

## **Minutes**

### **COMMISSION ON STATE MANDATES**

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
September 22, 2017

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

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

#### **CALL TO ORDER AND ROLL CALL**

Chairperson Ortega called the meeting to order at 10:03 a.m. Executive Director Heather Halsey called the roll.

#### **APPROVAL OF MINUTES**

Member Olsen made a motion to adopt the minutes. With a second by Member Adams, the July 28, 2017 hearing minutes were adopted by a vote of 6-0, with Member Chivaro absent.

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

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

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

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

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

Item 2      Appeal of Executive Director Decisions

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

**TEST CLAIM**

Item 3      *Certificated School Employees: Parental Leave*, 16-TC-01  
Education Code Section 44977.5; Statutes 2015, Chapter 400 (AB 375)  
Fresno Unified School District, Claimant

Senior Commission Counsel Eric Feller presented this item, recommended that the Commission deny this Test Claim, and authorize staff to update the Decision to reflect the claimant’s late comments submitted after staff issued the Proposed Decision.

Member Chivaro joined the meeting.

Parties were represented as follows: Arthur Palkowitz, representing the claimant; and Kimberly Leahy, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Chivaro, the motion to deny this Test Claim was adopted by a vote of 7-0.

**INCORRECT REDUCTION CLAIM**

Item 4      *Integrated Waste Management*, 14-0007-I-04  
Public Resources Code Sections 40418, 40196.3, 42920-42928; Public  
Contract Code Sections 12167 and 12167.1; Statutes 1992, Chapter 1116  
(AB 3521); Statutes 1999, Chapter 764 (AB 75); State Agency Model  
Integrated Waste Management Plan (February 2000)  
Fiscal Years: 1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006,  
2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011  
Gavilan Joint Community College District, Claimant

Executive Director Heather Halsey stated that the claimant representative notified Commission staff that the District did not plan to have a representative present at the hearing.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission partially approve this Incorrect Reduction Claim and request that the State Controller reinstate \$3,822 to the claimant.

Parties were represented as follows: Lisa Kurokawa, representing the State Controller’s Office.

Ms. Kurokawa stated that the State Controller’s Office agrees with the staff’s conclusion and recommendation. Without further 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 motion to partially approve this Incorrect Reduction Claim was adopted by a vote of 7-0.

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

- Item 5 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

No applications were filed.

**INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLES 7 AND 8 (action)**

**STAFF REPORT ON PUBLIC COMMENT AND PROPOSED MODIFICATIONS AFTER CLOSE OF PUBLIC COMMENT PERIOD**

- Item 6 General Cleanup Provisions, Proposed Amendments to California Code of Regulations, Title 2, Division 2, Chapter 2.5, Articles 1, 2, 3, 4, 5, 6, 7, 8, and 10

Commission Counsel Matt Jones presented this item, recommended one additional modification to the previously noticed changes to section 1183.1(c) governing the period of limitation to file a test claim, and recommended that the Commission authorize staff to issue a notice of modification and the proposed regulatory text, as modified, for an additional 15-day comment period.

There was no public comment on this item.

Following discussion among Commission members and staff, Member Morgan made a motion to adopt the staff recommendation. With a second by Member Chivaro, the motion to approve this modification and to authorize staff to issue a notice of modification and the proposed regulatory text, as modified, for an additional 15-day comment period was adopted by a vote of 7-0.

**STAFF REPORTS**

- Item 7 Legislative Update (info)

Program Analyst Jill Magee presented this item.

- Item 8 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 9 Executive Director: Workload Update, 2018 Hearing Calendar, and Tentative Agenda Items for the December 2017 and January 2018 Meetings (info/action)

Executive Director Heather Halsey presented this item, reported on the Commission's pending caseload, and presented the 2018 hearing calendar.

Following discussion among Commission members and staff, Member Adams made a motion to adopt the proposed 2018 hearing calendar. With a second by Member Hariri, the motion to adopt the 2018 hearing calendar was adopted by a vote of 7-0.

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

**A. PENDING LITIGATION**

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

Trial Courts:

1. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*  
Los Angeles County Superior Court, Case No. BS166734  
[*Handicapped and Disabled Students IRC*, 13-4282-I-06]
2. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*  
Los Angeles County Superior Court, Case No. BS166735  
[*Handicapped and Disabled Students II IRC*, 12-0240-I-01]
3. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*  
Los Angeles County Superior Court, Case No. BS167447  
[*Seriously Emotionally Disturbed Pupils IRC*, 12-9705-I-04]
4. ***On Remand from California Supreme Court, Case No. S214855, 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)  
Los Angeles County Superior Court, Case No. BS130730, Second District Court of Appeal, Case No. B237153 [*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]

Courts of Appeal:

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.* (petition and cross-petition)  
Third District Court of Appeal, Case No. C070357  
Sacramento County Superior Court Case No. 34-2010-80000604  
[*Discharge of Stormwater Runoff*, Order No. R9-207-000 (07-TC-09), California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
2. *Coast Community College District, et al. v. Commission on State Mandates*,  
Third District Court of Appeal, Case No. C080349  
Sacramento County Superior Court, Case No. 34-2014-80001842  
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31  
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters

36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]

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

California Supreme Court:

1. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*  
California Supreme Court, Case No. S239907  
Fourth District Court of Appeal, Division One, Case No. D068657  
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL  
[Mandate Redetermination, *Sexually Violent Predators*, (12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes

1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496) As modified by Proposition 83, General Election, November 7, 2006]

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

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

#### B. PERSONNEL

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

The Commission adjourned into closed executive session at 10:48 a.m., pursuant to Government Code section 11126(e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).


#### **RECOVENE IN PUBLIC SESSION**

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

At 10:59 a.m., Chairperson Ortega reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

#### **ADJOURNMENT**

Hearing no further business, Chairperson Ortega adjourned the meeting at 11:00 a.m.



Heather Halsey  
Executive Director

**ORIGINAL**

**RECEIVED**

**MEETING OF THE  
STATE OF CALIFORNIA**

**OCT 04 2017  
COMMISSION ON  
STATE MANDATES**

**COMMISSION ON STATE MANDATES**



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

**DATE: Friday, September 22, 2017**

**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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**Daniel P. Feldhaus, C.S.R., Inc.**  
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**FeldhausDepo@aol.com**

A P P E A R A N C E S

COMMISSIONERS PRESENT

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

LEE ADAMS III  
Sierra County Supervisor  
Local Agency Member

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

MARK HARIRI  
Representative for JOHN CHIANG  
State Treasurer

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

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member  
Local Agency Member



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY  
Executive Director  
*(Item 9)*

HEIDI PALCHIK  
Assistant Executive Director



A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF PRESENT

*(continued)*

ERIC FELLER  
Senior Legal Counsel  
(Item 3 and Item 4)

MATTHEW B. JONES  
Commission Counsel  
(Item 6)

JILL MAGEE  
Program Analyst  
(Item 7)

CAMILLE N. SHELTON  
Chief Legal Counsel  
(Item 8)



PUBLIC TESTIMONY

**Appearing Re Item 3:**

For Claimant Fresno Unified School District:

ARTHUR M. PALKOWITZ  
Artiano Shinoff  
2488 Historic Decatur Road, Suite 200  
San Diego, California 92106

For Department of Finance:

KIMBERLY LEAHY  
Education Unit  
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 the State Controller's Office:

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



**ERRATA SHEET**

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>12</u>	<u>3</u>	<u>employee's pay is deducted, or the equivalent of if no</u>
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Commission on State Mandates – September 22, 2017

1           *BE IT REMEMBERED* that on Friday, September 22, 2017,  
2 commencing at the hour of 10:03 a.m., thereof, at the  
3 State Capitol, Room 447, Sacramento, California, before  
4 me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the  
5 following proceedings were held:

6   --oOo--

7           CHAIR ORTEGA: Good morning, everyone.

8           I'd like to call to order the September 22<sup>nd</sup> meeting  
9 of the Commission on State Mandates.

10          Please call the roll.

11          MS. HALSEY: Mr. Adams?

12          MEMBER ADAMS: Here.

13          MS. HALSEY: Mr. Chivaro?

14          *(No response)*

15          MS. HALSEY: Mr. Hariri?

16          MEMBER HARIRI: Here.

17          MS. HALSEY: Mr. Morgan?

18          MEMBER MORGAN: Here.

19          MS. HALSEY: Ms. Olsen?

20          MEMBER OLSEN: Here.

21          MS. HALSEY: Ms. Ortega?

22          CHAIR ORTEGA: Here.

23          MS. HALSEY: Ms. Ramirez?

24          MEMBER RAMIREZ: Here.

25          MS. HALSEY: Thank you.

**Commission on State Mandates – September 22, 2017**

1 CHAIR ORTEGA: All right, the first item we have  
2 before us is the minutes from July 28<sup>th</sup>.

3 Are there any corrections or comments on the  
4 minutes?

5 MEMBER OLSEN: Move adoption.

6 CHAIR ORTEGA: Okay, moved by Ms. Olsen.

7 MEMBER ADAMS: Second.

8 CHAIR ORTEGA: Second by Mr. Adams.

9 All in favor of adoption of the minutes, please say  
10 "aye."

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

12 CHAIR ORTEGA: The minutes are adopted.

13 MS. HALSEY: And now we will take up public comment  
14 for matters not on the agenda.

15 Please note that the Commission cannot take action  
16 on items not on the agenda; however, it can schedule  
17 issues raised by the public for consideration at future  
18 meetings.

19 CHAIR ORTEGA: Any public comment?

20 *(No response)*

21 CHAIR ORTEGA: All right, seeing none, we'll move  
22 on.

23 MS. HALSEY: There are no items on consent this  
24 morning.

25 So let's go ahead and move to the Article 7 portion



1 of the hearing.

2 Will the parties and witnesses for Items 3 and 4  
3 please rise?

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

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

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

11 MS. HALSEY: Thank you.

12 Item 2 is reserved for appeals of Executive Director  
13 decisions.

14 There are no appeals to consider for this hearing.

15 Senior Commission Counsel Eric Feller will present  
16 Item 3, a test claim on *Certificated School Employees:*  
17 *Parental Leave.*

18 MR. FELLER: Good morning.

19 CHAIR ORTEGA: Good morning.

20 MR. FELLER: This test-claim statute requires school  
21 districts to provide differential pay to certificated  
22 employees who have exhausted all applicable sick leave,  
23 and who continue to be absent from work on account of  
24 parental leave under the California Family Rights Act for  
25 up to 12 school weeks.

**Commission on State Mandates – September 22, 2017**

1           Differential pay is the remainder of the  
2           certificated employee's salary after the substitute  
3           employee's pay is deducted, or the equivalent of no  
4           substitute is employed.

5           Although the test-claim statute applies uniquely to  
6           school districts and provides a new benefit to  
7           certificated employees, the differential pay for parental  
8           leave is not a state-mandated new program or higher level  
9           of service because it does not increase the level of  
10          educational services provided to the public. Rather,  
11          differential pay is a benefit provided employees who are  
12          not at work providing a service to the public; making  
13          this benefit the same kind that courts have held does not  
14          provide a state-mandated new program or higher level of  
15          service.

16          Also, the differential pay does not impose increased  
17          costs mandated by the State. The test-claim statute  
18          does not mandate school districts to perform the  
19          administrative activities identified by the claimant.  
20          Although a school district may find it necessary to  
21          perform these activities, they're incidental to the  
22          employee benefit and do not provide a service to the  
23          public.

24          Staff recommends the Commission adopt the analysis  
25          and deny the test claim; and also recommends that the

**Commission on State Mandates – September 22, 2017**

1 Commission authorize staff to update the decision to  
2 reflect the claimant's late comments that were submitted  
3 after staff issued the proposed decision, and make any  
4 technical non-substantive changes following the hearing.

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

7 MR. PALKOWITZ: Good morning. Art Palkowitz on  
8 behalf of the claimant, Fresno Unified School District.

9 MS. LEAHY: Kimberly Leahy with the Department of  
10 Finance.

11 CHAIR ORTEGA: Thank you.

12 Mr. Palkowitz?

13 MR. PALKOWITZ: Thank you.

14 Good morning, Commission Members. As I mentioned,  
15 my name is Art Palkowitz. I'm here on behalf of Fresno  
16 Unified School District and all school districts  
17 throughout the state.

18 We'd like to thank staff for their analysis.

19 There are a couple areas that we disagree with.

20 As stated by Mr. Feller, this test claim requires  
21 school districts, after the exhaustion of sick leave, to  
22 provide for certificated employees, K through 12, to  
23 receive up to 12 weeks of paid leave for the birth of  
24 their child.

25 *(Mr. Chivaro entered the meeting room.)*

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1 MR. PALKOWITZ: The potential payment may represent  
2 differential pay, which would be the difference of the  
3 pay of the teacher and the substitute teacher.

4 It is our position that there are increased costs,  
5 which we have asserted in our test claim.

6 The increased costs represents payment to the  
7 certificated employee during their sick leave. For  
8 example, if the employee is paid \$200 per day and a  
9 substitute is hired for \$75, there would be an increased  
10 cost of \$125, the differential pay. As submitted by the  
11 executive officer of Fresno Unified School District, this  
12 is an increased cost.

13 I think we can agree that there is an increased  
14 cost based on a hypothetical. Notwithstanding that,  
15 Commission staff is saying there isn't an increased cost  
16 because the District has a budget at the beginning of the  
17 year for the teacher's school salary. However, one of  
18 the exhibits to the test claim is the School Accounting  
19 Manual that states: Budgets are just projections of how  
20 much an estimate might be that be paid. However, the  
21 expenditure accounts are the actual amount. Therefore,  
22 the districts are incurring increased costs that are  
23 directly related to this test claim.

24 Despite the overwhelming facts and logic, for staff  
25 to take the position that there are not increased costs

1 is not supported by the law.

2 Also, staff, which we agree upon, has commented that  
3 this test-claim statute is unique to school districts.  
4 Clearly, that is undisputed.

5 Staff goes on to further say that this test-claim  
6 statute located in the Education Code section 44977.5, is  
7 a section that is not pertaining to instruction and  
8 services; and therefore, it cannot be a mandate. Again,  
9 this is not a requirement for a test claim. Educational  
10 services is not a requirement for a school mandate to be  
11 approved.

12 There are many examples of how this commission has  
13 approved mandates for reimbursement that were not under  
14 the code section of education and services. For example,  
15 racial desegregation, AIDS prevention instruction,  
16 behavioral intervention that deals with special ed,  
17 charter school, pupil suspensions that deal with the  
18 safety of students, and to prohibit firearms. None of  
19 those mandates appear in the instruction and services  
20 section of the Ed. Code, but still were approved by this  
21 board, this commission.

22 There are examples of test claims that were approved  
23 that were not even in the Education Code section. Those  
24 involve child abuse and neglect reporting, immunization  
25 records, to name a few.

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1           As you will note, none of these mandates fall under  
2 the Ed. Code section, and nor is there a requirement for  
3 a test claim to fall under education and services in  
4 order to be a mandate.

5           The next level of -- or the next issue, rather, of  
6 disagreement is whether this is an increased level of  
7 service. It is our position that increasing the level  
8 of service to the public is when there is a benefit to  
9 the parental leave to family. Students and society  
10 provide a new program under mandate law; and a school  
11 district is not limited to providing education in order  
12 to have a test claim approved. Though public education  
13 is one of the approved programs under the Constitution,  
14 there is no requirement that programs offered by school  
15 districts are limited to instruction and services for  
16 public.

17           And I just gave you a list of that.

18           The legislative intent is very important to analyze  
19 when determining if there is a reimbursable mandate.  
20 The California Teachers Association stated facts, which  
21 is part of the record -- it was part of the legislative  
22 discussion -- stated that "The extended maternity leave  
23 will help to facilitate a stronger mother-child bond and  
24 increases the child's ability to succeed in school and  
25 life due to the strength of the relationship with the

1 primary-caretaker. This relationship impacts a child's  
2 future mental, physical, social, and emotional health.  
3 This relationship is founded on the nonverbal emotional  
4 and communication between the child and parent, known as  
5 the 'attachment bond.' A secure attachment bond ensures  
6 a child will feel secure, understood, and safe, which is  
7 resulting in eagerness to learn, self-awareness, trust  
8 and empathy." Clearly, this is a benefit to the general  
9 public.

10 Parental leave results in more committed parents  
11 later in their children's lives, share responsibilities  
12 with long-term society benefits. Extending the parental  
13 leave allows the teachers to provide a high quality of  
14 government services. The enhanced level of service to  
15 the public will help narrow the achievement gap. The  
16 less parental leave has been possibly correlated with  
17 lower cognitive test scores and higher rates of  
18 behavioral problems. This was commented on in the Senate  
19 analysis of this bill.

20 The study also indicated that higher education, IQ,  
21 and income levels in adults, for children of mothers who  
22 use maternity leave was the biggest effect coming from  
23 children with lower-educated households, that would  
24 reduce the existing gap in education in the United  
25 States.

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1           CTA further commented that family leave also keeps  
2 people in the workforce after they have children as when  
3 more workers are about to take leave, they are more  
4 likely to return to the labor market, and the leave is  
5 associated with higher employment in economies throughout  
6 the world. By keeping teachers in the workforce, it  
7 provides a higher level of education as experienced  
8 teachers return to the classroom instead of being  
9 replaced by new teachers.

10           We are all familiar that pregnancy is important to  
11 the public as illustrated as a protected class, along  
12 with age, gender, race, and disabilities.

13           The staff recommendation discusses other benefits,  
14 considered employee benefits, as a basis for denying this  
15 mandate. Those benefits are not relevant. They relate  
16 to death benefits and public-safety pensions. They are  
17 not as strict and narrow as this mandate that deals with  
18 certificated employees, K through 12, impacting the  
19 classroom. Rather, those benefits deal more with  
20 recruitment and retention of public employees.

21           In conclusion, it is our position that there are  
22 increased costs, there is clearly an increased level of  
23 service; and that this Commission should approve this  
24 test claim.

25           Thank you very much.



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1 CHAIR ORTEGA: Thank you, Mr. Palkowitz.

2 Ms. Leahy, do you have any comments?

3 MS. LEAHY: Kimberly Leahy with the Department of  
4 Finance.

5 We support the Commission's proposed decision; and  
6 I'm here to answer any questions regarding our position.

7 Thank you.

8 CHAIR ORTEGA: Thank you.

9 Commission Members, any questions?

10 Ms. Ramirez?

11 MEMBER HARIRI: I have a --

12 CHAIR ORTEGA: Let's start with Ms. Ramirez.

13 MEMBER HARIRI: Go ahead.

14 MEMBER RAMIREZ: Thank you.

15 I subscribe to the sentiments that you've expressed.  
16 But I want to ask you, can you say, are there any  
17 districts that you're aware of that provided this benefit  
18 to certificated employees before this legislation?

19 MR. PALKOWITZ: I don't know the answer to that.  
20 However, my response would be, if they did, that would  
21 not be a mandate because they were not required to do  
22 that.

23 MEMBER RAMIREZ: Right.

24 MR. PALKOWITZ: And I honestly don't know of the  
25 hundreds of school districts in the state, if they were

1 provided. I know for a fact they are provided by many  
2 private employers.

3 MEMBER RAMIREZ: Right.

4 Thank you.

5 CHAIR ORTEGA: Mr. Hariri?

6 MEMBER HARIRI: You know, I just fail to see how  
7 someone can argue with the simplicity of this case.

8 No one is going to dispute the value that the  
9 schools provide for our children; no one can dispute the  
10 value of retaining highly experienced teachers by giving  
11 them peace of mind; and no one can dispute the importance  
12 of bonding between a child and his mother or her mother  
13 and her father. But none of these factor into the  
14 discussion. It's a question of whether the differential  
15 pay is subject to reimbursement. And that amount is  
16 already budgeted. And it becomes a question of whether  
17 the foregone savings are deserving of being reimbursed.  
18 That's the real issue here.

19 I mean, I really commend the staff for doing a  
20 super job in laying out the analysis and discussion and  
21 providing examples. All of the examples that you gave  
22 us, about analysis and study in racial segregation and  
23 the like, are truly additional services that warranted  
24 reimbursements. But this does not factor in here. It's  
25 simply a benefit that's given to the teacher while he or

1 she are on parental leave.

2 So whether we reimburse you or not, we're not saying  
3 that you should not support that program, nor are we  
4 saying that the program is not worth supporting the  
5 parental leave, that is. But the argument that you  
6 presented in the analysis right now doesn't really  
7 support the argument that a budgeted amount that's not  
8 expended to its fullest warrants a reimbursement.

9 Your budget is based on projected expenditures and  
10 needed resources. If you achieve savings, fine; if you  
11 did not, you met your budgeted amount. You cannot exceed  
12 your budget amount. You cannot go over your expenditure  
13 authority. And in that situation, you expend it within  
14 your allotted budget.

15 I mean, I can't see how all these other discussions  
16 about benefit and bonding and the like fit into that  
17 discussion.

18 My apologies.

19 MR. PALKOWITZ: No.

20 May I respond?

21 MEMBER HARIRI: Sure.

22 MR. PALKOWITZ: I've cited the California accounting  
23 manual. I think many of us who deal with public agencies  
24 are very familiar with budgets. But the public  
25 accounting manual is clear that a budget is not an actual

1 expenditure. The fact that you are correlating a budget  
2 to an actual expense, I believe, is improper in this  
3 situation. The manual is what is guiding us through  
4 this.

5 And I agree with everything else you said on that  
6 topic; but I'm very committed to the argument that this  
7 is a budget item and it's an actual cost.

8 Also, the declaration submitted by the  
9 subject-matter expert from Fresno confirmed that; and  
10 that is, how they deal with actual expenditures. So I --

11 MEMBER HARIRI: May I ask a question?

12 Had the teacher not taken the parental leave --

13 MR. PALKOWITZ: I'm sorry, I couldn't hear the  
14 beginning.

15 MEMBER HARIRI: Had the teacher not taken the  
16 parental leave, the school would have incurred the  
17 budgeted amount or expended the budgeted amount.

18 Would that have represented an additional cost?

19 If there was no parental leave in that year and  
20 you expended within your allotted budget, there would not  
21 have been an additional service or an additional expense  
22 to be reimbursed?

23 MR. PALKOWITZ: Yes, under that hypothetical, the  
24 actual cost would equal the budget. But in the case  
25 before us, the actual cost is not what counts -- or is

1 what counts. The budget is really an estimate given at,  
2 often, the beginning of the year, so the District could  
3 try to manage their finances.

4 To say that that actual cost is guaranteed to occur,  
5 and then it changes to say there is no change because we  
6 budgeted the same or the amount is less, is not accurate  
7 according to the manual.

8 CHAIR ORTEGA: Ms. Shelton, did you want to weigh in  
9 on this?

10 MS. SHELTON: Just to bring us back to mandates law,  
11 the whole point of mandates is to prevent the State from  
12 forcing school districts to go out and get an additional  
13 tax revenue. So when the amount is budgeted, there is  
14 no showing that they have to go out and get additional  
15 tax revenue.

16 In addition, the idea of cost savings is not a new  
17 idea among Commission staff. It is recognized in the  
18 legislative history for this bill.

19 CHAIR ORTEGA: Thank you.

20 Are there any other comments or questions from the  
21 Commission?

22 Ms. Ramirez, yes?

23 MEMBER RAMIREZ: I'd like to have staff respond to  
24 the comments.

25 MR. FELLER: Okay. With regards to cost savings,

1 as Camille said, it's the Commission's position -- or  
2 with regards to costs mandated by the State, it's the  
3 Commission's position that school districts were  
4 experiencing cost savings for teachers who went on  
5 parental leave and exhausted their leave benefits, that  
6 this test-claim statute basically now prevents. But  
7 that's not the same as a newly incurred cost that's a  
8 loss of cost savings. That's the Commission's position  
9 on the cost issue.

10 As far as whether the statute is unique, as  
11 Mr. Palkowitz states, we agree that it is unique to  
12 school districts. Just because -- however, the fact that  
13 it's in the Education Code is only -- that was only put  
14 in the analysis to show that this particular test-claim  
15 statute does not provide a benefit to the public in the  
16 same way that reimbursable mandates do.

17 Remember that this is a benefit that accrues to  
18 certificated employees while they're on leave and not  
19 providing a service to the public. And in that way, it's  
20 similar to the other benefits that the Court has found is  
21 not reimbursable.

22 And as far as the societal benefits that were cited  
23 in the legislative history and that Mr. Palkowitz brought  
24 up, those are extremely indirect, the same kind in the  
25 *City of Richmond* case, where the Court found that

1 benefits that helped in retention and recruitment were  
2 not reimbursable.

3 In addition, there is a part of the legislative  
4 history that says that this would provide an incentive  
5 for certificated employees to be absent longer than they  
6 would without the benefit. So the legislative history is  
7 not consistent in stating that this test-claim statute  
8 provides a benefit to the public. Any benefit it does  
9 provide is indirect and not as great as the benefit  
10 provided to the employee. And so the courts have found  
11 that those kinds of benefits don't impose a state  
12 mandate -- a reimbursable state mandate.

13 CHAIR ORTEGA: Ms. Shelton, do you have anything to  
14 add?

15 MS. SHELTON: Just to add -- that was very good.

16 I was going to add, for the elements for a new  
17 program or higher level of service are that you have to  
18 satisfy all elements, that they are: that the activity  
19 has to be new, it does have to be unique to government,  
20 but it also has to provide a service to the public. And  
21 the Courts, including the *City of Richmond* case, have  
22 already dealt with that issue, where something is  
23 uniquely provided to employees of public agencies; and  
24 those have been the primary purpose, to provide the  
25 employee a benefit and not to increase a level of service

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1 to the public. So the case law on that issue is pretty  
2 clear.

3 CHAIR ORTEGA: Ms. Olsen?

4 MEMBER OLSEN: As a parent, any of us who are  
5 parents who have had children in school -- Mr. Palkowitz,  
6 I do commend you for finding all of the statistics and  
7 everything about how parental bonding is really important  
8 for the development long-term of a child; but any of us  
9 who have had children in school -- and I want to say,  
10 before I say this next comment, which may be unpopular --  
11 I have known magical and impressive substitute teachers.  
12 But at least my experience has been that when there is a  
13 long-term substitute in the class, the learning potential  
14 for that classroom goes down.

15 So in some ways, we have traded off this benefit in  
16 the short-term for a decrease in the quality of public  
17 education; and that is not a benefit to the public.

18 CHAIR ORTEGA: Mr. Adams?

19 MEMBER ADAMS: Just to add to what Ms. Olsen said.  
20 I'm frustrated for the District. I understand their  
21 frustration that one can weigh this as an increased cost  
22 versus a decreased savings. And I realize that that has  
23 the potential to impact what the District would like to  
24 do with that savings that is not there now.

25 But to add to what Ms. Olsen said again, I too,



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1 thinking about my own education, had some great  
2 substitute teachers; but I can see that one could argue  
3 that this is actually a loss of service to the public as  
4 a whole. It may or may not benefit the kids of teachers.

5 I would also submit that, again, I don't know the  
6 whole bonding thing, but kids develop the way they  
7 develop. Maybe some develop because the parents are not  
8 there. Who knows? But be careful what you wish for.

9 But, again, I'm frustrated for you. But, again, I  
10 can see that one can argue that this is actually a loss  
11 of service to the public as a whole.

12 Thank you.

13 CHAIR ORTEGA: Thank you.

14 Any other comments from commissioners?

15 MEMBER OLSEN: I'll move adoption of the staff  
16 recommendation.

17 MEMBER CHIVARO: Second.

18 CHAIR ORTEGA: Moved by Ms. Olsen, second by  
19 Mr. Chivaro.

20 Any additional public comment?

21 *(No response)*

22 CHAIR ORTEGA: Okay, thank you, Mr. Palkowitz.

23 Please call the roll.

24 MS. HALSEY: Mr. Adams?

25 MEMBER ADAMS: Aye.

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1 MS. HALSEY: Mr. Chivaro?

2 MEMBER CHIVARO: Aye.

3 MS. HALSEY: Mr. Hariri?

4 MEMBER HARIRI: Aye.

5 MS. HALSEY: Mr. Morgan?

6 MEMBER MORGAN: Aye.

7 MS. HALSEY: Ms. Olsen?

8 MEMBER OLSEN: Aye.

9 MS. HALSEY: Ms. Ortega?

10 CHAIR ORTEGA: Aye.

11 MS. HALSEY: Ms. Ramirez?

12 MEMBER RAMIREZ: Aye.

13 MS. HALSEY: Thank you.

14 CHAIR ORTEGA: Thank you.

15 MEMBER RAMIREZ: Good job, Mr. Palkowitz.

16 MR. PALKOWITZ: Thank you.

17 MS. HALSEY: Senior Commission Counsel Eric Feller

18 will present Item 4, an incorrect reduction claim on

19 *Integrated Waste Management*.

20 On Tuesday, the claimant representative notified the

21 Commission staff that the District does not plan to have

22 a representative present at this hearing.

23 MR. FELLER: So the Controller's reduction to this

24 program were because the claimant did not deduct

25 offsetting savings from its diversion of solid waste and

1 the associated reduction of disposal costs in accordance  
2 with the test-claim statutes.

3 Staff finds the audit of fiscal year 2000-2001 was  
4 timely initiated and that the audit of all fiscal years  
5 in the audit period was timely completed.

6 Staff also finds the Controller's reduction of costs  
7 claimed for all years in the audit period except the  
8 first half of 2003-2004 is correct as a matter of law.  
9 The Controller's audit reduction for the first half of  
10 2003-2004 is incorrect, as a matter of law, because the  
11 Controller based the cost-savings calculation for this  
12 period on a 50 percent required diversion rate when the  
13 law required only a 25 percent diversion.

14 The Controller's office filed comments agreeing with  
15 the staff's decision.

16 So staff recommends that the Commission partially  
17 approve this IRC and requests the Controller reinstate  
18 \$3,822 to the claimant. Staff also requests the  
19 Commission to authorize staff to make technical,  
20 non-substantive changes to the proposed decision  
21 following the hearing.

22 Will the parties and witnesses please state your  
23 name for the record?

24 MS. KUROKAWA: My name is Lisa Kurokawa. I'm the  
25 audit manager with the State Controller's Office; and as

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1 Mr. Feller just stated, we agree about the Commission's  
2 proposed decision.

3 CHAIR ORTEGA: Any questions or comments?

4 MEMBER CHIVARO: No. I'll move adoption of the  
5 staff recommendation.

6 MEMBER OLSEN: Second.

7 CHAIR ORTEGA: Okay, moved by Mr. Chivaro, seconded  
8 by Ms. Olsen.

9 Please call the roll.

10 MS. HALSEY: Mr. Adams?

11 MEMBER ADAMS: Aye.

12 MS. HALSEY: Mr. Chivaro?

13 MEMBER CHIVARO: Aye.

14 MS. HALSEY: Mr. Hariri?

15 MEMBER HARIRI: Aye.

16 MS. HALSEY: Mr. Morgan?

17 MEMBER MORGAN: Aye.

18 MS. HALSEY: Ms. Olsen?

19 MEMBER OLSEN: Aye.

20 MS. HALSEY: Ms. Ortega?

21 CHAIR ORTEGA: Aye.

22 MS. HALSEY: Ms. Ramirez?

23 MEMBER RAMIREZ: Aye.

24 CHAIR ORTEGA: Thank you, everyone.

25 MS. HALSEY: Item 5 is reserved for County

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1 applications for a finding of significant financial  
2 distress or SB 1033 applications. No SB 1033  
3 applications have been filed.

4 Commission Counsel Matt Jones will present Item 6,  
5 staff's response to public comments and report on  
6 proposed substantial changes to the proposed regulatory  
7 package subject to an additional 15-day comment period.

8 MR. JONES: Good morning.

9 On May 26<sup>th</sup>, 2017, the Commission adopted an order  
10 to initiate a rule-making package. On July 7<sup>th</sup>, 2017,  
11 the California State Association of Counties requested  
12 a public hearing on those proposed regulations. On  
13 July 24<sup>th</sup>, 2017, the California Special Districts  
14 Association, CSAC, and the League of Cities filed written  
15 comments on the proposed regulations. The public hearing  
16 was held on July 28<sup>th</sup>; and CSDA, CSAC, and the League  
17 each presented oral comments in addition to the submitted  
18 written comments.

19 Staff has addressed those comments for today's  
20 hearing and recommends one additional modification to  
21 the previously noticed changes with respect to  
22 section 1183.1(c), governing the period of limitation to  
23 file a test claim. The proposed modification to that  
24 regulation makes it clear, consistent with the Government  
25 Code and the rules of interpretation, that test claims

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1 can only be filed within 12 months of first incurring  
2 costs when costs are not incurred within the first  
3 12 months of the effective date of a statute or executive  
4 order.

5 Staff further recommends that the Commission  
6 authorize staff to issue a notice of modification and the  
7 proposed regulatory text, as modified, for an additional  
8 15-day comment period.

9 If approved and following the receipt of comments  
10 on the modification, staff will prepare the final  
11 rulemaking package for the Commission's consideration at  
12 the December 1<sup>st</sup>, 2017, hearing.

13 CHAIR ORTEGA: Thank you, Mr. Jones.

14 Any questions or comments from commissioners?

15 Ms. Olsen, then Mr. Adams.

16 MEMBER OLSEN: I have to say, I have some sort of  
17 philosophical problem with the approach of this  
18 regulatory change, in that on its face, it seems to make  
19 it more difficult for local governments to bring  
20 legitimate claims before the Commission. And if we had  
21 had a lot of illegitimate claims or spurious claims or  
22 things like that, I would say, "Okay, maybe this makes  
23 sense. Let's tamp down on the window that they can apply  
24 for some redress."

25 But, honestly, I don't think that that's the

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1 situation we're in; and I don't see that this actually  
2 improves the situation for local governments coming  
3 before the State, which is what we're here for.

4 CHAIR ORTEGA: Let's take Mr. Adams' comment, and  
5 then maybe have Ms. Shelton talk about maybe kind of the  
6 impetus for bringing this before the Commission.

7 MEMBER ADAMS: Just a process question.

8 Does the 15-day rereview start once we adopt this  
9 today?

10 MS. SHELTON: Once we issue a notice of  
11 modification; and I think the dates are in there,  
12 starting --

13 MS. HALSEY: Monday.

14 MS. SHELTON: -- Monday.

15 MEMBER ADAMS: I will be interested to see what the  
16 folks that were frustrated with this have to say after  
17 that. So, yes, thank you.

18 MS. SHELTON: Just the whole purpose of the change  
19 to this reg, really, are the claims that are pending that  
20 you have not seen. Okay, there's a bunch of them there.  
21 And what is happening, you have the Government Code that  
22 says you have to file your test claim within the first --  
23 within 12 months of the effective date of the statute,  
24 which requires local government to track legislation and  
25 disregard their own budget, but to track legislation.

1           It does provide a second sentence that says, "or  
2 the date of incurring costs under the mandate."

3           What is happening is, as an example that we provided  
4 in the staff report, is that if you have a statute or  
5 an executive order that becomes effective on January 1,  
6 2015 -- whatever the hypo was we gave -- 2015, under the  
7 first sentence, you have to file a test claim by  
8 January 1, 2016. But what claimants are doing, are  
9 saying that "Well, we first incurred costs on January 2,  
10 2015." And then we get a whole other six months, so then  
11 it becomes 18 months, in that hypo, and sometimes over  
12 two years of the effective date of the statute.

13           The problem is, the way that they're interpreting  
14 the Government Code, it makes that second sentence  
15 completely absurd because costs can never be incurred  
16 before the effective date.

17           MEMBER OLSEN: Right.

18           MS. SHELTON: So we can't be interpreting the  
19 section that way. And so that is -- we're trying to  
20 define what it really means. And if we accept  
21 jurisdiction on those cases, Finance can always come  
22 and say that we have not satisfied the statute of  
23 limitations, and that our reg is improper. Then the  
24 Court would set aside the whole thing. So it could be  
25 a costly mistake for that to occur. So this is what is



1 happening.

2 And the whole point of that second provision was to  
3 track those types of programs, like LAFCo or sometimes  
4 POBOR, where a triggering event never occurs for a local  
5 government; and so the Legislature didn't want to force  
6 them to file a test claim when nothing is occurring.

7 That said, under the Government Code, you can file  
8 a test claim even if you have not yet incurred the costs  
9 by estimating your costs. You can estimate the costs and  
10 have it be okay. So it's functioning like litigation.

11 MEMBER OLSEN: Okay, so how would this affect those  
12 cases we haven't yet seen that are already before the  
13 Commission?

14 MS. HALSEY: It wouldn't.

15 MEMBER OLSEN: It wouldn't? They would be  
16 grandfathered in, essentially?

17 MS. SHELTON: Oh, yes.

18 MEMBER OLSEN: So it would just be future cases that  
19 would be affected by this?

20 MS. SHELTON: Right.

21 MEMBER OLSEN: All right, okay.

22 MS. SHELTON: Yes, those are still going to be all  
23 up in the air. But, yes.

24 CHAIR ORTEGA: Mr. Morgan, did you have a question?

25 MEMBER MORGAN: No.

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1 CHAIR ORTEGA: Okay, Ms. Ramirez?

2 MEMBER RAMIREZ: I'd just like to ask, I see that  
3 the major associations have made comments.

4 Do we have comments from individual groups that are  
5 not involved in those agencies? And do you sense that  
6 there's a problem with getting the word out to people?

7 MS. SHELTON: Maybe. You know, this is -- it does  
8 have a history; and maybe I need to kind of explain the  
9 history.

10 One, on the consulting groups, they have  
11 historically provided representation to cities, counties,  
12 and school districts; and they have been the primary  
13 spokespeople for local government. So it's the typical  
14 players involved.

15 And a lot of -- they've gone through a change in  
16 recent times; and we see a new group of people in those  
17 associations coming before the Commission. So they seem  
18 to be functioning under the old rules, which all occurred  
19 before the Legislature put in a statute of limitations.

20 So under the old rules, the only limitation was to  
21 the period of reimbursement. And if you wanted to save  
22 and get reimbursed for a fiscal year cost, you had to  
23 file your test claim before June 30. And so in their  
24 mind, June 30 has always been an important date, because  
25 then they could get reimbursed for the prior fiscal year

1 costs. So that's always been an important date for them.

2 But then as soon as the Legislature put in a statute  
3 of limitations, the focus changed. It's because of the  
4 Legislature. The focus changed to, "You'd better be  
5 tracking legislation and not just tracking your budget.  
6 You need to track the legislation now."

7 And so they're not getting that, I think. It may be  
8 a learning curve, but that is the point.

9 I do think if they want to preserve the June 30  
10 fiscal year idea in a statute of limitations, they do  
11 need a legislative fix to get that, because they're still  
12 operating under old rules.

13 MEMBER RAMIREZ: What can we do to -- "we," all of  
14 us -- do to inform entities of the new scene?

15 MS. SHELTON: Well, I think Heather is doing that on  
16 a daily basis with phone calls and walking them through  
17 the rules --

18 MS. HALSEY: For filing.

19 But we are also getting ready to have a process  
20 with local governments to update all of our claim forms  
21 because a lot of them are out of date. And not only  
22 that, but we're finding people are having trouble filing  
23 complete claims.

24 As Camille was mentioning, a lot of people who are  
25 participating in mandates now are new to the process, and

1 they don't understand what needs to be in there. And  
2 we have to have a lot of back and forth before we have a  
3 completed claim. So we're going to update those forms  
4 to make them more user-friendly and more clear. And we  
5 do that in an interactive process with the local  
6 governments.

7 And so we're going to be doing that in the next few  
8 months. And so that will be going through all the  
9 process of how do you file, when do you file, what needs  
10 to be included, and all those things would be involved in  
11 that.

12 MEMBER RAMIREZ: Well, I wanted to say that I'm  
13 involved with Southern California Association of  
14 Governments, which is six counties and a zillion cities.  
15 And I think every area has a planning organization, like  
16 Southern California Association. And I think maybe just,  
17 I could help to let people know this process is  
18 happening, so perhaps others could do that, too. Because  
19 I'm sure that the representatives come and take that  
20 information back to their -- they are local government;  
21 they're not school districts; they're cities, counties.

22 MEMBER OLSEN: And I guess that's part of my problem  
23 here, is that it seems like an ad hoc process, that --  
24 you know, this isn't going to be a problem for the City  
25 of Los Angeles. They've got a leg. unit. They're going

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1 to know exactly what's happening, and they're going to  
2 conform to whatever they need to do to put their claims  
3 in.

4 I'm just going to pick another town out of the air  
5 that I don't think has a leg. unit -- I could be wrong --  
6 but let's say the City of Banning. And they're not  
7 necessarily going to know. And that, I guess, is my  
8 concern, is that we have a process that is working. And  
9 I understand the desire to control workload at the  
10 Commission level. It's a small group of people who are  
11 doing phenomenal work on behalf of the local governments  
12 and the State of California. But I don't know that this  
13 change is necessary to make things work better for --  
14 universally, for local governments coming before the  
15 Commission. I don't even know if there's a way of  
16 communicating it universally to local governments.

17 CHAIR ORTEGA: Mr. Morgan?

18 MEMBER MORGAN: Yes, I don't think that's an issue;  
19 but I think, for me, it's a disconnect between the  
20 current reg, the June 30<sup>th</sup> date, and what's in statute,  
21 right. So I think that's -- I mean, we're kind of in  
22 this -- the legislation has a specific time period; and  
23 our current regs are not consistent with that. And so  
24 I think this is a change that needs to happen. But  
25 is there a way that we can better work with local

1 governments?

2 MEMBER OLSEN: Right.

3 MS. SHELTON: Also, just to kind of put it into  
4 perspective, all of these statute-of-limitation changes  
5 occurred in 2002, 2004, during the Laird Committee. And  
6 the whole point of that committee was to try to speed  
7 things up. Because, remember, that they had -- there was  
8 no statute of limitations; so that you could, 20 years  
9 after a statute was enacted, file a new test claim. And  
10 that was very difficult for the Legislature to deal with,  
11 because then you have -- you know, it's hard to get  
12 records and determine what they were thinking 20 years  
13 later.

14 And it's supposed to help local government, too. So  
15 the whole thing is supposed to -- the idea was to speed  
16 up the process.

17 Local government was initially not happy with the  
18 statute of limitations, as I recall. But it did work in  
19 their favor because you are getting it going and getting  
20 it done, and while everybody -- employees are still there  
21 and available, and the Legislature can deal with the cost  
22 right away. So it is a learning curve.

23 And I think partly we're dealing with these issues  
24 more in the last few years because we did have a backlog  
25 and didn't really reach a lot of these issues until the

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1 most recent, last couple of years.

2 So it seems like it happened a long time ago; but  
3 really, we're just now -- it's catching up.

4 CHAIR ORTEGA: Any additional comments from  
5 commissioners?

6 *(No response)*

7 CHAIR ORTEGA: Is there any additional public  
8 comment on this item?

9 *(No response)*

10 CHAIR ORTEGA: All right, seeing none, is there a  
11 motion?

12 MEMBER MORGAN: I move to accept the staff's  
13 recommendation.

14 CHAIR ORTEGA: Okay, moved by Mr. Morgan.

15 MEMBER CHIVARO: Second.

16 CHAIR ORTEGA: Second by Mr. Chivaro.

17 Please call the roll.

18 MS. HALSEY: Mr. Adams?

19 MEMBER ADAMS: Aye.

20 MS. HALSEY: Mr. Chivaro?

21 MEMBER CHIVARO: Aye.

22 MS. HALSEY: Mr. Hariri?

23 MEMBER HARIRI: Aye.

24 MS. HALSEY: Mr. Morgan?

25 MEMBER MORGAN: Aye.

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1 MS. HALSEY: Ms. Olsen?

2 MEMBER OLSEN: Aye.

3 MS. HALSEY: Ms. Ortega?

4 CHAIR ORTEGA: Aye.

5 MS. HALSEY: Ms. Ramirez?

6 MEMBER RAMIREZ: Aye.

7 CHAIR ORTEGA: Thank you.

8 MS. HALSEY: Program Analyst Jill Magee will present  
9 Item 7, the Legislative Update.

10 MS. MAGEE: Good morning. The following is an  
11 end-of-session review of 2017 legislation regarding  
12 mandates.

13 As we reported at our last hearing, the Governor  
14 signed the 2017-18 Budget Act, AB 97, which includes  
15 601 million in additional Prop. 98 funding to pay down  
16 the K-12 mandates backlog, and adds 8 million and two  
17 mandates to the K-12 mandate block grant.

18 The Budget Act makes no changes to the list of  
19 suspended K-12 mandates, or to funded or suspended  
20 community college and local government mandates as  
21 compared to 2016-2017.

22 We also monitored two other bills this legislative  
23 session.

24 AB 268 proposes a technical nonsubstantive change to  
25 Government Code section 17552. This is a spot bill, and



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1 the author's office confirmed they have no plans to  
2 pursue it this session.

3 SB 806, Charter Schools, is noteworthy because it  
4 would extend mandate reimbursement to nonprofits, which  
5 are not local governments and, thus, not subject to the  
6 tax-and-spend limitations of Article XIII of the  
7 California Constitution. Additionally, it would allow  
8 individual nonprofit schools to seek mandate  
9 reimbursement; whereas currently, only school districts  
10 may seek reimbursement on behalf of public schools.

11 On April 25<sup>th</sup>, the bill failed passage in the Senate  
12 Judiciary Committee. Reconsideration was granted, so the  
13 bill may be taken up this session.

14 CHAIR ORTEGA: Thank you, Ms. Magee.

15 Any questions or comments from commissioners on the  
16 report?

17 *(No response)*

18 CHAIR ORTEGA: Seeing none, thank you. We'll accept  
19 the report.

20 MS. HALSEY: Chief Legal Camille Shelton will  
21 present Item 8, the Chief Legal Counsel report.

22 MS. SHELTON: As you can see from my report, the  
23 Court has scheduled a number of hearing dates.

24 Since our last meeting, there have been two changes:  
25 One, in that first box, the County of LA consolidated

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1 cases dealing with *Handicapped and Disabled*. The hearing  
2 has been continued until April 25<sup>th</sup>, 2018.

3 And the second box, the Third District Court of  
4 Appeal has scheduled a hearing in the San Diego  
5 *Stormwater Permit* matter for November 20<sup>th</sup>, 2017.

6 CHAIR ORTEGA: Okay, thank you.

7 MS. HALSEY: Item 9 is the Executive Director's  
8 report.

9 Two newly filed test claims were issued for comment  
10 this week. Thus, after this hearing, there are now  
11 16 pending test claims, all but one of which are  
12 regarding the *National Pollutant Discharge Elimination*  
13 *System, or NPDES, Permits*. We also have one parameters  
14 and guidelines and one statewide cost estimate also  
15 regarding *NPDES Permits*. And these are on inactive  
16 status pending the outcome of litigation.

17 In addition, there is one parameters-and-guidelines  
18 amendment on inactive status pending the outcome of  
19 litigation in the *CSBA* case, which is now In the First  
20 District Court of Appeal.

21 Finally, we have 12 incorrect reduction claims  
22 pending.

23 As of today, the Commission staff expects to  
24 complete all currently pending test claims and IRCs by  
25 approximately the January 2019 Commission hearing,

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1 depending on staffing and other workload.

2 Next, I have an action item for the Commission.

3 This is the 2018 hearing calendar. Commission meetings  
4 have generally been held on the fourth Fridays of odd  
5 months. However, a special hearing date is required for  
6 the November hearing because the fourth Friday of  
7 November is a state holiday. Because there are five  
8 Fridays in November 2018, staff recommends setting the  
9 November hearing for November 30<sup>th</sup>, 2018. And that would  
10 be the Friday after Thanksgiving week.

11 Staff recommends the Commission adopt the proposed  
12 2018 hearing calendar indicated in the Executive  
13 Director's report of hearings on the fourth Friday of  
14 each month except for November, which is proposed for  
15 the fifth Friday of that month.

16 As usual, the fourth Fridays of June and October  
17 are proposed as tentative meetings in case a regular  
18 meeting must be moved or an urgent matter arises.

19 CHAIR ORTEGA: Okay, any objections to the calendar?

20 Ms. Olsen?

21 MEMBER OLSEN: I will do my annual objection to  
22 having the May meeting on the Friday of Memorial Day  
23 weekend.

24 CHAIR ORTEGA: Thank you.

25 Mr. Adams?

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1 MEMBER ADAMS: I just appreciate the early  
2 consideration of this to lock in schedules. And I would  
3 make a motion to approve as presented.

4 CHAIR ORTEGA: Okay. Is there a second?

5 MEMBER HARIRI: Second.

6 CHAIR ORTEGA: Second by Mr. Hariri.

7 All in favor of adoption of the calendar, please  
8 say "aye."

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

10 CHAIR ORTEGA: Okay, without objection, that is  
11 approved.

12 And, Heather, do you have additional --

13 MS. HALSEY: Tentative agenda items, please check  
14 the tentative agenda items on my report to see if your  
15 item or an item you're interested in is coming up over  
16 the course of the next few hearings.

17 You can also use the pending caseload documents on  
18 the Commission's Web site to get an idea of when  
19 something is tentatively expected to be heard. And those  
20 are regularly updated.

21 Commission staff is currently working on the *NPDES*  
22 *Permit* test claims which are extremely large and complex,  
23 as I have mentioned before. These claims are all  
24 tentatively set for hearing; but those tentative dates  
25 are subject to change for a variety of reasons.

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1           Since our last meeting, one of our attorneys, Paul  
2 Lukacs, has left the Commission to pursue a career in  
3 class-action litigation in the private sector. This has  
4 further slowed our progress in bringing the *NPDES Permit*  
5 test claims to hearing.

6           However, staff projects that at least one of these  
7 claims will be issued in time for the January 2018  
8 Commission meeting.

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

14           CHAIR ORTEGA: Thank you.

15           I just wanted to make a comment about the number of  
16 IRCs that are pending, because I feel like, four years  
17 ago when I had my first Commission meeting, the number  
18 was in the seventies or eighties; and to hear it down to  
19 11 seems quite remarkable. So congratulations to the  
20 staff for that achievement.

21           Are there any other comments from commissioners  
22 before we go into closed session?

23           Yes, Ms. Olsen.

24           MEMBER OLSEN: I have a calendar comment.

25           We will have no October meeting; correct?

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1 MS. HALSEY: There is none anticipated at this  
2 point. So, yes, I think it's highly unlikely.

3 MEMBER OLSEN: Okay, that's it.

4 CHAIR ORTEGA: All right, anything else?

5 *(No response)*

6 CHAIR ORTEGA: Okay, thank you to the public who  
7 attended.

8 We will move now into closed session.

9 The Commission will meet in closed executive session  
10 pursuant to Government Code section 11126(e) to confer  
11 with and receive advice from legal counsel for  
12 consideration and action, as necessary and appropriate,  
13 upon the pending litigation listed on the public notice  
14 and agenda, and to confer with and receive advice from  
15 legal counsel regarding potential litigation.

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

18 We will reconvene in open session in approximately  
19 15 minutes.

20 Thank you.

21 *(The Commission met in closed executive session  
22 from 10:48 a.m. to 10:59 a.m.)*

23 CHAIR ORTEGA: The Commission met in closed session  
24 pursuant to Government Code section 11126(e)(2) to  
25 confer with and receive advice from legal counsel for

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

7 There is no other business to discuss; and without  
8 any public comment, we will be adjourned.

9 Thank you.

10 *(The Commission meeting concluded at 11:00 a.m.)*

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REPORTER'S CERTIFICATE

I hereby certify:

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

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

*In witness whereof*, I have hereunto set my hand on the 3<sup>rd</sup> day of October 2017.



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Daniel P. Feldhaus  
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Registered Diplomat Reporter  
Certified Realtime Reporter