; Register 96, No. 13; Register 97, Nos. 21, 37, 39)

As Modified by: Statutes 2010, Chapter 434 (AB 354)

Department of Finance, Requester

The Statewide Cost Estimate of \$446,7991 for the initial claiming period and an estimated \$235,542 for the 2015-2016 fiscal year was adopted by the Commission. Senior Legal Analyst Carla Shelton presented this item, explained that it was removed from the Consent Calendar to correct two technical errors discovered when preparing for the hearing, and recommended that the Commission adopt this Statewide Cost Estimate as amended.

Member Olsen made a motion to adopt the staff recommendation. With a second by Member Chivaro, the motion to adopt this Statewide Cost Estimate as amended was adopted by a vote of 7-0.

## STAFF REPORTS

- Item 14     Chief Legal Counsel: New Filings, Recent Decisions, Litigation  
Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 15     Executive Director: Workload Update and Tentative Agenda Items for  
the March and May 2017 Meetings (info)

Executive Director Heather Halsey presented this item and reported on the Commission's pending caseload.

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

### A. PENDING LITIGATION

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

Trial Courts:

1. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*  
Los Angeles County Superior Court, Case No. BS166734  
[*Handicapped and Disabled Students IRC*, 13-4282-I-06]
2. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*  
Los Angeles County Superior Court, Case No. BS166735  
[*Handicapped and Disabled Students II IRC*, 12-0240-I-01]

Courts of Appeal:

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.* (petition and cross-petition)  
Third District Court of Appeal, Case No. C070357  
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]
2. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*  
Fourth District Court of Appeal, Division One, Case No. D068657  
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL  
[Mandate Redetermination, *Sexually Violent Predators*, (12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496) As modified by Proposition 83, General Election, November 7, 2006]
3. *Coast Community College District, et al. v. Commission on State Mandates,*  
Third District Court of Appeal, Case No. C080349  
Sacramento County Superior Court, Case No. 34-2014-80001842  
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31  
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203,

53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]

4. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*  
Third District Court of Appeal, Case No. C081929  
Sacramento County Superior Court, Case No. 34-2015-80002016  
[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register 2012, No. 28.]
5. *California School Board Association (CSBA) v. State of California et al.*  
First District Court of Appeal, Case No. A148606  
Alameda County Superior Court, Case No. RG11554698  
[2010-2011 Budget Trailer Bills; Education Code sections 42238.24 and 56523]

California Supreme Court:

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al*  
(petition and cross-petition)  
California Supreme Court, Case No. S214855  
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]

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

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

**B. PERSONNEL**

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

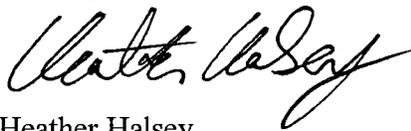
The Commission adjourned into closed executive session at 11:07 a.m., pursuant to Government Code section 11126(e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

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

At 11:33 a.m., Chairperson Ortega reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

**ADJOURNMENT**

Hearing no further business, Chairperson Ortega adjourned the meeting at 11:34 a.m.



Heather Halsey  
Executive Director

**ORIGINAL**

**RECEIVED**

FEB 08 2017

**PUBLIC MEETING COMMISSION ON  
COMMISSION ON STATE MANDATES STATE MANDATES**



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

**DATE: Friday, January 27, 2017**

**PLACE: State Capitol, Room 444  
Sacramento, California**



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomate Reporter, Certified Realtime Reporter

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

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA  
Representative for MICHAEL COHEN, Director  
Department of Finance  
*(Chair of the Commission)*

RICHARD CHIVARO  
Representative for BETTY T. YEE  
State Controller  
*(Vice Chair of the Commission)*

MARK HARIRI  
Representative for JOHN CHIANG  
State Treasurer

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

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member  
Local Agency Member

DON SAYLOR  
Yolo County Supervisor  
Local Agency Member



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY  
Executive Director  
*(Item 14)*

HEIDI PALCHIK  
Assistant Executive Director

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

*continued*

PAUL KARL LUKACS  
Senior Commission Counsel  
(Item 4 and Item 8)

CAMILLE N. SHELTON  
Chief Legal Counsel  
(Item 13)

CARLA SHELTON  
Senior Legal Analyst  
(Item 12)



PUBLIC TESTIMONY

**Appearing Re Item 4:**

For Claimant City of Glendora:

MELANIE L. CHANEY  
Liebert Cassidy Whitmore  
6033 W. Century Boulevard, Ste 500  
Los Angeles, California 90045

ANNETTE CHINN  
Cost Recovery Systems, Inc.  
705-2 East Bidwell Street, #294  
Folsom, California 95630

Interested Party:

ANDY NICHOLS  
Nichols Consulting  
1857-44th Street  
Sacramento, California 95819

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 4:** *continued*

For Department of Finance

DANIELLE BRANDON  
Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, California 95814

SUSAN GEANACOU  
Legal Office  
Department of Finance  
915 L Street, Suite 1280  
Sacramento, California 95814

**Appearing Re Item 8:**

For the State Controller's Office:

MASHA VOROBYOVA  
Audit Manager, Division of Audits  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816

LISA KUROKAWA  
Audit Manager, Division of Audits  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816





I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Call to Order and Roll Call .....	9
II. Election of Officers	
Item 1 Staff report .....	10
III. Approval of Minutes	
Item 2 October 28, 2016 .....	11
IV. Public Comment for Matters Not on the Agenda .....	11
V. Proposed Consent Calendar for Items Proposed for Adoption on Consent Pursuant to California Code of Regulations Title 2, Chapter 2.5, Articles 7 and 8	
Consent Item(s): Items 11 and 13 .....	12
VI. Hearings and Decisions on Test Claims and Parameters and Guidelines Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Appeal of Executive Director Decisions Pursuant to California Code of Regulations, Title 2, Section 1181.1(c)	
Item 3 Appeal of Executive Director Decision .....	13
B. Test Claims	
Item 4 <i>Local Agency Employee Organizations: Impasse Procedures, 15-TC-01</i> City of Glendora, Claimant .....	13
C. Incorrect Reduction Claims	
Item 5 <i>Health Fee Elimination, 09-4206-I-21 and 10-4206-I-36</i> Kern Community College District, Claimant <i>withdrawn</i>	

**INDEX**

<b><u>Proceedings</u></b>	<b><u>Page</u></b>
VI. Hearings and Decisions on Test Claims and Parameters and Guidelines Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
C. Incorrect Reduction Claims	
Item 6 <i>Animal Adoption</i> , 13-9811-I-02 City of Los Angeles, Claimant	<i>withdrawn</i>
Item 7 <i>Animal Adoption</i> , 11-9811-I-01 City of Hayward, Claimant	<i>withdrawn</i>
Item 8 <i>Animal Adoption</i> , 14-9811-I-03 Southeast Area Animal Control Authority, Claimant	. . . . . 37
Item 9 <i>Integrated Waste Management</i> , 14-0007-I-03 Citrus Community College District, Claimant	<i>withdrawn</i>
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 2	
Item 10 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer	<i>(None)</i> . . . . . 52
VIII. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8	
A. Statewide Cost Estimates	
Item 11* <i>California Assessment of Student Performance and Progress (CAASPP)</i> 14-TC-01 and 14-TC-04 Plumas County Office of Education, Plumas Unified School District, Porterville Unified School District, Santa Ana Unified School District, and Vallejo City Unified School District, Claimants	<i>(Consent item)</i> . . . 12



**Commission on State Mandates – January 27, 2017**

1 BE IT REMEMBERED that on Friday, January 27, 2017,  
2 commencing at the hour of 10:01 a.m., thereof, at the  
3 State Capitol, Room 444, Sacramento, California, before  
4 me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the  
5 following proceedings were held:



7 CHAIR ORTEGA: Good morning, everyone.

8 I'll call to order the January 27<sup>th</sup> meeting of the  
9 Commission on State Mandates.

10 Please call the roll.

11 MS. HALSEY: Mr. Chivaro?

12 MEMBER CHIVARO: Here.

13 MS. HALSEY: Mr. Hariri?

14 MEMBER HARIRI: Here.

15 MS. HALSEY: Mr. Morgan?

16 MEMBER MORGAN: Here.

17 MS. HALSEY: Ms. Olsen?

18 MEMBER OLSEN: Here.

19 MS. HALSEY: Ms. Ortega?

20 CHAIR ORTEGA: Here.

21 MS. HALSEY: Ms. Ramirez?

22 MEMBER RAMIREZ: Yes, here.

23 MS. HALSEY: Mr. Saylor?

24 MEMBER SAYLOR: Here.

25 CHAIR ORTEGA: Okay, thank you.

**Commission on State Mandates – January 27, 2017**

1 MS. HALSEY: The chair of the Commission,  
2 Ms. Ortega, will conduct the annual election of officers.

3 CHAIR ORTEGA: Let's see, we have been served by the  
4 Treasurer's representative as the vice chair for the last  
5 year.

6 So I will open nominations for chair -- vice chair,  
7 sorry.

8 Yes?

9 MEMBER OLSEN: I nominate Betty Yee, State  
10 Controller, for vice chair.

11 CHAIR ORTEGA: Okay. Is there a second?

12 MEMBER RAMIREZ: Second.

13 CHAIR ORTEGA: All in favor of the nomination,  
14 please say "aye."

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

16 CHAIR ORTEGA: Okay, approved unanimously.

17 MS. HALSEY: And moving on to the nomination of the  
18 chair.

19 CHAIR ORTEGA: Okay, is there a nomination for the  
20 chairperson of the Commission?

21 MEMBER OLSEN: I'll nominate Michael Cohen, Director  
22 of Finance.

23 CHAIR ORTEGA: Thank you.

24 Is there a second?

25 MEMBER HARIRI: Second.

**Commission on State Mandates – January 27, 2017**

1 CHAIR ORTEGA: All in favor of the nomination,  
2 please say "aye."

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

4 CHAIR ORTEGA: Okay, it passes unanimously.

5 And the next item would be the minutes from the  
6 October 28<sup>th</sup> meeting.

7 Any corrections, changes to the minutes?

8 *(No response)*

9 VICE CHAIR CHIVARO: I'll move approval.

10 CHAIR ORTEGA: Okay, moved by Mr. Chivaro.

11 MEMBER OLSEN: Second.

12 CHAIR ORTEGA: Second by Ms. Olsen.

13 All in favor of the minutes being adopted from  
14 October 28<sup>th</sup>, please say "aye."

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

16 CHAIR ORTEGA: Approved unanimously.

17 MS. HALSEY: Now, we will take up public comment for  
18 matters not on the agenda.

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

23 CHAIR ORTEGA: Okay, any public comment on items not  
24 on the agenda?

25 *(No response)*

**Commission on State Mandates – January 27, 2017**

1           VICE CHAIR CHIVARO: Seeing none, we'll move to the  
2 Consent Calendar.

3           MS. HALSEY: Items 11 and 13 are proposed for  
4 consent.

5           After the revised agenda issued, Item 12 was removed  
6 from consent by Commission staff to correct two technical  
7 errors discovered when preparing for hearing.

8           CHAIR ORTEGA: Okay. Any objections to the proposed  
9 Consent Calendar?

10           *(No response)*

11           CHAIR ORTEGA: All right, is there a motion on  
12 Items 11 and 13?

13           MEMBER RAMIREZ: So moved.

14           VICE CHAIR CHIVARO: Second.

15           CHAIR ORTEGA: Okay. Moved by Ms. Ramirez, second  
16 by Mr. Chivaro.

17           All in favor of the Consent Calendar, please say  
18 "aye."

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

20           CHAIR ORTEGA: It was approved unanimously.

21           MS. HALSEY: Let's move to the Item 7 portion of the  
22 hearing.

23           Please note that after the revised agenda issued,  
24 Items 5, 6, 7, and 9 were withdrawn by the claimants.

25           Will the parties for Items 4 and 5 please rise?

Commission on State Mandates – January 27, 2017

1 CHAIR ORTEGA: 4 and 8.

2 MS. HALSEY: I'm sorry, 4 and 8.

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

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

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

9 MS. HALSEY: Item 3 is reserved for appeals of  
10 Executive Director decisions. There are no appeals to  
11 consider for this hearing.

12 Senior Commission Counsel Paul Karl Lukacs will  
13 present Item 4, a test claim on *Local Agency Employee*  
14 *Organizations: Impasse Procedures.*

15 MR. LUKACS: Thank you.

16 Item Number 4. In 2011, the Legislature amended  
17 the Meyers-Miliias-Brown Act by granting to labor unions  
18 the right, under certain circumstances, to force local  
19 governments to engage in a collective bargaining process  
20 known as "fact-finding."

21 The staff recommends that this test claim be denied.

22 The 2011 statute, which is the only law before the  
23 Commission today, the 2011 statute unambiguously states  
24 that fact-finding can only occur after mediation. And  
25 the law is clear that mediation, under the Act, is

**Commission on State Mandates – January 27, 2017**

1 voluntary. Since a local government can avoid  
2 fact-finding by simply not agreeing to mediation, the  
3 2011 statute does not impose a mandate.

4 Staff recommends that the Commission adopt the  
5 proposed decision to deny the test claim.

6 Would the parties and witnesses please state their  
7 names?

8 MS. CHANEY: Good morning. My name is Melanie  
9 Chaney. I am counsel for the City of Glendora.

10 MR. NICHOLS: Andy Nichols, Nichols Consulting,  
11 interested party.

12 MS. CHINN: Annette Chinn, Cost Recovery Systems.  
13 I work with the City of Glendora.

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

16 MS. BRENDAN: Danielle Brendan, Department of  
17 Finance.

18 CHAIR ORTEGA: Okay, please.

19 MS. CHANEY: Okay. So the City of Glendora issued  
20 this test claim to get reimbursed for its increased costs  
21 for fact-finding.

22 Now, the City of Glendora engaged in fact-finding  
23 in 2015 -- not because it wanted to, but because it was  
24 required to under section 3505.4 of the Government Code,  
25 which is the Meyers-Milias-Brown Act.

**Commission on State Mandates – January 27, 2017**

1 Now, prior to January 1, 2012, there was no  
2 requirement for fact-finding in impasse procedures. This  
3 was a new program that was instituted by AB 646, which  
4 implemented a new 3505.4, 3505.5, and 3505.7. So this is  
5 new.

6 We're not arguing that mediation was ever voluntary  
7 or not. Mediation has always been voluntary.

8 In this case, that's not the issue. The City of  
9 Glendora did not engage in fact-finding, yet it had --  
10 there's no scenario under which the City of Glendora had  
11 any choice in engaging in fact-finding under 3505.4. It  
12 requires that once the bargaining unit makes a request  
13 to PERB for fact-finding, that we must engage in  
14 fact-finding, and that is exactly what we did. If we had  
15 not done that, we would have been subject to an unfair  
16 labor practice charge.

17 So there's no way around the fact that Glendora had  
18 to do this. It was mandated. It was required. They had  
19 to do it under 3505.4. And that statute, 3505.4, was  
20 pled in our test claim.

21 Now, what Commission staff is arguing is that  
22 AB 1606 is the statute or the bill that led to the  
23 mandatory portion of the fact-finding. That is not  
24 correct. AB 646 is the mechanism by which the MMBA was  
25 revised to make fact-finding mandatory.

**Commission on State Mandates – January 27, 2017**

1           Now, unfortunately, there was some ambiguity in that  
2 language which was pretty quickly found out. That's why  
3 PERB then issued emergency regulations clarifying that it  
4 is mandatory. That is why the Legislature went back and  
5 cleaned it up with AB 1606, to be clear that it was  
6 mandatory. But the intent and the effect of AB 646 was  
7 always clear that it was mandatory for an employer to go  
8 to fact-finding, should it be requested by the employee  
9 organization.

10           And to say now that it's not mandatory or that  
11 Glendora had some choice about going to fact-finding or  
12 not, going back to what the voluntary mediation, which is  
13 in a separate section of the MMBA, it doesn't lead -- it  
14 leads to an absurd result. It leads to the fact that  
15 Glendora had an obligation to engage in this  
16 fact-finding. But now, it's being said that that was not  
17 mandatory, when it very clearly was. And there's really  
18 no way around the fact that it was something mandatory  
19 for Glendora to do.

20           I am happy to answer any questions if anyone has any  
21 questions about it. We've submitted our papers and our  
22 comments; but that's really the gist of our argument  
23 here.

24           CHAIR ORTEGA: Okay, Mr. Nichols, or anyone else?

25           MR. NICHOLS: Would you like to go first?

Commission on State Mandates – January 27, 2017

1 MS. CHINN: No.

2 MR. NICHOLS: Okay. Thank you very much, Madam  
3 Chair and Commissioners.

4 Actually, I do appreciate all the effort that staff  
5 had put into the analysis, obviously reviewing PERB  
6 communication, all the discussion regarding it.

7 I guess I have two items.

8 One is a question; and it's just for me to gain an  
9 understanding.

10 The fact-finding activity is actually currently  
11 reimbursable for local education agencies under EERA.  
12 Not only for them, they also receive mediation costs.  
13 But mediation are not being alleged here.

14 So I was curious. I did not see -- unlike previous  
15 analysis when labor activities had been reviewed or  
16 looked at by the Commission -- and the most recent  
17 example is *Local Government Employee Relations*. That  
18 particular program also looked at PERB costs. And a  
19 comparison was drawn between that and the program,  
20 *Collective Bargaining and Collective Bargaining Agreement*  
21 *Disclosures*, which are eligible for school districts and  
22 college districts.

23 But, once again, not a criticism, but I was just  
24 curious why that was not looked at by staff.

25 Another program that also was reviewed under *Local*

**Commission on State Mandates – January 27, 2017**

1     *Government Employee Relations*, that affect local  
2     agencies, and is a reimbursable mandate, is the *Agency*  
3     *Fee Arrangement* claim for, once again, school districts  
4     and college districts. That was compared -- kind of a  
5     side-by-side comparison there. And I did not, once  
6     again, see that analyzed. And maybe I missed it. I'm  
7     sorry if I skipped over in the analysis somewhere. But  
8     I did not see that comparison, once again, between the  
9     fact-finding that is currently eligible for school and  
10    college districts to claim for their costs in comparison  
11    to what was alleged here by the City of Glendora.

12           The second point I wanted to mention, and actually  
13    Ms. Chaney kind of already touched upon it, I did have a  
14    chance to speak with -- unfortunately, he wasn't able to  
15    come here today, but Tim Yeung, whose materials he is the  
16    co-author of. He is with Renne, Sloan, Holtzman; and he  
17    is an author of the PERB Blog. And one of his documents  
18    that he co-authored navigating the mandate fact-finding  
19    AB 646 law basically went into description. It was  
20    reviewed, analyzed for the purpose of this proposed  
21    statement of decision. He actually -- he said there was  
22    potential unintended consequences here, once again, that  
23    Ms. Cheney had mentioned. Local agencies are required,  
24    as are bargaining units, to negotiate in good faith. And  
25    the fact that if this decision is as a way the Commission

1 is proposing it, could create, once again, an unintended  
2 consequence, and that consequence could lead to potential  
3 violation of bargaining good faith to avoid the trickle-  
4 down effects of getting to fact-finding. In other words,  
5 avoiding that cost. If you don't bargain in good faith,  
6 you could end up with an unfair labor practice charge.

7 Now, anyone looking at a PERB case report, going  
8 over to 18<sup>th</sup> and K Street and requesting that PERB case  
9 report, could look at the impasse for local agencies, and  
10 see the open filing date and closing dates of those.  
11 And those typically last weeks, sometimes months for  
12 impasse for local agencies.

13 However, unfair labor practice charges last months  
14 and years; and it usually is considerably much more  
15 expensive. And the reason I mention that is, once again,  
16 the program that has been approved by this Commission,  
17 *Local Government Employee Relations*, is reimbursable.  
18 So I don't know if that's an unintended consequence that  
19 this Commission has considered; but the fact that you may  
20 be saying "no" to something that we here feel is forced,  
21 required, or mandated, but the Commission staff is saying  
22 is optional, may have a trickle-down effect, where other  
23 claims will get more expensive. And that is something  
24 that Finance has argued in the past, that this process  
25 lacks cost-efficiency, and was argued in 2004 and 2008

**Commission on State Mandates – January 27, 2017**

1 not only by Finance, but also the State Controller's  
2 Office, where they wanted to rebate or reward those folks  
3 that reduced their state-mandated costs by trying to be  
4 more efficient.

5 I would like to respectfully ask that the Commission  
6 approve this test claim.

7 CHAIR ORTEGA: Okay, let's hear from --

8 MEMBER HARIRI: I have a question.

9 CHAIR ORTEGA: Oh, yes.

10 Can we hear from Ms. Chinn and then we will -- I'm  
11 kind of keeping track on the issues.

12 Ms. Chinn, did you have anything to --

13 MS. CHINN: No, I think they've covered it.

14 CHAIR ORTEGA: Okay. Let's have Camille respond to  
15 the issues -- or Paul -- on the comparison to the EERA  
16 statutes.

17 MR. LUKACS: The short answer is that certainly  
18 staff did, in fact, review both the EERA and the higher  
19 education; and I analyzed the history of both.  
20 Ultimately, when it came to write the decision, the  
21 Meyers-Milias-Brown Act has this very specific history.  
22 This is a test claim about an amendment to that one act.  
23 And while I certainly reviewed all those and kept the  
24 other sister acts in mind, you know, we here in  
25 California have made a decision that we don't have one

**Commission on State Mandates – January 27, 2017**

1        overarching statute regarding public employees. We have  
2        these multiple ones. And so this one was analyzed -- its  
3        specific language was analyzed; and the specific statute  
4        which was pled in the test claim is what was written up  
5        in the decision. But I do assure the Commission, all the  
6        other sister acts were read and analyzed in detail.

7                CHAIR ORTEGA: Then one follow-up question. Is  
8        mediation required under the Education Acts?

9                MR. LUKACS: Off the top of my head, I do not  
10       remember.

11                CAMILLE SHELTON: It is. I can tell you, it is.

12                CHAIR ORTEGA: I don't think that makes a difference  
13       in terms of the reimbursement decisions that have been  
14       made because in those statutes, mediation is required,  
15       and it's not required in the MMBA.

16                Mr. Hariri?

17                MEMBER HARIRI: I have a question of Chief Counsel  
18       and then my colleagues.

19                Can we reasonably assume that absent negotiation,  
20       mediation, or fact-finding, we can resolve any dispute,  
21       whether it relates to labor or otherwise? How can we  
22       resolve any problem without really delving into the  
23       issues through fact-finding?

24                Just logically, I'm not understanding that. Even  
25       though the law may be silent, was that the intent?

**Commission on State Mandates – January 27, 2017**

1 MS. HALSEY: Can I clarify one thing?

2 First of all, staff isn't finding that fact-finding  
3 is not required; it's just not required by AB 646. It's  
4 required by other law that wasn't pled. This is really  
5 a pleading issue. So it's not an issue of what the  
6 requirements are.

7 MEMBER HARIRI: And does it have to be specifically  
8 specified in statute?

9 CAMILLE SHELTON: Yes. For there to be a mandate,  
10 the State has to be imposing a duty by the statutes that  
11 are pled in a test claim.

12 In its claim, they've pled only the 2011 bill. That  
13 bill, almost immediately after it was enacted, came into  
14 question whether or not it was really mandatory or not,  
15 because it was triggered by a voluntary mediation. It  
16 wasn't until either, you can argue, the PERB regulations,  
17 which were not pled, or the 2012 statute that amended the  
18 code section, that it became arguably mandated. But we  
19 have not analyzed that here, since those two provisions  
20 have not been pled.

21 So the only statute that's been pled, the 2011  
22 statute, is not a mandate pursuant to several Supreme  
23 Court and court decisions on mandates.

24 MEMBER HARIRI: I mean, my question is, can you  
25 really resolve any dispute without mediation -- without

1 fact-finding?

2 MR. LUKACS: Well, I would think so, sir. I mean,  
3 sometimes, you know, the parties may be in the same  
4 place, near the beginning of talks. Sometimes there can  
5 be informal talks. Sometimes there can be formal.

6 I think the idea behind fact-finding was that when  
7 the process is near its end and it appears that there is  
8 a very strong issue, then the idea is that a fact-finding  
9 panel is appointed. And the fact-finding panel will do  
10 some research and issue a set of recommendations. And  
11 I think that's important to understand.

12 No one is bound by the fact-finding report. It's,  
13 in this case, three people will put together issues, such  
14 as, what are the prevailing wages, what are the job  
15 classifications involved, how much was inflation.

16 The earliest example of fact-finding that I could  
17 find, to put this in context, is in 1946, the workers at  
18 General Motors had a strike because they had not had a  
19 wage increase; and President Truman appointed a  
20 fact-finding commission. The commissioners reviewed the  
21 state of the economy and the state of industry, and  
22 recommended that there be a wage increase for all General  
23 Motors employees of at least 19 and a half cents per  
24 hour.

25 CHAIR ORTEGA: Thank you.

Commission on State Mandates – January 27, 2017

1 Are there any other comments from commissioners?

2 Yes, Ms. Olsen?

3 MEMBER OLSEN: I've got some questions.

4 CHAIR ORTEGA: Yes.

5 MEMBER OLSEN: This has a little bit of the aspect  
6 of a "gotcha" in terms of it being about what section was  
7 pled.

8 And I know that our Commission staff is really good  
9 at working with folks who come before the Commission  
10 prior to setting the hearing and all of that, to work out  
11 difficulties. At least that is my sense of what has  
12 happened in the past.

13 So I'm kind of wondering what the history is here  
14 that's brought us to this point, where --

15 Well, okay, a simple question: If we find for the  
16 Commission staff today, if we agree with the Commission  
17 staff today, does that preclude Glendora or some other  
18 city from pleading other statutes in another test claim?

19 MS. HALSEY: Well, the statute of limitations has  
20 passed for those.

21 MEMBER OLSEN: Okay.

22 MS. HALSEY: And the regulation, for instance,  
23 became effective on the same date as this test-claim  
24 statute.

25 MS. CHINN: However, if another agency did not have

1 costs incurred, they could still file for that, is my  
2 understanding. They have a year.

3 MS. HALSEY: That would be an issue of law which has  
4 not been addressed yet. It would be an issue of first  
5 impression. So we can't really answer that right at this  
6 point.

7 CAMILLE SHELTON: Yes, that is a difficult question;  
8 and we haven't been faced with that. We've certainly  
9 talked about that in-house. Because the intent of a  
10 statute of limitations and about the test-claim process  
11 being similar to a class action, arguably, it would be a  
12 loophole to allow anybody to come in first, incurring  
13 costs later, when -- you know what I'm saying? -- when  
14 they should have brought it within the first year of the  
15 statute or regulation becoming effective.

16 That's just one argument.

17 I don't know how we would proceed. And I would  
18 certainly need to get briefing from both parties on that.

19 But I was going to just add that Government Code  
20 section 17553 is the statute that governs how to file a  
21 test claim. And it very specifically says that you have  
22 to plead the code section and the statute and the chapter  
23 that you are alleging created the mandate.

24 Here, the only thing that they've pled was the code  
25 section and Statutes 2011.

**Commission on State Mandates – January 27, 2017**

1           Staff can't -- it would be a violation of ex parte  
2 procedures if we were to go out and help the claimant.

3           MEMBER OLSEN: Right. I understood that.

4           CAMILLE SHELTON: So I can't call them and say, "Did  
5 you really just mean, you know, this 2011 statute?"

6           There have been occasions in the past where maybe  
7 the pleading is not that clear and where there are some  
8 ambiguities within the pleading itself, where it's not  
9 clear which one that they're pleading. It wasn't the  
10 case here, though. There were multiple occasions, as  
11 Mr. Lukacs can describe, where they were specifically  
12 pleading the 2011 statute, and that's all they pled.

13          MEMBER OLSEN: Okay, thank you.

14          CHAIR ORTEGA: Ms. Chaney, do you want to comment on  
15 the pleading issue?

16          MS. CHANEY: Yes. So AB 646 is the statute that  
17 created fact-finding for MMBA. And the intent clearly  
18 was for it to be mandatory, and the effect of it was for  
19 it to be mandatory. I understand that there was  
20 ambiguity in the actual language which led to the cleanup  
21 language from AB 1606. But statutory construction  
22 requires you to look at what was in the statute at the  
23 time. And if it's ambiguous, then you need to see what  
24 the legislative intent was. And all the legislative  
25 intent materials that we've provided show that the intent

1 was for it to be mandatory. The effect was for it to be  
2 mandatory. And PERB then came behind and said, "Yes,  
3 it's mandatory," and issued regulations saying that it  
4 was mandatory.

5 There is -- in no situation, did Glendora have an  
6 option not to go to fact-finding here. And so for that  
7 reason, I would say that it is a mandate for which they  
8 should be reimbursed.

9 MR. LUKACS: Could I respond to that?

10 CHAIR ORTEGA: Yes.

11 MR. LUKACS: Staff believes that the statute, the  
12 test-claim statute and the MMBA behind that, on this  
13 issue, there is no ambiguity.

14 Under the Government Code, specifically  
15 section 3505.2 -- that's the mediation provision -- that  
16 has been unchanged since Governor Reagan signed it in  
17 1968. And there are several cases, court cases, which  
18 say flat out, that in this particular statute, mediation  
19 is voluntary.

20 Then in the test-claim statute, Government Code  
21 3505.4(a) was amended to read, "*If the mediator is unable*  
22 *to effect settlement of the controversy within 30 days of*  
23 *his or her appointment, the employee organization may*  
24 *request that the parties' differences be submitted to a*  
25 *fact-finding panel.*"

1           So as you can see, first, there is a voluntary  
2           decision to enter into mediation; and only downstream  
3           of that -- I mean, it's very clear: "If the mediator is  
4           unable to effect settlement," that is the precondition,  
5           that is the prerequisite, and it is a voluntary  
6           prerequisite. Ergo, we don't believe there's any  
7           ambiguity there.

8           As we noted in the decision, if a claimant wants to  
9           argue that there is an ambiguity, they need to find the  
10          ambiguity in the text of the statute. It is not  
11          appropriate to point to extra statutory material, such  
12          as the statements of sponsors, committee reports,  
13          statements and interviews. There is a -- when you simply  
14          read what the Legislature had passed, there is no  
15          ambiguity. Mediation is voluntary.

16          CHAIR ORTEGA: Yes?

17          MS. CHANEY: So I do not dispute that mediation is  
18          voluntary under 3505.2. I do not dispute that.

19          3505.4, as written by AB 646, has that phrase, "If  
20          the mediator doesn't find." I got that. But it does not  
21          say what happens when there isn't a mediation.

22          So in this case, there was no mediation. Nobody  
23          agreed to go to mediation. Glendora didn't have a  
24          mediation, nobody asked for a mediation. There was a  
25          request for fact-finding, and there was a request for

**Commission on State Mandates – January 27, 2017**

1 fact-finding that Glendora was not --

2 CHAIR ORTEGA: But then it would have been pursuant  
3 to the 1606 section; right? The amended -- the regs --

4 MS. CHANEY: Which clarified AB 646.

5 CHAIR ORTEGA: Yes, I get that, but --

6 MS. CHANEY: But it didn't create the new program.

7 AB 646 is the statute that created the new program.

8 CHAIR ORTEGA: Yes, I think that's where we're not  
9 going to be able to...

10 CAMILLE SHELTON: Just to clarify. A requirement  
11 can be stated in a law; but it may not be mandated by the  
12 state. There's lots of cases that have requirements by a  
13 state law, but they're not considered state-mandated,  
14 especially if they're triggered by a voluntary decision.

15 CHAIR ORTEGA: I certainly can sympathize with your  
16 perspective. But I think the issue still remains that if  
17 you didn't have mediation and you were required to go to  
18 fact-finding, it was pursuant to the changes that were  
19 made in 1606, not in 646. And it's only 646 -- yes, 646  
20 that's been pled. So I think that still remains the kind  
21 of fundamental problem for your test claim.

22 Are there any other comments from commissioners?

23 Mr. Saylor?

24 MEMBER SAYLOR: So that point comes up from time to  
25 time, the issue of timeliness.

**Commission on State Mandates – January 27, 2017**

1           Could staff describe again the reason that Glendora  
2           could not resubmit and plead based on additional statute?

3           CAMILLE SHELTON: Well, the Government Code requires  
4           that a test claim be filed within one year of the  
5           effective date of the test-claim statute or executive  
6           order, or within first incurring costs.

7           Again, there's some ambiguity, or legal differences,  
8           maybe, with the first incurring costs, which may be, if  
9           it comes forward, we'd have to analyze what that meant  
10          when it came forward.

11          MEMBER SAYLOR: Okay.

12          CAMILLE SHELTON: I was going to say, Ms. Chaney  
13          testified already that they incurred costs in 2015. So  
14          you're already technically past that date and have  
15          already incurring costs within the first year.

16          I was losing my train of thought.

17          The statutes also allow a test claim to be amended.  
18          But Government Code section 17557 says that it has to be  
19          amended before the matter is set for hearing. The matter  
20          is set for hearing when the draft proposed decision is  
21          issued under the law. So it could have been amended if  
22          they had caught it earlier, but it was not.

23          MS. HALSEY: And, actually, in this case, we didn't  
24          even catch it in time in our analysis. It was too late,  
25          pretty quickly, after the original was filed, in terms of

1 the statute of limitations.

2 MEMBER SAYLOR: Okay, so they --

3 MS. HALSEY: So not that it can't be amended just  
4 because we issued a draft; it was actually past the  
5 statute of limitations, before we even got into the  
6 analysis to see the issue for ourselves.

7 MEMBER SAYLOR: To the Claimant: Did you consider  
8 including additional statutes in your pleadings? Or did  
9 you not -- was there any reason that you didn't do that?

10 MS. CHANEY: It's our belief that AB 646 is the  
11 statute that made the new program; and it was under that  
12 statute that it was mandatory.

13 I would say, though, that if that is the issue,  
14 there's got to be some mechanism to conform the pleadings  
15 to the proof. I mean, we've shown you what it is and  
16 that it is mandatory, and that it was mandatory for the  
17 City of Glendora; and that the City of Glendora incurred  
18 the costs based on a requirement under 3505.4, which we  
19 did plead in our test claim.

20 And so I would say, just the same as you would in a  
21 civil trial, where you can go back and conform the  
22 pleadings to the proof, I would say we should be able to  
23 do that here, because we clearly incurred the costs based  
24 on a new program that was mandated.

25 CHAIR ORTEGA: Camille?

**Commission on State Mandates – January 27, 2017**

1 CAMILLE SHELTON: You know, in a civil pleading,  
2 unlike the pleading requirements here, you don't have to  
3 specifically plead each and every fact. You can claim  
4 them based on information and belief in a civil pleading,  
5 and then conform your pleadings to proof during trial.

6 Here, the statute, the Government Code section  
7 17553, requires very specific pleading. You specifically  
8 have to plead the code section and the statute and  
9 chapter that you allege claims the mandate. So there  
10 is -- you can't go back and conform the pleading to the  
11 proof. You have to specifically plead it or amend your  
12 claim within the time frame.

13 MEMBER SAYLOR: What about a statement that the  
14 intent and the effect, and all of the other evidence that  
15 comes into play, to pretty much -- well, to require the  
16 local agency to carry out fact-finding, even in the  
17 absence of mediation, as they say?

18 CAMILLE SHELTON: Well, there is also some  
19 information in here -- first, under the rules of  
20 statutory construction, you don't get to the history.  
21 You don't even look at what the legislators were thinking  
22 until you've determined that the plain language is vague  
23 and ambiguous. And we don't believe that it is. It's  
24 pretty clear.

25 And when you do, I believe there was some bill

**Commission on State Mandates – January 27, 2017**

1 analyses, some actual amendments to the bill that came  
2 forward that I think Mr. Lukacs can probably talk about  
3 on page 39, where they specifically had mediation as  
4 being required during the first versions of the bill, and  
5 then they took it out, so...

6 MR. LUKACS: Yes, that's correct. When Bill 646 was  
7 originally submitted on February 16, 2011, there was a  
8 requirement for mandatory mediation. However, in  
9 amendments which the Assembly approved on March 23<sup>rd</sup>,  
10 2011, that entire section was removed. So what was left,  
11 the staff finds to be unambiguous for the reasons I  
12 stated earlier.

13 MEMBER SAYLOR: Does the fact-finding only transpire  
14 if mediation has first taken place? Or in your case, I  
15 believe the claimant said that there was not mediation.

16 MS. CHANEY: There was no mediation.

17 MEMBER SAYLOR: The fact-finding request came  
18 forward.

19 MS. CHANEY: And if we had not engaged in  
20 fact-finding, we would been subject to an unfair labor  
21 practice charge.

22 MR. NICHOLS: Which is reimbursable.

23 CAMILLE SHELTON: I believe you said that was in  
24 2015, however?

25 MS. CHANEY: That's correct.

**Commission on State Mandates – January 27, 2017**

1 CAMILLE SHELTON: Right, in 2015.

2 In 2012, the law changed, to make fact-finding  
3 required regardless of whether you have mediation or not.  
4 The law changed in 2012. That 2012 statute has not been  
5 pled. So that would be correct, that they were required,  
6 no matter whether they had mediation or not, in 2015.

7 MS. CHANEY: Well, that's where we disagree.

8 MEMBER SAYLOR: So we all agree that there's a  
9 requirement that the State imposed that the local agency  
10 have fact-finding?

11 CAMILLE SHELTON: Yes.

12 MS. HALSEY: Not under this statute, though.

13 MEMBER SAYLOR: Okay, so how do we get past this  
14 Procrustean bed here to get to the point of the claimant  
15 being able to claim something, when it's clear that they  
16 have a cost that's required by the State?

17 CAMILLE SHELTON: You would need a change in our  
18 Government Code statutes to do that. It's very clear  
19 that you have to plead specifically the code section and  
20 the statute and chapter. And we've been to court on this  
21 many times. It's a pleading problem. And until --  
22 unless the Legislature makes a change to those statutes,  
23 we can't do anything.

24 CHAIR ORTEGA: Ms. Chaney, you were going to make  
25 one more?

**Commission on State Mandates – January 27, 2017**

1 MS. CHANEY: Well, I mean, I think you all  
2 understand what the issue is here. And I disagree that  
3 there was a change in the law. I believe it was a  
4 clarification of the law that already was in existence  
5 under AB 646. It's not a change. It was mandatory under  
6 AB 646. That's why PERB went and did its emergency regs,  
7 because it was ambiguous.

8 I understand that staff does not believe it was  
9 ambiguous, as read. I believe that it was ambiguous,  
10 because it does not address what happens if there's not a  
11 mediation at all. It just said, "If the mediator," you  
12 know, so forth and so on. If there is no mediator, it  
13 does not say what happens there. That was the problem.  
14 That's why everybody went back and tried to clarify it.

15 So I don't see it as there was a new law that AB --  
16 that there was a new law that changed what was there. It  
17 just clarified what was already there.

18 MS. HALSEY: May I direct the Members to page 39 of  
19 the test-claim decision -- or proposed decision?

20 And there is an Assembly Committee on Public  
21 Employees, Retirement and Social Security analysis of  
22 what those amendments did, the amendments that Paul was  
23 just referring to. And specifically, the second thing  
24 that they say that they do is to remove requirements that  
25 an employer or an employee organization submit their

**Commission on State Mandates – January 27, 2017**

1 differences to a fact-finding panel, and, instead,  
2 provides employees' organizations with the option to  
3 participate in a fact-finding process established in  
4 3505.4, added by this measure, which seems to signify  
5 that it is optional under this particular statute.

6 CHAIR ORTEGA: Yes?

7 MEMBER RAMIREZ: This is why people are frustrated  
8 with this Commission, because we're so legalistic; and  
9 that's why a lot of times, people don't like lawyers or  
10 legislators.

11 I'm actually going to abstain here because my city  
12 is sort of in the midst of this. But I totally respect  
13 the work of everybody here. That's why I will be  
14 abstaining. We're on the cusp there of this issue.

15 CHAIR ORTEGA: Thank you.

16 Okay, are there any additional comments from  
17 Commissioners?

18 *(No response)*

19 CHAIR ORTEGA: Is there any additional public  
20 comment on this item?

21 *(No response)*

22 CHAIR ORTEGA: Okay, with that, I'll call for a  
23 motion.

24 MEMBER MORGAN: I'm going to move to approve the  
25 staff recommendation.

Commission on State Mandates – January 27, 2017

1 MS. OLSEN: I'll grudgingly second it.

2 CHAIR ORTEGA: Thank you. A motion and a second.  
3 Let's go ahead and call the roll.

4 MS. HALSEY: Mr. Chivaro?

5 VICE CHAIR CHIVARO: Aye.

6 MS. HALSEY: Mr. Hariri?

7 MEMBER HARIRI: Abstain.

8 MS. HALSEY: Mr. Morgan?

9 MEMBER MORGAN: Aye.

10 MS. HALSEY: Ms. Olsen?

11 MEMBER OLSEN: Aye.

12 MS. HALSEY: Ms. Ortega?

13 CHAIR ORTEGA: Aye.

14 MS. HALSEY: Ms. Ramirez?

15 MEMBER RAMIREZ: Abstain.

16 MS. HALSEY: Mr. Saylor?

17 MEMBER SAYLOR: No.

18 CHAIR ORTEGA: The motion carries. Thank you.

19 Thank you, everyone.

20 Move to Item 8.

21 MS. HALSEY: Senior Commission counsel Paul Karl  
22 Lukacs will present Item 8, an incorrect reduction claim  
23 on *Animal Adoption*.

24 The claimant notified Commission staff that they  
25 stand on the record but disagree with portions of the

1 proposed decision, and consent to its adoption.

2 MR. LUKACS: Thank you.

3 Due to the complexity of the claim, this  
4 introduction will be longer than usual.

5 In 1998, the late State Senator Tom Hayden sponsored  
6 legislation which increased the minimum amount of time  
7 that animal shelters were required to hold strays for  
8 owner redemption or for adoption. The prior law required  
9 that 72 hours elapse before an unclaimed dog or cat could  
10 be put down.

11 The Hayden Act increased the minimum holding period  
12 for all stray and abandoned animals to either four  
13 business days or six business days, depending on certain  
14 factors.

15 In 2001, this Commission held that the increase in  
16 the mandatory holding period resulted in a reimbursable  
17 state mandate for the care and maintenance of the  
18 animals.

19 On this IRC, staff makes the following five  
20 recommendations:

21 First, as a threshold matter, while the claimant is  
22 a joint powers authority, which usually does not have  
23 standing to bring a claim, this claimant is acting as a  
24 representative of its 11 constituent cities. Staff  
25 therefore recommends that the Commission review the

1 merits.

2 Second: On those merits, the 2010 Court of Appeal  
3 decision, entitled "Purifoy versus Howell," which  
4 interprets the statutory term "business days" as being  
5 Monday through Friday only, that Court of Appeal decision  
6 applies retroactively, i.e., from the effective date of  
7 the statute, since this is the Court's interpretation of  
8 what the law has always been.

9 Third: The claimant is entitled to reimbursement of  
10 increased costs incurred during the increased holding  
11 period if an animal arrived at the shelter in a treatable  
12 condition but then deteriorated and had to be put down  
13 during the increased holding period.

14 Fourth: Under the parameters and guidelines, the  
15 Controller can calculate costs for the care and  
16 maintenance of animals and for necessary and prompt  
17 veterinary care by using a formula based on the actual  
18 costs incurred. The parameters and guidelines do not  
19 allow the Controller, as was done here, to base its  
20 calculations on an average.

21 Fifth: All other reductions are correct as a matter  
22 of law, and are not arbitrary, capricious, or entirely  
23 lacking in evidentiary support.

24 Staff therefore recommends that the Commission adopt  
25 the proposed decision to partially approve the IRC, and

**Commission on State Mandates – January 27, 2017**

1 to request that the Controller reinstate cost to the  
2 extent that the claimant has documentation.

3 Would the parties and witnesses please state their  
4 names for the record?

5 MS. VOROBYOVA: Masha Vorobyova, Audit Manager,  
6 State Controller's Office.

7 MS. KUROKAWA: Lisa Kurokawa, Audit Manager, State  
8 Controller's Office.

9 MS. VOROBYOVA: Good morning, Members of the  
10 Commission. Thank you for allowing us to comment on this  
11 incorrect reduction claim.

12 The Commission staff issued a proposed decision  
13 dated January 11<sup>th</sup>, 2017, in which the Commission staff  
14 supported the vast majority of SCO findings, with the  
15 exception of two main issues we'd like to address here  
16 today.

17 First issue: In the proposed decision, the  
18 Commission staff found that the SCO's reduction of costs  
19 related to exclusion of animals deemed treatable upon  
20 arrival at the shelter, and later euthanized during the  
21 increased hold because they became non-rehabilitatable,  
22 was incorrect.

23 The Commission staff concluded that the SCO's  
24 analysis interpreted parameters and guidelines too  
25 narrowly to the plain language of the activity.

**Commission on State Mandates – January 27, 2017**

1           The SCO stands on the written comments provided in  
2           the response to the draft proposed decision. We had no  
3           reason to analyze the plain language of the parameters  
4           and guidelines any further.

5           We believe that the program's criteria was written  
6           with great specificity and detail. The phrase "died  
7           during the increased holding period or ultimately  
8           euthanized" implied the distinction between two  
9           categories with the use of the word "or."

10           If the intent of the activity was also to include  
11           treatable animals being euthanized due to their health  
12           status changing, then we believe that such language  
13           should have been included in the parameters and  
14           guidelines.

15           The proposed decision indicated that the claimant  
16           should provide documentation proving such animals  
17           existed. We reviewed all supporting documentation  
18           provided to us during the audit. Such records do not  
19           exist to support these costs.

20           Second issue: In the proposed decision, the  
21           Commission staff also found that the SCO's recalculation  
22           of the increased holding period using an average number  
23           of reimbursable days is, quote, "incorrect as a matter of  
24           law, and is arbitrary, capricious, and entirely lacking  
25           in evidentiary support, to the extent the recalculation

1       resulted in an exclusion of eligible animals properly  
2       held for the duration required under Purifoy," end quote.  
3       The Commission staff's analysis indicated that the  
4       computing actual increased holding period for each animal  
5       was the only way to satisfy the program's requirements.  
6       The strict interpretation of the actual-cost requirement  
7       in this instance would result in no allowable cost,  
8       zero dollars reimbursed to the claimant because of the  
9       documentation limitations and absence of key information  
10      necessary to perform such computations.

11           We acknowledge that parameters and guidelines do  
12      not allow the use of the average number of reimbursable  
13      days as a means to compute allowable costs. We also  
14      agree that the parameters and guidelines spell out very  
15      specific documentation requirements. However, the  
16      claimant did not maintain necessary documentation  
17      consistent with the requirements outlined in the  
18      parameters and guidelines.

19           We had clear evidence that the reimbursable  
20      activities took place. Therefore, we believed that  
21      working with the claimant in determining an average  
22      number of reimbursable days was a reasonable approach to  
23      approximate actual costs as an alternative to allowing  
24      zero.

25           Furthermore, the claimant supported SCO's

1 methodology as it was consistent with their own claiming  
2 methodology. To compute the average increased holding  
3 period days, the SCO used the claimant's provided  
4 documentation and accounted for all possible scenarios of  
5 animal impound on various days of the week.

6 The SCO insured that this methodology would not  
7 produce unfavorable results to the claimant's  
8 computations of allowable costs.

9 Using the average methodology did not result in less  
10 allowable costs compared if actual number of reimbursable  
11 days method would have been employed. Using the SCO's  
12 analysis, Monday and Sunday, two days out of the week,  
13 were the only impound scenarios that could potentially  
14 produce unfavorable results to the claimant by excluding  
15 a potentially eligible animal. However, using the SCO's  
16 analysis, Tuesday, Wednesday, Thursday, and Friday --  
17 four days out of the week -- impound scenarios created  
18 favorable results to the claimant by including  
19 potentially ineligible animals.

20 Saturday impound scenario, one day out of the week,  
21 had neutral results when using the averaged increased  
22 holding period.

23 Therefore, the likelihood of an unfavorable outcome  
24 is far less than a favorable one, because likelihood of  
25 having a Monday or Sunday impound is far less than

1 impounds occurring on all other days of the week  
2 combined, when using an average, was not detrimental to  
3 the claimant.

4 The SCO would also like to point out the restrictive  
5 language in the parameters and guidelines relating to the  
6 computation of actual increased holding period for dogs  
7 and cats, which was defined as the difference between  
8 72 hours and four business days after impoundment.

9 The SCO's function is not to interpret the  
10 parameters and guidelines but, rather, to remain  
11 impartial and audit to the plain language of the  
12 criteria. As such, the plain language of the criteria  
13 requires the record of not only day of impoundment, but  
14 also the exact hour the animal was taken in.

15 We performed in excess of 40 audits of the *Animal*  
16 *Adoption* program. No animal shelter we audited  
17 maintained such detailed records. Therefore, it was not  
18 only impractical, due to the volume of records, but also  
19 impossible to compute actual increased holding period  
20 days for dogs and cats in absence of information of time  
21 of day animals were impounded.

22 For the reasons stated here today, the SCO disagrees  
23 with the Commission staff conclusion in the proposed  
24 decision related to these two issues.

25 An "arbitrary decision" is defined as a decision

1 based on random choice or personal whim. Black's Law  
2 Dictionary defines "arbitrary and capricious" as "A  
3 willful and unreasonable action without consideration or  
4 in disregard of facts or law, or without determining  
5 principle, not supported by fair, solid, and substantial  
6 cause, and without reason given." We believe that we  
7 provided adequate analysis and adequate proof that the  
8 SCO's assertions are well-supported by the evidence in  
9 the record and that the methodology to compute allowable  
10 costs reasonably satisfied the requirements of the  
11 mandate by using the information available.

12 The SCO worked with the claimant's available  
13 documentation, and it remained reasonable and impartial  
14 while computing allowable costs totaling \$760,091 for the  
15 audit period, rather than zero for the activities that  
16 took place.

17 We therefore believe that the reduction in costs  
18 associated with the use of the average number of  
19 reimbursable days should not be considered arbitrary and  
20 capricious and entirely lacking in evidentiary support.  
21 We believe it would have been arbitrary and capricious  
22 had we not attempted to work with the claimant and  
23 determine allowable costs, knowing that the claimant was  
24 able to support that reasonable activities were  
25 performed.

**Commission on State Mandates – January 27, 2017**

1           Commission staff has recommended that the claims  
2 be remanded back to the SCO to reevaluate these two  
3 issues and offer the claimant an opportunity to provide  
4 additional supporting documentation. We spent many  
5 months reviewing all of the claimant's documentation  
6 supporting activities in question during audit field  
7 work. There is no additional documentation available to  
8 reinstate any costs.

9           We believe our findings are valid.

10          Thank you. And we're ready for any questions.

11          CHAIR ORTEGA: Any questions from -- yes,  
12 Mr. Hariri?

13          MEMBER HARIRI: Excuse me. You mentioned at the  
14 end, that there are no documentations to support the  
15 claim.

16          MS. VOROBYOVA: No additional documentation.

17          MEMBER HARIRI: No additional documentation?

18          MS. VOROBYOVA: Right.

19          MEMBER HARIRI: And what is the basis for this  
20 statement?

21          MS. VOROBYOVA: We spent a substantial amount of  
22 time on the field reviewing the claimant's documentation  
23 that they provided to us. We reviewed countless line  
24 items for animal records that they provided, and other  
25 various invoices, Paws documentation, we believe they

**Commission on State Mandates – January 27, 2017**

1 gave us everything that they had to prove the activities  
2 took place. And we considered all of it, combined.

3 MEMBER HARIRI: Thanks.

4 CHAIR ORTEGA: Anything else? Any points the staff  
5 wants to respond to, or --

6 MS. CHINN: This is for SEAACA.

7 CHAIR ORTEGA: Yes.

8 MS. CHINN: Can I pop in here?

9 I know I was --

10 CHAIR ORTEGA: Please state your name for the  
11 record, please.

12 MS. CHINN: Annette Chinn, Cost Recovery Systems;  
13 and I'm the consultant who helped SEAACA prepare those  
14 claims.

15 And I believe you guys -- I missed the beginning  
16 part of it. You got the statement that they wanted to  
17 have read. But I think the assertion of the State  
18 Controller's Office is not necessarily true, that they  
19 don't have data to substantiate those other things.

20 I think they would like to work with the State  
21 Controller's Office to see if any of their records could  
22 help to support some of the costs that were found  
23 unallowable. So that's just something I wanted to add.

24 CHAIR ORTEGA: Okay, thank you.

25 MS. KUROKAWA: Well, I believe during the audit, we

1 worked with SEAACA over the course of probably about a  
2 year. So I'm uncertain of what additional documentation  
3 is available that was not provided to us during that year  
4 period. And I also want to put on the record, that  
5 animal census data -- the audit period was for five  
6 fiscal years. Animal census data was not available for  
7 fiscal year 2001-02 or 2002-03.

8 So using the strict documentation requirements  
9 identified in the parameters and guidelines, in theory,  
10 we should have allowed no costs for fiscal years 2001-02  
11 or 2002-03.

12 We worked for many, many months with SEAACA for  
13 getting -- to help determine what the true costs would  
14 be, because we know that they did impound shelters. So  
15 I am uncertain what documentation exists. But if they  
16 provide it to us, I will look at it; but we've reviewed  
17 everything up until this point.

18 MS. VOROBYOVA: I also want to point out, the animal  
19 records that were provided to us, we had a listing of  
20 animal records, and we reviewed three years' worth of  
21 records that was available. There was between 18,000 and  
22 25,000 line items for each fiscal year. So we did review  
23 everything that was provided to us. And within those  
24 animal records, there was no record -- in terms of  
25 treatable animal situation, there was no medical records

1 or veterinary records that would actually show that this  
2 scenario actually did take place where the animal came in  
3 treatable and later was euthanized because their health  
4 status was changing. Nothing exists in the record that  
5 was provided with the animal data.

6 MS. CHINN: However, the data that's being asked for  
7 now is different than what we had provided at that time.  
8 So if --

9 MS. VOROBYOVA: No, it's not. It's the animal  
10 records.

11 CHAIR ORTEGA: I think this is not going to be  
12 productive.

13 Can I ask a procedural question? So the part of  
14 the staff recommendation is for the claimant and the  
15 Controller's office -- for those two issues to be sent  
16 back to the Controller's office to work with the  
17 claimant; correct?

18 So what happens --

19 CAMILLE SHELTON: Those are legal issues, though.  
20 Because the findings that the Controller made were  
21 incorrect as a matter of law.

22 CHAIR ORTEGA: Right.

23 CAMILLE SHELTON: So we don't have the -- I have no  
24 idea what kind of documentation is out there.

25 MS. HALSEY: But we know the PAWS for the last three

1 years.

2 CAMILLE SHELTON: Right. I mean, there's testimony  
3 that there's a Pawtracks system that did look at the  
4 intake of animals.

5 I will say, though, that part of the testimony from  
6 the Controller about counting the hours, 72 hours versus  
7 four to six business days, is not correct. The P's & G's  
8 were already, from day one, converted the 72 hours to  
9 days. So you don't need to know the hour the animal came  
10 in. It's stated on page 6 of the P's and G's and on  
11 page 114 of this record.

12 So it's the difference between three days from the  
13 day of capture and four and six business days from the  
14 day after the impoundment. So there is no -- you don't  
15 have to get to that level of specificity.

16 The law in our -- the P's and G's themselves do  
17 require supporting documentation to get reimbursed. But  
18 also the Food and Agricultural Code sections at issue  
19 that were part of the test-claim statutes also required  
20 claimants to maintain records on each animal.

21 And I understand the records had to identify their  
22 intake, the condition of the animal when the animal came  
23 in, the treatment that was provided, and what happened to  
24 the animal during this day.

25 So if they don't have that information, then

**Commission on State Mandates – January 27, 2017**

1 reimbursement is not allowed. I mean, they're required  
2 to have documentation to get reimbursed.

3 MS. CHINN: And the documentation does exist; it's  
4 just, however, there's 24,000 records per year. That's  
5 a lot of data that has to be gone through.

6 I think what the City was hoping was that they could  
7 provide something like a time study, where they could,  
8 you know, do a month's worth of records that shows, you  
9 know, this percentage is where the State Controller's  
10 Office calculations was amiss. I mean, it is our hope  
11 that we could find some reasonable approach to finding an  
12 area of agreement.

13 MS. VOROBYOVA: A time study does not substitute an  
14 actual record. I think the discussions here --

15 MS. CHINN: A time study is an actual allowable  
16 portion of our method of filing test claims.

17 MS. VOROBYOVA: I also think these findings have  
18 nothing to do with the time or studying the time, how  
19 long it takes to do certain activity. The discussions  
20 here are about computing how many days each animal -- of  
21 those 24,000 line items, how many days they were required  
22 to be held prior to being euthanized. That's the only  
23 thing that we're talking about here.

24 MS. CHINN: But we could do the same thing --

25 CHAIR ORTEGA: So, again, I'm going to stop this

**Commission on State Mandates – January 27, 2017**

1 conversation, because I think this is a conversation that  
2 needs to go on after the staff's recommendation is  
3 considered. I don't think that this --

4 MS. CHINN: The technicalities, right.

5 CHAIR ORTEGA: Yes, this issue is what needs to be  
6 resolved as a result of the staff recommendation.

7 So I'm going to put it to the commissioners to bring  
8 this back to the staff recommendation.

9 MEMBER OLSEN: I will move the staff recommendation.

10 CHAIR ORTEGA: Thank you.

11 MEMBER HARIRI: Second.

12 CHAIR ORTEGA: Okay, there's a motion and a second.

13 I don't know that there's any objection to asking,  
14 all in favor of the motion, say "aye."

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

16 CHAIR ORTEGA: Any abstentions or objections?

17 *(No response)*

18 CHAIR ORTEGA: No?

19 So the staff recommendation carries unanimously.

20 Thank you.

21 MS. HALSEY: Item 9 was withdrawn.

22 Item 10 is reserved for County applications for a  
23 finding of significant financial distress or SB-1033  
24 applications. No SB-1033 applications have been filed.

25 Item 11 was on consent.

**Commission on State Mandates – January 27, 2017**

1           Commission Senior Legal Analyst Carla Shelton will  
2 present Item 12, a statewide cost estimate for  
3 *Immunization Records, Mumps, Rubella, and Hepatitis-B.*

4           CARLA SHELTON: This proposed statewide cost  
5 estimate was removed from the Consent Calendar to correct  
6 two technical errors discovered when preparing for  
7 hearing. Specifically, on page 9, Footnote 17 does not  
8 belong on the table where it is located, but, rather, the  
9 middle line of the table, immediately below. And  
10 Footnote 17 should read, "11" -- not "9" -- "fewer school  
11 districts submitted claims in 2014-2015."

12           These technical corrections do not change the  
13 proposed statewide cost estimate. And staff recommends  
14 the Commission adopt the statewide cost estimate as  
15 amended.

16           CHAIR ORTEGA: Okay, any questions?

17           MEMBER OLSEN: So moved.

18           CHAIR ORTEGA: Moved by Ms. Olsen.

19           VICE CHAIR CHIVARO: Second.

20           CHAIR ORTEGA: Second by Mr. Chivaro.

21           Any public comment on this item?

22           *(No response)*

23           CHAIR ORTEGA: Seeing none, all in favor of the  
24 motion, say "aye."

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

**Commission on State Mandates – January 27, 2017**

1 CHAIR ORTEGA: It's approved unanimously.

2 Thank you, Ms. Shelton.

3 And to Heather?

4 MS. HALSEY: Item 13 is on the Consent Calendar.

5 Chief Legal Counsel Camille Shelton will present  
6 Item 14, the Chief Legal Counsel report.

7 CAMILLE SHELTON: Good morning.

8 The County of Los Angeles has filed two new pieces  
9 of litigation challenging IRC decisions that were denied  
10 based on statute-of-limitation grounds. And those are  
11 listed in my report here.

12 On November 16<sup>th</sup>, 2016, the California Supreme Court  
13 did deny a petition for rehearing in the *Municipal*  
14 *Stormwater and Urban Runoff Discharge* case. And that  
15 case has now been remanded back to the lower courts.

16 And finally, the decision by the Fourth District  
17 Court of Appeal does grant a petition for a writ of  
18 mandate in the Commission's -- on the Commission's  
19 decision dealing with the mandate redetermination for  
20 *Sexually Violent Predators*, and finds that reimbursement  
21 is still required.

22 CHAIR ORTEGA: Okay, any questions?

23 *(No response)*

24 CHAIR ORTEGA: All right, seeing none, the Executive  
25 Director report.

Commission on State Mandates – January 27, 2017

1 MS. HALSEY: After this hearing, there are 15 test  
2 claims remaining; all but one of which are regarding the  
3 *NPDES Permits*.

4 Also, one parameters and guidelines and one  
5 statewide cost estimate regarding *NPDES Permits* are also  
6 pending. And those are on inactive status, awaiting the  
7 decision in the lower courts on the L.A. *NPDES* case.

8 In addition, there is one parameters and guidelines  
9 on inactive status pending the outcome of the *CSBA*  
10 litigation, which is now in the First District Court of  
11 Appeal.

12 Finally, we have 17 IRCs remaining. As of today,  
13 Commission staff expects to complete all currently  
14 pending test claims and IRCs by approximately the  
15 September 2018 hearing, depending on staffing and other  
16 workload.

17 Please check the tentative agenda items to see if  
18 your item is coming up over the next few hearings. And  
19 we'll be updating caseload on our Web site, too; and  
20 that's a great place to see what is the latest  
21 anticipated dates that things are coming up for hearing.

22 Commission staff is working on *Stormwater* test  
23 claims; and those have large and complex records ranging  
24 from 10,000 to more than 60,000 pages; and they are  
25 growing in size. There are numerous co-claimants

1 involved. And this is resulting in unusually challenging  
2 logistics in getting these completed.

3 These claims are all tentatively set for hearing,  
4 but those tentative dates are subject to change for a  
5 variety of reasons, including requests for extensions and  
6 postponement by the parties, which have been numerous;  
7 and competing workload of Commission staff and the  
8 complexity of the issues of those claims.

9 Please expect to receive draft proposed decisions  
10 on all test claims and IRCs for your review and comment  
11 at least eight weeks prior to the hearing date, and a  
12 proposed decision approximately two weeks prior to  
13 hearing.

14 CHAIR ORTEGA: Okay, any questions on the Executive  
15 Director report?

16 Mr. Saylor?

17 MEMBER SAYLOR: A question.

18 I'm not sure if this is appropriate in this item;  
19 but I don't know that there's any other place to ask the  
20 question. So it's a question of the Executive Director.

21 Several times, we've noticed that there are very  
22 highly technical pleading issues, such as the one we had  
23 today, with one of the items. And there have been  
24 others.

25 And my question is, do we have any opportunity for

**Commission on State Mandates – January 27, 2017**

1 claimants to come and talk with Commission staff to just  
2 kind of put the issue out and say, "How do we proceed?"  
3 Is there -- it seems to me that that would be a positive  
4 step.

5 Is something like that available to claimants?

6 CAMILLE SHELTON: Can I answer? Because it raises  
7 a legal question.

8 And, you know, the Commission is a quasi judicial  
9 agency, as well as the Commission staff have to act as  
10 quasi judicial. Under that principle, one party can't  
11 come to Commission staff to get help, because that would  
12 be a violation of the State's due-process rights. So  
13 everything that is done, has to be done with all parties  
14 present.

15 You know, typically, a court is not going to help a  
16 claimant or a party to file their pleading.

17 You know, our recommendation on test claims has  
18 always been -- and we've had a lot of workshops in the  
19 past -- when you're filing a test claim, plead everything  
20 related to your issue, because that is safe. I mean, if  
21 you plead everything, you always look for regs, you look  
22 for every potential statute and chapter, and just plead  
23 everything, and then we'll find it if it's there. And  
24 that's our best recommendation.

25 MEMBER SAYLOR: Do claimants know that? Do you give

**Commission on State Mandates – January 27, 2017**

1     them instructions? Or how would they -- I mean, is that  
2     because we say it here, or is there some --

3           CAMILLE SHELTON: Well, we haven't had a workshop  
4     in a while. We've had workshops in the past; and we  
5     offered training. We've had that in the last couple of  
6     years, to county -- state association of county groups  
7     and to school districts. And I know that Heather can  
8     speak to this. She is in contact with a lot of those  
9     folks just generally. If those types of phone calls are  
10    made without asking any specific questions, just  
11    generally how to file a test claim, we always answer  
12    those questions. But we can't -- I can't -- we can't  
13    specifically tell them which statute to plead.

14           MEMBER OLSEN: So would it be possible -- I mean,  
15    because I think Mr. Saylor has a really good point here.  
16    And would it be possible, since you do workshops and  
17    outreach to groups, would it be possible -- and maybe  
18    it does exist on our Web site -- to basically say, you  
19    know -- have a little blurb that says, "For those  
20    pleading, please see this information." And one of those  
21    statements could be, "Plead everything. Plead everything  
22    related. You know, that's our recommendation to anybody  
23    who comes before the Commission."

24           CAMILLE SHELTON: That's a good idea.

25           MEMBER OLSEN: Is there anything to preclude us from

Commission on State Mandates – January 27, 2017

1 doing that?

2 CAMILLE SHELTON: No. As long as you put it out  
3 there --

4 MEMBER OLSEN: For everybody.

5 CAMILLE SHELTON: -- for everybody, you're fine.

6 MS. HALSEY: It is actually on the test-claim form,  
7 on the section where they're supposed to put the sections  
8 that they're pleading, it does say to do that right  
9 there, on Box 4 of our --

10 MEMBER OLSEN: What does it say?

11 MS. HALSEY: It says -- let me pull it up.

12 MEMBER SAYLOR: It seems to be a pretty common  
13 issue.

14 CHAIR ORTEGA: I mean, is it common? This is the  
15 first time I --

16 CAMILLE SHELTON: It's common; and there's some  
17 history to it.

18 CHAIR ORTEGA: Well, what is common to you?

19 CAMILLE SHELTON: There is some history to it.

20 So the Government Code section --

21 MS. HALSEY: Okay, here it is. I'll read it aloud.

22 It says, "*Please identify all code sections (include*  
23 *statutes, chapters, and bill numbers) (e.g. Penal Code*  
24 *Section 2045, Statutes 2004, Chapter 54, AB 290),*  
25 *regulations (include register number and effective date),*

1     *and executive orders (include effective date that impose*  
2     *the alleged mandate)."*

3           MEMBER OLSEN: See, I think that's a little  
4     different than we're talking about here. I think we're  
5     talking about -- you know, that says, "Please do it for  
6     this form." That's a little different than a  
7     recommendation that when you are pleading, plead  
8     everything related. I mean, there's a little difference  
9     in emphasis here. And I think that's what tripped  
10    Glendora; and I suspect it would trip up, you know, small  
11    cities, small communities. Those are the folks who are  
12    not going to have the big legal budgets, who are not  
13    necessarily going to go out to external sources to get  
14    that first help in doing this.

15           And I think that my sense is, that that's where we  
16    see these kinds of issues, is with the guys that are  
17    trying to go it alone.

18           CAMILLE SHELTON: I agree, yes.

19           MEMBER SAYLOR: Right. So my hope is that what we  
20    do, while clearly it's a quasi judicial body and we do  
21    want to be sure that the work that we do is fair, we want  
22    to see that it's fair, as well as legal.

23           CAMILLE SHELTON: Right.

24           MEMBER RAMIREZ: To add on, for many years, I worked  
25    for Ventura Superior Court doing what we called

**Commission on State Mandates – January 27, 2017**

1 "self-help," which was a trend, helping people without  
2 attorneys understand how to get through a process. And  
3 I think you're doing it here.

4 But I really see our issue here as sort of a general  
5 problem with the Legislature -- if not problem, but this  
6 is the legislation we have to follow it; and it  
7 frustrates so many people, including very knowledgeable  
8 and experienced people. And I do think that this is a  
9 role for the advocates out there to take to the  
10 Legislature to fine-tune; explain the problems, and see  
11 if they can get a legislative solution to some of these  
12 things.

13 And many times, simply they don't have enough money,  
14 so people are scrambling for it. But we have such a  
15 strict role here. And to the inexperienced listener, it  
16 just sounds very harsh and bureaucratic. But that's who  
17 we are. We have to do that.

18 So a plea for some advocates out there to go and  
19 take these issues to the Legislature -

20 MS. CHINN: (Shaking head.)

21 MEMBER RAMIREZ: and I see you shaking your head. I  
22 understand.

23 I got it. Thank you.

24 CHAIR ORTEGA: Well, I would add, to the extent that  
25 this is viewed as a problem in the claimant community in

**Commission on State Mandates – January 27, 2017**

1 terms of understanding how to file an appropriate test  
2 claim, I think that the legislative arena is a more  
3 appropriate place for them to seek guidance than before  
4 the Commission. It feels a little -- walking a fine line  
5 of the Commission making it -- going out of the staff's  
6 way to explain how to properly file. And we have a set  
7 of statutes, we have a set of regulations; and we  
8 certainly want to make them clear. But it's also not  
9 the Commission's responsibility to assist one party over  
10 another. So I think we need to walk that line.

11 CAMILLE SHELTON: I was just going to say, if the  
12 Commission took jurisdiction over a statute that was not  
13 properly pled, then the Court can hold that the decision  
14 is void. So, I mean, we are -- it's strict construction.

15 MEMBER OLSEN: Understood. But, again, going back  
16 to the fact that the staff does workshops -- we do  
17 outreach, as the Commission, to try to help people know  
18 how to come before the Commission effectively -- it seems  
19 to me that we're going to miss people in doing that. And  
20 so the greatest way of getting -- of covering ourselves,  
21 and saying, "We have done what we need to do to let  
22 people know how to do this complicated process," is to  
23 make a very clear statement that's available to everybody  
24 and that is up on the Web.

25 MS. PALCHIK: And can I just add that, without

**Commission on State Mandates – January 27, 2017**

1 giving any legal advice, Commission staff has fielded  
2 many, many phone calls; and procedurally, has walked  
3 many, many claimants through the process of filing and  
4 how to submit comments. And so we are interactive. But,  
5 of course, we don't call the individuals; they call us.  
6 When they call us, we always take -- procedural  
7 questions. Again, we don't give legal advice. We can't  
8 tell them again how to file -- what to submit for their  
9 claim; but we certainly procedurally address many, many  
10 phone calls and e-mails.

11 MEMBER SAYLOR: I appreciate the conversation, and  
12 it's an issue that's not going to go away.

13 MEMBER OLSEN: Right.

14 CHAIR ORTEGA: Okay, anything else?

15 *(No response)*

16 CHAIR ORTEGA: All right, is there any further  
17 public comment?

18 *(No response)*

19 CHAIR ORTEGA: All right, seeing none, the  
20 Commission will meet in closed executive session pursuant  
21 to Government Code section 11126(e) to confer with and  
22 receive advice from legal counsel for consideration and  
23 action, as necessary and appropriate, upon the pending  
24 litigation listed on the published notice and agenda; and  
25 to confer with and receive advice from legal counsel

**Commission on State Mandates – January 27, 2017**

1 regarding potential litigation.

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

4 We will reconvene in open session in approximately  
5 15 minutes.

6 *(The Commission met in closed executive session*  
7 *from 11:07 a.m. to 11:33)*

8 CHAIR ORTEGA: The Commission met in closed  
9 executive session pursuant to Government Code section  
10 11126(e)(2), to confer with and receive advice from legal  
11 counsel for consideration and action, as necessary and  
12 appropriate, upon the pending litigation listed on the  
13 published notice and agenda; and to confer with and  
14 receive advice from legal counsel regarding potential  
15 litigation; and pursuant to Government Code section  
16 11126(a)(1), to confer on personnel matters.

17 With no other business to discuss, we will be  
18 adjourned.

19 Thank you.

20 *(The Commission meeting concluded at 11:34 a.m.)*

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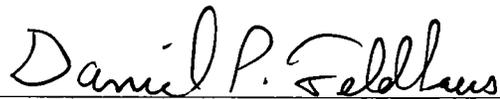
**REPORTER'S CERTIFICATE**

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 3<sup>rd</sup> day of February 2017.



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