

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447

Sacramento, California

July 29, 2010

Present: Member Cynthia Bryant, 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
Kirstin Kolpitzke for Member Cathleen Cox
Acting 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 Bryant called the meeting to order at 10:55 a.m. Executive Director Paula Higashi called the roll.

Chairperson Bryant reported that Senator Dave Cox, a former Commission member, passed away on July 13, 2010. Senator Cox was appointed to the Commission by Governor Wilson in 1997 and left the Commission when elected to the Assembly in 1998. Senator Cox, father of current Commission member Cathleen Cox, was a good friend to this Commission and to local government.

Chairperson Bryant stated that a public memorial will be held on August 5, 2010 at the Cathedral of the Blessed Sacrament and called for a moment of silence in honor of Senator Cox.

Chairperson Bryant made the light-hearted comment that Senator Cox would not have been pleased with today's hearing starting late.

Ms. Higashi added that Senator Cox was always early for meetings.

APPROVAL OF MINUTES

Item 1 May 27, 2010

The May 27, 2010 hearing minutes were adopted by a vote of 6-0. Member Olsen abstained.

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.

PROPOSED CONSENT CALENDAR

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

DISMISSAL OF WITHDRAWN TEST CLAIM

- Item 5* *Open Meetings Act II*, 06-TC-01
Government Code Sections 54954.2 and 54957.1
Statutes 2005, Chapter 72 (AB 138)
City of Newport Beach, Claimant

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

PROPOSED PARAMETERS AND GUIDELINES (GOV. CODE, § 17557)

- Item 6* *Student Records*, 02-TC-34
Education Code Sections 49069.3, 49069.5, 49076.5, 76234
Statutes 1989, Chapter 593 (SB 1546); Statutes 1993, Chapter 561 (AB 1531); Statutes 1998, Chapter 311 (SB 933); Statutes 2005, Chapter 67 (AB 2453);
Riverside Unified School District and Palomar Community College District, Co-Claimants
- Item 7* *Child Abuse and Neglect Reporting*, 01-TC-21
Penal Code Sections 11165.7, Subdivision (d) and 11174.3, Subdivision (a)
Statutes 1987, Chapters 640 (AB 285) and 1459 (SB 1219), Statutes 1991, Chapter 132 (AB 1133); Statutes 1992, Chapter 459 (SB 1695); Statutes 1998, Chapter 311 (SB 933); Statutes 2000, Chapters 916 (AB 1241); Statutes 2001, Chapters 133 (AB 102) and 754 (AB 1697)
San Bernardino Community College District, Claimant

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 8* *Crime Victim's Rights*, 09-PGA-04 (05-PGA-28, CSM-96-358-01)
Department of Finance, Requestor
Penal Code Section 679.02, Subdivision (a)(12)
Statutes 1995, Chapter 411 (SB 221)
- Item 9* *Consolidated Handicapped and Disabled Students*, 09-PGA-03, (04-RL-4282-10); *Handicapped and Disabled Students II* (02-TC-40/02-TC-49); and
Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services (97-TC-05)
Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (AB 3632)
Statutes 1985, Chapter 1274 (AB 882)
Statutes 1994, Chapter 1128 (AB 1892)
Statutes 1996, Chapter 654 (AB 2726)
California Code of Regulations, Title 2, Sections 60000-60610
(Emergency Regulations Effective January 1, 1986 [Register 86, No. 1], and Re-filed June 30, 1986, Designated Effective July 12, 1986 [Register 86, No. 28]; and Emergency Regulations Effective July 1, 1998 [Register

98, No. 26], Final Regulations Effective August 9, 1999
[Register 99, No. 33])
State Controller's Office, Requestor

Member Olsen made a motion to adopt items 5, 6, 7, 8, and 9 on the consent calendar. With a second by Member Glaab, the consent calendar was adopted by a vote of 7-0.

HEARING AND DECISION ON INCORRECT REDUCTION CLAIM, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, § 17551) (action)

Ms. Higashi swore in parties and witnesses participating in the hearing.

Item 3 *Investment Reports*, 02-9635802-I-47
Government Code Section 53646, Subdivisions (a), (b) and (e)
Statutes 1995, Chapter 783 (SB 564) As Amended by Statutes 1996,
Chapters 156 (SB 864) and 749 (SB 109)
(Fiscal Years 1995-1996 through 1998-1999)
City of Tustin, Claimant

Camille Shelton, Chief Legal Counsel, presented this item. Ms. Shelton stated that this incorrect reduction claim was filed by the City of Tustin on reimbursement claims for costs incurred in fiscal years 1995-96 through 1998-99 on the *Investment Reports* program.

The issues in dispute involved the State Controller's reduction of costs claimed following a desk audit of the salaries and benefits of county employees preparing and submitting the annual statement of investment policy, and the activities required to accumulate and compile data necessary to render the quarterly report of investments.

For the reasons stated in the analysis, staff concluded that the State Controller's Office incorrectly reduced the costs claimed by the City of Tustin. However, the reimbursement claims filed by the County for salaries and benefits include activities and costs that are not reimbursable.

Staff recommended that the Commission adopt the analysis and remand the reimbursement claims back to the State Controller's Office for further review and reinstatement of those costs that are eligible for reimbursement in accordance with the Commission's decision on this incorrect reduction claim.

Parties were represented as follows: Annette Chinn, Cost Recovery Systems; Alan Burdick, CSAC SB-90 Service and the California Cities SB-90 Service; Shawn Silva, State Controller's Office; and Carla Shelton, Department of Finance.

Annette Chinn, Cost Recovery Systems, stated that she had two concerns with the staff analysis.

Ms. Chinn stated that her first concern was the disallowance of the activity of entering, tracking, balancing, and auditing every investment transaction. Staff confused the wording "entering transactions" with "ascertaining whether every transaction is in compliance with their investment policy." Ms. Chinn offered expert witness Connie Jamison's report prepared for the Commission and then pointed out that the Commission has repeatedly relied upon the report. Ms. Chinn stated that the report missed the critical difference that the reimbursable activity is not the entering of every transaction, but reviewing whether every transaction is in compliance with the policy requirements.

Ms. Chinn continued that recording each investment transaction is exactly what is meant by the language "accumulating and compiling data." In their claims, the City requested an average of ten hours per month of staff time to compile quarterly reports, which worked out to be about

\$5000 per year for the cost of staff salaries and benefits. Ms. Chinn did not believe that to be an excessive amount. By disallowing the costs of entering all investment transactions, the report becomes a meaningless and potentially inaccurate document which was not the intent of the implementing legislation.

Ms. Chinn added that the denial of the use of subsidiary reports or ledgers, and all those activities pertaining to balancing ledgers, accumulating investment data and entering information for reviewing was a concern. The City of Tustin is a small city and uses an Excel spreadsheet to track investment reports. By disallowing “subsidiary ledgers,” the Commission is effectively denying their entire investment report. Therefore, the staff analysis should be modified to indicate that subsidiary ledgers are reimbursable.

Mr. Alan Burdick, CSAC SB-90 Service and California Cities SB-90 Service, thanked the Commission for recognizing Senator Dave Cox. Mr. Burdick concurred with the concerns voiced by Ms. Chinn.

Shawn Silva, State Controller’s Office, asserted that the State Controller was in support of the staff analysis. Mr. Silva reminded the Commission that there was more than one expert present and testifying during the hearings many years ago. Among them was Dr. Tootelian, an expert in business and accounting, whose opinion was that a treasurer, in operating his office, was obligated to do a certain minimum level of accounting, whether or not there was a reporting requirement in existence.

Mr. Silva stated that the question is not what they have to do now but, rather, what is beyond what they had to do before the law in question was enacted. The State Controller’s position then, and now, was that a treasurer cannot avoid entering transactions into ledgers to maintain the books because that would be beyond ordinary business care and prudence. He urged the Commission to adopt the staff analysis.

Carla Shelton, Department of Finance, added that Finance had no concerns with the staff recommendation.

Ms. Chinn stated that she did not believe that the position regarding disallowing the subsidiary ledger made logical sense because it would mean that some transactions would never get entered despite the potential of investment money coming in and out.

Mr. Burdick disagreed with the Controller’s position that the activity is a “good practice,” because you cannot stop doing it.

Ms. Chinn argued that the instructions in the mandate clearly say “accumulate and compile data necessary to complete your investment report,” which requires that all of the data be put into the investment report.

Ms. Shelton noted that the mandate required a quarterly report of investment transactions for investments that are held at the end of the quarter. The mandate did not require an implementation of their investment policies on a quarterly basis, unlike the 1984 statute that required a detailed monthly report. Furthermore, when the Commission adopted the original parameters and guidelines, it denied the original claimant’s request for reimbursement to prepare the subsidiary ledger of investments, and to input all transactions at various times. However, the subsidiary ledger could be used if it was necessary to gather information for the quarterly reports.

Ms. Shelton added that the Commission adopted clarifying parameters and guidelines in 2003 and clearly found that inputting every transaction during the quarter was not reimbursable, and that the only activity that is reimbursable is the one-time data entry of every investment that is held on the last day of the quarter into an investment reporting application or software. The

Commission already decided that those investments that are held at the end of the quarter are eligible for reimbursement for data entry. Those investments that are not held at the end of the quarter are not eligible for reimbursement and thus, this current recommendation is consistent with prior decisions on this program.

Member Glaab asked Ms. Chinn if the claimants must input every transaction so that there is accurate information. Ms. Chinn confirmed that that was correct. Member Glaab commented that the Commission's decisions on the matter so far seemingly meant that only some of the entries were eligible for reimbursement. Ms. Chinn confirmed that was also her understanding.

Ms. Shelton clarified that there are actually two separate activities. One activity is for purposes of reporting the type of investment and issuer, the date of maturity and the par dollar amount invested at the end of the quarter, and that reimbursement is allowed for the one-time data entry of those investments held at the end of the quarter. The second activity is to compile cash-flow information to provide a statement to the agency on the ability of the agency to meet their expenditures. Ms. Chinn argued that the ledger should be included under that activity because all investment transactions must be recorded to know how much cash is on hand. Ms. Shelton conceded that that was possible but it was not evident, based on the way the reimbursement claims were filed, what was being claimed.

Mr. Burdick stated that despite the amendment to the parameters and guidelines, the controlling parameters and guidelines should still be the original ones under which all of the claims were filed. He acknowledged that the Commission has historically taken the position that later parameters and guidelines supersede earlier parameters and guidelines, but he disagrees with that position.

Ms. Shelton stated that the intent of the 2003 amendment was to clarify what the original parameters and guidelines allowed as reimbursable. Under the law, every time a statute or regulation or any document which governs the Commission's parameters and guidelines are amended and that amendment is for purposes of clarification only, the subsequent amendments can apply to the original version.

Member Worthley added his understanding that if a claimant is entering every piece of data, then the Commission is saying that is not reimbursable; but if they have to enter the data for the final day of the quarter, then that would be reimbursable. Ms. Shelton said that would depend on what is going on in that particular jurisdiction and whether a transaction is acquired at the beginning of the month and held on to until the end, at which point they would get reimbursement for entering it into whatever software or spreadsheet that they use, or if it was acquired and not held until the end of the quarter, then they would not get reimbursement.

Member Worthley observed that refusing to reimburse claimants for all data entry pertaining to investments would seemingly create more work and more of a financial burden on claimants than to just allow all data recording activities especially since the claimants are not asserting high costs for the data entry function.

Ms. Shelton responded that the issue was a jurisdictional issue and that the Commission determined the activity that is reimbursable is the one-time data entry of any investment that is held on the last day of the quarter.

Member Glaab commented that if the language of the parameters and guidelines needs to be fine tuned to clarify the Commission's intent, then that should be entertained. He also commented that the entry of all information should be encouraged because transparency in government work, especially as it pertains to investments, is very important.

Member Glaab noted that the reductions listed in the staff report were significant and asked Ms. Chinn if the original amounts claimed were justified. Ms. Chinn clarified that she is only contesting \$5,000 of the reduction, which was the amount claimed for the data entry activity.

Mr. Burdick observed that the law in question had been repealed so these are the only claims and they date back to 1998-1999. He stated the locals were in initial agreement with the expert for the State Controller and the points relative to subsidiary ledgers and the entering of transactions were minor, but now it seems those were changed by the clarifying amendments. He also pointed out that the total amount being claimed by all 18 counties, with the exception of Los Angeles County, is less than \$40,000.

Chairperson Bryant stated that, although she appreciates Mr. Burdick's comments regarding the amount of the claims, she believes that the issue is a precedential Commission decision that clearly states the reimbursable activity is "the one-time data entry in the investment reporting system for investments held on the last day of each quarter."

Ms. Higashi added that the clarifying amendments described what activities were not reimbursable based on what was in the decision, what was not in the decision, and what was not claimed in the original test claim filing.

Chairperson Bryant asked if the 2003 amendments were clarifying and if they were not, could they be revisited here. Ms. Shelton responded that the Commission did not have jurisdiction to revisit the parameters and guideline, and there was no evidence to suggest that the parameters and guidelines were not clarifying.

Ms. Shelton cited Exhibit N. The Task Force on Local and State Investment Practices, that was created by the Governor, put forth the idea that requiring an annual policy investment and a quarterly report to tell the board what the state of the investments were at the end of the quarter would put the board on notice. It also clearly provided that they were not mandating the implementation of the investments, or the treasurer's role of the investment policies. The inputting of every transaction and auditing are likely activities in every local investment policy; however those activities are not reimbursable. What is reimbursable is just enough to get the report before the board.

Member Glaab asked if the item before the Commission includes only the City of Tustin and not the County of Los Angeles or any other counties. Ms. Shelton confirmed that it is currently only the City of Tustin at issue, and that Los Angeles County's claim was already decided and that decision was consistent on this point.

With a motion by Member Chivaro and a second by Member Lujano, the staff recommendation was adopted by a vote of 5-2 with Member Glaab and Member Worthley voting no.

Item 4 Proposed Statement of Decision: *Investment Reports*, 02-9635802-I-47
[See Item 3 above.]

Ms. Shelton presented this item and stated that staff recommends that the Commission adopt the proposed Statement of Decision.

Member Chivaro made a motion to adopt the proposed Statement of Decision. Member Lujano, seconded the motion and the Statement of Decision was adopted by a vote of 5-2, with Member Glaab and Member Worthley voting no.

- Item 11 Update on Implementation of Recommendations from Bureau of State Audits October 15, 2009 Report 2009-501
State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and Controlling Costs and Liabilities

Ms. Patton reported that the Commission will be submitting a budget change proposal to the Department of Finance in September.

- Item 12 Legislative Update

Ms. Patton reported that AB 2082 was held in committee but that it could end up in a budget trailer bill. Ms. Patton will update the Commission if anything becomes of the bill.

- Item 13 Trailer Bill Language and Working Group Proposal: Mandate Redetermination Process

Ms. Higashi reported that Commission staff continues to work with the Legislature, state agencies and local governments on the proposed Mandate Redetermination Process. She noted that this was also a recommendation of the Bureau of State Audits.

STAFF REPORTS

- Item 14 Chief Legal Counsel's Report (info)

Ms. Shelton reported that there are three new filings against the Commission.

The first, which was filed and served before the Agenda was issued was the *County of Santa Clara vs. the Commission on State Mandates and State Controller's Office*. That case deals with an incorrect reduction claim on the *Handicapped and Disabled Students* Program.

The next two claims were filed last week. The first is the *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et. al.* That case deals with the water board permit that was issued by the Los Angeles Regional Water Board and the Commission's adoption and approval of that program.

The third case is very similar and deals with the San Diego water permit and the decision made on that for the County of San Diego and the cities of San Diego in that case. Both cases are pending in Sacramento Superior Court.

The other case of interest to note is the Clovis case (*Clovis Unified School District et. al. v. State Controller*), which is dealing with a challenge to the Controller's reduction based on contemporaneous source documents. That case is set to be heard on August 17, 2010, before the Third District Court of Appeal.

- Item 15 Executive Director's Report (info)

Pending Workload

Ms. Higashi pointed out that both test claim and incorrect reduction claim filings have increased.

Budget

Ms. Higashi reported that there is nothing new with the budget. AB 3632 is an outstanding mandate issue concerning the *Handicapped and Disabled Students* Program. Ms. Higashi also pointed out that the LAO proposal concerning the *Open Meetings Act* and *Brown Act Reform* was adopted by the conference committee and that that statute will be redrafted to eliminate the state mandate and, instead, tie it into implementation of an initiative (Proposition 59).

Ms. Higashi noted that the changes would be substantial in terms of the dollar amount previously budgeted for the *Open Meetings Act*.

New Practices

Ms. Higashi reported that the Commission continues to move toward more electronic record keeping including an increased use of PDF documents with the ultimate goal of an upswing in e-filing and e-distribution of documents. This new practice will be implemented when the proposed regulatory package is adopted.

Meeting Dates

After discussion, the Commission agreed on the following 2010 meeting/hearing dates: September 30, October 28 (tentative), and December 2.

Future Agenda Items

Ms. Higashi reported that the Commission is currently working on several complex and difficult claims and that the Commissioners should keep all of the currently scheduled meetings on the calendar.

Member Worthley pointed out that when the Commission mails out the hearing items in binders, they have to be sent in boxes. Member Worthley asked for the items to be sent without the binders thus saving the Commission money in postage. Ms. Higashi agreed to send only documents for the next hearing.

Member Glaab explained that his late arrival was due to mechanical problems on his airplane.

PUBLIC COMMENT

Alan Burdick commented on his interest in having the Commission staff discuss the potential ramifications of the proposal to suspend the *Mandate Reimbursement Process* program and the legal ramifications if that were to occur.

Ms. Shelton pointed out that when the Legislature suspends a program, it becomes voluntary for that fiscal year. The Commission has no authority to issue a decision on the validity of the suspension; it becomes a constitutional issue that must go before the court.

Ms. Higashi said that if the *Mandate Reimbursement Process* program is suspended, items could be scheduled for hearing but staff at the local level may not have the budget to respond, file comments, or appear at a hearing. In those circumstances, postponements or extensions of time for filing comments could be granted based on good cause.

Next Mr. Burdick raised two additional concerns regarding the potential suspension of the *Mandate Reimbursement Process* program. The first was what will happen to the existing workload and claims before the Commission, and the second was what the rights of the local agencies would be after the suspension.

Ms. Shelton reiterated that if the *Mandate Reimbursement Process* program is suspended in the budget, the Commission would no longer have jurisdiction to review the program unless a party wants to amend the parameters and guidelines or a claimant files an incorrect reduction claim.

Ms. Higashi reminded Mr. Burdick and the Commission that if the mandate is suspended, the reimbursable activities are suspended so then it becomes a question of duty and whether there is still a duty to perform the activity.

Chairperson Bryant requested an update on mandate suspensions at the next meeting and acknowledged that we may not be able to weigh in on the legal issues.

ADJOURNMENT

Hearing no further business, Chairperson Bryant adjourned the meeting at 12:35 p.m.

A handwritten signature in cursive script, appearing to read "Paula Higashi".

PAULA HIGASHI
Executive Director