

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126

Sacramento, California

March 29, 2007

Present: Member Michael Genest, Chairperson
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

Absent: Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Genest called the meeting to order at 9:32 a.m.

APPROVAL OF MINUTES

Item 1 January 25, 2007

Member Worthley made a motion to adopt the January 25, 2007 hearing minutes. With a second by Member Olsen, the motion carried unanimously.

PROPOSED CONSENT CALENDAR

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS

Item 9 Amendment to Parameters and Guidelines to Correct Reimbursement
Period
Removal of Chemicals, 06-PGA-01
Education Code Section 49411
Statutes 1984, Chapter 1107 (AB 3820)
As Amended by Statutes 1994, Chapter 840 (AB 3562)

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, DIVISION 2, CHAPTER 2.5 (action)

- Item 10 Adoption of Proposed Regulatory Action – Incorrect Reduction Claim Process
Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, Article 5. Incorrect Reduction Claims, Commencing With Section 1185

ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING

- Item 11 Parameters and Guidelines: Reasonable Reimbursement Methodologies and Statewide Cost Estimates
Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, Article 3, Sections 1183.1 through 1183.3.

Member Chivaro made a motion to adopt items 9, 10, and 11 on the consent calendar. With a second by Member Olsen, the items were unanimously adopted.

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

- Item 3 Staff Report (if necessary)

There were no appeals to consider.

HEARINGS AND DECISIONS ON TEST 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 of items 4, 5, and 6.

REQUEST FOR RECONSIDERATION OF PRIOR FINAL DECISION PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1188.4

- Item 4 Proposed Statement of Decision
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 2000, Chapter 906 (SB 402)
City of Palos Verdes Estates and County of Napa, Claimants
Chair, Commission on State Mandates, Requestor

Deborah Borzelleri, Senior Commission Counsel, presented this item. She noted that the sole issue before the Commission was whether the proposed Statement of Decision, which was updated to reflect the addition of witnesses, vote count, and staff analysis provided at the last hearing, accurately reflects the Commission's decision on the reconsideration of the *Binding Arbitration* test claim heard on January 25, 2007.

Staff recommended that the Commission adopt the proposed Statement of Decision.

Parties were represented as follows: Juliana Gmur, on behalf of the City of Palos Verdes Estates; Jacqueline Gong, on behalf of the County of Napa; and Carla Castaneda, with the Department of Finance.

Ms. Gmur contended that certain items were excluded as reimbursable activities, particularly preparation for the hearing. She noted staff's finding that these activities are not in statute. However, Ms. Gmur argued that the statute requires them to be at the hearing, and in reality, they must come prepared.

Ms. Gong stated her concern regarding the limitation on preparation for the hearing. She argued that an arbitration proceeding is a full-fledged evidentiary hearing and detailed certain activities necessary to prepare for such a hearing. While the plain language of the statute does not say prepare for the hearing, she asserted that preparation is an integral part of any hearing. She asked the Commission to direct staff to amend the proposed Statement of Decision for reconsideration to more clearly allow reasonably related activities.

Ms. Castaneda concurred with the proposed Statement of Decision. She stated that the claimants' request would be more appropriately addressed at the parameters and guidelines phase.

Ms. Gmur argued that the Statement of Decision is the law of the case, and thus, if the door is shut now, she was concerned that it could not be reopened at the parameters and guidelines stage.

Member Worthley asked staff if this had been done in the past. Ms. Borzelleri responded that at the test claim phase, the Commission must make a legal determination as to what the law says. At the parameters and guidelines phase, the Commission has the ability to include activities that are the most reasonable methods of complying with the mandate, as defined in section 1183.1 of the Commission's regulations.

Ms. Gmur asked if the Statement of Decision could reflect that the claimant is not precluded from raising this issue at the parameters and guidelines phase.

Camille Shelton, Chief Legal Counsel, clarified that the Commission already voted on the item and was receiving new testimony today. For the Commission to change the Statement of Decision, she explained that the claimants would have to request a rehearing of the item, and the Commission would have to grant the rehearing before the analysis is changed.

Chairperson Genest noted that he was not present at the last hearing and asked the other members if the proposed Statement of Decision reflected the last hearing.

Member Olsen stated that she had no problem with the item being reheard if needed.

Member Worthley stated that he would like the Commission to move forward with the item if the issue can be resolved at the parameters and guidelines phase. He noted that a record of testimony was created indicating that the claimant would not be precluded from raising the issue at the parameters and guidelines stage.

Ms. Shelton added that the hearing testimony is transcribed into a transcript, which becomes an official part of the administrative record. She maintained that at the parameters and guidelines stage, the Commission has discretion to include activities that are not expressly mandated by statute, but are reasonably necessary to comply with the mandate.

Ms. Higashi pointed out that the statute provides that the successful test claimant has the right to submit the proposed parameters and guidelines, and thus, it would be up to the County of Napa and City of Palos Verdes Estates to submit proposed parameters and guidelines detailing the reimbursable activities.

Member Worthley made a motion to adopt the proposed Statement of Decision. With a second by Member Lujano, the motion carried unanimously.

TEST CLAIMS

- Item 5 *Training Requirements for Instructors and Academy Staff*, 02-TC-03
California Code of Regulations, Title 11, Sections 1001, 1052, 1053,
1055, 1070, 1071, and 1082 (Register 2001, No. 29)
County of Sacramento, Claimant

Deborah Borzelleri, Senior Commission Counsel, presented this item. She noted that the test claim addresses regulations adopted by the Commission on Peace Officer Standards and Training, or POST, which requires classified training for certain POST instructors and key staff of POST training academies. Ms. Borzelleri explained that POST training is provided to law enforcement officers by POST-approved institutions, and POST can certify training courses and curricula developed by other entities as meeting required minimum training standards.

Staff found that the regulations establish requirements that flow from a discretionary decision by the local agency to participate in POST, and a discretionary decision to provide POST-certified training or establish a POST training academy. Staff further found that local agencies have alternatives to providing POST-certified training or establishing a POST training academy. Therefore, staff found that the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Staff recommended that the Commission adopt the staff analysis to deny the test claim.

Parties were represented as follows: Allan Burdick, on behalf of the California State Association of Counties, SB 90 Service; Leonard Kaye, on behalf of the County of Los Angeles; Cheryl MacCoun, Gail Wilczynski, Nancy Gust, and Christine Hess, representing the County of Sacramento Sheriff's Department; Bryon Gustafson, with the Commission on Peace Officer Standards and Training; and Carla Castaneda, with the Department of Finance.

Mr. Burdick stated that there were two issues: 1) the basic underlying issue of whether or not POST regulations could result in a reimbursable state mandate, and 2) the specifics of the test claim. He asked the Commission how they wanted to proceed.

Ms. Borzelleri noted that no comments were received on the draft staff analysis, so this was all new information.

Member Worthley commented that the issue seemed to be whether there was a strict legal compulsion or practical compulsion.

Mr. Kaye indicated that staff's analysis concludes that local agencies have alternatives to providing POST-certified training or establishing a POST training academy. He stated that the witnesses from local law enforcement agencies could discuss those alternatives.

Ms. Wilczynski outlined two issues. First, she stated that while it was true that the sheriff's department does not have to have a training academy, training has to occur somewhere, so either a law enforcement agency or a community college has to provide the training. Secondly, she argued that there was nothing voluntary about whether or not an officer had to meet the POST standards. She indicated that over her 25 years of law enforcement experience, POST went from setting a minimum, to exact standards, to exact curricula that must be met. She contended that it was a standard of care issue, and that a sheriff's department or city police department could not operate without being POST certified. She provided a personal example to emphasize her argument that meeting POST standards is not voluntary. Ms. Wilczynski concluded that there is a tremendous cost that goes along with meeting the POST standards.

Member Worthley asked what would prevent an agency from creating its own standards that was very much like the POST standards.

Ms. MacCoun responded that as law enforcement providers, participation in POST in its most basic form is mandated by statute. She noted that Penal Code section 832, subdivision (a), states that every peace officer in the state has to satisfactorily complete an introductory course on training prescribed by POST. She asserted that it was more practical to provide the mandated training in-house.

Ms. Shelton mentioned that Penal Code section 832, subdivision (a), dealt with basic training of individuals that want to become peace officers. She agreed that anyone who wanted to become a peace officer had to complete POST-certified training to receive the basic training certificate. However, she noted that this was not true for continuing education.

Chairperson Genest stated his understanding that the issue was not whether participation in POST training is mandatory, but whether the classes beyond the basic training are mandated.

Ms. Borzelleri clarified that the issue is whether training for certain trainers and academy staff beyond the basic training is a reimbursable state mandate.

Ms. MacCoun asserted that in order to operate an academy, new instructors have to use POST's 2001 requirements.

Ms. Wilczynski contended that the bottom line was that POST set the standard of care, and it is the minimum standard by which officers and instructors are able to engage in their profession.

Mr. Gustafson commented that there were examples of police departments in California that do not participate in the POST program, including the City of Isleton and for many years, the City of Los Angeles. He stated that it is very practical for agencies to participate in the POST program because POST reimburses travel and per diem expenses.

Mr. Gustafson noted that 44 of the 58 counties did not have their own training academy. He commented that the City of Sacramento chose to have their own for local control to train their officers and to meet the needs of the community, but he asserted that the city was not compelled to have an academy. In response to Member Worthley's earlier question, he stated that an agency could have its own standards to parallel POST's; however, the downside is that POST will not reimburse the training. Thus, agencies had an incentive to join the POST program.

Ms. MacCoun agreed that POST reimburses travel and per diem; however, she submitted that backfill, tuition, and assistance in maintaining records and documentation are not reimbursed by POST.

Ms. Wilczynski stated that agencies that use some outside source are still measured against POST standards. If the training does not meet POST standards, it does not count as an equivalent course.

Ms. Shelton clarified that the analysis before the Commission focuses only on whether or not the regulations constitute a state-mandated program. In order for the Commission to approve any test claim, the Commission must find that there is a mandate; that the new activities constitute a new program or higher level of service; and that there are increased costs mandated by the state, considering the cost of the training and any reimbursement provided by POST.

Ms. Shelton explained that the Supreme Court provided direction with regard to the finding of a state mandate: 1) it is not an equitable decision, but a question of law; 2) it has to be expressly

mandated by statute; and 3) if it is not expressly mandated by statute, it has to impose certain or severe penalties, such as double-taxation or other types of fiscal financial penalties. She stated that the courts have also discussed a public safety exception, in which the entity has no other choice but to perform the mandate. Ms. Shelton stated that today's testimony is all new evidence that would need to be further analyzed. However, she maintained that the plain language of the statutes do not mandate the training or the costs incurred by the local agency.

Chairperson Genest recommended that the issue be continued to the next meeting.

Ms. Higashi stated that because there was no written evidence in the record on this issue, she suggested that Commission staff reissue the final staff analysis and allow the parties an additional 30 days to submit written briefs and comments and to clearly articulate their objections and positions.

Hearing no objections from the members, Chairperson Genest continued the test claim to the next meeting.

- Item 6 Proposed Statement of Decision
 Training Requirements for Instructors and Academy Staff, 02-TC-03
 See Above

Item 6 was postponed.

- Item 7 *Re-Districting Senate and Congressional Districts*, 02-TC-50
 Statutes 2001, Chapter 348 (AB 632)
 Senate Elections and Reapportionment Committee Instructions Issued on
 September 24, 2001;
 County of Los Angeles, Claimant

Item 7 was postponed.

- Item 8 Proposed Statement of Decision
 Re-Districting Senate and Congressional Districts, 02-TC-50
 See Above

Item 8 was postponed.

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

PRESENTATION AND DISCUSSION OF MANDATE REFORM PROPOSALS

- Item 12 Department of Finance Proposal
 Legislative Analyst's Proposal
 Public Comment

Nancy Patton, Assistant Executive Director, presented this item. She noted that since 2003, mandate reform has been a major budget and policy issue. She discussed current problems with the mandate determination and reimbursement process, as well as the Administration and Legislature's attempts to improve the process since 2003. She noted that in 2006, the Commission sought to streamline the existing process using a collaborative process; however, the Legislature elected not to fund the project. This year, she indicated that the Department of Finance and the Legislative Analyst's Office had proposals to improve the process.

Ms. Patton stated that, as a result of being provided with additional staff, the Commission has increased the number of completed test claims and is reducing the test claim backlog. She noted, however, that the Legislative Analyst's Office report contends that the Commission's workload has not been reduced because staff was completing test claims at the same rate as new test claims were being filed. Ms. Patton pointed out that the Legislature directed the Commission to reconsider 13 prior mandate determinations before eliminating the existing backlog. The Commission completed 11 of the 13 reconsiderations in 2004 and will complete the remaining within the next six months. In addition, the Legislature modified or repealed numerous mandates and required the Commission to modify or set-aside 48 sets of parameters and guidelines in 2006. In 2006 and 2007, the Commission made a determination on 22 test claims and staff has drafted analyses on another 23 claims that will be heard in April, May, and July.

Moreover, Ms. Patton stated that the Legislative Analyst's report frequently cited the Commission's failure to eliminate the backlog as the main reason for time delays in the mandates process. She noted that all participating entities contribute to the delays by frequently requesting extensions of time to comment and seeking postponement of hearings. For example, she stated that in 2002, state agencies requested 107 extensions and claimants requested 30 extensions of time on one set of parameters and guidelines.

Ms. Patton stated that in 2004, Assemblyman Laird's Special Committee on State Mandates sponsored, and the Governor enacted, AB 2856 to allow the Commission to adopt a reasonable reimbursement methodology that places a greater emphasis on the use of formulas and unit costs or times to reimburse mandate claims. She explained that AB 2856 required two criteria to be met to adopt a reasonable reimbursement methodology; however, the criteria make it near impossible to adopt a methodology. She noted that prior to the criteria being required, the Commission had adopted unit cost methodologies for several programs.

Staff supports amending the criteria as proposed by the Legislative Analyst's Office. In the meantime, Ms. Patton noted that the Commission had initiated a rulemaking package to amend its regulations to further define the criteria so that methodologies can be adopted.

Ms. Patton introduced Tom Dithridge, Department of Finance, and Marianne O'Malley, Legislative Analyst's Office, who presented their proposals.

Mr. Dithridge stated that the Department of Finance's goal is to create a mandates process that is more timely so that local governments can know what will be reimbursed and the Legislature and Administration can know the cost. He explained that the worst thing for Finance in preparing the budget is having an unknown mounting liability and not be able to plan for the liability. Thus, he asserted that Finance has a great interest in trying to speed up and simplify the process.

Mr. Dithridge indicated that Finance proposed to eliminate the current statute that sets up the reasonable reimbursement methodology because it would be easier to eliminate the requirement and move forward with a new process. The proposed process would allow Finance to work with local government either prior to or immediately after enactment of a potential mandate, together deciding whether there is a reimbursable mandate at issue, and if so, the best approach to estimating a reasonable cost. Within about a year, the parties would take a proposal to the Legislature to decide whether to fund, modify, or repeal the mandate.

Mr. Dithridge noted that Finance would like to come up with a process that works for cities, counties, and special districts, and then take it to the education community to see if it works for them. If not, they would work to create a process that will work.

Because it can be so political at the legislative level, Member Worthley asked if Finance considered, instead of going to the Legislature, to come to the Commission for a stipulated judgment.

Mr. Dithridge responded that they intended to come back to the Commission with a reasonable reimbursement methodology that the Commission could endorse and adopt.

Ms. Higashi commented that the Department of Finance and some local agencies were working together now on some cost surveys that would be proposed as reasonable reimbursement methodologies for the Commission to consider.

Ms. O'Malley noted that the Legislative Analyst's Office respected the enormity of the work that the Commission faces. She acknowledged that the process is hampered by the Commission's other workload, as well as the delays caused by requests for extensions, but maintained that this would continue to occur. Therefore, a timelier process is necessary. She stated her other concerns that the claiming process is highly complicated and that there is little incentive for cost containment.

Ms. O'Malley stated the following goals of the Legislative Analyst's Office proposal:

1) to expedite the process; 2) to simplify the claiming process; and 3) to create a process that provides alternatives for local government. She noted that the proposal, which is incorporated into AB 1576, includes school districts. She outlined the proposal, as follows:

1. Amend the reasonable reimbursement methodology statute to require only one of the two existing criteria.
2. Create a clear process and timeline so that parameters and guidelines and statewide cost estimates can be developed through negotiations between local governments and the Department of Finance. This may save about a year from the current process.
3. Establish a "Fast-Track" process so that shortly after the Legislature enacts legislation, local governments and the Department of Finance can get together to determine the mandate, develop a reasonable reimbursement methodology, estimate the cost, and prepare a funding package for the Legislature's consideration. This process bypasses the Commission entirely and would be used for mandates where there is wide agreement.

Moreover, Ms. O'Malley noted that the intention of the Legislative Analyst's Office was to have a broad public policy discussion on the proposal and benefit from feedback from the Commission, state agencies, and local government.

Chairperson Genest requested clarification regarding the key differences between the two proposals, which was provided by Mr. Dithridge and Ms. O'Malley.

Chairperson Genest also asked about the impact of Proposition 1A. After an explanation by Ms. O'Malley, he indicated that he thought the proposals would work well in the context of mandates that are affected by Proposition 1A and urged the Commission to seriously consider whether or not to endorse the proposals.

Noting that the specifics were not that much different for the two proposals, Mr. Dithridge commented that they may soon come together and meld into one proposal.

Member Worthley stated his concern that the Legislature would not act and thought that an agreement reached by the parties would have a greater impact on the Legislature if it were supported by a quasi-judicial determination.

Given that the Commission must conduct public hearings on anything that comes before the Commission, Ms. O'Malley submitted that the "Fast-Track" process was proposed in the interest of time.

After further discussion, Ms. Higashi commented that the concept of legislatively-determined mandates is not new. She also pointed out that the Commission's statewide cost estimates are based on actual claims received by the State Controller's Office, and that the Commission itself does not have the power to initiate reasonable reimbursement methodologies. She was pleased by the change in the environment and culture about how mandates are approached, and the willingness of the Department of Finance to become more engaged in discussing unit costs and expediting the process.

Michael Johnston, on behalf of the Clovis Unified School District, expressed concern about the exclusion of school districts from the process. Even though mandate reform for school districts will be addressed at a later time, he asserted that they would not have the same type of input that local agencies will have in the process.

Edgar Manalo, on behalf of the San Jose Unified School District, also voiced the importance of including school districts in mandate reform discussions. He argued that any deviation from school district participation would result in an unsuccessful reform process.

Art Palkowitz, on behalf of the San Diego Unified School District, applauded the parties' efforts to move forward with this process. He stated that it was important to have an alternative process that gives the parties a way to try to resolve matters promptly when there is wide agreement on reimbursement.

Leonard Kaye, on behalf of the County of Los Angeles, commented that both the proposals had merit and should be discussed.

Allan Burdick, representing the California State Association of Counties, SB 90 Service, stated that local government was encouraged by most of the proposals. He commended the Commission's efforts, as well as the creation of the Mandates unit at the Department of Finance.

STAFF REPORTS

Item 13 Mandate Reform Legislation (info/action)

Nancy Patton, Assistant Executive Director, presented this item. She reviewed the current procedures for submitting bill analyses and Commission positions to the Governor's Office and provided an overview of, as well as staff's recommendation on, the following four bills pending that would affect the Commission and the mandate determination process:

1. AB 281 – Assembly Member Silva
2. AB 1222 – Assembly Member Laird
3. AB 1576 – Assembly Member Silva
4. AB 1170 – Assembly Member Krekorian

Ms. Patton noted that staff would provide analyses of AB 1576 and the Department of Finance proposal for the April hearing.

Item 14 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Ms. Shelton reported that the Department of Finance and the Integrated Waste Management Board filed a lawsuit against the Commission on State Mandates, the Santa Monica Community College District, and the Lake Tahoe Community College District on the *Integrated Waste Management* program. The case was filed in Sacramento County Superior Court.

Ms. Shelton also reported that two new decisions were issued. First, in *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, the Supreme Court denied the petition for review, leaving the Court of Appeal decision valid, which upholds the Commission's decision to deny those claims. Secondly, the Sacramento County Superior Court issued its ruling in the *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* case, finding that the revisions made by Assembly Bill 138 were unconstitutional.

Item 15 Executive Director's Report (info/action)
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi reported the following:

- *Personnel.* Kerry Ortman, Staff Services Analyst, was introduced.
- *Budget.* Budget hearings are focusing on mandate reform concepts and the Legislative Analyst's Office report. There has been one hearing in the Senate, but no action had been taken. Another hearing is scheduled in April, as well as one in the Assembly.
- *Upcoming Hearings.* After reviewing some of the future agenda items, Ms. Higashi offered claimants for the *Peace Office Instructor Training* test claim an opportunity to submit further briefing in light of today's testimony. The hearing on this matter would be rescheduled.

The County of San Bernardino withdrew its test claim on *Medically Indigent Adults*.

PUBLIC COMMENT

There was no public comment.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526 (action)

PERSONNEL

Report from Personnel Subcommittee and to confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

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, subdivision (e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
3. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, California Supreme Court, Case No. S149772, on appeal from Second District Court of Appeal; Second District Court of Appeal, Case Number B188169, on appeal from Los Angeles Superior Court Case No. BS092146, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*], consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS095456, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]
4. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]
5. *County of San Bernardino v. Commission on State Mandates, et al.*, Los Angeles County Superior Court, Case No. BS106052; San Bernardino County Superior Court, Case No. SCVSS 138622 [*Standardized Emergency Management Systems (SEMs)*]
6. *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*, Sacramento County Superior Court, Case No. 06CS01335; [AB 138; *Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II*]
7. *Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court, Case No. 07CS00079, CSM 06-L-02, [*Peace Officer Procedural Bill of Rights*]

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).)

Hearing no further comments, Chairperson Genest 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.

Ms. Higashi announced that the prehearing conference on the parameters and guidelines amendments for the *Graduation Requirements* program will convene immediately after the closed session.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Genest 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 Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, and with a motion by Member Chivaro and second by Member Olsen, Chairperson Genest adjourned the meeting at 11:37 a.m.


PAULA HIGASHI
Executive Director