

ITEM 1B
PROPOSED MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 437
Sacramento, California
June 10, 2005

Present: Chairperson Anne Sheehan
 Representative of the Director of the Department of Finance
 Member Nicholas Smith
 Representative of the State Controller
 Member Francisco Lujano
 Representative of the State Treasurer
 Member Jan Boel
 Representative of the Director of the Office of Planning and Research

Vacant: Local Elected Officials (2)
 Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:31 a.m.

**HEARING AND DECISION PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 6.5 (action)**

Paula Higashi, Executive Director, swore in the parties and witnesses intending to testify before the Commission.

Item 1 Adoption of Proposed Statement of Decision: Butte County Application
 for Finding of Significant Financial Distress, Welfare & Institutions Code
 Section 17000.6

Shirley Opie, Project Manager, presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflects the Commission's preliminary decision on May 26, 2005, regarding the Butte County application on a finding of significant financial distress.

Staff recommended that the Commission adopt the proposed Statement of Decision. Staff also recommended that the Commission adopt an effective date of July 2, 2005. Ms. Opie noted that the 12-month period of significant financial distress will begin on September 1, 2005, which is 60 days following the effective date of the decision.

Parties were represented as follows: Paul McIntosh, on behalf of the County of Butte; and Michael Herald, with the Western Center on Law and Poverty and on behalf of Legal Services of Northern California.

Mr. McIntosh stated that he was available to answer questions.

Mr. Herald noted that at the May 26 hearing, Butte County cited a recent Attorney General opinion to illustrate the kind of relief from certain housing mandates it may receive from reducing

general assistance. He indicated that after reviewing the opinion, he found nothing in it to support the County's articulation of impact. He stated his belief that the opinion is not applicable to the matter.

In addition, Mr. Herald acknowledged that procedurally, the Commission could not consider additional information. However, with regard to the effects of the triple flip on estimating property tax and vehicle license fee revenues, he stated that there was a great likelihood that property tax revenues may be \$7 million or greater, which would completely meet the unmet needs gap. Thus, he noted for the record his belief that Butte County failed to make a compelling case for relief and to demonstrate beyond clear and convincing evidence that basic county services could not be maintained.

Mr. McIntosh disputed Mr. Herald's comments. He asserted that vehicle license fees will grow on a statewide basis, but with the triple flip in place, the County does not benefit. He also stated that the growth in property tax rates were taken into account in the fiscal forecast. Mr. McIntosh supported staff's findings.

Member Boel made a motion to adopt the proposed Statement of Decision. With a second by Member Smith, the motion carried unanimously.

**REQUEST FOR RECONSIDERATION OF PRIOR STATEMENT OF DECISION
PURSUANT TO GOVERNMENT CODE SECTION 17559 AND CALIFORNIA CODE
OF REGULATIONS, TITLE 2, ARTICLE 7, SECTION 1188.4**

- Item 2 Statement of Decision Adopted on March 30, 2005, *Regional Housing Needs Determination: Councils of Governments*
Reconsideration of Statutes 1980, Chapter 1143, Claim No. 3929,
Directed by Statutes 2004, Chapter 227, Sections 109-110 (SB 1102)
Southern California Association of Governments, Sacramento Area
Council of Governments, California Association of Councils of
Governments, and San Diego Association of Governments, Requesters

Camille Shelton, Senior Commission Counsel, presented this item. She stated that pursuant to Government Code section 17559 and section 1188.4 of the Commission's regulations, the Councils of Governments requested reconsideration of the Commission's decision adopted on March 30, 2005. Ms. Shelton noted that the request raises the same arguments made by the Councils of Governments through written and oral testimony at the March hearing. However, based on the evidence in the record, staff concluded that the Commission does not have jurisdiction to consider the request for reconsideration because the petition was not timely filed and the time for any action by the Commission to reconsider has lapsed. Thus, the request is deemed denied by operation of law.

Staff recommended that the Commission adopt the revised staff analysis and take no action on the request for reconsideration.

Karen Tachiki represented the Southern California Association of Governments.

Ms. Tachiki stated that she was having difficulty reconciling the procedural and jurisdictional issues that staff raised. She believed that staff was seeking to elevate form over substance because while staff acknowledges receipt of the filing, it is denied because the courier's receipt did not have an exact time stamp. Regarding the jurisdiction issue, she pointed out that the 30-day period for reconsideration lapsed because the hearing date set by staff was after the 30

days. She asserted that the parties had no power to set the hearing date. Moreover, Ms. Tachiki pointed out that this hearing was meaningless because there were not five members present. She maintained her argument that councils of governments are eligible claimants under the law and that nothing changed since the Board of Control rendered its original decision.

Ms. Shelton responded that Commission staff received the request for reconsideration on May 6, 2005. However, she noted that the Commission's regulations, which have the force of law, require that, if a common carrier is used, there must be a showing that the document was delivered to the carrier before the end of the business day. In this case, there was no such evidence in the record. As to the lapse of time, Ms. Shelton stated that the 30-day period expired on June 5, but that staff made an inadvertent mistake. She explained that the Commission is an administrative agency with limited jurisdiction, so if the Commission acts beyond its jurisdiction, the decision would be considered void.

Member Smith noted that Ms. Tachiki's comment about the requirement for five affirmative votes was correct. However, Ms. Shelton stated that the Commission has no control over the appointments made to the body. She indicated that requesters can challenge decisions in court without having to come before the Commission on a reconsideration.

Member Smith encouraged everyone to write to the Governor to ask him to appoint a full Commission.

Chairperson Sheehan stated that appointment interviews were being conducted. She affirmed that staff is limited in terms of selecting hearing dates, and stated that all future requests for reconsideration should be done in a timely fashion to avoid this same situation.

Ms. Tachiki added that the statute under which the Commission's jurisdiction derives and that sets the 30-day limit also indicates that the 30 days begins when the Statement of Decision is issued. She noted that by the literal language of the statute, the Statement of Decision should be issued by delivery or mail, not by electronic mail.

Ms. Shelton responded that the Commission's regulations, which implemented the Government Code statute being referenced, allow for an electronic mail delivery by consent of the Commission or the parties. She stated that consent of the parties was attained for the electronic delivery of all comments and written documents related to reconsiderations.

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

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

ADOPTION OF PROPOSED ORDER TO SET-ASIDE PARAMETERS AND GUIDELINES (Tentative)

- Item 3 *Regional Housing Needs Determination: Councils of Governments, Statutes 1980, Chapter 1143 (AB 2853)*
Directed by Statutes 2004, Chapter 227, Sections 109-110 (SB 1102)

Eric Feller, Commission Counsel, presented this item. He stated that the Commission, on reconsideration, found that this program is not a reimbursable mandate. Thus, staff recommended that the Commission adopt the proposed order to set aside the *Regional Housing Needs Determination: Councils of Governments* Parameters and Guidelines effective

July 1, 2004. He stated that this recommendation accurately reflects the Commission's March 30, 2005 decision.

Karen Tachiki represented the Southern California Association of Governments. She stated that she had nothing to add to the record.

Member Boel made motion to adopt the proposed order to set aside the parameters and guidelines. With a second by Member Lujano, the motion carried 3-0. Member Smith abstained.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 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.*, Case Number 03CS01069 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-01 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01432 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
3. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01401 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
4. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01568 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
5. *San Jose Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01569 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
6. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Case Number 03CS01570 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
7. *Clovis Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01702 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
8. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Case Number 04CS00028 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
9. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS087959, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-11 [*Animal Adoption*]

10. *County of Los Angeles and Los Angeles County Flood Control District v. State of California, Commission on State Mandates, et al.*, Case Number BS089769, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-12 [*Transit Trash Receptacles, et al.*]
11. *City of Artesia, et al. v. State of California, Commission on State Mandates, et al.*, Case Number BS089785, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-13 [*Waste Discharge Requirements*]
12. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Case No. BS092146, in the Superior Court of the State of California, County of Los Angeles, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*]
13. *City of Newport Beach v. Commission on State Mandates, et al.*, Case Number BS095456, in the Superior Court of the State of California, County of Los Angeles, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]

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 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

Chairperson Sheehan 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 Smith and second by Member Boel, Chairperson Sheehan adjourned the meeting at 10:00 a.m.

PAULA HIGASHI
Executive Director