

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447

Sacramento, California

November 9, 2010

Present: Member Cynthia Bryant, 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 Cathleen Cox
Acting Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Sarah Olsen
Public Member
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Bryant called the meeting to order at 10:32 a.m. Executive Director Paula Higashi called the roll.

APPROVAL OF MINUTES

Item 1 September 30, 2010

The September 30, 2010 hearing minutes were adopted by a vote of 7-0, on a motion by Member Olsen and second by Member Glaab.

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

Item 2 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)

A, ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

Item 4* *Pupil Discipline Records, Notification to Teachers: Pupils Subject to Suspension or Expulsion II*, 00-TC-10/00-TC-11
Education Code Sections 48201 and 49079
Statutes 2000, Chapter 345 (AB 29)
Carpinteria Unified School District, Sweetwater Union High School District, and Grant Joint Union High school District, Co-Claimants

B. ADOPTION OF PROPOSED ORDER TO INITIATE RULEMAKING

- Item 7* Proposed Regulations to Amend Conflict of Interest Code
California Code of Regulations, Title 2, Chapter 2.5., Article 9, Section
1189.10 and Appendix.

Member Glaab made a motion to adopt items 4 and 7 on the consent calendar. With a second by Member Worthley, the consent calendar was adopted by a vote of 7-0.

STAFF REPORT

- Item 3 Budget Act and Budget Trailer Bills

Paula Higashi presented this item. She reviewed local government and education trailer bills, and identified the mandates in the budget, both funded and suspended. She pointed out additional programs where funding was deleted by the Governor, and reviewed the new redetermination program enacted by SB 856.

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

- A. ADOPTION OF EMERGENCY REGULATIONS PURSUANT TO
GOVERNMENT CODE SECTIONS 17527 SUBDIVISION (g) AND 17570,
SUBDIVISION (e)

- Item 5 Proposed Emergency Regulations to Implement Mandate Redetermination
Process Pursuant to Government Code Section 17570, Subdivision (d)
(Stats. 2010, Ch. 719, eff. October 19, 2010 (SB 856)):
California Code of Regulations
Title 2, Chapter 2.5., New Article 10, Sections 1190-1190.05

Program Analyst Heidi Palchik presented this item. Ms. Palchik stated that trailer bill SB 856 established a process for redetermining existing mandates, and required the Commission to adopt emergency regulations to implement this process. The proposed emergency regulations set up procedures for receiving requests to adopt new test claim decisions and providing notice of the hearing on those requests. Ms. Palchik explained that the statutory process is in effect now and it is critical to have procedures in place. The Commission conducted a workshop on the emergency regulations, and parties voiced concerns about adopting emergency regulations. Ms. Palchik pointed out that emergency regulations are only in effect for six months while permanent regulations are being adopted. Staff recommended the Commission adopt the emergency regulations.

Allan Burdick, CSAC-SB 90 Service, stated that there was some trepidation about the emergency regulations, because there is uncertainty about this new redetermination process. With a motion by Member Olsen, and a second by Member Cox, the emergency regulations were adopted by a vote of 7-0.

- B. ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING
PURSUANT TO GOVERNMENT CODE SECTION 17527 SUBDIVISION (g)
AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1189.2

- Item 6 Proposed Regulations to Implement Mandate Redetermination Process
Pursuant to Government Code Section 17570, Subdivision (d) (Stats. 2010,
Ch. 719, eff. October 19, 2010 (SB 856))
California Code of Regulations
Title 2, Chapter 2.5., New Article 10, Sections 1190-1190.05

Ms. Palchik also presented this item. She stated that this item was the order to initiate permanent

rulemaking on the redetermination process, and recommended that the Commission adopt the order to initiate rulemaking. With a motion by Member Worthley, and a second by Member Olsen, the order to initiate rulemaking for the mandate redetermination process was approved by a vote of 7-0.

STAFF REPORTS

Ms. Higashi stated there was nothing new to report on Item 8 (SB 1033 Applications).

Item 9 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Ms. Shelton reported that a cross-petition was filed against the state and the Commission by local agencies in the Los Angeles County water permit case. There was a dismissal filed on the *Behavioral Intervention Plans* lawsuit. On November 19, 2010, there is a hearing on the Commission and state's demurrer and motion to strike in the *County of Santa Clara* case dealing with their *Handicapped and Disabled Students* incorrect reduction claim.

Regarding cases of interest, there was a final published decision on the *Clovis* case. Briefing is complete and hearing will be set on the *California School Boards Association v. State of California* case challenging the practice of deferring mandate reimbursement to schools. Ms. Shelton also reported on the *San Diego Unified School District v. State Controller* case, regarding whether the Controller began an audit of reimbursement claims for the STAR program after the audit period. The next case reviewed was *Fenton Avenue Charter School v. State Controller's Office*, filed by many charter school districts alleging that the Controller improperly returned reimbursement claims. Ms. Shelton also discussed the injunction and declaratory relief in *County of Sacramento v. State of California*, where 23 counties are suing the state on the Governor's veto and suspension of funding for the *Handicapped and Disabled Students* program.

Member Worthley asked if the mandate would be rescinded for the *Handicapped* case.

Ms. Shelton responded that there are interagency agreements and dispute resolution procedure between the school districts and counties, and they are trying to have the court place an injunction on suspension of the mandate.

Item 10 Executive Director's Report

Ms. Higashi noted that staff is in the process of reviewing 37 filings on a Bay Area water permit. It is probable that not all filings will be accepted. She also noted the increase in incorrect reduction claim filings. Ms. Higashi stated the Commission's budget has been reduced by \$64,000 for both 2010-11 and 2011-12 fiscal years. She also explained that with ratification of the Bargaining Unit 1 and 4 contracts, most of the staff is no longer furloughed. However, since Bargaining Unit 2 has not reached agreement, Commission attorneys continue to be furloughed three days per month.

Member Cox asked if staff was moving to self-directed furloughs. Ms. Higashi responded yes.

Ms. Higashi reminded members and parties that e-filing provisions will go into effect on January 3, 2011, and staff will conduct a workshop at the next meeting in December.

Ms. Higashi reviewed the tentative agenda items for the next nine months, and reported on the negotiations regarding the *Investment Reports* incorrect reduction claims.

PUBLIC COMMENT

Alan Burdick, CSAC-SB 90 Service, asked if requests for adoption of new test claim decisions are filed, will they take precedence over the existing test claim caseload. Ms. Higashi responded that the statute does not direct the Commission to treat these requests differently from the existing caseload. Therefore, unless the Commission directs staff to treat the requests differently, they will be added to the existing caseload.

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

Chairperson Bryant 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 published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation; and also to confer on personnel matters and a report from the personnel subcommittee pursuant to Government Code section 11125, subdivision (a)(1).

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, subdivision (e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *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]
3. *County of Santa Clara v. Commission on State Mandates, State Controller's Office, et al.*, Sacramento County Superior Court Case No.34-2010-80000592 [*Handicapped and Disabled Students*, Incorrect Reduction Claim CSM 09-4282-I-5, Fiscal years 2003-2004 through 2005-2006]
4. *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]*
5. 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]*

6. *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.*, Sacramento County Superior Court Case No. 34-2010-80000605 [*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]

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).)

B. REPORT FROM PERSONNEL SUBCOMMITTEE

To confer on personnel matters pursuant to Government Code section 11126, subdivision (a)(1).

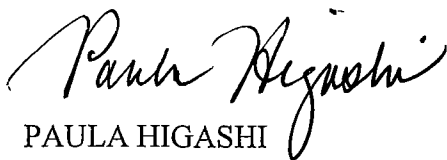
- Review of Executive Director Applications

REPORT FROM CLOSED EXECUTIVE SESSION

At 12:17 p.m., Chairperson Bryant 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 public notice and agenda, and potential litigation, and also to confer on personnel matters listed on the published notice and agenda pursuant to Government Code section 11126, subdivision (a)(1).

ADJOURNMENT

Hearing no further business, Chairperson Bryant adjourned the meeting at 12:17 p.m.



PAULA HIGASHI
Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 10:30 a.m.
DATE: Thursday, November 9, 2010
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:
Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomate Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.
Certified Shorthand Reporters
8414 Yermo Way, Sacramento, California 95828
Telephone 916.682.9482 Fax 916.688.0723
FeldhausDepo@aol.com

A P P E A R A N C E S

COMMISSIONERS PRESENT

CYNTHIA BRYANT
(Commission Chair)
Representative for ANA MATOSANTOS
Director, State Department of Finance

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

CATHLEEN COX
Acting Director
Director, Office of Planning & Research

PAUL GLAAB
City Council Member
City of Laguna Niguel

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

J. STEVEN WORTHLEY
Supervisor and Chairman of the Board
County of Tulare



COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Items 3 and 10)

NANCY PATTON
Assistant Executive Director

HEATHER HALSEY
Commission Counsel
(Item 5)

A P P E A R A N C E S

COMMISSION STAFF PRESENT

continued

HEIDI PALCHIK
Program Analyst
(Items 5 and 6)

CAMILLE SHELTON
Chief Legal Counsel
(Item 9)



PUBLIC TESTIMONY

Appearing Re Item 5 and Public Comment

ALLAN BURDICK
California State Association of Counties
SB-90 Service
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841



ERRATA SHEET

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1 BE IT REMEMBERED that on Thursday, November 9,
2 2010, commencing at the hour of 10:32 a.m., thereof, at
3 the State Capitol, Room 447, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:



7 CHAIR BRYANT: The Commission on State Mandates
8 will come to order.

9 Paula, will you call the roll?

10 MS. HIGASHI: Mr. Chivaro?

11 MEMBER CHIVARO: Present.

12 MS. HIGASHI: Ms. Cox?

13 MEMBER COX: Present.

14 MS. HIGASHI: Mr. Glaab?

15 MEMBER GLAAB: Present.

16 MS. HIGASHI: Mr. Lujano?

17 MEMBER LUJANO: Here.

18 MS. HIGASHI: Ms. Olsen?

19 MEMBER OLSEN: Here.

20 MS. HIGASHI: Mr. Worthley?

21 MEMBER WORTHLEY: Here.

22 MS. HIGASHI: Ms. Bryant?

23 CHAIR BRYANT: Here.

24 MS. HIGASHI: The first item on today's agenda
25 is Item 1, adoption of the minutes.

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1 CHAIR BRYANT: Are there any objections or
2 corrections to the minutes?

3 *(No response)*

4 CHAIR BRYANT: Is there a motion?

5 MEMBER OLSEN: I'll move adoption.

6 MEMBER GLAAB: Second.

7 CHAIR BRYANT: We have a motion and a second.

8 All those in favor?

9 *(A chorus of "ayes" was heard.)*

10 CHAIR BRYANT: Any opposed or abstentions?

11 *(No response)*

12 CHAIR BRYANT: Okay, the minutes are adopted.

13 MS. HIGASHI: This brings us to the Consent
14 Calendar.

15 CHAIR BRYANT: Are there any objections to the
16 proposed Consent Calendar?

17 MS. HIGASHI: It's Items 4 and 7.

18 CHAIR BRYANT: I'm sorry, Items 4 and 7.

19 *(No response)*

20 CHAIR BRYANT: Is there a motion?

21 MEMBER GLAAB: So moved.

22 MEMBER WORTHLEY: Second.

23 CHAIR BRYANT: It's been moved and seconded to
24 adopt the proposed Consent Calendar.

25 All those in favor?

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1 (A chorus of "ayes" was heard.)

2 CHAIR BRYANT: Any opposed or abstentions?

3 (No response)

4 CHAIR BRYANT: The motion carries.

5 MS. HIGASHI: We're now on Item 3. And this is
6 a staff report on the Budget Act and Budget Trailer
7 Bills.

8 In the agenda item, we've given you an overview
9 of what's covered, actually identifying the mandates that
10 were funded in the budget, those that show zeroes in the
11 appropriation lines, both for school districts,
12 community-college districts, and local agencies.

13 I've also reported on the veto message on the
14 local agency mandates where funding was deleted for the
15 *Handicapped and Disabled Students I and II* and *SEDS*
16 program, and also for the *Local Recreational Background*
17 *Checks* program.

18 We've also reported on the State Government
19 Budget Trailer bill, SB 856, which you'll be hearing much
20 more about as we go through the agenda. But I just
21 wanted to point out the key amendments. We had a
22 workshop on this earlier so that we could meet with our
23 claimant community and state agency community reps to go
24 over these changes.

25 The first are the amendments to Government Code

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1 section 17556. And you'll be getting updated pages for
2 your reference binders on these sections.

3 Also, the amendments to Government Code section
4 17557, which clarifies the process for proposed
5 parameters and guidelines amendments.

6 Also, of course, this trailer bill included the
7 mandate redetermination process, which is basically the
8 same trailer bill language that the Commission had
9 reviewed last spring, in the subcommittee meetings as
10 well as in our meetings.

11 The only significant change that had been made
12 was one which required the Commission to adopt emergency
13 regulations to implement the program.

14 Other changes in that trailer bill were the one
15 that authorized local agencies to charge fees for the
16 costs of fingerprinting volunteers.

17 And also, we had thought that there might be a
18 change regarding open meetings and Brown Act, but that
19 change fell through and was dropped from the trailer
20 bill.

21 The Education Finance Budget trailer bill was a
22 bit more complex to review. And there are different --
23 there's new language that's added, that characterizes
24 revenues and appropriations as being offsetting revenues
25 for school district mandates.

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1 There are also amendments made to a couple of
2 programs, *Notification of Truancy, Habitual Truant*
3 program, the *Behavioral Interventions Plans* program. And
4 there are also some suspended mandates.

5 And also what's included in the ed. trailer
6 bill is language suggesting that the Department of
7 Finance request mandate redeterminations of the
8 *Behavioral Intervention Plans* program and the *Collective*
9 *Bargaining and Collective Bargaining Agreement Disclosure*
10 program.

11 There's also language that directs the -- I
12 should say requires the Controller to confirm that school
13 districts are no longer filing mandate claims on certain
14 *activities regarding -- as part of the SARC program,*
15 *School Accountability Report Cards.* And then it further
16 specifies that if the Controller makes a certain finding,
17 that they should request a P's and G's amendment.

18 The Legislative Analyst's office is also
19 required to convene a working group to study all of the
20 education mandates, and to decide what to do with them.
21 And they started this work this year; and only a handful
22 of the mandates were actually amended.

23 There are a couple other mandates that, in
24 going through the report again and the bill, there was a
25 change -- there was a new section added to the Ed. Code

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1 which identifies another offset for *Graduation*
2 *Requirements* program for the costs of teachers.

3 And then there were other amendments made to a
4 couple other programs that were much smaller. The
5 *Teacher Incentive* program, and a significant change to
6 *Pupil Promotion and Retention* program. In both of those
7 programs, there's language added in a paragraph at the
8 end of the Ed. Code section which you could miss -- you
9 know, very easily miss, which basically says, "Well,
10 until 2013, school districts don't have to do this
11 program." So it's a very interesting education trailer
12 bill, and I'm sure it will be studied and reviewed by
13 many for a while.

14 So I wanted to call your attention to all of
15 those changes.

16 Are there any questions?

17 CHAIR BRYANT: No.

18 MS. HIGASHI: This brings us to Item 5.

19 Program Analyst Heidi Palchik and Senior Staff
20 Counsel Heather Halsey will present this item.

21 MS. PALCHIK: Good morning.

22 SB 856 adds section 17570 to the Government
23 Code to establish a process for redetermining existing
24 mandates.

25 Under this process, state agencies, local

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1 governments, and statewide organizations representing
2 local governments may request that the Commission adopt a
3 new test-claim decision to supersede a previously adopted
4 test-claim decision upon showing that the State's
5 liability for that test-claim decision has been modified
6 based on a subsequent change in law.

7 SB 856 requires the Commission to adopt
8 emergency regulations to implement the new
9 redetermination process.

10 The proposed emergency regulations establish
11 the procedures for receiving requests to adopt new
12 test-claim decisions and for providing notice and to the
13 hearings on those requests.

14 AB 1610 requests that Finance submit requests
15 to adopt new test-claim decisions on the *Collective*
16 *Bargaining* and *Behavioral Intervention Plans* test-claim
17 decisions by October 31st, 2010.

18 If such requests are being considered, it's
19 critical that the Commission have regulations in place
20 prior to any entity requesting a new test-claim decision,
21 since the filing and notice requirements in statute are
22 susceptible to interpretation.

23 While not required by law, the Commission held
24 its workshop on the proposed emergency regulations on
25 October 25th, 2010. While parties voiced concerns with

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1 adopting these regulations as emergency regulations, it's
2 important to note that the emergency regulations are only
3 effective for six months.

4 During that time, Commission staff will also be
5 proceeding with regular rulemaking. The proposed regular
6 rulemaking will be discussed in Item 6.

7 If the Commission adopts these regulations,
8 they can become effective after posting by the Office of
9 Administrative Law, a brief notice and comment period.
10 We estimate this would occur at the end of November.

11 Staff recommends that the Commission find a
12 statutory emergency exists pursuant to Government Code
13 section 17570, subdivision (e), that requires immediate
14 action, and that this emergency regulatory action is
15 necessary to avoid serious harm to the public peace,
16 health, safety, and general welfare.

17 Also, that staff recommends the Commission
18 adopt the proposed addition of Article 10 to California
19 Code of Regulations Title 2, Division 2, chapter 2.5,
20 effective upon filing with the Secretary of State.

21 And finally, that staff recommends the
22 Commission authorize staff to make any nonsubstantive
23 technical corrections requested by the Office of
24 Administrative Law or Barclays Official California Code
25 of Regulations prior to publication.

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1 Would the parties please state your names for
2 the record?

3 *(No response)*

4 CHAIR BRYANT: Maybe there's no testimony.
5 Does anybody wish to comment on this item?

6 *(No response)*

7 CHAIR BRYANT: Are there any questions from the
8 commissioners?

9 *(No response)*

10 CHAIR BRYANT: Well, that's okay. Don't feel
11 pressure.

12 MR. BURDICK: Just because you're looking for
13 people, Allan Burdick on behalf of the CSAC League of
14 Cities Advisory Committee on State Mandates.

15 And, yes, I think when we had the workshop, we
16 went through this process, and understand that, you know,
17 obviously, you need to go forward based on the statutory
18 provisions. But I don't think we have yet, probably as a
19 local government community, figured exactly what our
20 plans are for this whole process.

21 So I guess our only question would be probably
22 later on, when we talk about priority of these over
23 others. This is probably not appropriate at this time,
24 I'm assuming.

25 CHAIR BRYANT: Okay, then are there any

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1 other questions --

2 MR. BURDICK: Thank you very much.

3 CHAIR BRYANT: Are there any questions of staff
4 from the Commission members?

5 *(No response)*

6 CHAIR BRYANT: Is there a motion on these?

7 MEMBER OLSEN: I move that we adopt a finding
8 that a statutory emergency exists pursuant to Government
9 Code section 17570, subdivision (e), that requires
10 immediate action; and that this emergency regulatory
11 action is necessary to avoid serious harm to the public
12 peace, health, safety, or general welfare.

13 MEMBER COX: Second.

14 CHAIR BRYANT: We have a very good motion and a
15 second.

16 MEMBER OLSEN: Thank you, staff.

17 MEMBER WORTHLEY: Otherwise, there's no staff
18 recommendation.

19 CHAIR BRYANT: We have motion and a second.

20 Is there any further discussion?

21 *(No response)*

22 CHAIR BRYANT: Paula, can you call the roll?

23 MS. HIGASHI: I was just going to ask, are you
24 going to take the vote bullet by bullet? Or are you
25 going to do these --

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1 MEMBER OLSEN: We can consolidate, if you want.

2 MS. HIGASHI: I was just going to suggest,
3 maybe you could do all of it, then the amendments can be
4 made.

5 MEMBER OLSEN: Should I read the other two?

6 MEMBER CHIVARO: Just move the staff
7 recommendation?

8 MEMBER OLSEN: I'll just move the staff
9 recommendation if you want.

10 I'll withdraw my former motion, and I'll move
11 the staff recommendation.

12 CHAIR BRYANT: Okay.

13 MEMBER COX: Second.

14 CHAIR BRYANT: We have a motion and a second on
15 the staff recommendation.

16 Can you call the roll?

17 MS. HIGASHI: Chivaro?

18 MEMBER CHIVARO: Aye.

19 MS. HIGASHI: Cox?

20 MEMBER COX: Aye.

21 MS. HIGASHI: Glaab?

22 MEMBER GLAAB: Aye.

23 MS. HIGASHI: Lujano?

24 MEMBER LUJANO: Aye.

25 MS. HIGASHI: Olsen?

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1 MEMBER OLSEN: Aye.

2 MS. HIGASHI: Worthley?

3 MEMBER WORTHLEY: Yes.

4 MS. HIGASHI: Bryant?

5 CHAIR BRYANT: Aye.

6 MS. HIGASHI: The motion is adopted.

7 CHAIR BRYANT: Okay, then Item 6.

8 MS. HIGASHI: Item 6, Ms. Palchik?

9 MS. PALCHIK: Good morning, again.

10 Section 1189.2 of the Commission's regulation
11 authorizes the Commission to adopt an order to initiate
12 rulemaking. The purpose of the proposed regulations is
13 to implement Government Code section 17570. SB 856 added
14 section 17570 to the Government Code, which generally
15 establishes a process for redetermining existing
16 mandates.

17 The proposed regulations implement the
18 redetermination process by establishing the procedures
19 for receiving requests to adopt new test-claim decisions
20 and for providing notice and to hearings on those
21 requests.

22 This rulemaking package is a regular noticed
23 rulemaking that will be conducted as required by the
24 Administrative Procedures Act while the emergency
25 regulations from Item 5 are in effect.

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1 The proposed regulations also amend Article 1,
2 sections 1181.1 and 1181.2 as they relate to the mandate
3 redetermination process.

4 Following the adoption of the order, staff will
5 publish the notice of hearing and mail the notice and
6 rulemaking package to all interested persons for public
7 comment.

8 Staff recommends that the Commission adopt the
9 order to initiate rulemaking.

10 Will the parties please state your name for the
11 record?

12 (*No response*)

13 CHAIR BRYANT: Okay, apparently there's no
14 public testimony on this item, either.

15 Do we have any questions? Comments?

16 MEMBER WORTHLEY: I move the staff
17 recommendation, Madam Chair.

18 MEMBER OLSEN: Second.

19 MS. HIGASHI: I just wanted to clarify, too,
20 that the staff recommendation actually has four bullets
21 on page 3, just to be sure you're all looking at the same
22 page.

23 CHAIR BRYANT: Okay, then do you want to call
24 the roll? Or can we substitute our last roll call?

25 MS. HIGASHI: It's up to you.

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1 CHAIR BRYANT: Let's just substitute our last
2 roll call, without objection.

3 (No response)

4 CHAIR BRYANT: Okay, then I think we move on.
5 What do we -- motion carried then on that. So we're
6 going to Tab 8.

7 MS. HIGASHI: Tab 8, we have nothing new to
8 report.

9 Tab 9, Chief Legal Counsel's report.

10 MS. SHELTON: Good morning.

11 Just to go over some of this information that
12 we have on this report, there have been a couple of new
13 filings.

14 There has been a cross-petition filed by the
15 local agencies in the Los Angeles County water permit
16 case. And that cross-petition was filed against the
17 State and the Commission.

18 Also, there was a dismissal filed on the
19 *Behavioral Intervention Plans* lawsuit. So that case is
20 now dismissed.

21 As far as the litigation calendar, next Friday,
22 a week from Friday, we have a hearing on the Commission's
23 and the State's demurrer on motion to strike in the
24 *County of Santa Clara* case dealing with a *Handicapped and*
25 *Disabled Students* reduction.

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1 And there's also many cases of interest.

2 That *Clovis* case, now that I've reported on the
3 last couple of months, is now a published final decision.
4 So that will be included in your binders as well.

5 Another case reported last month, *California*
6 *School Boards Association vs. the State of California*.
7 That one is pending in the Fourth District Court of
8 Appeal and the briefing is complete. So hearing will be
9 set. And that case challenges the practice of deferring
10 mandate-reimbursement payments to school districts.

11 Another case is *San Diego Unified School*
12 *District vs. the Controller's Office*. In this case,
13 challenges reductions made by the State Controller's
14 Office on the *STAR* program. The issue in that case is
15 whether the Controller began the audit of the
16 reimbursement claims after the audit period.

17 The next case is *Fenton Avenue Charter School*
18 *vs. the State Controller's Office*. That one is filed by
19 twenty -- or many charter-school districts alleging that
20 the Controller improperly returned reimbursement claims.
21 And they contend that they are contained within the --
22 that charter school or contained within the definition of
23 school districts under 17519 and are eligible to claim
24 reimbursement.

25 Yesterday, we just learned about a new case

1 called *County of Sacramento vs. State of California*,
2 where 23 counties are suing the state on the *Handicapped*
3 *and Disabled* veto by the Governor, where he line-item'd
4 the appropriation and declared that the mandate was
5 suspended. They're asking for an injunction and
6 declaratory relief in that case.

7 Lots of issues.

8 MEMBER WORTHLEY: Madam Chairman, the mandatory
9 relief, is that it would be determined to be rescinded as
10 far as a mandate or --

11 MS. SHELTON: And that they have no duties
12 under the program.

13 The injunction part of it is, I think that
14 they're trying to get out -- in the procedure, there are
15 interagency agreements and dispute resolutions between
16 the school districts and the counties. And they're
17 trying to have the court place an injunction that they've
18 done nothing wrong, essentially, and won't be found at
19 fault under those procedures.

20 MS. HIGASHI: Item 10, the workload data,
21 pending workload data, is presented in Item 10.

22 And I just wanted to note that we have filings
23 from 37 cities and counties regarding a water permit in
24 the Bay Area. And we're in the process of trying to sort
25 through the -- which claim is the first filed and what

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1 the jurisdictions are. And it is a lot of paper in our
2 conference room at this point in time. And so you see 37
3 there. It could end up being much smaller by the time
4 we're done. But that's our new workload there.

5 And we've certainly been getting incorrect-
6 reduction claims. We have an increase in that number as
7 well.

8 And I think we got another test claim filed
9 after this report was published that we're still doing
10 completeness review on.

11 In terms of our budget, I'd like to note that
12 when the budget was adopted, it included \$1.579 million
13 for the Commission. But, actually, with the budget
14 letters that have issued and the cuts -- the additional
15 cuts that are authorized, that will be reduced by another
16 \$64,000. So the Commission's budget will end up being
17 \$1.515 million.

18 Added to the budget issues, we are still in the
19 midst of having furloughs in our office; and just wanted
20 to let everyone know that while most of the staff is no
21 longer furloughed, we now have the issue of the
22 attorneys' bargaining unit being one of the units that
23 does not have a settlement -- have a contract, so they
24 are furloughed. So we have a policy in place in terms of
25 how all of this works. But it is rather confusing.

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1 MEMBER COX: So are you moving to a -- or have
2 you always been on a self-directed furlough then for your
3 attorneys?

4 MS. HIGASHI: Before, we were on the
5 furlough-Friday policy, and now we have self-directed
6 furloughs for the attorneys.

7 MS. SHELTON: They are self-directed, but they
8 have to be taken within the month, within the pay period.
9 So it's still three days off a month.

10 MS. HIGASHI: So this month, we are losing many
11 attorney days of work. Not a good month.

12 Regarding new practices, we wanted to just
13 remind everybody that our last regulation package has
14 now been filed, and was sent over to print. The regs
15 will actually not be in effect until January 1 for the
16 e-filing provisions. But at our next meeting in
17 December, we'll be having a workshop to go over exactly
18 the process and how that will all work, so all of the
19 parties will be aware of that before it starts.

20 As to scheduling, because of the uncertainty in
21 terms of when the Commission's meetings will be next
22 year, what we've done is identified a schedule that is
23 basically the next batch of agenda items that will be
24 coming up. And they're what is in the queue right now in
25 terms of assignments, drafts in progress, research being

1 done, et cetera.

2 Also, I wanted to note that as far as our
3 incorrect-reduction claim backlog goes, what we've been
4 doing is trying to work out an alternative process for
5 dealing with the *Investment Reports* IRCs. And as we work
6 on that process, we'll continue reporting to you on it in
7 terms of how that's working.

8 But as you can see, there are a number of
9 lengthy agenda items in the future for Commission
10 meetings.

11 There is one correction I need to make, and
12 that's on the first test claim listed, "Discrimination
13 complaint procedures." That had originally been
14 scheduled for December. Department of Finance requested
15 an extension of time and postponement. And we've moved
16 it to the March meeting now.

17 And the rest of the items that we have drafts
18 pending, as you can see, coming up.

19 Are there any questions?

20 *(No response)*

21 CHAIR BRYANT: Is that it?

22 MS. HIGASHI: That's it.

23 CHAIR BRYANT: Do we have any public comment on
24 an item not on the agenda?

25 Mr. Burdick?

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1 MR. BURDICK: Do you want a progress report?

2 CHAIR BRYANT: What?

3 MR. BURDICK: Just the question that I raised
4 earlier, that as Paula pointed out in the budget, that
5 there is language which seems to indicate the Department
6 of Finance should file a request for redetermination.
7 And the question really is, if those redeterminations are
8 filed, do they take precedent over the other test claims
9 that are in the queue, or are they treated the same? Do
10 they go to the bottom of the box? Or, you know, has the
11 Commission or the staff looked at what happens when one
12 is filed in that particular process, as to where -- are
13 they any different from a regular test claim in terms of
14 priorities?

15 CHAIR BRYANT: Any thoughts on that?

16 MS. HIGASHI: Do you want me to give the same
17 answer I've given before?

18 CHAIR BRYANT: Yes.

19 MS. HIGASHI: Which is basically, the statute
20 does not direct us to treat them any differently. There
21 are no mandated timelines. So the only workload that we
22 have mandated timelines for, are our test claims. And we
23 are way behind on our test claims.

24 And so unless the Commission -- if one of these
25 requests is filed, and unless the Commission directs us

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1 to do differently, at this point there is no special
2 priority treatment. Although certainly when a request is
3 filed, if it's deemed complete, we would send it out for
4 comment and follow the proposed emergency regulations
5 process that we just adopted.

6 CHAIR BRYANT: Okay, thank you.

7 MR. BURDICK: Thank you very much.

8 CHAIR BRYANT: Any other public comment?

9 *(No response)*

10 CHAIR BRYANT: All right, then the Commission
11 will meet in closed executive session pursuant to
12 Government Code section 11126, subdivision (e), to confer
13 with and receive advice from legal counsel, for
14 consideration and action, as necessary and appropriate,
15 upon the pending litigation listed on the published
16 notice and agenda; to confer with and receive advice from
17 legal counsel regarding potential litigation.

18 The Commission will also confer on personnel
19 matters and report from the personnel subcommittee
20 pursuant to Government Code section 11126, subdivision
21 (a)(1), to review the Executive Director applications.

22 We will convene in open session in
23 approximately 30 minutes.

24 Thanks.

25 //

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1 *(The Commission met in closed session*
2 *from 10:56 a.m. to 12:17 p.m.)*

3 CHAIR BRYANT: The Commission met in closed
4 executive session pursuant to Government Code section
5 11126, subdivision (e), to confer and receive advice from
6 legal counsel for consideration and action, as necessary
7 and appropriate, upon the pending litigation listed on
8 the published notice and agenda; to confer with and
9 receive advice from legal counsel regarding potential
10 litigation.

11 The Commission also met in closed executive
12 session pursuant to Government Code section 11126,
13 subdivision (a)(1), to confer on personnel matters, and a
14 report from the personnel subcommittee as listed on the
15 published notice and agenda.

16 The Commission will convene in open session.

17 Is there any further business?

18 *(No response)*

19 CHAIR BRYANT: It doesn't appear so.

20 So with no further business to discuss, I will
21 entertain a motion to adjourn.

22 MEMBER OLSEN: So moved.

23 MEMBER WORTHLEY: Second.

24 CHAIR BRYANT: All those in favor, say "aye."

25 *(A chorus of "ayes" was heard.)*

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CHAIR BRYANT: The meeting is adjourned.

(The meeting concluded at 12:17 p.m.)



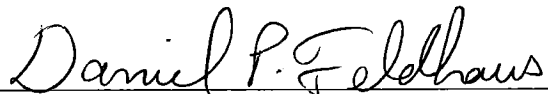
REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on November 15th, 2010.



Daniel P. Feldhaus
California CSR #6949
Registered Diplomat Reporter
Certified Realtime Reporter