

MINUTES

COMMISSION ON STATE MANDATES

Department of Finance
Redwood Room
915 L Street
Sacramento, California
January 31, 2008

- Present: Member Anne Sheehan, 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
Member Cynthia Bryant
Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
- Absent: Member Sarah Olsen
Public Member
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:40 a.m. Executive Director Higashi noted that Member Glaab was absent due to a family emergency, and Member Olsen was absent due to illness.

ELECTION OF OFFICERS

Item 1 Staff Report

Ms. Higashi asked for nominations for chairperson. Member Bryant nominated Director of Finance, Mike Genest. With a second by Member Chivaro, Department of Finance Director Mike Genest was unanimously elected chairperson. Chairperson Sheehan asked for nominations for vice-chairperson. Member Bryant nominated California State Treasurer Bill Lockyer. With a second by Member Worthley, Treasurer Lockyer was unanimously elected vice-chairperson.

APPROVAL OF MINUTES

Item 2 December 6, 2007

The December 6, 2007 hearing minutes were adopted 5-0.

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.

PROPOSED CONSENT CALENDAR

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

DISMISSAL OF INCORRECT REDUCTION CLAIMS

- Item 5 *Graduation Requirements*
Statutes 1983, Chapter 498 (SB 813)
1. Castro Valley Unified School District, 03-4435-I-47
Fiscal Years 1999-2000, 2000-2001, 2001-2002
 2. Fullerton Joint Union High School District, 03-4435-I-48
Fiscal Years 1999-2000, 2000-2001, 2001-2002
 3. Grossmont Union High School District, 03-4435-I-44
Fiscal Year 1999-2000
 4. San Jose Unified School District, 03-4435-I-46
Fiscal Years 1999-2000, 2000-2001, 2001-2002
 5. Sweetwater Union High School District, 05-4435-I-51
Fiscal Years 1999-2000, 2000-2001

PARAMETERS AND GUIDELINES

- Item 6 *Mentally Disordered Offenders: Treatment as a Condition of Parole* - 00-TC-28, 05-TC-06
Penal Code Section 2966
Statutes 1985, Chapter 1419(SB 1296); Statutes 1986, Chapter 858 (SB 1845); Statutes 1987, Chapter 687 (SB 425); Statutes 1988, Chapter 658 (SB 538); Statutes 1989, Chapter 228 (SB 1625); Statutes 1994, Chapter 706 (SB 1918)
County of San Bernardino, Claimant

Member Worthley made a motion to adopt items 5 and 6 on the consent calendar. With a second by Member Bryant, the items were unanimously adopted.

IMPLEMENTATION OF AB 1222

- Item 4 Staff Report

Assistant Executive Director Nancy Patton presented this item. Ms. Patton stated that at the Commission's September 2007 hearing, staff committed to completing several steps to implement AB 1222, including conducting training for members, staff, and interested parties. Ms. Patton began the training by reviewing the existing parameters and guidelines processes including the existing process for adopting a reasonable reimbursement methodology. Ms. Patton then discussed AB 1222's revised criteria for adopting a reasonable reimbursement methodology, and provided the Commission with a document that compared the existing and new processes.

Chief Legal Counsel Camille Shelton compared the definitions and criteria of the reasonable reimbursement methodology under prior law and under AB 1222. Ms. Shelton clarified that

under prior law, a reasonable reimbursement methodology could not be adopted because the statutory criteria could not be met. Therefore, AB 1222 was enacted to revise those criteria so that methodologies could be adopted while still considering variations of costs among local entities and meeting cost-efficient standards. Ms. Shelton also noted that the Commission will be able to apply these new standards for the first time at the March 2008 hearing.

Ms. Patton reviewed the second process enacted under AB 1222: a streamlined process where the claimants and Department of Finance negotiate a reimbursement methodology and propose this methodology and a statewide estimate of costs for adoption by the Commission. This process would be in lieu of the Commission adopting parameters and guidelines and statewide cost estimates. Ms. Patton pointed out the differences between the two processes, including the fact that the Commission's review is limited to determining whether the proposed methodology meets the revised statutory criteria.

Ms. Patton introduced Carla Castaneda with Department of Finance. Ms. Castaneda discussed the progress of reasonable reimbursement methodologies that are currently being negotiated between Finance and local agencies, and a school district. Ms. Castaneda also presented an overview of the final section of AB 1222: legislatively determined mandates. This is a process where the claimant and Finance jointly propose a reimbursement methodology to the Legislature for adoption. This process does not include Commission participation.

Ms. Patton added that this process will probably not be used much. It is intended to be used when all parties agree that a statute is probably a mandate. And, legislatively determined mandates may free up the Commission to work on the more complex pending test claims. Ms. Patton stated that Commission staff will monitor proposals for legislatively determined mandates because under this process, a claimant may reject the amount adopted by the Legislature and return to the existing test claim process.

Member Worthley suggested that the Legislative Analyst's Office (LAO) could help with this process, by providing analysis of the joint proposals, and asked if they would be able to assist. Ms. Castaneda responded that while LAO participation is not statutorily required, they participated in drafting AB 1222, and offered to participate in the joint negotiations.

Ms. Higashi added that the Commission is completing a rulemaking package to implement regulations regarding AB 1222. This package will be on the March 2008 hearing agenda. Chairperson Sheehan asked if public comments were filed on the package. Ms. Higashi responded that no comments were received.

Member Worthley thanked staff for the report.

Ms. Higashi asked Allan Burdick, CSAC-SB 90 Group, to come forward. Mr. Burdick provided the Commission with a list and discussed possible ideas for further mandate reform. He noted that representatives from counties, cities, and school districts met to discuss possible changes to the mandates process for potential introduction in the Legislature in 2008. This meeting was also attended by representatives from state agencies and legislative staff.

Mr. Burdick reported that participants have not identified any needed cleanup provisions for AB 1222, but recognized that it was probably too soon, since AB 1222 has not been fully tested.

Mr. Burdick discussed other pending legislation that could be used this year for further reforms: AB 1170 (Krekorian) and AB 1576 (Silva). Mr. Burdick discussed several ideas, including providing alternates on the Commission for the local government members; and imposing a deadline for completing incorrect reduction claims. Mr. Burdick noted however, that given the

state's current budget crisis, there does not seem to appear to be significant support to pursue major mandate reform this year.

Member Bryant stated that she was opposed to his proposal to remove the Director of the Office of Planning and Research from the Commission. Mr. Burdick responded that it wasn't personal, but an attempt to even the membership on the Commission by reducing the number of state members and increasing the number of local government members.

Mr. Burdick also noted that they are working with the Controller's Office on possible reforms to the reimbursement process.

Chairperson Sheehan commented that the training session was informative and helpful and is looking forward to the successful implementation of AB 1222.

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

AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 7 *Notice of Truancy*, 4133
Education Code Section 48260.5,
Statutes 1983, Chapter 498 (SB 813);
As Directed by the Legislature
Statutes 2007, Chapter 69 (AB 1698)

Ms. Patton also presented this item. The *Notification of Truancy* program requires school districts, upon a pupil's initial classification as a truant, to notify the pupil's parent that the pupil is truant and other information regarding truancy. The initial classification as truant occurred when the pupil was absent without valid excuse more than three days in one school year. The program was amended twice to add new information to the notice, and to revise the classification as truant so that a truancy designation now occurs when a student is absent without valid excuse three days rather than more than three days. However, no party requested that the parameters and guidelines be amended. This revised definition caused confusion to claimants and the State Controller's Office regarding when school districts are eligible for reimbursement.

Therefore, the State Controller's Office sponsored AB 1698 to require the Commission, by January 31, 2008, to amend the parameters and guidelines to clarify that truancy begins, and the notice is sent out when a student has been absent three days rather than more than three days without valid excuse. This item makes the amendments to the parameters and guidelines as required under AB 1698.

Keith Petersen, SixTen and Associates, a school district representative, stated procedural concerns regarding the Legislature requiring the Commission to amend parameters and guidelines. He was also concerned that the phrase "at that time" in the proposed parameters and guidelines could be misinterpreted to require school districts to immediately send the notice. Mr. Petersen stated that the program statutes do not require immediate notification. This process may take many days during which subsequent trancies can occur. Removal of the phrase would ensure that it is not misinterpreted to mean that schools must provide notice immediately upon the third truancy. Ms. Patton indicated that staff removed the phrase, and provided the Commission with revised proposed parameters and guidelines that included this revision.

Patrick Day, San Jose Unified School District, agreed with Mr. Petersen. Ginny Brummels,

State Controller's Office, concurred with the staff analysis.

Chairperson Sheehan and Member Worthley acknowledged Mr. Petersen's procedural concerns. Member Bryant expressed support for completing this legislative requirement on time. With a motion by Member Worthley and a second by Member Chivaro, the proposed amendment to the parameters and guidelines, as modified, was adopted by a vote of 5-0.

STATEWIDE COST ESTIMATE

- Item 8 *Enrollment Fee Collection and Waivers*,
99-TC-13 and 00-TC-15
Education Code Section 76300, Subdivisions (a), (b), (g), (h)
Statutes 1984xx, Chapter 1 (AB 1xx); Statutes 1984, Chapters 274
(AB 207) and 1401 (AB 3776); Statutes 1985, Chapters 920 (AB 602)
and 1454 (AB 2262); Statutes 1986, Chapters 46 (AB 2352) and 394
(SB 993); Statutes 1987, Chapter 1118 (AB 2336); Statutes 1989,
Chapter 136 (SB 653); Statutes 1991, Chapter 114 (SB 381); Statutes
1992, Chapter 703 (SB 766); Statutes 1993, Chapters 8 (AB 46), 66
(SB 399), 67 (SB 1012), and 1124 (AB 1561); Statutes 1994, Chapters
153 (AB 2480) and 422(AB 2589); Statutes 1995, Chapter 308 (AB 825);
Statutes 1996, Chapter 63 (AB 3031); and Statutes 1999, Chapter 72
(AB 1118)
California Code of Regulations, Title 5, Sections 58501-58503, 58611-
58613, 58620, and 58630, Subdivision (b)
Los Rios and Glendale Community College Districts, Claimants

Ms. Higashi presented this item. The Commission approved the *Enrollment Fee Collection and Waivers* program, and adopted the parameters and guidelines in 2006. Reimbursement claims were due in 2007. This item was postponed from the December 6, 2007 hearing in order to allow the Community College Chancellor's Office to submit additional revenue data. Commission staff forwarded this data to the State Controller's Office so it could compare the data with the offsets listed in the claimants' reimbursements claims. Commission staff reviewed this information and accordingly reduced the proposed statewide cost estimate by \$30,887,000. Ms. Higashi clarified that staff did not reduce the proposed estimate by the Board of Financial Assistance Program (BFAP) 2 percent administrative allowance, because it is not clear at this point whether this is a voluntary or mandatory offset. Ms. Higashi explained that the Department of Finance is opposed to the proposed estimate because staff did not reduce the proposal an additional 2 percent for the BFAP allowance. Staff recommended that the Commission adopt the proposed statewide cost estimate of \$162,128,285 for fiscal years 1998-99 through 2007-08.

Jonathan Lee, Department of Finance, agreed that they were opposed to not taking a further 2 percent reduction, because the governing statute expressly states it is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every eligible student.

Tim Bonnel, California Community College Chancellor's Office, stated that historically, these funds have been provided to the colleges on an unrestricted basis, meaning that they can spend the money anywhere. The 2 percent funding was intended to back-fill the amount a college would retain on any fees collected, had they collected those fees. In 1984, AB 1XX provided

that colleges only had to report 98 percent of the funding that they actually collected to be offset against apportionment. The other 2 percent went unreported and could be used for whatever purposes the schools chose. Therefore, the Chancellor's Office doesn't see it as an offset to the claims made under the mandates process.

Mr. Lee provided the Education Code statute for the Commission members to review. Chief Legal Counsel Camille Shelton stated that the statute shows that the 2 percent offset is unrestricted and can go to the entity's general fund. In addition, the Chancellor's Office issued a manual interpreting this language to exclude the 2 percent. Therefore, to the extent a school district did use this 2 percent for this program; they would be required to offset it from their reimbursement claims.

Chairperson Sheehan asked if some districts do use some of the 2 percent funding for the *Enrollment Fee Collection and Waiver* program. Mr. Bonnel responded that there may be some that choose to use this funding for this program, but for the most part, the funding is designated for general purpose use.

Member Worthley moved the staff recommendation. With a second by Member Chivaro, the item was adopted by a vote of 5-0.

STAFF REPORTS

- Item 9 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Ms. Shelton stated that there is a hearing before the Sacramento County Superior Court on February 29 on the *Integrated Waste Management Board* case, and a hearing in San Diego County Superior Court on April 3 on the *Emergency Procedures Act*.

- Item 18 Executive Director's Report (info/action)
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi introduced our new analyst Sonny Leung. Ms. Higashi provided updates on budget hearings, and explained that, like other state agencies, the Commission's budget will take a 10 percent reduction under the Governor's budget proposal.

Ms. Higashi asked the Commission to take action on the 2008 Rulemaking Calendar. Member Lujano moved the staff recommendation to approve the 2008 Rulemaking Calendar. With a second by Member Chivaro, the item was adopted by a vote of 5-0.

Ms. Higashi also proposed moving Commission hearings to Fridays to accommodate budget hearings and member schedules. She discussed the proposed hearing dates¹ and recommended that the Commission adopt the revised dates. Member Worthley moved the staff recommendation. With a second by Member Bryant, the item was adopted by a vote of 5-0.

PUBLIC COMMENT

There was no public comment.

¹ 1 March 28, May 29, June 27 (tentative), August 1, September 26, October 31 (tentative), and a date to be determined in December.

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. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
2. *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)*]
3. *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*, 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*]
4. *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*]
5. *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*]
6. *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 Sheehan 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.

REPORT FROM CLOSED EXECUTIVE SESSION

At 11:14 a.m., Chairperson Sheehan reconvened in open session, and 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 pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

PERSONNEL

- Item 11 Salary Adjustment: Attorney to the Commission/Chief Legal Counsel (CEA IV), pursuant to Government Code Section 17529

Chairperson Sheehan stated that under existing procedures the Commission may adjust the salary of the chief legal counsel up to the maximum of 10 percent beginning December 1, 2007. Member Chivaro moved to adjust the Chief Legal Counsel's salary by 10 percent effective December 1, 2007. With a second by Member Bryant, this item was adopted by a vote of 5-0.

ADJOURNMENT

Hearing no further business, Chairperson Sheehan adjourned the meeting at 11:16 a.m.


PAULA HIGASHI
Executive Director