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STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

REPORT TO THE DIRECTOR, DEPARTMENT OF FINANCE: WORKLOAD LEVELS AND BACKLOG

September 15, 2011

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COMMISSION ON STATE MANDATES
2011 WORKLOAD LEVELS AND CONSIDERATIONS
REPORT TO THE DIRECTOR, DEPARTMENT OF FINANCE

The annual Budget Act requires the Commission on State Mandates (Commission) to report to the Director, Department of Finance on workload levels and backlog. The 2011 State Budget Act states:¹

The Commission on State Mandates shall, on or before September 15, 2011, and annually thereafter, submit to the Director of Finance a report identifying the workload levels and any backlog for the staff of the commission.

This report to the Director of the Department of Finance satisfies this requirement.

BACKGROUND

Commission on State Mandates

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local government for the costs of new programs or increased levels of service mandated by the state. To implement article XIII B, section 6, the Legislature created the Commission to succeed the State Board of Control in making determinations whether new statutes or executive orders are state-mandated programs.² The Commission was established to render sound quasi-judicial decisions and to provide an effective means of resolving disputes over the existence of state-mandated local programs. The Commission provides the sole and exclusive procedure for local agencies and school districts (claimants) to claim reimbursement for costs mandated by the state as required by article XIII B, section 6 of the California Constitution. The Commission is required to hear and decide claims (test claims) filed by local agencies and school districts that they are entitled to be reimbursed by the state for costs mandated by the state.³

Statutory time frames were established for completing this work. Since 1998, state law has required the Commission to adopt procedures to ensure that a statewide cost estimate is adopted within 12 to 18 months after receipt of a test claim, when the Commission determines that a mandate exists. (Gov. Code, § 17553, subd. (a).) In 2004, AB 2856 (Stats. 2004, ch. 890) made modifications to the Commission's statutory authority, to, among other things, require the Commission to notify the Legislature of its mandate determinations.

The Commission is also required to hear and decide incorrect reduction claims (IRCs) by local agencies and school districts that the State Controller's Office (SCO) has incorrectly reduced payments to them. (Gov. Code, § 17551.) There is no statutory time frame for completing IRCs.

COMMISSION WORKLOAD CONSIDERATIONS

Workload Completed in 2010-2011

In fiscal year 2010-2011, the Commission completed 11 test claims, 8 parameters and guidelines, 6 statewide cost estimates, and 15 incorrect reduction claims.

¹ Statutes 2011, chapter 33, (SB 87), Item 8885-001-0001, Provision 2.

² Statutes 1984, chapter 1459, Government Code section 17500, et seq.

³ Government Code section 17551.

Position Authority

Like most other state agencies, during the ongoing budget crisis, Commission staffing levels have continued to decrease. The Commission was provided with three limited-term positions in 2006 to eliminate the backlog. Those positions were made permanent in 2007. In 2008 and 2009, a total of two positions were eliminated. Currently, the Commission has 10.5 positions. Table A shows completed workload and position authority for the past eight fiscal years.

**Table A. Commission Decision Making and Position Authority
2002-2003 through 2010-2011⁴**

	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
Test Claims Determined	22	17	6	30	16	18	18	11
Test Claims Reconsidered ⁵	NA	5	9	1	2	0	0	0
Parameters and Guidelines and Amendments Adopted or Set Aside	20	6	43	24	11	11	62	8
Statewide Cost Estimates Adopted	3	14	2	7	3	11	5	6
Requests to Review SCO's Claiming Instructions Determined	0	0	0	0	0	1	0	0
Incorrect Reduction Claims Determined	10	0	0	0	5	0	1	15
Positions	9.7	9.7	13.6	13.6	12.0 ⁶	12.0 ⁷	11.0	10.5

Pending Caseload

The Commission's pending caseload consists of matters filed by claimants and state agencies, including test claims, incorrect reduction claims, parameters and guidelines and proposed amendments to parameters and guidelines, reasonable reimbursement methodologies, statewide cost estimates, and requests to review claiming instructions. The caseload may also consist of

⁴ This table does not reflect work completed by attorneys and administrative staff on litigation, regulations, and special projects such as mandate reform and responding to audits performed by the Bureau of State Audits.

⁵ Directed by the Legislature.

⁶ Positions were reduced from 13.6 to 12 by eliminating one staff counsel position and temporary help funding in the 2008-09 State Budget.

⁷ Includes one staff counsel position that was left vacant during fiscal year 2008-2009 to reduce General Fund operations budgets by 1.5 percent, as ordered by Governor's Executive Order S-01-08. This position was eliminated as part of the 2009-2010 State Budget.

regulatory actions proposed by Commission staff. We also track pending joint proposals for legislatively-determined mandates. Table B shows the Commission’s current pending caseload. To strategically address the backlog shown in Table B, on May 25, 2011, CSM staff published its *Backlog Reduction Plan*. Since that time, staff has received very positive feedback on this plan – and staff’s rapid progress to date on the plan – from both the claimant community and state agencies.

Table B. Pending Caseload, September 15, 2011

Type of Action	Number Pending
Test Claims ⁸	49
Test Claims to be Reconsidered	0
Test Claims to be Reconsidered or Reinstated Based on Court Action	0
Incorrect Reduction Claims ⁹	148
Incorrect Reduction Claims to be Reconsidered Based on Court Action	0
Reasonable Reimbursement Methodologies/Statewide Estimate of Costs	0
Proposed Parameters and Guidelines ¹⁰	10
Proposed Parameters and Guidelines Amendments ¹¹	12
Parameters and Guidelines to be Amended, Set Aside, or Reinstated, as Directed by the Legislature or Court Action	0
Statewide Cost Estimates ¹²	6
New Test Claim Filings to be Reviewed	0
New Incorrect Reduction Claim Filings to be Reviewed	0
Appeals of Executive Director Decisions	0
Regulatory Actions Pending	1

Requests to Jointly Develop Legislatively Determined Mandates

Type of Action	Number Pending
Notice of Intent to Pursue Legislatively Determined Mandates	0

⁸ This includes 21 test claims filed by school districts and 28 filed by local agencies. See Exhibit A.

⁹ See Exhibit B.

¹⁰ See Exhibit C.

¹¹ See Exhibit D.

¹² See Exhibit E.

Test Claims

The Commission's test claim caseload is backlogged. There are 49 test claims pending completion. Table C shows the pending test claim filings by fiscal year, and claimant type.

**Table C. Pending Test Claims
By Fiscal Year of Filing and Claimant Type**

Filing Date by Fiscal Year	Total New Filings¹³	Pending School District Test Claims	Pending Local Agency Test Claims	Total Pending Test Claims
2002-2003	51	6	0	6
2003-2004	23	7	4	11
2004-2005	4	0	2	2
2005-2006	6	3	1	4
2006-2007	2	0	1	1
2007-2008	12	2	3	5
2008-2009	6	3	2	5
2009-2010	3	0	2	2
2010-2011	12	2	10	12
2011-2012	1	0	1	1
Totals	120	23	26	49

The following factors contribute to the backlog, and are evaluated by staff when assigning work and projecting workload completion:

1. Number of Filings

Prior to 2002, test claim filings averaged approximately 24 per year. In 2002, changes in the statute of limitations for filing test claims caused local agencies and school districts to file 51 test claims in one year. The Commission is still completing test claims filed in 2002. There are eight 2002 test claims pending before the Commission. Claimants filed 23 test claims in 2003, 11 of which are still pending. However, the test claim filings are decreasing. Because claimants now have only 1 year to file test claims on new statutes and executive orders, between 2004 and 2011, 45 new test claims were filed for those years combined.

2. Number and Level of Positions

The Commission's position authority has decreased over the past several fiscal years. This continual decrease in position authority is one of the major factors that causes the backlog in the Commission's caseload. The number of test claims completed is based on the number of positions we have for a particular fiscal year, but also on the level of those positions. We have one staff counsel and two staff counsel III positions. All attorney positions complete test claims. However, a staff counsel III may also handle other workload, including litigation, which could reduce the time available to complete test claims.

3. Size of Each Test Claim

Test claims are often thought to be filed on one individual statute. This is not correct, especially when evaluating the backlog. Test claims are filed on numerous statutes, regulations, and executive orders. For example, the 74 test claims filed in 2002 and 2003 allege that nearly 500 statutes, and 400 regulatory sections and executive orders are mandated programs. By law, each statute, regulation, and executive order pled requires a finding by the Commission.

¹³ All test claims filed prior to 2002-2003 are complete.

4. *Other Pending Work*

Past requests to reconsider existing test claims, incorrect reduction claims, parameters and guidelines, and litigation have contributed to the delay in eliminating the test claim backlog.

5. *Potential Work*

On October 15, 2009 the Bureau of State Audits (BSA) published a report that was critical of the Commission’s backlog (<http://www.bsa.ca.gov/pdfs/reports/2010-041.pdf>). It recommended that Commission staff work with the Legislature to establish a reconsideration process that will allow mandates to undergo revision when appropriate. Commission staff worked with legislative staff to draft language for a new “redetermination” process. In 2010 SB 894 was enacted to implement this process. Since its enactment no requests for redetermination have been filed. However, this new process represents a potential increase in the Commission’s workload.

6. *Number of Commission Meetings*

We also factor in how many meetings will be conducted for a particular fiscal year. The Commission is required by statute to conduct at least six public meetings per year, and we tentatively schedule two additional meetings each year.

Incorrect Reduction Claims (IRCs)

The IRC workload is also backlogged. There are currently 148 IRCs pending before the Commission that allege a total of \$73.3 million in reductions to mandate reimbursement claims. Table D shows the pending IRC caseload by fiscal year and claimant type.

**Table D. Pending Incorrect Reduction Claims
By Fiscal Year of Filing and Claimant Type**

Filing Date by Fiscal Year	Total New Filings¹⁴	Pending School District Claims	Pending Local Agency Claims	Total Pending Claims
2002-2003	74	0	69	69
2003-2004	7	1	0	1
2004-2005	5	2	1	3
2005-2006	30	22	1	23
2006-2007	2	1	1	2
2007-2008	28	7	2	9
2008-2009	9	9	1	10
2009-2010	17	14	1	15
2010-2011	13	11	2	13
2011-2012	3	3	0	3
Totals	188	70	78	148

IRCs are filed with the Commission based on actions taken by the State Controller’s Office. Unlike test claims, where one claimant represents all potential claimants statewide, individual claimants file IRCs with the Commission.¹⁵ Though the Commission may combine IRCs on the same program and similar issues for purposes of analysis, it must issue a separate decision for each claimant.

¹⁴ All incorrect reduction claims filed prior to 2002-2003 are complete.

¹⁵ California has 58 counties so county claims are limited to 58 potential IRCs. However, mandates involving cities, school districts, and special districts create thousands of potential IRCs.

The process for resolving IRCs can be complex, and differs with each claim. For some claims, once the claimant files an IRC, an informal conference is conducted where Commission staff mediate the issues in dispute between the claimant and the SCO. If the issues are resolved in the informal conference, the IRC is settled. When the issues cannot be resolved, attorney and analytical staff prepare a detailed analysis of the legal and fiscal issues, the Commission approves or denies the IRC, and a statement of decision is prepared. Whether or not the issues are resolved at the informal conference, staff must spend time to prepare and review the record (including the original test claim record, parameters and guidelines, and claiming instructions) review detailed reimbursement claims, and determine the legal and fiscal issues. This process can be lengthy, particularly in cases where numerous IRCs are filed on one program. For example, for the *Graduation Requirements* program, the Commission adopted statements of decision on 11 IRCs in 12 months.

There are currently IRCs filed on 22 state-mandated programs. Table E shows the programs listed by type of claimant and the dollar amounts per program.

Table E. Pending IRCs and Amount of Alleged Reductions by Program

	Program	Number of IRCs Filed	Amount of Alleged Reductions
		Local Agency Claims	
1.	<i>Absentee Ballots</i>	2	\$933,286
2.	<i>Child Abduction and Recovery</i>	1	\$1,268,210
3.	<i>Firefighters' Cancer Presumption</i>	1	\$516,132
4.	<i>Handicapped and Disabled Students</i>	1	\$3,232,423
5.	<i>Investment Reports</i>	68	\$1,963,374
6.	<i>Open Meetings Act</i>	1	\$4,653,917
7.	<i>Peace Officers Bill of Rights</i>	1	\$526,802
8.	<i>Seriously Emotionally Disturbed Pupils (SEDS): Out-of-State Mental Health Services</i>	1	\$1,979,388
9.	<i>Sexually Violent Predators</i>	2	\$373,643
	Subtotal	78	\$15,447,175
		School District Claims	
10.	<i>Collective Bargaining</i>	1	\$765,967
11.	<i>Emergency Procedures, Earthquake & Disasters</i>	2	\$1,941,572
12.	<i>Graduation Requirements</i>	3	\$18,776,536
13.	<i>Interdistrict Attendance Permits</i>	2	\$24,556
14.	<i>Intradistrict Attendance</i>	4	\$502,421
15.	<i>National Norm-Referenced Achievement Test (NNRAT)</i>	1	\$160,120
16.	<i>Notification of Truancy</i>	10	\$3,246,985
17.	<i>Notification to Teachers: Pupils Subject to Suspension or Expulsion</i>	1	\$354,046

18.	<i>School District of Choice: Transfer and Appeals</i>	2	\$465,717
19.	<i>Standardized Testing and Reporting (STAR)</i>	1	\$1,446,786
	Subtotal	27	\$27,684,706
		Community College District Claims	
20.	<i>Collective Bargaining</i>	7	\$2,119,937
21.	<i>Health Fee Elimination</i>	35	\$28,071,158
22.	<i>Mandate Reimbursement Process</i>	1	\$10,004
	Subtotal	43	\$30,201,099
	TOTAL	148	\$73,332,980

The Role of the State Controller's Office

Filing IRCs is an appeals process. The State Controller is authorized, by desk review or field audit, to reduce reimbursement claims that they deem to be excessive or unreasonable. The claimant is then authorized to appeal any reduction by filing an IRC with the Commission. Sixty-eight of the pending IRCs are on the *Investment Reports* program. These reductions, along with many of the reductions to other programs, were based on desk reviews of claims. To date, the Commission has decided two IRCs on this program, and is meeting with the State Controller's Office staff and claimant representatives to develop a work plan to address the remaining claims. Fifty two of the pending IRCs are on claims that were reduced based on a field audit that resulted in a published audit report.

Completing the Pending Incorrect Reduction Claims Caseload

Despite our decreasing position authority and other pending work, Commission staff is developing a comprehensive work plan to eliminate the pending IRCs using existing resources. The Commission decided one IRC in 2009-2010, one IRC in 2010-2011, and has seven additional IRCs scheduled for hearing September 29, 2011. The same factors that contribute to the test claim backlog also contribute to the IRC backlog, including the number of filings, number and level of positions, number of Commission meetings, and other pending work.

The Commission has many options in how to address incorrect reduction claims. For example, it may be appropriate to consolidate IRCs filed by different claimants so that one analysis and statement of decision are adopted by the Commission. However, this only works if the issues are the same, and the Controller's auditors were consistent in making claim reductions, based on similar documentation. It is also possible that once the Commission determines one IRC that other claims on the same program will be settled and withdrawn based on that decision. But, it may also be necessary for the Commission to adopt individual decisions on IRCs filed on the same program because documentation and the way reimbursement claims were filed may differ. Most IRCs involve issues of law and fact. Thus, analysis of each IRC requires legal, analytical, and audit review.

Caseload Projections

It is difficult to predict if a substantial number of IRCs will be filed in the future. In fact, as the number of mandated programs for which the state must reimburse local agencies and school districts grows, exposure to IRCs increases. In addition, the number of audits the State

Controller conducts on reimbursement claims directly affects the number of IRCs that may be filed.

Since auditor positions have been added to the Controller's staff, the number of audits of mandate reimbursement claims has increased. While the State Controller's Office does not have current numbers, claimants report that the audits have reduced 85 percent of costs claimed for reimbursement. An increase in claim reductions will result in more IRCs.