Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
April 19, 2013

Present: Member Richard Gillihan, Chairperson
Representative of the Director of the Department of Finance
Member Richard Chivaro, Vice Chairperson
Representative of the State Controller
Member Andre Rivera
Representative of the State Treasurer
Member Ken Alex
Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member Don Saylor
County Supervisor

Absent: Member Carmen Ramirez
City Council Member

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

CALL TO ORDER AND ROLL CALL

Chairperson Gillihan called the meeting to order at 10:00 a.m.

Executive Director Heather Halsey called the roll.

To accommodate the schedules of parties and witnesses, items at this hearing were heard out of numerical order.

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

Executive Director Heather Halsey swore in parties and witnesses participating in the hearing.

A. TEST CLAIMS

Item 3 *Teacher Credentialing*, 03-TC-09

Education Code Sections 44225, 44225.7, 44300, 44301, 44326, 44327, 44332, 44830, 44830.3, 44842, 44885.5, 44901, 45037

Statutes 1975, Chapter 228; Statutes 1981, Chapter 1136; Statutes 1982, Chapter 206; Statutes 1982, Chapter 434; Statutes 1982, Chapter 471; Statutes 1982, Chapter 1388; Statutes 1983, Chapter 498; Statutes 1983, Chapter 536; Statutes 1983, Chapter 1038; Statutes 1983, Chapter 1302; Statutes 1984, Chapter 482; Statutes 1985, Chapter 747; Statutes 1986, Chapter 989; Statutes 1987, Chapter 1468; Statutes 1988, Chapter 1355; Statutes 1989, Chapter 375; Statutes 1991, Chapter 590; Statutes 1992, Chapter 1050; Statutes 1993, Chapter 378; Statutes 1994, Chapter 673; Statutes 1994, Chapter 922; Statutes 1996, Chapter 303; Statutes 1996, Chapter 948; Statutes 1997, Chapter 934;

Statutes 1998, Chapter 533; Statutes 1998, Chapter 547; Statutes 1999, Chapter 281; Statutes 1999, Chapter 381; Statutes 2001, Chapter 585; Statutes 2002, Chapter 1069; and Statutes 2002, Chapter 1087

California Code of Regulations, Title 5, Sections 80005, 80016, 80020.4.1, 80023.1, 80023.2, 80025, 80025.1, 80025.5, 80026, 80026.1, 80026.5, 80026.6, 80027, 80035, 80035.5, 80036, 80036.1, 80036.3, 80037, 80037.5, 80038, 80040, 80043, 80045, 80047.2, 80047.4, 80048.2, 80048.3, 80048.3.1, 80048.4, 80054, 80055.1, 80055.2, 80058.2, 80070.2, 80070.3, 80070.4, 80070.6, 80071.4, 80413.3, 80435, 80441, 80466, 80556, 80556.1, 80601

Register 75, No. 16 (April 16, 1975); Register 75, No. 25 (June 20, 1975); Register 75, No. 27 (Aug. 2, 1975); Register 76, No. 5 (Feb. 27, 1976); Register 76, No. 21 (June 20, 1976); Register 76, No. 49 (Jan. 2, 1977); Register 77, No. 21 (June 19, 1977); Register 77, No. 51 (Jan. 15, 1978); Register 78, No. 10 (April 7, 1978); Register 78, No. 22 (June 29, 1978); Register 78, No. 48 (Dec. 29, 1978); Register 79, No. 23 (July 5, 1979); Register 80, No. 6 (March 7, 1980); Register 80, No 32 (Sept. 5, 1980); Register 81, No. 15 (May 6, 2001); Register 81, No. 23 (July 3, 1981); Register 82, No. 41 (Jan. 1, 1983); Register 82, No. 45 (Dec. 2, 1982); Register 82, No. 48 (Nov. 10, 1982); Register 83, No. 12 (March 15, 1983); Register 83, No 23 (July 3, 1983); Register 83, No. 30 (Aug. 21, 1983); Register 83, No. 31 (Aug. 28, 1983); Register 83, No. 40 (Sept. 27, 1983); Register 84, No. 8 (Mar. 23, 1984); Register 84, No. 40 (Nov. 3, 1984); Register 86, No. 40 (Oct. 31, 1986); Register 86, No. 50 (Jan. 9, 1987); Register 86, No. 52 (Jan. 1, 1987); Register 89, No. 11 (April 9, 1989); Register 89, No. 12 (April 16, 1989); Register 89, No. 46 (Dec. 13, 1989); Register 90, No. 42 (Sept. 4, 1990); Register 92, No. 39 (Sept. 21, 1992); Register 93, No. 25 (July 15, 1993); Register 94, No. 16 (May 20, 1994); Register 94, No. 19 (June 9, 1994); Register 95, No. 9, (Mar. 3, 1995); Register 95, No. 15 (May 10, 1995); Register 95, No. 32 (Sept. 7, 1995); Register 96, No. 26 (July 27, 1996); Register 96, No. 41 (Nov. 10, 1996); Register 97, No. 39 (Oct. 26, 1997); Register 97, No. 51 (Dec. 16, 1997); Register 98, No. 3 (Jan. 13, 1998); Register 98, No. 12 (April 17, 1998); Register 98, No. 28 (July 6, 1998); Register 98, No. 32 (Sept. 5, 1998); Register 98, No. 49 (Dec. 2, 1998); Register 99, No. 11 (April 10, 1999); Register 99, No. 41 (Nov. 7, 1999); Register 99, No. 46 (Nov. 12, 1999); Register 99, No. 51 (Jan. 15, 2000); Register 2000, No. 15 (May 14, 2000); Register 2000, No. 16 (May 21, 2000); Register 2000, No. 22 (June 20, 2000); Register 2001, No. 17 (May 25, 2001); Register 2001, No. 24 (June 15, 2001); Register 2001, No. 47 (Oct. 9, 2001); Register 2002, No. 21 (June 20, 2002); Register 2002, No. 50 (Jan. 8, 2002); Register 2002, No. 52 (Jan. 22, 2003); Register 2003, No. 5 (Mar. 1, 2003).

San Diego County Office of Education, Claimant

This test claim addresses the teacher credentialing process and employment of K-12 teachers and the activities of school districts related to credentialing teachers and other general employment.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission approve the test claim for the regulations regarding professional growth advisors but deny the statutes and remaining regulations because they do not mandate a new program or higher level of service; thereby adopting the staff analysis and the proposed statement of decision to partially approve the test claim.

Parties were represented as follows: Arthur Palkowitz of the law offices of Stutz Artiano Shinoff & Holtz, representing the claimants. Finance did not participate in the hearing for this item.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Olsen, the staff recommendation to adopt the staff analysis and proposed statement of decision partially approving the test claim was adopted by a vote of 6-0.

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

Item 2 *Appeal of Executive Director Decision to Deny the California School Boards Association (CSBA) request to postpone the April 19, 2013 Hearing of the Proposed Parameters and Guidelines: California Public Records Act,* 02-TC-10 and 02-TC-51
Allan P. Burdick, Executive Director, CSAC SB 90 Service, Appellant

This item is an appeal to the Commission filed by CSAC SB-90 Service of the Executive Director's decsion to deny a request made by the California School Boards Association (CSBA) to postpone hearing of Item 5, the adoption of parameters and guidelines for the *California Public Records Act* program.

Following discussion among the Commission members, staff, and appellant, Member Saylor made a motion to adopt the staff recommendation. With a second by Member Olsen, the staff recommendation to adopt the staff analysis to uphold the executive director's decision to deny the CSBA request to postpone and proceed to consider Item 5 on this agenda was adopted by a vote of 6-0.

(*Member Olsen stepped out of the meeting room.*)

CONSENT CALENDAR

If there are no objections to any of the following action items designated by an asterisk (*), the Executive Director will include each one on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

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

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

Item 5* *California Public Records Act,* 02-TC-10 and 02-TC-51

Government Code Sections 6253, 6253.1, 6253.5, 6253.9, 6254.3, and 6255

Statutes 1992, Chapter 463 (AB 1040); Statutes 2000, Chapter 982

AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

County of Los Angeles and Riverside Unified School District, Co-Claimants

Item 9* *Parental Involvement Programs,* 03-TC-16

Education Code Sections 11504, 49091.10, 51101, 51101.1

Statutes 1990, Chapter 1400; Statutes 1998, Chapter 864; Statutes 1998, Chapter 1031; and Statutes 2002, Chapter 1037

San Jose Unified School District, Claimant

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

STATEWIDE COST ESTIMATE

Item 10* *Developer Fees,* 02-TC-42

Government Code Sections 65970, 65971, 65972, 65973, 65974, 65974.5, 65975, 65976, 65977, 65978, 65979, 65980, 65981

Statutes 1977, Chapter 955; Statutes 1979, Chapter 282; Statutes 1980, Chapter 1354; Statutes 1981, Chapter 201; Statutes 1982, Chapter 923; Statutes 1983, Chapter 1254; Statutes 1984, Chapter 1062; Statutes 1985, Chapter 1498; Statutes 1986, Chapters 136 and 887; Statutes 1994, Chapter 1228

Clovis Unified School District, Claimant

Chairperson Gilihan announced that the parties requested to move Item 5 to the Consent Calendar and asked if there was any objection. No objection was made. Then, Member Chivaro moved to adopt the consent calendar. Member Saylor seconded the motion and Chairperson Gilihan asked if there was any public comment. There was no response. The consent calendar was adopted by a vote of 5-0. Member Olsen was not present for the vote.

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

A. TEST CLAIMS

Item 4 *County Formation Cost Recovery*, 06-TC-02

Government Code Sections 23300-23397

Statutes 1974, Chapter 1392, Sections 2 and 3; Statutes 1975, Chapter 1247; Statutes 1976, Chapter 1143; Statutes 1977, Chapter 1175; Statutes 1978, Chapter 465; Statutes 1979, Chapter 370; Statutes 1980, Chapter 676; Statutes 1981, Chapter 1114; Statutes 1984, Chapter 226; Statutes 1985, Chapter 702; Statutes 1986, Chapter 248; Statutes 1994, Chapter 923; and Statutes 2002, Chapter 784; Statutes 2004, Chapter 227

Governor's Press Release, May 10, 2004

Santa Barbara County, Claimant

This test claim arises from the failed attempt to partition the north area of Santa Barbara County into a separate county, Mission County. The test claim statutes require the formation of a

County Formation Review Commission which conducts a fiscal and economic study, and the holding of an election, a popular election to determine whether to form the new county.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the staff analysis and proposed statement of decision to deny the test claim.

(*Member Olsen returned to the meeting room.*)

Parties were represented as follows: Anne Rierson, Deputy County Counsel, representing Santa Barbara County; Carla Shelton representing the Department of Finance.

Following discussion among Commission members, staff, and parties, Member Saylor made a motion to adopt the staff recommendation. With a second by Member Chivaro, the staff recommendation to adopt the statement of decision denying the test claim was adopted by a vote of 6-0.

APPROVAL OF MINUTES (action)

Item 1 January 25, 2013

Member Chivaro made a motion to adopt the minutes. With a second by Member Rivera, the January 25, 2013 hearing minutes were adopted by a vote of 5-0 with Chairperson Gillihan abstaining.

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

B. PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

Item 6 *Behavioral Intervention Plans (BIPs), CSM 4464 - TO ADOPT STATEMENT OF DECISION AND PARAMETERS AND GUIDELINES CONFORMING TO THE VOTE TAKEN ON JANUARY 25, 2013*

California Code of Regulations, Title 5, Sections 3001 and 3052

Register 93, No. 17; Register 96, No. 8; Register 96, No. 32.

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

The sole issue before the Commission for this item is to determine what was intended by the Commission's vote at the January 25, 2013 hearing. At that hearing, the Commission adopted portions of two analyses and both methodologies for reimbursement, requiring staff to redraft the proposed statement of decision to reflect a reasonable reimbursement methodology (RRM) for the initial period of time, and actual cost claiming thereafter. There was some confusion over the date to which the RRM should apply and the time when actual cost claiming should begin.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the staff analysis and proposed statement of decision to clarify that the Commission vote at the January 25, 2013 hearing intended that either (1) the RRM extend to the entire initial claiming period, which, based on the timing of the hearing and the production of claiming instructions by the State Controller's Office would include fiscal year 2012-2013; or (2) the RRM extend only to fiscal 2011-2012, meaning the initial claims filed by the districts and SELPAs would include both the RRM for fiscal years 1993-1994 through 2011-2012, and actual costs for fiscal year 2012-2013.

Parties were represented as follows: Diana McDonough of the law offices of Fagen Friedman & Fulfrost representing the claimants; Jim Spano and Jill Kanemasu representing the State Controller's Office; Christian Osmena representing the Department of Finance.

Following discussion among the Commission members, staff, parties, and the public, Member Saylor made a motion. With a second by Member Rivera, the staff recommendation to adopt the proposed parameters and guidelines and statement of decision approving the RRM from July 1, 1993 to June 30, 2012 and approving actual cost reimbursement for claims beginning July 1, 2012 was adopted by a vote of 6-0.

Item 7 *Williams Case Implementation I, II, III*
05-TC-04, 07-TC-06, and 08-TC-01

Education Code sections 14501, 33126(b), 35186, 41020, and 42127.6

Statutes 2004, Chapter 900 (SB 550); Statutes 2004, Chapter 902 (AB 3001); Statutes 2004, Chapter 903 (AB 2727); Statutes 2005, Chapter 118 (AB 831); Statutes 2006, Chapter 704 (AB 607); and Statutes 2007, Chapter 526 (AB 347)

San Diego County Office of Education and Sweetwater Union High School District, Claimants

These parameters and guidelines address the activities required with respect to annual compliance audits of school districts, school accountability report cards, fiscal oversight by the county offices of education, and a new Williams complaint process.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed statement of decision and parameters and guidelines.

Parties were represented as follows: Arthur Palkowitz of the law offices of Stutz Artiano Shinoff & Holtz representing the claimants; Christian Osmena representing the Department of Finance.

Following concurrence of the parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Alex, the staff recommendation to adopt the proposed statement of decision and parameters and guidelines was adopted by a vote of 6-0.

Item 8 *Minimum Conditions for State Aid*, 02-TC-25 and 02-TC-31

Education Code Sections 66010.2, 66010.7 66721.5, 66731, 66732, 66736, 66738, 66740, 66742, 70902, 78015, and 78016

Statutes 1988, Chapter 973; Statutes 1991, Chapter 1188; Statutes 1998, Chapter 365; and Statutes 2000, Chapter 187

California Code of Regulations, Title 5, Sections 53203, 53207, 55001, 55002, 55005, 55006, 55150, 55201, 55202, 55750, 55751, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759, 55760, 55761, 55764, 55800, 55805, 55805.5, 55806, 58102, 58104, and 58106

Register 91, Number 23; Register 93, Number 25; Register 93, Number 42; Register 94, Number 38; Register 98, Number 7; Register 2000, Number 50; Register 2002, Number 8; and Register 2003, Number 18.

Los Rios Community College District, Santa Monica Community College District, and West Kern Community College District, Co-Claimants

These parameters and guidelines address standards for the formation of basic operation of the California community colleges.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the proposed statement of decision and parameters and guidelines.

Parties were represented as follows: Keith Petersen of SixTen and Associates representing the claimants; Christian Osmena representing the Department of Finance.

(*Member Saylor stepped out of the meeting room.*)

Following concurrence of the parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Rivera, the staff recommendation to adopt the proposed statement of decision and parameters and guidelines was adopted by a vote of 5-0. Member Saylor was not present for the vote.

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

Note: This item will only be taken up if an application is filed.

No applications were filed.

STAFF REPORTS

Item 12 Legislative Update (info)

Assistant Executive Director Jason Hone presented this item.

Item 13 Chief Legal Counsel: Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

Item 14 Executive Director: Workload, Budget, and Tentative Agenda Items for Next Meeting (info)

(*Member Saylor returned to the meeting room.*)

Executive Director Heather Halsey presented this item.

PUBLIC COMMENT

Mr. Allan Burdick commented on Item 5, *California Public Records Act*, having been put on the Consent Calendar and sought clarification on the language of the adopted parameters and guidelines. Chief Counsel Camille Shelton replied that the item was on consent and that Commission staff could point to areas in the staff analysis for that item to answer Mr. Burdick's questions.

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

A. PENDING LITIGATION

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

1. *State of California, Department of Finance v. Commission on State Mandates,* Sacramento County Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]

2. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego,* et al. (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]

3. *California School Board Association (CSBA) v. State of California* et al., Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]

4. *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). 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).

REPORT FROM CLOSED EXECUTIVE SESSION

At 11:54 a.m., Chairperson Gillihan reconvened in open session and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2), to confer and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed in the published 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 Gillihan adjourned the meeting at 11:55 a.m.

Heather Halsey
Executive Director

PUBLIC MEETING

COMMISSION ON STATE MANDATES

TIME: 10:00 a.m.

DATE: Friday, April 19, 2013

PLACE: State Capitol, Room 447
Sacramento, California

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by:
Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomate Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

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

KEN ALEX, Director
Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

ANDRÉ RIVERA
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

DON SAYLOR
Yolo County Supervisor
Local Agency Member

COMMISSION STAFF PRESENT

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

JASON HONE
Assistant Executive Director
(Item 12)

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

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

ERIC FELLER
Senior Commission Counsel
(Item 3)

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

PUBLIC TESTIMONY

Appearing Re Item 2 (Re Item 5):

For CSAC SB-90 Service:

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

Appearing Re Item 3:

For Claimant San Diego Office of Education:

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

For Department of Finance:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4:

For Claimant County of Santa Barbara:

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

For Department of Finance:

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

Appearing Re Item 6:

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

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

For Department of Finance:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6:

For State Controller's Office:

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

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

Appearing Re Item 7:

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

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

For Department of Finance:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 8:

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

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

For Department of Finance:

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

Appearing Re Public Comment:

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

ERRATA SHEET

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

--oOo--

(The gavel was sounded.)

CHAIR GILLIHAN: Good morning.

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

Heather, can you call the roll?

MS. HALSEY: Mr. Chivaro?

(No response)

MS. HALSEY: Mr. Gillihan?

CHAIR GILLIHAN: Present.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Here.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Present.

MS. HALSEY: Ms. Ramirez?

(No response)

MS. HALSEY: Mr. Rivera?

MEMBER RIVERA: Present.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Here.

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

MS. HALSEY: Yes.

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

MS. HALSEY: Are you ready for Item 2?

MR. BURDICK: Yes.

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

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

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

CHAIR GILLIHAN: Any objections?

MEMBER ALEX: No objections.

MEMBER SAYLOR: None.

MEMBER RIVERA: None.

MEMBER OLSEN: None.

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

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

Let's move to the Article 7 portion of the

hearing.

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

(Parties and witnesses stood to be sworn.)

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

(Chorus of "I dos.")

MS. HALSEY: Thank you.

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

MR. FELLER: Good morning.

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

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

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

alternatives for certificating and employing teachers.

(Mr. Chivaro entered the meeting room.)

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

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

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

CHAIR GILLIHAN: Mr. Palkowitz?

MR. PALKOWITZ: Thank you.

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

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

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

To me, the claimants feel that the hiring is

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

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

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

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

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

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

Once again, these requirements were not decided

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

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

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

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

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

So we submit that there is a showing by the

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

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

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

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

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

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

The focus is, throughout this analysis on the

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

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

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

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

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

CHAIR GILLIHAN: Thank you.

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

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

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

CHAIR GILLIHAN: Thank you.

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

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

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

CHAIR GILLIHAN: Interesting. Thank you.

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

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

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

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

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

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

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

MEMBER OLSEN: I'll second.

CHAIR GILLIHAN: We have a motion and a second.

Is there any more discussion or debate amongst the commissioners?

(No response)

CHAIR GILLIHAN: Seeing none…

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. HALSEY: Mr. Gillihan?

CHAIR GILLIHAN: Aye.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Aye.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Mr. Rivera?

MEMBER RIVERA: Aye.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Aye.

CHAIR GILLIHAN: The motion carries the staff recommendation.

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

Camille Shelton will present this item.

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

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

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

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

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

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

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

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

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

So, anyway, Jason is handing out the handouts.

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

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

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

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

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

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

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

you now have.

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

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

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

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

(No response)

MR. BURDICK: Mr. Norm Miller.

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

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

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

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

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

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

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

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

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

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

And prior to that, they would have to get an

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

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

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

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

Let me give you a little bit of background.

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

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

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

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

Now, RRMs under AB 1222 can be prepared two ways.

The first way, and the best way, is jointly

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

that's an issue themselves.

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

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

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

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

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

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

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

(Cell phone sounded.)

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

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

is this $10 million? What is it?"

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

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

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

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

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

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

Anyway, as you can see, it all happened very

quickly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reporting, and their Division of Audits.

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

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

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

which at that time left the Controller out.

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

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

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

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

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

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

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

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

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

CSAC has five proposed RRMs pending. I'm assuming this goes below those five.

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

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

CHAIR GILLIHAN: Mr. Burdick, if you could

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

MR. BURDICK: I'll bring it to a landing. But I will say this: You're looking at what could be a hundred-million-dollar issue. So I should appreciate it.

But let me do it real quickly.

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

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

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

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

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

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

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

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

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

Here are the expected supporters on there.

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

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

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

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

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

Thank you.

CHAIR GILLIHAN: Thank you.

Would staff comment on the relevant points of the testimony?

CAMILLE SHELTON: Just a couple of things.

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

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

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

CAMILLE SHELTON: The Executive Director --

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

CAMILLE SHELTON: The Executive Director has

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

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

And that matter had been pending since June 2011.

MR. BURDICK: Could I comment on that?

CHAIR GILLIHAN: Briefly, sir.

MR. BURDICK: Okay, briefly.

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

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

CAMILLE SHELTON: And that is absolutely true.

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

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

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

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

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

MEMBER OLSEN: Yes.

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

(No response)

CHAIR GILLIHAN: Any questions from the Commission?

CAMILLE SHELTON: Can I just also --

MR. BURDICK: Can I make a final comment?

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

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

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

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

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

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

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

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

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

CHAIR GILLIHAN: Thank you.

Is there any questions from the commissioners?

Mr. Saylor?

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

CAMILLE SHELTON: Correct.

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

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

MS. HALSEY: Well, both, actually.

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

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

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

reimbursement claims and get reimbursed for these.

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

MS. HALSEY: Right.

MEMBER SAYLOR: They're ready to proceed.

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

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

MEMBER OLSEN: I will second that.

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

(No response)

CHAIR GILLIHAN: Heather, please call the roll.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Yes.

MS. HALSEY: Mr. Gillihan?

CHAIR GILLIHAN: Yes.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Yes.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Yes.

MS. HALSEY: Mr. Rivera?

MEMBER RIVERA: Yes.

MS. HALSEY: And Mr. Saylor?

MEMBER SAYLOR: Yes.

CHAIR GILLIHAN: The motion carries.

Thank you.

MR. BURDICK: Thank you very much.

CHAIR GILLIHAN: Thank you, Mr. Burdick.

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

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

CHAIR GILLIHAN: So we skipped over the Consent Calendar.

Do you want to go back to that now?

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

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

Is there any objection amongst the commissioners?

(Chorus of noes.)

CHAIR GILLIHAN: Seeing none --

MEMBER CHIVARO: So moved.

CHAIR GILLIHAN: We have a motion.

MEMBER SAYLOR: Second.

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

Any public comment?

(No response)

CHAIR GILLIHAN: Heather, please call the roll.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Yes.

MS. HALSEY: Mr. Gillihan?

CHAIR GILLIHAN: Yes.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Yes.

MS. HALSEY: Ms. Olsen?

(No response)

MS. HALSEY: Mr. Rivera?

MEMBER RIVERA: Yes.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Aye.

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

So that brings us to…?

MS. HALSEY: Item 4.

CHAIR GILLIHAN: Item 4.

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

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

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

Staff recommends denial of this test claim for several reasons.

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

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

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

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

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

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

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

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

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

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

(Ms. Olsen returned to the meeting room.)

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

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

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

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

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

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

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

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

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

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

First, there is not really a shift in costs,

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

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

So let's talk about the case law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for your time.

CHAIR GILLIHAN: Thank you.

Department of Finance?

CARLA SHELTON: Carla Shelton with the

Department of Finance.

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

CHAIR GILLIHAN: Thank you.

Mr. Jones?

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

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

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

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

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

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

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

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

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

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

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

You know, I certainly don't intend to argue

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

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

CHAIR GILLIHAN: Thank you.

What is the pleasure of the Commission?

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

MEMBER ALEX: I'll move the staff report.

MEMBER CHIVARO: Second.

CHAIR GILLIHAN: We have a motion and a second.

Any other discussion or debate?

(No response)

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

(No response)

CHAIR GILLIHAN: Seeing none, Heather, please

call the roll.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Yes.

MS. HALSEY: Mr. Gillihan?

CHAIR GILLIHAN: Yes.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Yes.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Yes.

MS. HALSEY: Mr. Rivera?

MEMBER RIVERA: Yes.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Aye.

CHAIR GILLIHAN: Motion carries.

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

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

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

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

So is there a motion to approve the minutes?

MEMBER CHIVARO: I'll move the minutes.

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

MEMBER RIVERA: Second.

CHAIR GILLIHAN: We have a second.

All in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR GILLIHAN: All opposed, say "no."

(No response)

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

MS. HALSEY: Thank you.

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

Matt Jones will be presenting this item.

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

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

The Commission adopted portions of both

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

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

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

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

Staff further recommends that the Commission

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

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

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

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

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

MR. OSMEÑA: Christian Osmeña, Department of Finance.

CHAIR GILLIHAN: Thank you.

Ms. McDonough?

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

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

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

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

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

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

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

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

And we'd like you to take that action.

CHAIR GILLIHAN: Thank you.

Controller's?

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

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

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

CHAIR GILLIHAN: Please.

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

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

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

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

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

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

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

CHAIR GILLIHAN: Thank you.

Department of Finance?

MR. OSMEÑA: We have no additional comments.

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

CHAIR GILLIHAN: Sure.

MS. KANEMASU: No matter what years the

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

CHAIR GILLIHAN: Thank you.

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

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

Mr. Saylor?

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

MS. McDONOUGH: Diana McDonough.

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

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

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

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

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

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

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

Is that the -- I'd like to know if that's what others…

MEMBER OLSEN: As the member who seconded the

motion, that was my understanding as well.

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

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

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

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

MEMBER OLSEN: Right.

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

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

MS. KANEMASU: Yes, that's correct.

MEMBER SAYLOR: Okay, so that's consistent.

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

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

MEMBER SAYLOR: Yes. Good idea.

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

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

Does that reflect your motion?

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

MR. JONES: Thank you.

CHAIR GILLIHAN: So we have a motion.

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

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

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

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

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

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

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

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

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

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

MEMBER ALEX: Hang on.

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

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

CHAIR GILLIHAN: Thank you, Mr. Burdick.

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

MEMBER RIVERA: I second the motion.

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

Heather, please call the roll.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Yes.

MS. HALSEY: Mr. Gillihan?

CHAIR GILLIHAN: Yes.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Yes.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Yes.

MS. HALSEY: Mr. Rivera?

MEMBER RIVERA: Yes.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Yes.

CHAIR GILLIHAN: The motion carries.

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

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

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

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

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

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

MR. OSMEÑA: Christian Osmeña, Department of Finance.

CHAIR GILLIHAN: Thank you.

Mr. Palkowitz?

MR. PALKOWITZ: Good morning.

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

CHAIR GILLIHAN: Thank you.

Department of Finance?

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

comments.

CHAIR GILLIHAN: Thank you.

MEMBER OLSEN: I move adoption.

MEMBER ALEX: Second.

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

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

(No response)

CHAIR GILLIHAN: Seeing none, any other public comment?

(No response)

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

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Yes.

MS. HALSEY: Mr. Gillihan?

CHAIR GILLIHAN: Yes.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Yes.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Mr. Rivera?

MEMBER RIVERA: Yes.

MS. HALSEY: Mr. Saylor?

MEMBER SAYLOR: Aye.

MS. HALSEY: The motion carries.

Thank you.

MS. HALSEY: The next item is Item 8.

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

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

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

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

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

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

In addition, the claimant raised several

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

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

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

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

MR. PETERSEN: Keith Petersen representing the test claimants.

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

CHAIR GILLIHAN: Thank you.

Mr. Petersen?

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

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

CHAIR GILLIHAN: Thank you.

Department of Finance?

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

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

MR. PETERSEN: We're going to litigate.

MEMBER ALEX: Okay, thank you.

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

MEMBER ALEX: Yes. Understood.

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

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

(No response)

CHAIR GILLIHAN: Any questions from the commissioners?

(No response)

CHAIR GILLIHAN: What is the Commission's preference?

MEMBER OLSEN: I will move the staff recommendation.

MEMBER RIVERA: Second.

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

Heather, please call the roll.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Yes.

MS. HALSEY: Mr. Gillihan?

CHAIR GILLIHAN: Yes.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Yes.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HALSEY: Mr. Rivera?

MEMBER RIVERA: Yes.

MS. HALSEY: Mr. Saylor?

(No response)

MS. HALSEY: He stepped out.

CHAIR GILLIHAN: The motion carries.

MR. PETERSEN: So neither one of us can retire for at least five or six years, or move on or anything.

Thank you.

CHAIR GILLIHAN: Thank you.

MS. HALSEY: Item 11 is reserved for county applications for a finding of significant financial distress, or SB 1033 applications.

No SB 1033 applications have been filed.

Item 12, Assistant Executive Director Jason Hone will present the legislative update.

MR. HONE: Good morning.

Staff has identified two bills introduced this

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

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

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

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

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

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

Staff will continue to monitor this legislation.

CHAIR GILLIHAN: Thank you.

Questions from the commissioners?

(No response)

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

CAMILLE SHELTON: Just a couple of items to report.

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

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

CHAIR GILLIHAN: Thank you.

Any questions?

(No response)

CHAIR GILLIHAN: Seeing none.

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

Just an update on workload.

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

But we are moving along on working our backlog.

(Mr. Saylor returned to the meeting room.)

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

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

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

CHAIR GILLIHAN: Thank you.

Is there any public comment at this time?

(No response)

CHAIR GILLIHAN: Mr. Burdick?

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

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

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

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

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

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

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

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

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

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

CHAIR GILLIHAN: Thank you.

Camille or Heather?

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

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

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

MR. BURDICK: Thank you very much.

CHAIR GILLIHAN: Thank you.

So I believe that brings us to closed session.

The Commission will meet in closed session pursuant to Government Code section 11126(e) to confer 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.

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

We will reconvene in open session in approximately 30 minutes.

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

CHAIR GILLIHAN: The Commission met in closed session pursuant to Government Code section 11126(e)(2), to confer and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed in the published 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.

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

MEMBER OLSEN: So moved.

MEMBER RIVERA: Second.

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

(A chorus of "ayes" was heard.)

CHAIR GILLIHAN: All opposed?

(No response)

CHAIR GILLIHAN: Hearing none, this meeting is adjourned.

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

REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 10th of May 2012.

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