

## **Minutes**

### **COMMISSION ON STATE MANDATES**

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
July 26, 2013

Present: Member Ana Matosantos, Chairperson  
Director of the Department of Finance  
Member Richard Chivaro, Vice Chairperson  
Representative of the State Controller  
Member Andre Rivera  
Representative of the State Treasurer  
Member Ken Alex  
Director of the Office of Planning and Research  
Member Sarah Olsen  
Public Member  
Member Carmen Ramirez  
City Council Member  
Member Don Saylor  
County Supervisor

*NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.*

#### **CALL TO ORDER AND ROLL CALL**

Chairperson Matosantos called the meeting to order at 10:04 a.m.

Executive Director Heather Halsey called the roll.

#### **APPROVAL OF MINUTES**

Item 1 April 19, 2013

Member Rivera made a motion to adopt the minutes. Member Ramirez noted that her name was misspelled. With a second by Member Saylor, the April 19, 2013 hearing minutes were adopted as corrected by a vote of 7-0.

Item 2 May 24, 2013

Member Rivera made a motion to adopt the minutes. With a second by Member Alex, the May 24, 2013 hearing minutes were adopted by a vote of 7-0.

#### **PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA**

The Chairperson asked if there was any public comment. There was no response.

#### **CONSENT CALENDAR**

*If there are no objections to any of the following action items designated by an asterisk (\*), the Executive Director will include each one on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES  
AMENDMENTS

Item 7\* *Teacher Credentialing, 03-TC-09*

California Code of Regulations, Title 5, Sections 80556(a),(c),(f) and (j) and  
80556.1(e) as added and amended by Register 86, No. 40; Register 94, No.  
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San Diego County Office of Education, Claimant

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

STATEWIDE COST ESTIMATE

Item 9\* *Behavioral Intervention Plans (BIPs), CSM-4464*

California Code of Regulations, Title 5, Sections 3001 and 3052

Register 93, No. 17; Register 96, No. 8; Register 96, No. 32

Butte County Office of Education, San Diego Unified School District, San  
Joaquin County Office of Education, Claimants

Item 10\* *Public Contracts (K-14), 02-TC-35*

Public Contract Code Sections 3300, 7104, 20103.5, 20104, 20104.2,  
20104.50, and 22300

Statutes 1985, Chapter 1073; Statutes 1988, Chapter 1408; Statutes 1989,  
Chapter 330; Statutes 1990, Chapter 1414; Statutes 1992, Chapter. 799;  
and Statutes 1994, Chapter 726.

Business and Professions Code Section 7028.15

Statutes 1990, Chapter 321

California Code of Regulations, Title 5, Sections 59504, 59505, 59506,  
and 59509; Register 1994, Number 6

Clovis Unified School District and Santa Monica Community College  
District, Claimants

- Item 11\* *Discrimination Complaint Procedures, 02-TC-46*  
 Education Code Sections 66010.2, 66010.7, and 87102, as amended by Statutes 1988, Chapter 973 and Statutes 1991, Chapter 1198;  
 California Code of Regulations, Title 5, Sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034, as added or amended by Register 92, Number 17; Register 96, Number 23; and Register 2002, Number 35  
 (Consolidated With)  
 Government Code Section 11135, as added or amended by Statutes 1992, Chapter 913; Statutes 1994, Chapter 146; Statutes 2001, Chapter 708; Statutes 2002, Chapter 1102  
 California Code of Regulations, Title 5, Sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, 59340, and 59342, as added or amended by Register 81, Number 16; Register 92, Number 17; Register 96, Number 23; Register 2001, Number 6; Register 2002, Number 13; and Register 2002, Number 35  
 Santa Monica Community College District, Los Rios Community College District, and West Kern Community College District, Claimants
- Item 12\* *Charter Schools IV, 03-TC-03*  
 Education Code Sections 1628, 42100(a), 47605, 47605.6  
 Statutes 2002, Chapter 1058  
 San Diego Unified School District, Claimant
- Item 13\* *Local Agency Ethics (AB 1234), 07-TC-04*  
 Government Code Sections 53232.2(b), 53232.3(a) and (b), 53235(f) and 53235.2(a)  
 Statutes 2005, Chapter 700  
 City of Newport Beach, Claimant

Member Rivera made a motion to adopt the consent calendar. With a second by Member Olsen, the consent calendar was adopted by a vote of 7-0.

**HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)**

Executive Director Heather Halsey swore in parties and witnesses participating in the hearing.

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

Item 3 Appeal of Executive Director Decisions

There were no appeals to consider.

## TEST CLAIMS

Item 4      *General Health Care Services for Inmates, 07-TC-12*

Penal Code Section 4011.10

Statutes 2005, Chapter 481 (SB 159) and  
Statutes 2006, Chapter 303 (SB 896)

Orange County Health Care Agency, Claimant

This item was postponed to the September 27, 2013 hearing, at the request of the claimant.

Item 5      *Immunization Records - Pertussis, 11-TC-02*

Health and Safety Code Sections 120325 and 120335

Statutes 2010, Chapter 434 (AB 354)

Twin Rivers Unified School District, Claimant

This test claim pertains to school district activities related to a new pertussis (whooping cough) immunization requirement for adolescent students.

Senior Commission Counsel Tyler Asmundson presented this item and recommended that the Commission adopt one of two options. Option A would completely deny the test claim, based on the plain language of Health and Safety Code section 120335(d) which contains a prohibition. Option B would partially approve the test claim for the activities associated with Health and Safety Code section 120335(d) based on an analysis of activities required to implement the prohibition consistent with the Constitutional requirement for compulsory k-12 education.

Parties were represented as follows: Arthur Palkowitz of the law offices of Stutz Artiano Shinoff & Holtz, representing the claimants; Laurie Carney and Susan Geanacou, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Saylor made a motion to adopt Option B partially approving the test claim. With a second by Member Ramirez, the motion to adopt Option B partially approving the test claim was adopted by a vote of 6-1, with Chairperson Matosantos in opposition.

## REQUEST FOR MANDATE REDETERMINATION

Item 6      *Sexually Violent Predators (CSM-4509), 12-MR-01*

Welfare and Institutions Code Sections 6601 through 6605, and 6608  
Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763  
(AB 888); Statutes 1996, Chapter 4 (AB 1496)

As Alleged to be Modified by: Proposition 83,  
General Election, November 7, 2006

California Department of Finance, Requestor

This redetermination request alleges that the state's liability under a previously determined test claim has been modified based on a subsequent change in law as defined in Government Code section 17570.

Commission Counsel Matt Jones presented this item and recommended that the Commission determine that the Department of Finance has made an adequate showing that the State's liability for the *Sexually Violent Predators* program may have been modified as a result of Proposition 83

and that the Commission direct staff to schedule a second hearing on the request.

Parties were represented as follows: Hasmik Yaghobyan, on behalf of County of Los Angeles; Craig Osaki, on behalf of the Los Angeles County Public Defender's Office; Jack Weedin, on behalf of the California Public Defenders Association; Timothy Barry, on behalf of the San Diego County Sheriff's Office, District Attorney's Office, and Public Defender's Office; Geoffrey Neill, on behalf of the California State Association of Counties; Michael Byrne and Susan Geanacou, representing Requester, the Department of Finance.

Following discussion among the Commission members, staff, parties, and a member of the public, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Alex, the staff recommendation to grant the request for redetermination and to direct staff to schedule a second hearing on the merits of the request was adopted by a vote of 7-0.

#### RECONSIDERATION OF STATEMENT OF DECISION AND PARAMETERS AND GUIDELINES

Item 8        *California Public Records Act*, 02-TC-10 and 02-TC-51

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255 Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

California Special Districts Association, Requestor

This is a request for reconsideration filed by the California Special Districts Association (CSDA), pursuant to section 1188.4 of the Commission's regulations. CSDA contends that the statement of decision and parameters and guidelines, adopted April 19, 2013, for the *California Public Records Act* program contain an error of law with respect to the description of eligible claimants. The decision authorized reimbursement for cities, counties, and school districts, but did not address the issue of special districts.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the corrected statement of decision and parameters and guidelines which correct the section on eligible claimants to provide that special district subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes are eligible to claim reimbursement, and to clarify potential offsetting revenues for this program.

Parties were represented as follows: Dorothy Holzem, California Special Districts Association, representing Requester; Andy Nichols, on behalf of Nichols Consulting; Geoffrey Neill, on behalf of the California State Association of Counties.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. There was no second on this motion<sup>1</sup>. The staff recommendation to adopt the corrected statement of decision and parameters and guidelines which correct the section on eligible claimants and clarify potential offsetting revenues for this program was adopted by a vote of 7-0.

#### HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE

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<sup>1</sup> Robert's Rules of Order (11<sup>th</sup> ed.), p.37, ll. 12-15 states "If a motion is considered and adopted without having been seconded – even in a case where there was no reason for the chair to overlook this requirement – the absence of a second does not affect the validity of the motion's adoption."

**SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2,  
ARTICLE 6.5 (info/action)**

- Item 14 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 15 Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

- Item 16 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 17 Executive Director: Workload, Report to Finance and Backlog Reduction Plan and Tentative Agenda Items for Next Meeting (info)

Executive Director Heather Halsey presented this item.

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

**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, 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.* (petition and cross-petition), Third District Court of Appeal, Case No. C070357 (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]
2. *California School Board Association (CSBA) v. State of California et al.*, Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
3. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al* (petition and cross-petition). Second District Court of Appeal, Case No. B237153 (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

**PERSONNEL**

To confer on personnel matters pursuant to Government Code section 11126(a)(1):

The Commission 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, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

**REPORT FROM CLOSED EXECUTIVE SESSION**

At 11:40 a.m., Chairperson Matosantos 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, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

**ADJOURNMENT**

Hearing no further business, Chairperson Matosantos adjourned the meeting at 11:41 a.m.



Heather Halsey  
Executive Director

