

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
July 31, 2003

Present: Chairperson Robert Miyashiro
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Sherry Williams
Representative of the Director of the Office of Planning and Research
Member Walter Barnes
Representative of the State Controller
Member John Lazar
City Council Member
Member David Rosenberg
County Supervisor

Vacant: Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Miyashiro called the meeting to order at 9:30 a.m.

Chairperson Miyashiro welcomed David Rosenberg, County Supervisor, as a new member of the Commission on State Mandates.

APPROVAL OF MINUTES

Item 1 April 24, 2003

Item 2 June 20, 2003

Upon motion by Member Sherwood and second by Member Williams, the minutes were unanimously adopted.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

INCORRECT REDUCTION CLAIM

Item 6 *Graduation Requirements – Remodeling Costs, 01-4435-I-43*
Paso Robles Joint Unified School District, Claimant
Education Code Section 51225.3
Statutes 1983, Chapter 498 (SB 813)

PROPOSED STATEMENT OF DECISION – TEST CLAIM

- Item 7 *Differential Pay and Reemployment*, 99-TC-02
Palmdale School District, Claimant
Education Code Sections 44977 and 44978.1
Statutes 1998, Chapter 30 (SB1019)

PROPOSED STATEMENT OF DECISION – DISMISSAL OF WITHDRAWN PORTIONS OF TEST CLAIM

- Item 8 *Enrollment Fee Waivers*, 00-TC-15
Glendale Community College District, Claimant
Board of Governors Fee Waiver Program and Special Programs, 2000-2001
Program Manual

PROPOSED STATEMENTS OF DECISION – INCORRECT REDUCTION CLAIMS

- Item 9 *Certification of Teacher Evaluator's Demonstrated Competence*
Education Code Section 35160.5
Statutes 1983, Chapter 498 (SB 813)
Elk Grove Unified School District, 01-4136-I-41
Santa Maria-Bonita School District, 01-04136-I-42
Milpitas Unified School District, 01-04136-I-43
Del Mar Union School District, 01-4136-I-44
Saratoga Union Elementary School District, 01-4136-I-45
Merced City Elementary School District, 01-04136-I-46
Davis Joint Unified School District, 01-04136-I-47
- Item 10 *Graduation Requirements*, 4435-I-09
Lompoc Unified School District
Statutes 1983, Chapter 498, (SB 813)
- Item 11 *Graduation Requirements*, 01-4435-I-42
Irvine Unified School District
Education Code Section 51225.3
Statutes 1983, Chapter 498 (SB 813)

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 14 *School District Reorganization*, 98-TC-24
San Luis Obispo County Office of Education, Claimant
Education Code Sections 35704, 35705.5 and 35707
Statutes 1980, Chapter 1192 (AB 3018)
Statutes 1994, Chapter 1186 (SB 1537)

PROPOSED CONSOLIDATION OF PARAMETERS AND GUIDELINES

- Item 16 *Emergency Procedures, Earthquake Procedures, and Disasters*, 01-PGA-01
 Comprehensive School Safety Plans, 98-TC-01
 Education Code Sections 35295, 35296, 35297, 40041.5, and 40042
 Education Code Sections 35294.1, 35294.2, 35294.6, and 35294.8
 Statutes 1984, Chapter 1659 (AB 2786)
 Statutes 1997, Chapter 736 (SB 187)
 Statutes 1999, Chapter 996 (SB 334)

Member Williams moved for adoption of the consent calendar, which consisted of items 6, 7, 8, 9, 10, 11, 14, and 16. With a second by Member Lazar, the consent calendar was unanimously adopted.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

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

- Item 3 Staff Report

Paula Higashi, Executive Director, reported that there were no appeals filed.

The parties and witnesses participating in the hearing of the agenda items were sworn.

TEST CLAIMS

- Item 4 *Postmortem Examinations: Unidentified Bodies, Human Remains*, 00-TC-18
 County of Los Angeles, Claimant
 Government Code Sections 27521 & 27521.1;
 Health & Safety Code Section 102870;
 Penal Code Section 14202
 Statutes 2000, Chapter 284 (SB 1736)

Eric Feller, Commission Counsel, presented this item. He explained that the claimant amended this test claim following release of the draft staff analysis. The Executive Director severed the amendment to consolidate it with another test claim alleging the same statutes. Therefore, before the Commission was the original, unamended test claim.

Mr. Feller noted that the claimant sought reimbursement for costs associated with the coroner's activities in identifying unidentified bodies, as listed in the statute, and for law enforcement to file a report on the death of an unidentified person within 10 days of discovery. Based on statutory language and legislative history, staff determined that the coroner's activities were discretionary, and thus, were not subject to article XIII B, section 6 of the California Constitution. However, staff did find the law enforcement report to be a reimbursable state mandate.

Staff recommended that the Commission adopt the staff analysis.

Parties were represented as follows: Leonard Kaye, representing the County of Los Angeles; David Campbell, with the Los Angeles County Coroner's Office; and Susan Geanacou, for the Department of Finance.

Mr. Kaye noted that the amendment to 00-TC-18 was severed from this claim, assigned a new number – 02-TC-09, and consolidated with the *DNA Database* test claim, 00-TC-27.

Mr. Kaye stated general agreement with the staff findings on the law enforcement report, however, he had issues concerning the activities under Government Code section 27521. He asserted that these activities were state-mandated because they are performed in conjunction with a coroner-ordered autopsy on an unidentified body or human remains, and that although the coroner had statutory authority to determine which types of postmortem examinations or autopsy procedures were appropriate in a specific instance, the coroner did not have discretion to do nothing. He also asserted that the coroner has a specific mandated duty to provide what, in his or her discretion, is an appropriate postmortem examination. He added that there were also other new requirements, including the preservation and storage of jaws.

Mr. Campbell stated that historically, Government Code section 27491 identified the cases in which the coroner was to be involved, but it did not mandate an identification of decedents. He explained that the coroner's responsibility was to establish the manner, mode, and cause of death. As time passed, the coroner's responsibilities increased to include notifying the next of kin and identifying the deceased.

Mr. Campbell argued that although the coroner had discretion in the past, the test claim legislation here requires that the coroner perform specific duties not previously required, such as the collection of tissue samples, jaws, and hair standards for DNA retention purposes. He urged the Commission to recognize that new requirements had been imposed on the Coroner's Office.

Ms. Geanacou agreed with the staff analysis.

Member Williams made a motion to adopt the staff analysis. With a second by Member Barnes, the motion carried unanimously.

- Item 5 *Peace Officer Personnel Records: Unfounded Complaints and Discovery*,
00-TC-24, 00-TC-25, 02-TC-07, 02-TC-08
City of Hayward, Santa Monica Community College District, and
County of San Mateo, Claimants
Evidence Code Sections 1043, 1044, 1045, 1046 and 1047
Penal Code Sections 832.5, 832.7 and 832.8
Statutes 1978, Chapter 630 (SB 1436)
Statutes 1982, Chapter 946 (SB 1065)
Statutes 1985, Chapter 539 (AB 1112)
Statutes 1988, Chapter 685 (SB 1027)
Statutes 1989, Chapters 615 (AB 2222) and 693 (SB 859)
Statutes 1994, Chapter 741 (SB 2058)
Statutes 1996, Chapters 220 (SB 1839) and 1108 (AB 3434)
Statutes 1998, Chapter 25 (AB 1016)
Statutes 2000, Chapter 971 (AB 2559)
Statutes 2002, Chapter 63 (AB 1873)

Camille Shelton, Senior Commission Counsel, presented this item. She noted that this test claim was filed by a city, a county, and a community college district on legislation addressing the discovery of peace officer personnel records and citizen complaints on peace officers. However, before the Commission was a late filing from Keith Petersen, representative for the community colleges, who, due to illness, requested postponement of the claim as it relates to community colleges. The request was granted. Therefore, staff recommended that the hearing on this item move forward on the substantive issues for city and county claimants, and the issues specific to community colleges be postponed for testimony and vote at the September hearing.

Ms. Shelton stated staff's finding that Evidence Code section 1043 and Penal Code sections 832.5 and 832.7 impose some new notice and record retention requirements on city and county peace officer employers, resulting in a new program or higher level of service and costs mandated by the state. Staff recommended that the additional activities claimed for receiving, responding to, or defending against a discovery motion, or investigating complaints against peace officers be denied because they do not constitute a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

Parties were represented as follows: Veronica Larsen, with the City of Hayward; Pamela Stone, representing the City of Hayward and the County of San Mateo; Gregory Eatmon, with the San Mateo County Sheriff's Office; and Susan Geanacou, for the Department of Finance.

Ms. Larsen stated that the City of Hayward alleged a reimbursable state mandate for unfounded complaints against police officers as imposed by amendments to Penal Code section 832.5. The City of Hayward asserted that prior law required police departments to establish procedures to investigate citizen complaints and make them available to the public. Following the events of 1978, complaints were required to be kept for five years. Further, the City of Hayward alleged that the 1996 statutory amendment required that complaints deemed to be frivolous be maintained in a separate personnel file subject to the Public Records Act. She contended that this required citizen complaints to be investigated for the first time.

Ms. Stone argued that Evidence Code section 1043, as related to the Pitchess motion, is a reimbursable mandate. She asserted that staff took dicta out of a couple of cases that fail to discuss the entire process in section 1043. She disagreed with staff's finding that the test claim legislation did nothing more than codify the Pitchess process. She provided background on the Pitchess case and decision, noting that as a result of the decision, the head of a police department must determine whether to release the personnel records in their entirety or dismiss the criminal defendant when that defendant comes to court with a reasonable right to access those records. Ms. Stone explained that the test claim legislation in this case enacted Evidence Code section 1043. If a criminal defendant wishes to access a peace officer's personnel file, the defendant must file a motion with the court and the police department must follow a substantial procedure. She asserted that only information relevant to the criminal defendant would be released, not the entire contents of the personnel file, as in the Pitchess process.

Mr. Eatmon indicated that personnel records were extensive and contain psychological examinations, background investigations, criminal histories, medical histories, any personnel complaints, credit checks, and identifying information as to where an officer lives and his or her family members. He added that almost all agencies in California comply with the guidelines established by the Commission of Peace Officers' Standards and Training.

Regarding the Pitchess process, Mr. Eatmon contended that it was a two-pronged test. He explained that first, all the information in a person's personnel record, which are generally kept separate, are garnered and taken to court. A judge then reviews the material in an in-camera hearing to decide which information is relevant to the issue and to determine whether or not the peace officer's privacy rights outweigh the relevant information contained in the personnel file. He noted that Pitchess motion filings were increasing.

Ms. Geanacou agreed with the staff analysis.

Ms. Shelton stated that in the test claim filing and rebuttals filed, the claimants requested reimbursement for the activities of reviewing, responding to, and defending a motion for discovery. Although an employer may feel it absolutely necessary to defend the motion, she

maintained that Evidence Code section 1043 does not mandate the employer to defend the motion. In addition, the courts have said that activities found to be necessary by a local agency do not require reimbursement; it has to be mandated by the state.

Ms. Shelton noted that the Pitchess decision held: "a defendant's motion to discover is addressed solely to the sound discretion of the trial court which has inherent power to order discovery when the interests of justice demands." She added that this process was established by the court as a proper procedure and is law to discover those personnel records before the Evidence Code sections were enacted or amended by the Legislature. Therefore, the motion process was in place and is not new.

Further, Ms. Shelton disagreed with the claimants' argument that the citation to the *San Diego* case in the analysis was dicta, because the case specifically stated that the Evidence Code sections codified Pitchess and the court relied on those statements to arrive at their conclusion. She recommended that the activities of receiving and responding to those motions be denied.

Member Sherwood commented that he was bothered by the postponement request by the community colleges and stated that a matter should only be postponed in special situations.

Member Rosenberg requested Ms. Shelton's response to Mr. Eatmon's comment that discovery motions were being filed routinely, which to him seemed that a duty was being imposed on local jurisdictions to respond to and defend them. Ms. Shelton reiterated that under mandates law, the Supreme Court stated that unless the state has mandated by law or imposed a duty to do something, the activity is not reimbursable.

Ms. Stone argued that at issue was not whether a choice was voluntarily made by a public entity. Rather, a criminal defendant files a motion to access personnel records, and theoretically, if the public agency does not respond, a "default" can be taken with regard to that motion and it is granted, regardless of whether or not the defendant met the statutory requirements of relevance and materiality.

Member Rosenberg requested clarification as to what the state did to change the discovery tool already available. Ms. Stone responded that motions were not new, but under prior law, the sheriff or chief of police would decide whether to release the entire personnel record or dismiss the criminal. Now, there was an entire process and procedure to be followed and only the relevant information is released.

Ms. Shelton disagreed, stating that a judge, who is responsible for weighing the rights of the defendant and the employer, would not allow private information to come to a criminal trial. She maintained that the evidence had to be relevant to the defense of the case. Also, she reiterated that the state did not require defendants to file motions and the state did not require the employer to defend them.

After some discussion regarding the effect of the court action in the Pitchess decision, Member Barnes stated that nothing really changed between what was being done before and after the court's action. Therefore, he agreed with staff that there were no other new activities.

Member Barnes made a motion to adopt the staff recommendation. With a second by Member Sherwood, the motion carried 5 – 1, with Member Rosenberg voting "No."

Member Barnes requested clarification regarding the portion of the claim as to community college districts, which was provided by Ms. Higashi.

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 15 *Grand Jury Proceedings, 98-TC-27*
County of San Bernardino, Claimant
Penal Code Sections 914, 933, 933.05, and 938.4
Statutes 1996, Chapter 1170 (SB 1457)
Statutes 1997, Chapter 443 (AB 829)
Statutes 1998, Chapter 230 (AB 1907)

Nancy Patton, Staff Services Manager, presented this item. She noted that on June 27, 2002, the Commission adopted its Statement of Decision for the *Grand Jury Proceedings* program, which revised grand jury operations. The following activities were found to be reimbursable:

- Providing comments to the grand jury report, including fiscal matters in the report;
- Providing training and consultation to the grand jury;
- Meeting with a subject of an investigation;
- Providing a meeting room and support for the grand jury; and
- Forwarding copies of the grand jury report and responses to the State Archivist.

Ms. Patton outlined the following two outstanding issues:

1. Should reimbursement for training grand jurors be limited to report writing, interviews, and a grand jury's scope of responsibility and statutory authority?

The claimant requested that training be expanded to include other statutory duties deemed necessary by the courts. However, staff limited reimbursement to training grand juries on report writing, interviews, and a grand jury's scope of responsibility and statutory authority because the test claim statutes and the Statement of Decision imposed the minimum requirements necessary to train grand jurors.

2. Should updating policies and procedures and the training program be included as reimbursable activities?

Staff did not include the activity to update policies and procedures because the test claim statutes set out specific duties for counties to follow when implementing the mandate, including developing a training program. Therefore, staff finds that the activity is not reasonably necessary to carry out the mandate.

Staff recommended that the Commission adopt the parameters and guidelines, as modified.

Parties were represented as follows: Pam Stone and Bonnie Ter Keurst, representing the County of San Bernardino; Susan Geanacou and Sarah Mangum, for the Department of Finance; and Shawn Silva, for the State Controller's Office.

Ms. Stone suggested a minor technical amendment to section II. Eligible Claimants.

Also, Ms. Stone asserted that grand juries were dissolved after a period of one year, and thus, in order to satisfy the mandate of training grand jurors, a training program must be established. She added that this should include training the trainer as a one-time per employee activity.

Regarding staff's proposal to limit the consultation between the court, district attorney, county

counsel, and the grand juror to a one-time activity, the claimant argued that there was no such limitation in the statutory framework and that the county had no control over when the courts request such meetings. She noted that if this were limited to a one-time basis, then there would be no guarantee that deficiencies in training would be rectified in the future.

Ms. Stone further argued that it was consistent with the legislation to allow counties to update policies and procedures when there are new court decisions that substantially affect the interpretation of the scope and responsibility, process, and procedures of the grand jury.

Ms. Ter Keurst disagreed with staff's finding that "any subsequent changes [to policies and procedures] would exceed the mandate because changes would be at the discretion of the county." She argued that Penal Code section 914 directs the court, in consultation with others, to ensure training, but it did not limit training to specific items. She added that training was not static, but an evolving process that would require updates. She recommended that updating policies and procedures and updating the training program, as necessary, be reimbursable one-time per year.

In addition, Ms. Ter Keurst argued that training of grand juries should include other statutory duties deemed necessary by the court and that costs for the consultation between the court, district attorney, county counsel, and the grand juror should be reimbursable.

Ms. Geanacou and Mr. Silva concurred with the staff analysis.

Member Rosenberg agreed that developing the training program should be an ongoing activity. Also, he stated that it was reasonable to allow an update of policies and procedures at certain intervals, such as every five years. Regarding training, he stated that it was not necessary that it be ongoing because the law provides that a number of grand jurors continue into the next year, and those jurors could be relied upon to engage in training. Further, he maintained that the activity of overseeing the grand jury response process should be reimbursable and asked staff to comment as to why it was not included.

Ms. Patton responded that there were two reasons. First, neither the test claim legislation nor the Statement of Decision required the activity, and second, staff believed that it was covered under prior law.

Member Lazar requested staff's comment with respect to not including the activity of updating policies and procedures. Ms. Patton explained that the statutory language specifically directs counties as to what needs to be done. Therefore, staff felt that updating was not necessary.

Member Rosenberg stated that it was unreasonable to conclude that updates are not necessary. Member Sherwood agreed.

Member Sherwood also pointed out that staff originally included the activity. Paul Starkey, Chief Legal Counsel, explained that staff looks at what is being directed by the Legislature. In this case, he indicated that there was intent in the statute that better training be provided for grand juries and specific minimum requirements were included. He noted that staff, after reviewing comments, changed its view and took the conservative approach to try and follow the strict direction from the Legislature.

Member Rosenberg commented that staff should take the most conservative view on these matters, but as a Commissioner, he would always lean toward the most reasonable approach.

Mr. Feller pointed out that it was important to realize that changes could occur as a result of a state mandate or as a result of local discretion. In this case, any changes to the initial policies

and procedures would result from decisions made at the local level because the law had already specified what was required.

Member Barnes agreed with staff as to the issue of updating policies and procedures and the training program.

Ms. Stone commented that staff examines legislation in a snapshot, looks at it at the present time, and assumes that further changes in legislation, even though miniscule, would result necessarily in a new test claim. She argued that law was not static and that it would be more rational and cheaper for the state to allow an update of policies and procedures at certain intervals, versus filing test claims and going through the lengthy process each time the law changed.

Member Sherwood stated that with this particular program, updating of policies and procedures should be reimbursable.

Chairperson Miyashiro noted that while he did not view it as unreasonable to allow updating of the training program and policies and procedures, he felt that because the Legislature did not specifically require it, the decision was left to the locals. He agreed with the staff analysis.

Member Rosenberg supported the following changes: providing reimbursement for updating and implementing policies and procedures, as needed, one-time every five years; and providing ongoing reimbursement for development of the training program.

Member Rosenberg made a motion that was seconded by Member Lazar to move the activity of developing the training program from one-time activities to ongoing county activities. The motion failed 1 – 5, with Member Lazar, Member Sherwood, Member Williams, Member Barnes, and Chairperson Miyashiro voting “No.”

Member Rosenberg made a motion that was seconded by Member Sherwood to add an ongoing activity to “update and implement policies and procedures one time every five years.” Member Barnes stated that he was concerned with the wording because he did not see anything in the legislation that would indicate the need for an update. In addition, Mr. Starkey requested clarification about the word “implement.” After further discussion and without objection, Member Rosenberg modified his motion by striking the word “implement” so it would read, “updating policies and procedures for the activities listed in section IV. of these parameters and guidelines one time every five years.” The motion failed 3 – 3, with Member Williams, Member Barnes, and Chairperson Miyashiro voting “No.”

Member Williams made a motion to adopt the staff recommendation. With a second by Member Barnes, the motion carried unanimously.

[At this time, a short break was taken.]

Item 12 *Attendance Accounting*, 98-TC-26/01-TC-04
Campbell Union High School District, Grant Joint Union High School
District, and San Luis Obispo County of Education, Claimants
Education Code Sections 2550.3, 2550.4, 41344, 42238.7, and 48216
Statutes 2001, Chapter 106, et al. (SB 739)

Shirley Opie, Assistant Executive Director, presented this item. She noted that the test claim arose from changes to the Education Code that added new student attendance reporting requirements for school districts and county offices of education. The Commission found that there were costs mandated by the state for the one-time activity to complete and return the report, “Worksheet for Determining the Adjusted 1998-99 Base Revenue Limit in Accordance with

SB 727," to the Superintendent of Public Instruction. This report was only required by the state for the 1996-1997 school year. Thus, before the Commission was the proposed parameters and guidelines, which limited reimbursement to writing and returning the required information on the worksheet.

Ms. Opie indicated that a draft staff analysis was issued on June 11, 2003. In a letter dated June 23, 2003, the claimants' representative agreed that the changes made by staff were consistent with the Statement of Decision. No other comments were received.

Parties were represented as follows: David Scribner, with Spector, Middleton, Young & Minney, representing the claimants; Susan Geanacou, for the Department of Finance; and Paul Warren, with the Legislative Analyst's Office.

Chairperson Miyashiro stated that he asked this item to be pulled off the consent calendar. He noted that the record for this claim references a memo that he had issued in his prior job as the Director of the Finance Division of the Department of Education. This division developed the various forms that school districts and county offices of education used to glean state funding.

Chairperson Miyashiro asked Paul Starkey, Chief Legal Counsel, if a Commission's finding of a reimbursable state mandate can be reconsidered. Mr. Starkey responded that once the period of time for reconsideration passes, the Commission no longer has jurisdiction, and the only challenge allowed is through the writ process of the court.

Indicating that he was not a member of the Commission at the time the decision was made, Chairperson Miyashiro stated his view that this claim was not a new program or higher level of service. He asserted that the claimants submitted a reimbursement claim for a procedural act required as a condition of receiving state funds. As to costs, he contended that there were no costs incurred. In fact, he submitted that school districts experienced significant administrative savings because they are no longer required to collect and verify excused absences for purposes of receiving state funding. However, since the Commission had already found a mandate to exist, he moved that it be reimbursed on a one-time basis, at a unit cost rate of \$1 per claimant, to cover both direct and indirect costs. He held his motion in abeyance.

Mr. Warren agreed with Chairperson Miyashiro that the offsetting savings far exceed the cost of the limited mandate, and thus, there were no costs to be reimbursed.

Mr. Scribner argued that whether or not there was an overall savings was not the issue before the Commission. Rather, the issue was whether the proposed parameters and guidelines sufficiently addressed what was outlined in the Statement of Decision. If the Chairperson wished to put forth a proposal based on findings, he stated that the claimants would review the documentation; do its own survey to include small, medium, and large districts across the state; determine the accuracy of the number; and return with a counterproposal. He noted that the claimants were not noticed of the Chairperson's proposal, and thus, had not had the opportunity to review it or comment. He also noted that a \$1000 threshold was in place to protect the state's interest.

Member Barnes requested that Chairperson Miyashiro clarify his proposal. Chairperson Miyashiro clarified his recommendation that the Commission adopt a unit cost of \$1 per claimant. Member Rosenberg commented that the procedural issue should be addressed. Member Sherwood agreed, noting that he was not in a position to decide on the \$1 proposal without analysis from the parties involved.

Chairperson Miyashiro asked Mr. Starkey to comment as to whether the Commission could act on his suggestion. Mr. Starkey indicated that the item had been properly noticed and was now

before the Commission, with a recommendation from staff. He stated that Government Code section 17557 requires the Commission to determine the amount to be subvended, but because the Commission already determined that there are costs incurred, the Chairperson's proposal reflects the de minimus argument, that is, trifling costs are incurred.

Member Rosenberg stated his understanding that essentially, every claim would be denied because they would be under the \$1000 threshold. Mr. Scribner affirmed. Member Rosenberg indicated that he would like input from the parties regarding the Chairperson's proposal. Mr. Starkey noted that procedurally, the Commission may make that decision.

Ms. Higashi clarified that staff would put the proposal forward and invite all of the parties to comment. The item would then be brought back at the September hearing with a supplemental analysis on the \$1 issue.

Member Barnes was concerned because his understanding of the issue was that the original decision was incorrect. He maintained that since the original decision cannot be changed, the issue should be whether the parameters and guidelines are correct. He noted that this was a fairly minor mandate that would not cost much, and given the Commission's workload, he made a motion that was seconded by Member Lazar to adopt the staff recommendation.

Member Sherwood requested clarification regarding procedure that was provided by Ms. Higashi. Ms. Higashi noted that the testimony from Mr. Warren and comments from Chairperson Miyashiro indicated that the significant cost savings associated with the program should result in insignificant costs. Therefore, staff could spend more time on the matter than the actual costs incurred. She also noted that the claimant's original test claim was much broader in scope and that the majority of the requested activities were denied. All that remains is actually writing information onto the form and mailing copies of the Department of Education memo with the forms to the school districts.

Mr. Scribner clarified that the process of filling out the form had no bearing on the activities associated with completing the form, and thus, there would not be any offsetting savings because the schools redid a whole new process. He asserted that this was a minimal claim that could end up increasing the cost of the mandates reimbursement process if the claimant surveys school districts on costs. He maintained that the \$1000 threshold currently in place is very high for many districts to overcome with such minor activities, and therefore, he suggested that the Commission adopt the staff recommendation and allow the process to take care of itself.

Ms. Geanacou stated that the Department of Finance was prepared to support the staff analysis. However, if the Commission wanted to take the unit cost approach, she stated that they would like the opportunity to review the proposal.

Regarding the issue of offsetting savings, Member Barnes clarified that savings previously incurred could not be used to overcome a new activity.

Member Rosenberg stated that the Commission should just adopt the parameters and guidelines if it was truly a de minimus claim because it would be handled with the \$1000 threshold. Realizing that it was late in the process, Chairperson Miyashiro noted that he just wanted to raise the issues that may not have been addressed at the time. However, he stated that he would support the staff recommendation.

The motion made by Member Barnes and seconded by Member Lazar to adopt the staff recommendation carried unanimously.

Item 13 *Immunization Records – Hepatitis B*, 98-TC-05
Los Angeles County Office of Education, Claimant
Education Code Section 48216
Health and Safety Code Sections 120325, 120335, 120340, and 120375
Statutes 1978, Chapter 325
Statutes 1979, Chapter 435
Statutes 1982, Chapter 472
Statutes 1991, Chapter 984
Statutes 1992, Chapter 1300
Statutes 1994, Chapter 1172
Statutes 1995, Chapters 219 and 415
Statutes 1996, Chapter 1023
Statutes 1997, Chapters 855 and 882
California Code of Regulations, Title 17, Sections 6020, 6035, 6040, 6055,
6065, 6070, and 6075

Cathy Cruz, Program Analyst, presented this item. She noted that the first *Immunization Records* test claim, which was found to be a reimbursable state mandate in 1979 by the Board of Control, mandated school districts to require, maintain, and report on immunization records for diphtheria, pertussis, and tetanus (DPT); polio; and measles. She indicated that costs incurred for compliance with *Immunization Records* were reimbursed through the State Mandates Apportionment System, and the unit rate in fiscal year 2001-2002 was \$5.11 per new entrant. On August 24, 2000, she stated that the Commission adopted the Statement of Decision for the *Immunization Records: Hepatitis B* test claim. The test claim legislation added mumps, rubella, and hepatitis B to the list of diseases an entering student must be immunized against prior to first admission into a school, and amended statutes and regulations relating to the monitoring, record keeping, reporting, and parent notification requirements. Hepatitis B immunizations were also required for students entering the seventh grade.

Ms. Cruz explained that the number of reimbursable activities substantially increased from the original mandate because the *Immunization Records: Hepatitis B* program requires, for new entrants, 10 new activities for hepatitis B immunizations in addition to three *new* pupil exclusion and parent notification requirements for DPT, polio, and MMR. Also, the program requires 10 new activities for hepatitis B immunizations for seventh grade pupils. She stated that a draft staff analysis was issued on June 6, 2003, that included proposed unit cost rates for new entrants and seventh grade pupils. The unit cost rates were developed using the SMAS rate for *Immunization Records* as the basis, in which the SMAS rate was divided by the number of activities included in the *Immunization Records* program and then the result was multiplied by the number of activities found to be reimbursable under *Immunization Records: Hepatitis B*.

For fiscal year 2001-2002, Ms. Cruz indicated that the proposed unit rate for new entrants was \$6.48, and the unit rate for seventh grade pupils was \$3.41. The claimant supported the staff analysis and proposed unit costs and the Controller's Office did not object to the proposed unit costs. However, the California Department of Education and Department of Finance disagreed with the methodology used to calculate the unit costs.

The Department of Finance proposed an alternate methodology that relied on the number of boxes to be checked on the "California School Immunization Record" form, resulting in a 25 percent increase of the amount that was currently in SMAS for *Immunization Records*. Ms. Cruz explained that while the function of record keeping was one of the new activities for hepatitis B

immunizations, Finance's proposed methodology did not allow for the other nine reimbursable activities or the three new requirements related to pupil exclusion and parent notifications for each of the three immunizations required in the original *Immunization Records* program.

Education and Finance also noted that the requirement that seventh grade pupils be checked for hepatitis B immunizations should be eliminated after the 2004-2005 school year. Staff agreed, but Ms. Cruz stated that record review and reporting activities would continue to be reimbursable until the Legislature amends or repeals the statute, and thus, they could not be completely eliminated from the parameters and guidelines. To address the concerns, however, staff included as an assumption that beginning with the 2004-2005 school year, only five of the ten activities would remain necessary, thereby reducing the proposed unit cost by half.

Staff recommended that the Commission adopt the proposed parameters and guidelines.

Parties were represented as follows: Carol Berg, for Education Mandated Cost Network; Art Palkowitz, for the San Diego Unified School District; Mike Wilkening and Blake Johnson, for the Department of Finance; Juan Sanchez, for the California Department of Education; Paul Warren, for the Legislative Analyst's Office; and Shawn Silva, for the State Controller's Office.

Ms. Berg supported the staff recommendation. She commented that the Department of Finance's proposal was disingenuous.

Mr. Palkowitz indicated that he would support the staff recommendation. However, he noted that San Diego Unified School District's estimate for the activities under New Entrants was \$12.49, which was nearly double the staff's proposal.

Mr. Wilkening argued that the staff's proposal was too high, and when looking at the workload, a 25 percent increase was more accurate.

Mr. Sanchez stated that the proposal seemed excessive and had no additional comments other than those already submitted in writing.

Mr. Warren's view was similar to that of the Department of Finance. For the existing activities being required for the new immunization, he recommended a rate of \$1.75 because essentially, there was a 33 percent increase in the number of required immunizations. Regarding the new activities, he recommended that actual costs be filed since good cost information was not yet available.

Member Rosenberg requested clarification regarding the 25 and 33 percent increases.

Mr. Wilkening clarified that the number of shots increased by 33 percent, whereas the number of boxes to be checked on the immunization form increased by 25 percent.

Member Sherwood was bothered that the Department of Finance's proposal failed to consider the additional services being required.

Mr. Silva concurred with the staff analysis.

Member Barnes thanked the staff and stated that the Controller's Office appreciated participating in the process. Mr. Wilkening concurred on behalf of the Department of Finance.

Mr. Sanchez acknowledged that there were some additional requirements, but reiterated that the staff's proposal still seemed excessive. Ms. Berg pointed out that the California Department of Education did not submit an alternate proposal.

Member Sherwood stated that this was not a small ticket item and that he was uncomfortable because of the significant differences in proposals. Ms. Berg commented that this was a

self-contained mandate that eliminates itself almost to the de minimus level by 2007, since the majority of the work occurred during the very first year.

Chairperson Miyashiro asked if the staff recommendation reflected the Department of Finance's concern regarding costs associated with seventh graders being minimal effective fiscal year 2004-2005. Ms. Cruz affirmed.

Mr. Wilkening argued that if a unit rate were adopted, every new entrant would receive the same amount even if the activity level decreased. Ms. Berg responded that only those students that are examined can be claimed.

Mr. Palkowitz stated that a big part of the 10 new activities involve notification requirements. Noting that the *Notification of Truancy* program established a unit rate of \$13 for record keeping, sending a letter, and making a follow-up call, he maintained that a \$6 rate here seemed within reason of the required activities.

Member Barnes pointed out that a unit cost was developed at the request of the Commission. Therefore, the issue was whether the Commission was going to accept the staff proposal or go back to the original recommendation, which was to submit actual costs and wait until more data was available.

Member Barnes asked if staff had any thoughts as to what was put on the table here. Ms. Opie pointed out that the Department of Finance's proposal did not address the new activities, and that the Legislative Analyst's Office did recognize that there were new activities that should be considered outside of a unit cost. She indicated that staff's proposal was based on the information available, weighing all the factors equally.

Member Barnes made a motion that was seconded by Member Rosenberg to adopt the staff recommendation.

Chairperson Miyashiro expressed his appreciation that the parties came together to develop a unit cost. He stated that the Commission members were faced with a decision to evaluate the strength and merits of the competing methodologies presented. He believed that staff's analysis was the more comprehensive one and intended to support it. Member Rosenberg added that the staff's proposal was not at all unreasonable.

The motion carried unanimously. On behalf of the State Controller's Office, Member Barnes thanked Chairperson Miyashiro for suggesting the unit cost.

STAFF REPORT

Item 17 Executive Director's Report: Workload; Assembly Special Committee on State Mandates; Next Agenda

Ms. Higashi noted the following:

- *Workload.* During the last fiscal year, the Commission met 12 times and adopted decisions addressing 19 test claims, 78 incorrect reduction claims, 14 statewide cost estimates, and 8 parameters and guidelines amendments, which encompassed major revisions to documentation language necessary to implement the *School Bus Safety II* audit recommendations.

The new statute of limitations established by AB 3000 resulted in a flood of new test claim filings. The 2002-2003 fiscal year ended with 51 test claim filings.

- *Assembly Special Committee on State Mandates.* The committee has almost completed its work and will soon be issuing a report. The Legislative Analyst's Office and the Department of Finance are recommending that legislation be sponsored to change particular mandates. Ms. Higashi stated that the Commission staff met with the Legislative Analyst's Office and the Department of Finance staff, committee consultants, and claimant representatives to examine the entire mandates process. She provided background on some of the concerns.
- *Future Hearing Agendas.* The *Standardized Account Code Structure* test claim is scheduled for hearing in September, as well as a number of parameters and guidelines.
- *Personnel.* Sigrid Asmundsen, Law Student, and Kan Cheung, Student Assistant, were introduced.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

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. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
2. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-17 [*Domestic Violence*]
3. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-18 [*SEMS*]
4. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*]
5. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]
6. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number S109219, in the Supreme Court of the State of California. CSM Case No. 02-L-03 [*School Site Councils*]
7. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number B163801, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 02-L-04 [*Property Tax Administration*]
8. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number C044162, in the Appellate Court of the State of California, Third Appellate District. CSM Case No. 02-L-05 [*Physical Performance Tests*]

9. *Palos Verdes Peninsula Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS00897, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-06 [*Eastview Optional Attendance Area*]

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).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

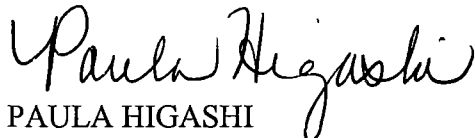
Hearing no further comments, Chairperson Miyashiro adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on 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

Chairperson Miyashiro 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 Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, and upon motion by Member Williams and second by Member Sherwood, Chairperson Miyashiro adjourned the meeting at 2:00 p.m.



PAULA HIGASHI
Executive Director