

Minutes

COMMISSION ON STATE MANDATES

Department of Finance, Redwood Room
Sacramento, California
May 26, 2011

Present: Member Pedro Reyes, Chairperson
Representative of the Director of the Department of Finance
Member Richard Chivaro, Vice Chairperson
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Ken Alex
Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Sarah Olsen
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Reyes called the meeting to order at 9:30 a.m. Executive Director Drew Bohan called the roll. Member Glaab was absent.

NOTE: The Chairman chose to take items out of order, so the following reflects the order of the items as they were heard by the Commission. The complete transcript of this Commission meeting is attached.

APPROVAL OF MINUTES

Item 2 March 24, 2011

With a motion for approval by Member Olsen and a second by Member Chivaro, the March 24, 2011 hearing minutes were adopted by a vote of 6-0.

CONSENT CALENDAR

HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND GUIDELINES, AND INCORRECT REDUCTION CLAIMS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

PARAMETERS AND GUIDELINES AND STATEMENT OF DECISION

Item 9* *Mandate Reimbursement II*
05-TC-05
Government Code Section 17553(b)(1)(C) through
(G) and (b)(2)
Statutes 2004, Chapter 890 (AB 2856)
California Code of Regulations, Title 2, Sections 1183(d)
(Register 2005, No. 36, Effective September 6, 2005)
City of Newport Beach, Claimant

And

Proposed Consolidated Parameters And Guidelines
Statutes 1975, Chapter 486, Statutes 1984, Chapter 1459

Statutes 1995, Chapter 303 (Budget Act of 1995), Statutes 1996, Chapter 162 (Budget Act of 1996), Statutes 1997, Chapter 282 (Budget Act of 1997), Statutes 1998, Chapter 324 (Budget Act of 1998), Statutes 1999, Chapter 50 (Budget Act of 1999), Statutes 2000, Chapter 52 (Budget Act of 2000), Statutes 2001, Chapter 106 (Budget Act of 2001), Statutes 2002, Chapter 379 (Budget Act of 2002), Statutes 2003, Chapter 157 (Budget Act of 2003), Statutes 2004, Chapter 208 (Budget Act of 2004), Statutes 2005, Chapter 38 (Budget Act of 2005) Statutes 2006, Chapter 47 (Budget Act of 2006), Statutes 2007, Chapter 171 (Budget Act of 2007), Statutes 2008, Chapter 268 (Budget Act of 2008), Statutes 2009, Chapter 1, Third Extraordinary Session (Budget Act of 2009), Statutes 2010, Chapter 712 (Budget Act of 2010)

Government Code Section 17553(b)(1)(C) through (G) and (b)(2)
Statutes 2004, Chapter 890 (AB 2856)
California Code of Regulations, Title 2, Sections 1183(d)
(Register 2005, No. 36, Effective September 6, 2005)

Mandate Reimbursement Process I and II
CSM-4204, 4485, and 05-TC-05

City of Newport Beach, Claimant

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

A. PROPOSED STATEWIDE COST ESTIMATES

Item *Prevailing Wage Rate*
12* 01-TC-28

Labor Code Section 1776
Statutes 1978, Chapter 1249 (AB 3174)
California Code of Regulations, Title 8, Sections 16400,
Subdivisions (c), and (d), 16403, Subdivision (a), and 16408,
Subdivision (b)

Grossmont Union High School District, Claimant

Item *Academic Performance Index*
13* 01-TC-22

Education Code Section 52056, Subdivision (c)
Statutes 1999, 1st Extraordinary Session, Chapter 3
Statutes 2000, Chapter 695 (SB 1552);

San Juan Unified School District, Claimant

Item *Student Records*
14* 02-TC-34

Statutes 1989, Chapter 593 (SB 1546), Statutes 1993, Chapter 561
(AB 1539), Statutes 1998, Chapter 311 (SB 933), Statutes 2000, Chapter 67
(AB 2453)

Riverside Unified School District and Palomar Community College District,
Co-Claimants

Member Worthley made a motion to adopt items 9, 12, 13, and 14 on the consent calendar. With a second by Member Olsen, the consent calendar was adopted by a vote of 6-0.

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.

HEARING AND DECISIONS ON TEST CLAIMS, PARAMETERS AND GUIDELINES, INCORRECT REDUCTION CLAIMS, AND STATEMENTS OF DECISION, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)

Drew Bohan, Executive Director, swore in parties and witnesses participating in the hearing.

C. **INCORRECT REDUCTION CLAIM**

Item 10 *Handicapped and Disabled Students*
09-4282-I-05
Fiscal Years 2003-2004, 2004-2005, and 2005-2006
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 (AB2726)
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])

Santa Clara County, Claimant

This is an incorrect reduction claim filed by the County of Santa Clara regarding reductions made by the State Controller's Office to reimbursement claims for costs incurred in fiscal years 2003-2004 through 2005-2006, in the approximate amount of \$8.6 million to provide outpatient mental health rehabilitation services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.

The *Handicapped and Disabled Students* program was enacted by the Legislature to implement federal special education law (Individuals with Disabilities Education Act, or IDEA) that requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The program shifted to counties the responsibility and funding to provide mental health services required by a pupil's individualized education plan (IEP).

Chief Legal Counsel Camille Shelton presented this item.

Parties were represented as follows: Greta S. Hansen and Juniper Downs, representing claimant Santa Clara County; Chris Ryan and Shawn Silva, representing State Controller's Office.

With a motion by Member Olsen to adopt the staff recommendation, and a second by Member Worthley, the staff recommendation to approve the incorrect reduction claim was adopted by a vote of 5-1, with Member Chivaro voting no.

Item 11 Proposed Statement of Decision: *Handicapped and Disabled Students*
09-4282-I-05

[See Item 10 above.]

Member Olsen made a motion to adopt the proposed statement of decision. With a second by Member Worthley, the statement of decision was adopted by a vote of 5-1, with Member Chivaro voting no.

A. TEST CLAIMS

Item 3 *Minimum Conditions for State Aid*
02-TC-25 and 02-TC-31

Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7

Statutes 1975, Chapter 802 (SB 1213); Statutes 1976, Chapters 275 (AB 77), 783 (AB 4044), 1010 (AB 3100), and 1176 (AB 3595)
Statutes 1977, Chapters 36 (AB 447) and 967 (AB 799); Statutes 1979, Chapters 797 (AB 1549) and 977 (SB 15); Statutes 1980, Chapter 910 (AB 1171); Statutes 1981, Chapters 470 (AB 1726) and 891 (SB 936);

Statutes 1982, Chapters 1117 (AB 3133) and 1329 (AB 3424); Statutes 1983, Chapters 143 (AB 1949) and 537 (SB 73); Statutes 1984, Chapter 1371 (SB 2252); Statutes 1986, Chapter 1467 (AB 3); Statutes 1988, Chapters 973 (AB 1725) and 1514 (AB 3653); Statutes 1990, Chapters 1372 (SB 1854) and 1667 (SB 1033); Statutes 1991, Chapters 1038 (SB 9), 1188 (SB 121), and 1198 (AB 617); Statutes 1995, Chapters 493 (SB 450) and 758 (AB 446); Statutes 1998, Chapter 365 (AB 2214), 914 (AB 499), and 1023 (AB 2329); Statutes 1999, Chapter 587 (AB 537); Statutes 2000, Chapter 187 (AB 1918); and Statutes 2002, Chapter 1169 (SB 2028)

California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410

Register 71, Number 27; Register 76, Number 10; Register 77, Number 45; Register 78, Number 51; Register 81, Number 52; Register 82, Number 31; Register 83, Number 18; Register 83, Number 29; Register 83, Number 53; Register 84, Number 26; Register 85, Number 20;

Register 88, Number 20; Register 88, Number 42; Register 90, Number 37; Register 90, Number 49; Register 91, Number 23; Register 91, Number 45; Register 91, Number 46; Register 92, Number 4; Register 92, Number 7; Register 92, Number 15; Register 92, Number 17; Register 92, Number 34; Register 93, Number 25; Register 93, Number 42; Register 94, Number 18; Register 94, Number 38; Register 98, Number 7; Register 98, Number 14; Register 2000, Number 26; Register 2000, Number 50; Register 2001, Number 43; Register 2002, Number 8; Register 2002, Number 26; and Register 2003, Number 18. Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); "Program and Course Approval Handbook" Chancellor's Office California Community Colleges (September 2001)

Los Rios Community College District, Santa Monica Community College District, and West Kern Community College District, Co-Claimants

This consolidated test claim addresses Education Code sections, title 5 regulations, and an executive order that prescribe standards for the formation and basic operation of the California Community Colleges, and set forth minimum conditions, satisfaction of which entitles community college districts to receive state aid.

These conditions and standards cover various areas of operation and formation of community colleges including, but not limited to, the following: (1) standards of scholarship; (2) degrees and certificates; (3) open courses; (4) comprehensive or master plans for academics and facilities; (5) student fees; (6) approval of new colleges and educational centers; (7) accreditation; (8) counseling programs; and (9) investigation and enforcement of the minimum conditions by the Chancellor and the Board of Governors.

In addition, the test claim addresses regulations which provide that community college districts adopt policies or provide students with information or notices regarding: (1) student directory information; (2) student representation fees; (3) the provision of course materials; and (4) possible consequences of failing to pay a proper financial obligation due to the district or college.

Kenny Louie, Commission counsel, presented this item.

Parties were represented as follows: Keith Petersen, SixTen and Associates, representing claimants; and Susan Geanacou, Department of Finance.

With a motion by Member Chivaro to adopt the staff recommendation, and a second by Member Olsen, the staff recommendation to partially approve the test claim was adopted by a vote of 6-0.

Item 4 Proposed Statement of Decision: *Minimum Conditions for State Aid*
02-TC-25 and 02-TC-31
[See Item 3 above.]

Member Chivaro 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 6-0.

Item 5 *California Public Records Act*
02-TC-10 and 02-TC-51
Government Code Sections 6252, 6253, 6253.1, 6253.5, 6253.9, 6254.3, 6255, and 6259
Statutes 1975, Chapters 678 (SB 736) and 1246 (AB 23); Statutes 1977, Chapter 556 (AB 1710); Statutes 1980, Chapter 535 (AB 2328); Statutes

1982, Chapter 163 (AB 2295); Statutes 1984, Chapters 802 (SB 2222) and 1657 (AB 3100); Statutes 1985, Chapter 1053 (SB 16); Statutes 1990, Chapter 908 (SB 2272); Statutes 1992, Chapters 463 (AB 1040) and 970 (SB 1260); Statutes 1993, Chapter 926 (AB 2205); Statutes 1994, Chapter 923 (SB 1546); Statutes 1998, Chapter 620 (SB 143); Statutes 1999, Chapter 83 (SB 966); Statutes 2000, Chapter 982 (AB 2799); Statutes 2001, Chapter 355 (AB 1014); and Statutes 2002, Chapters 945 (AB 1962) and 1073 (AB 2937)
Riverside Unified School District and Los Angeles County,
Co-Claimants

This consolidated test claim addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides for the disclosure of public records kept by state and local agencies, kindergarten through 12th grade school districts and community college districts (K-14 districts), and county offices of education. These activities include: (1) providing copies of public records with portions exempted from disclosure redacted; (2) notifying a person making a public records request whether the requested records are disclosable; (3) assisting members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) making disclosable public records in electronic formats available in electronic formats; and (5) removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee.

In 2004, California voters approved Proposition 59, to incorporate the right of public access to information contained in the CPRA and other open meetings and public records laws, into the California Constitution.

Kenny Louie, Commission counsel, presented this item.

Parties were represented as follows: Keith Petersen, SixTen and Associates, representing claimant Riverside Unified School District; Leonard Kaye, Los Angeles County, representing claimant Los Angeles County; and Donna Ferebee, Department of Finance.

With a motion by Member Lujano to adopt the staff recommendation, and a second by Member Olsen, the staff recommendation to partially approve the test claim was adopted by a vote of 6-0.

Item 6 Proposed Statement of Decision: *California Public Records Act*
02-TC-10 and 02-TC-51
[See Item 5 above.]

With a motion by Member Lujano to adopt the proposed statement of decision, and a second by Member Olsen, the statement of decision was adopted by a vote of 6-0.

Item 7 *School Bus Safety III*
03-TC-01
Education Code Sections 39831.5 [Former Section 38048], 38047.5, 38047.6; Vehicle Code Sections 22112, 22454, 27316, 27316.5
Statutes 1999, Chapter 647 (AB 1573); Statutes 1999, Chapter 648 (AB 15); Statutes 2001, Chapter 581 (SB 568); Statutes 2002, Chapter 360 (AB 2681); Statutes 2002, Chapter 397 (SB 1685)
San Diego Unified School District, Claimant

This test claim addresses statutes that impose activities on school districts, including giving

school bus safety instructions to pupils, informing parents of school bus safety procedures, requiring specific duties of school bus drivers, and having pelvic and upper torso passenger restraint systems in school buses and school pupil activity buses.

Prior to this test claim the Commission on State Mandates (Commission) heard the *School Bus Safety II* (97-TC-22) test claim, which addresses prior versions of some of the statutes pled in the current test claim. The Commission found that the test claim legislation imposed reimbursable state-mandated activities, including instructing all prekindergarten and kindergarten pupils in school bus emergency procedures and passenger safety, and informing district administrators, school site personnel, transportation services staff, school bus drivers, contract carriers, students, and parents of the new Vehicle Code requirements relating to the use of the flashing red signal lamps and stop signal arms.

However, in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), the Department of Finance requested a writ directing the Commission to set aside its decision and to issue a new decision denying the test claim. The court granted Finance's petition, and by doing so agreed that the *School Bus Safety II* test claim was not a reimbursable state-mandated program to the extent that the underlying school bus transportation services were discretionary. The court ordered the Commission to set aside the prior statement of decision and to vacate the parameters and guidelines and statewide cost estimate issued with respect to the *School Bus Safety II* test claim, but left one issue for remand: The Commission must reconsider the limited issue of whether the federal Individuals with Disabilities Education Act (IDEA) or any other federal law requires school districts to transport any students and, if so, whether the *School Bus Safety II* test claim statutes mandate a higher level of service or new program beyond federal requirements for which there are reimbursable state-mandated costs.

On remand, the Commission found that although federal law may require *transportation of* disabled children under certain circumstances, the law does not require school districts to provide a *school bus* transportation program. As a result, the *School Bus Safety II* test claim statutes do not impose a new program or higher level of service beyond federal requirements for which there are reimbursable state-mandated costs.

Kenny Louie, Commission counsel, presented this item.

Parties were represented as follows: Art Palkowitz, of Stutz, Artiano, Shinoff, and Holtz, representing claimant San Diego Unified School District; and Donna Ferebee, Department of Finance.

With a motion by Member Chivaro to adopt the staff recommendation, and a second by Member Olsen, the staff recommendation to deny the test claim was adopted by a vote of 5-1, with Member Worthley voting no.

Item 8 Proposed Statement of Decision: *School Bus Safety III*
03-TC-01
[See Item 7 above.]

Member Chivaro 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 5-1, with Member Worthley voting no.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)

- Item 15 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

Note: This item will only be taken up if an application is filed.

No applications were filed.

STAFF REPORTS

- Item 17 Legislative Update

Assistant Executive Director Nancy Patton presented this item.

- Item 18 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Chief Legal Counsel Camille Shelton presented this item.

- Item 19 Executive Director's Report

Executive Director Drew Bohan presented his report.

PUBLIC COMMENT

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (action).

A. 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(e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates*, Sacramento, Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]
2. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego*, et. al., Sacramento County Superior Court Case No. 34-2010-80000604 [*Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L*]
3. Cross Petition Filed: *County of San Diego, and Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solano Beach, and Vista v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Control Board San Diego Region*, Sacramento County Superior Court Case No. 34-2010-80000604 [*Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L*]

4. *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.*, Los Angeles County Superior Court Case No. BS130730 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

5. Cross Petition: *County of Los Angeles and Cities of Bellflower, Carson, Commerce, Covina, Downey and Signal Hill v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region*, Los Angeles County Superior Court, Case No. BS130730 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

6. *California School Board Association (CSBA) v. State of California et. al.*, Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Redetermination Process]

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(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 or staff.

Hearing no further comments, Chairperson Reyes adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation.

REPORT FROM CLOSED EXECUTIVE SESSION

At 10:59 a.m., Chairperson Reyes reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(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 public notice and agenda, and potential litigation.

ADJOURNMENT

Hearing no further business, Chairperson Reyes adjourned the meeting at 11:00 am.

Drew Bohan
Executive Director