

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
July 26, 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 John Fillmore
Representative of the 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 9:39 a.m. Executive Director Paula Higashi noted that Member Glaab was unable to attend today’s hearing.

APPROVAL OF MINUTES

Item 1 May 31, 2007

Member Worthley made a motion to adopt the May 31, 2007 hearing minutes. With a second by Member Chivaro, the motion carried 6-0.

PROPOSED CONSENT CALENDAR (Item 2)

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

DISMISSAL OF WITHDRAWN TEST CLAIM

Item 4 *In-Home Support Services*, CSM 4314
Welfare and Institutions Code Sections 12301, 12302, and 12306;
Statutes 1981, Chapter 69 (Senate Bill 633); and
Department of Social Services Manual Letter No. 81-30 (Dated
July 19, 1981) and Attached Interim Instruction notice dated
January 19, 1982
County of San Bernardino, Claimant

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

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 10 Correction of Parameters and Guidelines Amendment
Law Enforcement Agency Notifications, CSM-4505
Education Code Section 48902, Subdivision (c)
Chapter 1117, Statutes of 1989 (SB 1275)

B. PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS

- Item 11 Adoption of Proposed Regulatory Action - 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 Olsen made a motion to adopt items 4, 10, and 11 on the consent calendar. With a second by Member Chivaro, 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

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)**

Ms. Higashi swore in the parties and witnesses participating in the hearing of the test claim items.

TEST CLAIMS

- Item 5 *Domestic Violence Background Checks*, 01-TC-29
Family Code Sections 6300 and 6306, Welfare and Institutions Code
Section 213.5, Penal Code Section 273.75
Statutes 2001, Chapter 572 (SB 66); Statutes 2001, Chapter 713
(AB 1129)
County of Alameda, Claimant

Eric Feller, Senior Commission Counsel presented this item. Mr. Feller stated that this test claim alleges reimbursable state-mandated activities for courts, district attorneys, and prosecuting city attorneys to perform database searches on the backgrounds of persons who are charged with domestic violence or when considering domestic violence restraining orders. Staff finds that the test claim legislation imposes a reimbursable state mandate for specific activities upon any charge involving acts of domestic violence for the following activities:

1. Perform or caused to be performed, in specified electronic databases, a thorough investigation of the defendant's history, including, but not limited to, prior convictions for domestic violence, other forms of violence, or weapons offenses and any current protective or restraining order issued by any civil or criminal court.
2. Present the information for consideration by the court when setting bond, when releasing a defendant into his or own recognizance, and upon any consideration of a plea agreement.
3. Under specified conditions, send to another court, relevant information regarding orders issued when a protective or restraining order is issued by another criminal court involving the same or related parties.

Parties were represented as follows: Juliana Gmur representing the County of Alameda, Allan Burdick representing the CSAC SB 90 Service, and Carla Castaneda and Susan Geanacou with Department of Finance.

Ms. Gmur and Mr. Burdick concurred with the staff analysis and urged the Commission to support it. Ms. Castaneda also concurred with the staff analysis.

Member Worthley made a motion to adopt the staff recommendation to partially approve the test claim, which was seconded by Member Chivaro. The motion carried by a vote of 6-0.

Item 6 Proposed Statement of Decision
 Domestic Violence Background Checks, 01-TC-29
 See Item 5

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 *Domestic Violence Background Checks* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision. Mr. Feller noted that minor changes, including those that reflect the hearing testimony and vote count, will be included in the final Statement of Decision.

Member Lujano made a motion to adopt the staff recommendation, which was seconded by Member Worthley. The motion carried by a vote of 6-0.

Item 7 *Adult Education Enrollment Reporting, 02-TC-37*
 Statutes 1999, Chapter 50 (SB 160), line items 6110-156-0001 and 6110-156-0890; Statutes 2000, Chapter 52 (AB 1740), line items 6110-156-0001 and 6110-156-0890; Statutes 2001, Chapter 106 (SB 739), line items 6110-156-0001 and 6110-156-0890; Statutes 2002, Chapter 379 (AB 425), line items 6110-156-0001 and 6110-156-0890
 Letters from California Department of Education (Dated July 6, 1999; April 24, 2000; and August 1, 2002)
 Berkeley and Sacramento Unified School Districts, Claimants

Kenny Louie, Commission Counsel presented this item. Mr. Louie stated that the test claim addresses statutes and executive orders that require K-12 school districts, which provide state and federally funded adult education programs, to collect and report certain adult education data to the Department of Education, and to implement TOPSpro, a data and accountability system used to collect and report this data. Mr. Louie explained that except for adult English and citizenship classes, the provision of adult education by K-12 school districts is discretionary. As a result, the

test claim statutes and executive order establish requirements that flow from the discretionary decision to provide adult education. And, prior to enactment of the test claim statutes, school districts were required to collect and report adult education data. In addition, school districts have available state funds to pay for the adult education program expenses. Therefore, staff recommends the Commission deny this test claim because it does not constitute a reimbursable state mandate within the meaning of article XIII B, section 6 of the California Constitution.

The parties were represented as follows, David Scribner, Scribner Consulting, Inc., representing Berkeley Unified School District; and Russell Edwards and Donna Ferebee representing the Department of Finance. Mr. Scribner stated that he will stand on his pleadings and has no further comment. Ms. Ferebee stated that Department of Finance concurs with the staff analysis.

Member Worthley commented that while he concurs with the ultimate conclusion, he disagrees with one portion of the staff analysis regarding applying the *Kern* case to this test claim and considering it a discretionary act on the part of school districts to provide adult education.

Member Lujano made a motion to adopt the staff recommendation to deny the test claim. With a second by Member Chivaro, the motion carried unanimously.

Item 8 Proposed Statement of Decision
Adult Education Enrollment Reporting, 02-TC-37
See Item 7

Mr. Louie also presented this item, stating that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the *Adult Education Enrollment Reporting* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision. Mr. Louie noted that minor changes, including those that reflect the hearing testimony and vote count, will be included in the final Statement of Decision.

Member Olsen made a motion to adopt the staff recommendation, which was seconded by Member Lujano. The motion carried by a vote of 6-0.

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

Item 9 *In Home Supportive Services II, 00-TC-23*
Government Code Section 16262.5; Welfare and Institutions Code Sections 12301.3, 12301.4, 12301.6, 12301.8, 12302.25, 12302.7, 12303.4, 12306.1, 14132.95, 17600 and 17600.110
Statutes 1999, Chapters 90 (AB 1682) and 91 (SB 710); Statutes 2000, Chapter 445 (SB 288)
County of San Bernardino, Claimant
Department of Social Services, Requestor

Katherine Tokarski, Commission Counsel, presented this item. Ms. Tokarski stated that the Department of Social Services requested reconsideration of the *In-Home Supportive Services (IHSS) II* Statement of Decision. Ms. Tokarski explained that the Commission decided this claim on April 16, 2007, partially approving the claim for county administrative activities necessary to establish an employer of record for IHSS care providers, and denying the claim for the cost of increased provider wages, benefits, and collective bargaining. The Commission may grant this request for reconsideration by a supermajority of five votes. At this hearing, the sole issue before the Commission is whether it will exercise its discretion to grant the request for reconsideration.

If the Commission does decide to reconsider, it will conduct a subsequent hearing on the merits of the request.

Department of Social Services requested that the Commission amend a portion of its decision to add cost-limiting language so that counties would only use the least-costly method of complying with the mandate. Ms. Tokarski stated that the legislation that required the counties to establish an employer of record did not require that the counties make their choice based on the least costly method, nor does any other statute require that the choice be made on the basis of cost alone. Social Services also requested that time-limiting language be added to another activity. Ms. Tokarski explained that the law requiring that activity has no statutory end date and remains valid law. Therefore staff recommended that the Commission deny the request for reconsideration, finding that the requestor has raised no errors of law that merit reconsideration.

Parties were represented as follows: Allan Burdick, representing the CSAC SB 90 Service, Jeanlaurie Ainsworth with Department of Social Services; and Susan Geanacou and Carla Castaneda with Department of Finance.

Ms. Ainsworth reiterated their request that the Statement of Decision be revised to require counties to use the least-costly method when implementing the mandate. Mr. Burdick asserted that the request is without merit and should be rejected by the Commission. Ms. Castaneda stated that Department of Finance defers to Department of Social Services, indicating that their request may have merit, and if the Commission decides to deny Social Services' request, Finance will pursue the issue of using the least costly method at the parameters and guidelines phase.

Member Worthley moved adoption of the staff recommendation. With a second by Member Lujano, the motion carried by a vote of 6-0.

STAFF REPORTS

Item 12 Updates and Positions on Pending Mandate Reform Legislation (AB 1222)

Nancy Patton, Assistant Executive Director, presented this item. She reported that further clarifying amendments to the legislatively determined mandate section were drafted to address concerns raised by the Education Coalition. The latest amendments were submitted to Legislative Counsel for completion by August 1, 2007. She noted that the bill is set for hearing in Senate Appropriations Committee on August 20, 2007.

Chairperson Genest asked the Commission's legislative subcommittee about their position on AB 1222 or any other legislation. Member Lujano responded that the subcommittee agrees with staff, and noted that he attended several working group meetings, which were conducted in an efficient and cooperative manner.

Item 13 Chief Legal Counsel's Report (info) Recent Decisions, Litigation Calendar

Camille Shelton, Chief Legal Counsel, discussed the *County of Los Angeles* case dealing with four test claims filed by the County of Los Angeles and cities within the County on permits that were issued by the Regional Water Quality Control Board. The Commission returned those test claims because Government Code section 17516 prohibited the Commission from accepting claims on permits issued by a Regional Water Quality Control Board. Ms. Shelton explained that the court of appeal found that Government Code section 17516 was unconstitutional, issued a writ directing the Commission to set aside the orders that return those test claims, and to hear

the test claims on the merits. Therefore, the September agenda will have an item to set aside the orders to return the claims.

Ms. Shelton also introduced the Commission's summer law clerk: Ben Himas from McGeorge Law School.

Item 14 Executive Director
Workload, Budget, and Next Hearing

Ms. Higashi discussed workload data for the last fiscal year, noting that the Commission completed 30 test claims, one reconsideration, five parameters and guidelines, 19 parameters and guidelines amendments, seven statewide cost estimates, and two rulemaking packages. She stated that the remaining workload includes 70 pending test claims and 118 incorrect reduction claims (IRCs). She also noted that shortly she will be presenting an ambitious work plan for the next fiscal year, assuming that all positions are filled and a significant amount of new litigation is not filed.

Ms. Higashi also noted that her report contains an overview of budget trailer bill issues that affect mandates and mandate reimbursement which are contained in SB 86, including repeal of outdated language regarding local government claims bills. Finally, she stated that the tentative agendas for the September and December hearings include a variety of test claims with an emphasis on worker's compensation issues.

Chairperson Genest asked for more details on IRCs and the pending IRC workload.

Ms. Higashi and Member Chivaro explained that when the State Controller's Office audits reimbursement claims and reduces the amount claimed and the claimant disagrees, the claimant may file an IRC with the Commission alleging that the reduction was incorrect.

Member Olsen asked for clarification on September and October hearing dates. Ms. Higashi clarified that the September hearing is on September 27, and there is no October hearing.

PUBLIC COMMENT

There was no public comment.

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

A. PERSONNEL

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

B. 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):

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. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal; Case Number B183981, CSM Case No. 04-L-03,

(Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]

4. *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)*]
5. *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. Stat 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]*
6. *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*]
7. *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, CSM 06-L-03 [*Integrated Waste Management*]
8. *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, CSM 06-04 [*Emergency Procedures: Earthquake Procedures and Disasters*]

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.

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, on personnel matters and the pending litigation listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, Chairperson Genest adjourned the meeting at 10:12 a.m.


PAULA HIGASHI
Executive Director