

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
June 26, 2008

Present: Member Anne Sheehan, Chairperson
Representative of the Director of the Department of Finance
Member Francisco Lujano, Vice Chairperson
Representative of the State Treasurer
Member Richard Chivaro
Representative of the State Controller
Member Cynthia Bryant
Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Sarah Olsen
Public Member
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:38 a.m. Member Chivaro was absent.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTION 11126

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, subdivision (e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Third District Court of Appeal, Case No. C055700; [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]
3. *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833, [Peace Officer Procedural Bill of Rights]

4. *Department of Finance and California Integrated Waste Management Board v. Commission on State Mandates, Santa Monica Community College District, and Lake Tahoe Community College District*, Sacramento County Superior Court, Case No. 07CS00355, [Integrated Waste Management]
5. *San Diego Unified School District v. Commission on State Mandates and California Department of Finance*, San Diego County Superior Court, Case No. 37-2007-00064077-CU-PT-CTL, [Emergency Procedures: Earthquake Procedures and Disasters]
6. *California School Boards Association, Education Legal Alliance, and Sweetwater Union High School Dist. v. State of California, Commission on State Mandates, and John Chiang, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 07CS01399, [School Accountability Report Cards, SARC]

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, subdivision (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 and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

(Member Chivaro arrived.)

Hearing no further comments, Chairperson Sheehan adjourned into closed executive session pursuant to Government Code section 11126, subdivision (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 Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

RECONVENE IN OPEN SESSION

At 10:00 a.m., Chairperson Sheehan reconvened the meeting in open session.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Sheehan reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (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 potential litigation; and pursuant to Government Code section 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

APPROVAL OF MINUTES

Item 1 March 28, 2008

The March 28, 2008 hearing minutes were adopted by a vote of 7-0.

PROPOSED CONSENT CALENDAR

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

A. PARAMETERS AND GUIDELINES

Item 6 *Binding Arbitration (01-TC-07)*

Code of Civil Procedure, Sections 1281.1, 1299, 1299.2, 1299.3, 1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9 Statutes of 2000, Chapter 906 County of Napa, Claimant

Item 7 *Local Recreational Area, Background Screenings (01-TC-11)*

Statutes 2001, Chapter 777 Public Resources Code, Section 5164; Subdivision (b)(1) and (b)(2).
City of Los Angeles - Department of Recreation and Parks, Claimant

Item 8 *CalSTRS Service Credit (02-TC-19)*

Statutes 1993, Chapter 893 (AB 1796) Statutes 1994, Chapters 20 (SB 858), 507 (AB 2647), 603 (AB 2554), and 933 (AB 3171) Statutes 1995, Chapters 390 (AB 1122), 394 (AB 948), and 592 (AB 1298) Statutes 1996, Chapters 383 (AB 3221), 608 (AB 2673), 634 (SB 2041), 680 (SB 1877), and 1165 (AB 3032) Statutes 1997, Chapters 482 (SB 471) and 838 (SB 227) Statutes 1998, Chapters 965 (AB 2765), 967 (AB 2804), 1006 (AB 1102), 1048 (SB 2085), and 1076 (SB 2126) Statutes 1999, Chapter 939 (SB 1074) Statutes 2000, Chapters 402 (AB 649), 880 (SB 1694), 1020 (AB 820), 1021 (AB 2700), 1025 (AB 816), and 1032 (SB 1435) Statutes 2001, Chapters 77 (SB 165), 159 (SB 662), 802 (SB 499), and 803 (SB 501) Statutes 2002, Chapter 375 (AB 2982) Educations Code Section 22000, et al.
Santa Monica Community College District, Claimant

B. PROPOSED STATEWIDE COST ESTIMATE

Item 10 *Handicapped and Disabled Students II (02-TC-40/02-TC-49)*

Government Code Sections 7570, 7572, 7579, 7585, 7586.6, 7587, as added or amended by Statutes 1996, Chapter 654; Statutes 1998, Chapter 691; Statutes 1992, Chapter 759; Statutes 2001, Chapter 745; Statutes 2002; Chapter 585; Section 41 of Statutes 2002, Chapter 1167, and Title 2, California Code of Regulations, Sections 60000-60600
Counties of Los Angeles and Stanislaus, Claimants

- Item 11 *Binding Arbitration* (01-TC-07)
Code of Civil Procedure, Sections 1281.1, 1299, 1299.2, 1299.3, 1299.4,
1299.5, 1299.6, 1299.7, 1299.8, and 1299.9 Statutes of 2000, Chapter 906
County of Napa, Claimant

Member Worthley made a motion to adopt items 6, 7, 8, 10 and 11 on the consent calendar. With a second by Member Glaab, the items were unanimously adopted (7-0).

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

- Item 2 Staff Report (if necessary)

There were no appeals to consider.

**HEARINGS AND DECISIONS ON CLAIMS, PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559)
(action)**

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing.

A. TEST CLAIMS

- Item 3A *Crime Statistic Reports for the Department of Justice*, (02-TC-04), (02-TC-11)
Statutes 1980, Chapter 1340 (SB 1447); Statutes 1982, Chapter 147 (SCR 64);
Statutes 1984, Chapter 1609 (SB 1472); Statutes 1989, Chapter 1172 (SB 202);
Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB
2250); Statutes 1995, Chapters 803 and 965 (AB 488 and SB 132); Statutes
1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571 (AB 491); Statutes
2000, Chapter 626 (AB 715); Statutes 2001, Chapters 468 and 483 (SB 314 and
AB 469); and California Department of Justice, Criminal Justice Statistics
Center, Criminal Statistics Reporting Requirements and Requirements
Spreadsheet, March 2000
City of Newport Beach and County of Sacramento, Claimants

Eric Feller, Senior Commission Counsel presented this item. Mr. Feller explained that this test claim alleges reimbursable state-mandated activities for local agencies to report various crime statistics to the California Department of Justice. Staff found that the test claim legislation imposes a reimbursable state mandate for submitting the statistics on the following crimes to the Department of Justice: homicide, hate-crime, concealed firearm, and carrying a loaded firearm in a public place. Staff also found that supporting all domestic violence-related calls for assistance with a written incident report is reimbursable.

Mr. Feller indicated that this test claim was originally scheduled for the March 28, 2008 hearing but was postponed when claimants submitted a test claim amendment the day before the hearing. The amendment was deemed incomplete and returned to the claimant. Claimants did not file a complete amendment prior to the 30-day deadline. However, they filed a new test claim amendment yesterday (June 25, 2008) adding statutes not pled in the original test claim. The Executive Director severed the amendment from the test claim before the Commission.

Parties were represented as follows: Juliana Gmur and Glenn Everroad for the City of Newport Beach, and Carla Castañeda and Donna Ferebee for the Department of Finance.

Ms. Gmur commented that they were encouraged that the language staff used in the staff analysis specifically talks of the actual gathering, compiling and recording of information. However, she notes that in the conclusion, staff speaks only of the reporting of information. Ms. Gmur continued that, in the parameters and guidelines phase, they will be providing evidence and arguments supporting the fact that gathering, compiling and recording are necessary parts of reporting information to the Department of Justice. Ms. Gmur then concurred with the staff analysis.

Mr. Everroad had no additional comments except to thank staff for the analysis. Ms. Castañeda remarked that the Department of Finance had nothing to add.

Member Bryant asked counsel to clarify if the language raised by Ms. Gmur will be addressed in parameters and guidelines. Mr. Feller indicated that the Statement of Decision tracks the language of the statutes. Staff will take evidence during the parameters and guidelines phase to decide what is within the scope of the mandate.

Member Bryant then questioned the process of test claim amendments coming in the day before the hearing. Ms. Higashi responded that there are two versions of the law that pertain to amendments. She explained that the old version allows for an amendment to be filed any time before the hearing. The new version requires an amendment to be filed prior to the test claim being "set for hearing" which is defined as when the draft staff analysis is issued. Draft staff analyses are issued eight to ten weeks prior to the hearing. This particular test claim, however, was filed under the old rules. Ms. Higashi stated that she will send information to the members regarding the total number of test claims that still fall under the old rules and may be amended any time prior to the hearing.

Member Glaab made a motion to adopt the staff recommendation. With a second by Member Bryant, the staff recommendation to partially approve the test claim was adopted by a vote of 7-0.

Item 3B Proposed Statement of Decision: *Crime Statistic Reports for the Department of Justice*, (02-TC-04), (02-TC-11)

[See description of statutes and executive orders in Item 3A above.]

Mr. Feller also presented this item. He stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the *Crime Statistic Reports for the Department of Justice* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision including minor changes.

Member Worthley made a motion to adopt the proposed Statement of Decision. With a second by Member Olsen, the Statement of Decision was adopted by a vote of 7-0.

- Item 4 *Comprehensive School Safety Plans II*, (02-TC-33)
Education Code Sections 35294.1, 35294.2, 35294.6, and 35294.8, as added and amended by Statutes 2001, Chapters 646 and 890 (AB 79 and SB 257); and Statutes 2002, Chapters 91, 506, and 735 (AB 2708, SB 1667, and AB 2198)
Sweetwater Union High School District and Bakersfield City School District, Claimants

Senior Commission Counsel Deborah Borzelleri presented this item. Ms. Borzelleri stated the purpose for this program is to ensure that all K-12 schools, in cooperation with local law enforcement agencies and community leaders, parents, pupils, teachers, administrators, and other interested parties, develop a comprehensive school safety plan that addresses safety concerns identified through a systematic planning process.

Ms. Borzelleri cited a prior test claim that found a reimbursable state-mandated program for the activities of writing, developing and adopting comprehensive school safety plans. The statutes for the test claim before you today add two new elements to the safety plan, address the timing for adopting plans for new schools, specify particular parties that must be notified of the public meeting adopting the safety plan and provide procedures for notice of violent crimes committed at schools.

Ms. Borzelleri stated that any funds or grant funds available to school site councils for the newly mandated activities must be identified as offsetting revenues at the parameters and guidelines stage. She explained that San Diego Unified School District was added as a co-claimant to this test claim. Also, a proposed amendment was filed yesterday (June 26, 2008). The Executive Director severed the amendment and staff is reviewing the amendment for completion.

Staff recommended the Commission adopt the staff analysis to partially approve the test claim.

Parties were represented as follows: Donna Ferebee and Ryan Storm for the Department of Finance, Keith Petersen for the claimants.

Mr. Petersen stated that he had nothing to add. Ms. Ferebee remarked that the Department of Finance had nothing to add.

Member Olsen made a motion to adopt the staff recommendation. With a second by Member Glaab, the staff recommendation to partially approve the test claim was adopted by a vote of 7-0.

- Item 5 Proposed Statement of Decision: *Comprehensive School Safety Plans II*,
(02-TC-33)
[See description of statutes and executive orders in Item 4 above.]

Member Worthley made a motion to adopt the proposed Statement of Decision. With a second by Member Bryant, the motion carried unanimously (7-0).

B. JOINT REQUEST FOR REASONABLE REIMBURSEMENT
METHODOLOGY AND STATEWIDE ESTIMATE OF COSTS PURSUANT
TO GOVERNMENT CODE SECTIONS 17557.1 AND 17557.2

- Item 9 *Firearm Hearings for Discharged Inpatients, (99-TC-11)*
Welfare and Institutions Code Sections 8103(f) and 8103(g)
Statutes of 1990, Chapter 9, et al.
County of Los Angeles and Department of Finance, Joint Requestors

Assistant Executive Director Nancy Patton introduced this item. Ms. Patton summarized AB 1222, which was enacted to establish an alternative to adopting parameters and guidelines and statewide cost estimates. Under AB 1222, the Department of Finance and local governments can jointly develop reasonable reimbursement methodologies (RRMs) and statewide estimates of costs and submit the proposals to the Commission for approval and adoption.

Ms. Patton stated that the County of Los Angeles and the Department of Finance filed a joint request for a reasonable reimbursement methodology (RRM) and statewide estimate of costs (SEC) for this program. Staff found that the joint proposal met the following statutory criteria required to adopt the RRM: It is based on cost information from a representative sample of eligible claimants and considers the variation in costs among local agencies to implement the mandate in a cost-efficient manner; it shows that the County and Finance took steps to determine the level of claimant support for the RRM; it includes a two-year term and that they will consider jointly whether amendments to the RRM are necessary. Ms. Patton added that Department of Finance had requested additional technical amendments which staff supported.

Under AB 1222, if the Commission adopts the proposed RRM, it is then required to adopt the proposed statewide estimate of costs for the initial claiming period and budget year. Ms. Patton noted that the County and Finance proposed a statewide estimate of costs of \$154,675 for nine fiscal years, which averages to \$17,186 per year. Staff recommended that the Commission approve the RRM with Finance's proposed technical amendment, and adopt the statewide estimate of costs.

Ms. Patton explained that since there were no objections to this proposal, it would normally have been placed on the consent calendar. However, because this is the first RRM proposal, staff thought the Commission might want to hear it. She also recognized the hard work performed by the County of Los Angeles and the Department of Finance to develop this proposal. They worked very closely with the Executive Director to refine it.

Parties were represented as follows: Leonard Kaye for the County of Los Angeles, Carla Castañeda and Donna Ferebee for the Department of Finance.

Mr. Kaye commented on all the hard work and effort put into this proposal by Paula Higashi, and Carla Castañeda and others with the Department of Finance, and expressed honor and appreciation to be here to support it.

Ms. Castañeda stated that they would be happy to answer any questions concerning the details of the numbers and analysis. She also commented on the fact that they are continuing to work on other mandates that may have RRM's in revising them.

Chairperson Sheehan commented that this was a historic item and the first of what we hope will be many that come before the Commission.

Member Olsen expressed discomfort with being asked to vote on the proposed technical amendments without seeing them. Ms. Patton provided the technical amendments to the members. Ms. Higashi reassured Member Olsen and the Commission that the changes are purely technical. She explained that the intent of the technical amendments is to precisely mirror statutory language on what happens at the time the agreement expires and not to change the substance of how the methodology will be applied or any of its provisions. Ms. Higashi added that staff would review the proposal if it is adopted and send it out for final comment from the parties before it is issued. Ms. Higashi concluded that the final product will serve as a template for future proposals.

Member Bryant discussed her review of the record, the process for development of the final agreement, and concern that the process was overcomplicated. Ms. Higashi explained that this was the first time for all parties. This required meetings with the parties, including Department of Finance and State Controller's Office, to develop regulations, to review the proposal, and develop a simplified model document that was different from parameters and guidelines. She agreed with Member Bryant that future claimants and the Department of Finance have a template to build from.

Allan Burdick, SCAC-SB 90 Service, commented that Department of Finance and the County of Los Angeles worked closely with CSAC and its members in completing the proposal, and thanked the parties.

Chairperson Sheehan stated her appreciation of the time and efforts put into the RRM, and hope that it will serve as a model and template for facilitating future claims.

Member Bryant moved to adopt the proposed RRM as revised by staff and adopt the statewide estimate of costs, and then authorize staff to make the technical corrections. With a second by Member Olsen, the proposed RRM and statewide estimate of costs was approved and adopted by a vote of 7-0.

STAFF REPORTS

Item 12 Chief Legal Counsel's Report (info)

Camille Shelton, Chief Legal Counsel, reported receiving a ruling from the trial court on the *Integrated Waste Management* case which will require the Commission to amend the Parameters and Guidelines requiring community college districts to identify offsetting cost savings and revenues. Also, there is an upcoming hearing in San Diego on the *Emergency Procedures Act* claim.

Item 13 Executive Director's Report (info)

Ms. Higashi noted that the regulations the Commission previously adopted on AB 1222 are now final and copies of the regulation package are available for any parties in the audience. Ms. Higashi also reported that the State Controller's Office issued their 2008 Deficiency Report showing a deficiency of \$2.6 billion.

The next Commission hearing is set for Friday, August 1, 2008, with three test claims on the agenda: *Expulsions and Suspensions II*, *Disabled Student Programs and Services*, and *Prevailing Wage Rates*, and proposed parameters and guidelines. Ms. Higashi noted that she expects some changes as some claimants reprioritize their pending test claims.

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

Hearing no further business, and with a motion by Member Glaab and second by Member Chivaro, Chairperson Sheehan adjourned the meeting at 10:32 a.m.


PAULA HIGASHI
Executive Director