

# MINUTES

## COMMISSION ON STATE MANDATES

State Capitol, Room 126  
Sacramento, California  
July 29, 2004

Present: Chairperson James Tilton  
Representative of the Director of the Department of Finance  
Member Bruce Van Houten<sup>1</sup>  
Representative of the State Treasurer  
Member Walter Barnes  
Representative of the State Controller  
Member Jan Boel  
Acting Director of the Office of Planning and Research  
Member John Lazar  
City Council Member

Vacant: Local Elected Official  
Public Member

### CALL TO ORDER AND ROLL CALL

Chairperson Tilton called the meeting to order at 9:34 a.m.

### APPROVAL OF MINUTES

Item 1 May 27, 2004

Upon motion by Member Boel and second by Member Van Houten, the minutes were adopted. Member Lazar abstained.

### APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)0

Item 2 Staff Report on Appeals Related To Current Agenda Items (if necessary)

No appeals were filed.

### PROPOSED CONSENT CALENDAR

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

#### ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 11 *Postmortem Examinations: Unidentified Bodies, Human Remains*, 00-TC-18  
County of Los Angeles, Claimant  
Government Code Section 27521.1  
Statutes 2000, Chapter 284 (SB 1736)

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<sup>1</sup> Mr. Van Houten left the meeting upon conclusion of the Executive Director's report and Ms. Linda McAtee, represented the Treasurer for the remainder of the meeting.

## ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES

- Item 12     *Standards-Based Accountability*, 98-TC-10  
San Diego Unified School District, Claimant  
Department of Education Standards-Based Accountability Memoranda,  
Dated June 30, 1997 and April 15, 1998
- Item 13     *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)
- Item 14     *Attendance Accounting*, 98-TC-26  
Campbell Union High School District, Grant Joint Union High School District,  
and San Luis Obispo County Office of Education, Co-claimants  
Education Code Sections 2550.3 and 42238.7  
Statutes 1997, Chapter 855 (SB 727)  
Statutes 1998, Chapter 846 (SB 1468)
- Item 15     *Redevelopment Agencies—Tax Disbursement Reporting*, 99-TC-06  
County of Los Angeles, Claimant  
Health and Safety Code Section 33672.7  
Statutes 1998, Chapter 39 (SB 258)

Member Lazar moved for adoption of the consent calendar, which consisted of items 11 through 15. With a second by Member Boel, the consent calendar was unanimously adopted.

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

Paula Higashi, Executive Director, swore the parties and witnesses participating in the hearing of agenda items 3 through 10.

### TEST CLAIMS AND PROPOSED STATEMENTS OF DECISION

- Item 3     *Algebra Instruction*, 00-TC-14  
Sweetwater Union High School District, Claimant  
Education Code Section 51224.5  
Statutes 2000, Chapter 1024 (SB 1354)

Eric Feller, Commission Counsel, presented this item. He stated that the test claim statute requires pupils to pass a course in algebra to obtain a high school diploma. The claimant pled reimbursable activities related to remedial instruction to help pupils pass the course. However, staff found that the test claim statute neither requires nor refers to remedial instruction, and thus, those activities were found not to be reimbursable.

Regarding the algebra course itself, Mr. Feller indicated that prior law already required the successful completion of two mathematics courses in order for students to graduate from high school. Thus, the test claim statute merely places algebra instruction within the existing framework for mathematics instruction without adding to the framework. Therefore, staff found that this activity was not reimbursable.

Staff recommended that the Commission deny the *Algebra Instruction* test claim.

Parties were represented as follows: Ruth Ann Duncan and Larry Hendee, on behalf of the claimant; and Michael Wilkening, with the Department of Finance.

Mr. Hendee disagreed with staff's findings that: 1) remedial instruction is not reimbursable under article XIII B, section 6; 2) there is no threat of penalty for the failure to provide remedial instruction; and 3) remedial instruction is an activity undertaken at the discretion of the school district.

Mr. Hendee noted that in the staff analysis, it was disclosed in a discussion about the State Board of Education math standards that 30 to 40 percent of pupils do not take high school algebra. He contended that a large percent of those students do not take algebra because of the lack of desire for higher education, the inability to be successful in algebra, or the inability to simply do algebra. He also noted staff's statement that the test claim statute was enacted, in part, to protect the High School Exit Exam from court challenges because pupils need the opportunity to learn the subject matter being tested. Applying this to the large portion of students not taking algebra, he asserted that it implied the probable need for remediation intervention.

Regarding staff's first finding, Mr. Hendee argued that the minutes of all of the Assembly and Senate hearings on this legislation disclosed that 30 to 40 percent of pupils choose not to take algebra, and that there was a need to preserve the opportunity for students to learn the subject matter. As to the second finding, he contended that ultimately the students would suffer the penalties because the district must either graduate the student or not. With regard to the third finding, he maintained that for those 30 to 40 percent of pupils not taking algebra, remediation intervention was necessary for success.

Further, Mr. Hendee disagreed with staff's reliance on the *County of Los Angeles* decision regarding domestic violence training to support its position that *Algebra Instruction* was not a new program or higher level of service. He believed the comparison was inappropriate.

Mr. Hendee also asserted that in the process of setting priorities, the Legislature imposed a higher level of service on school districts. He introduced Ms. Duncan, a math curriculum specialist for the Sweetwater Union High School District.

Ms. Duncan discussed the algebra requirement and provided context as to what the district had done, including the development of courses and diagnostic tests, in order to comply with the requirement. She argued that requiring a student to take algebra as one of the two required math courses constituted a higher level of service because math teachers must raise skill levels and address the needs of special education students, at-risk learners, and low performers. She contended that this was a costly and labor-intensive effort. She also stated that there was not a clear financial penalty to the district for not providing remedial instruction; however, the students would suffer by not receiving their high school diplomas.

Mr. Wilkening concurred with the staff analysis.

Chairperson Tilton requested clarification about what was at issue because the claimants were arguing the issue of expanded workload while staff maintained that the requirement of two math courses remained and the issue was prioritization. Mr. Feller responded that those activities pled by the claimant were not found in the law, and therefore, staff found that they are not mandated by the state within the meaning of article XIII B, section 6.

Member Boel asked questions regarding the pass rate on the High School Exit Exam, to which Ms. Duncan responded.

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

Item 4 Proposed Statement of Decision: *Algebra Instruction*, 00-TC-14, as described above in Item 3

Eric Feller, Commission Counsel, presented this item. He indicated that unless there were objections, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the test claim decision. Staff also recommended that the Commission allow minor changes to be made to reflect the hearing testimony and vote count.

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

Item 5 *Mandatory On-The-Job Training for Peace Officers Working Alone*  
00-TC-19, County of Los Angeles Claimant  
02-TC-06, Santa Monica Community College District, Claimant  
Commission on Peace Officer Standards and Training (POST) Bulletin: 98-1  
and POST Administrative Manual, Procedure D-13

Camille Shelton, Senior Commission Counsel, presented this item. She stated that the test claim was filed on documents issued by the Commission on Peace Officer Standards and Training. The POST Bulletin 98-1 and the POST Administrative Manual Procedure D-13 establish field-training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties. Staff found that the POST field-training program is required only if the local agency or school district employer elects to become a member of POST, and for those officers employed by a POST-participating agency, only upon the officer's completion of the basic training course.

Staff recommended that the Commission adopt the staff analysis, which denies the test claim for the following reasons:

- 1) State law does not require school districts and community college districts to employ peace officers, and thus, POST field-training requirements do not impose a state mandate on school districts and community college districts.
- 2) State law does not require local agencies or school districts to participate in the POST program, and thus, the field-training requirements imposed by POST on their members are not mandated by the state.

Parties were represented as follows: Leonard Kaye, on behalf of County of Los Angeles; Leo Shaw, on behalf of the Santa Monica Community College District; Pamela Stone, on behalf of the California State Association of Counties; Bud Lewallen and Al Stowe, with the Commission on Peace Officer Standards and Training; and Georgia Johas, with the Department of Finance.

Mr. Kaye stated his belief that there was an unambiguous legal compulsion to provide mandatory field training and that the field-training standards and requirements applied to all peace officers. He indicated that the language of POST Bulletin 98-1 had an implied and express understanding that these standards and requirements were to be consistently applied throughout California. He added that this bulletin was sent to all "affected state agencies," which he understood to include all sheriffs' departments, police departments, schools, etc.

Mr. Kaye argued that POST's new field-training program for peace officers assigned to general law enforcement duty was an integral and required component of basic officer training. In addition to being legally compelled, he felt that there was no reasonable alternative to providing the training. He noted that if an agency were not a member of POST, it contracted with officers from agencies that were members.

Mr. Shaw concurred with Mr. Kaye's comments and submitted on the record.

Ms. Johas and Mr. Stowe concurred with the staff analysis.

Mr. Stowe added that POST was created in the late 1950s with an agreement among the Legislature, local agencies, and law enforcement that it would be created as a voluntary program. He noted that those agencies participating in the POST program received the benefits of reimbursement, certificates, and other services in return for voluntarily meeting the selection and training requirements. Over the years, the requirements had been embellished, but all at the concurrence of the members. He indicated that the claimants both passed ordinances to voluntarily participate in the POST program, and the field-training program had been part of the requirements effective in 1999.

Chairperson Tilton restated Mr. Stowe's comments that the state established a standard that local entities can use to measure themselves against, but it was not a mandate by the state.

Mr. Kaye reiterated that there was a legal compulsion to make sure that the officers are properly trained so that their arrests are valid.

Chairperson Tilton explained that the fundamental issue was whether or not the state required this additional effort. He said that clearly there was an increased level of service required to get the POST certification, but unless there was a statute requiring agencies to be POST-certified, then there was no underlying legal requirement for the state to reimburse costs.

Ms. Stone contended that there were two subdivisions in the Penal Code that addressed the issue. She explained that the first subdivision spoke to the standards, including training requirements, that were required to be met for a person to become a peace officer within the state of California. The second subdivision dealt with the fact that an entity could be a voluntary member of POST. However, she maintained that regardless of membership, the POST standards were applicable to all officers. Ms. Stone noted that there was also an Attorney General's opinion underlining the fact that for one to exercise peace officer duties in California, one must meet the POST standards.

Mr. Stowe clarified that the only certificate required of individual peace officers in California is the Basic certificate. He noted that an Attorney General's opinion says that POST is obliged to provide that certificate whether the person's agency participates in a POST program or not.

Mr. Kaye explained that they required field training as an essential element before an officer could be assigned to uniformed patrol duties because of the POST Executive Director's characterization of the field-training as an integral part of the Basic training.

Ms. Shelton added that in the plain reading of the POST Bulletin 98-1, it states that the requirements for the regular Basic certificate are not affected by the field-training requirements. In addition, she quoted POST regulations section 1005, subdivision (a)(1), which indicates that an officer can exercise the powers of a peace officer during the field-training program. Thus, it is not part of the Basic training requirement.

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

Item 6 Proposed Statement of Decision: *Mandatory On-The-Job Training for Peace Officers Working Alone*, 00-TC-19 and 02-TC-06, as described above in Item 5

Camille Shelton, Senior Commission Counsel, presented this item. She indicated that the sole issue before the Commission was whether the proposed decision accurately reflected the test claim decision. Unless there were objections, staff recommended that the Commission adopt the proposed Statement of Decision, and authorize staff to make minor changes to reflect the vote count and witnesses present at the hearing.

Mr. Shaw noted that in the last paragraph on page 14, there was a typographical error in the citation of Penal Code section 13522. Ms. Shelton indicated that the error would be corrected in the final decision.

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

Item 7 *DNA Database*, 00-TC-27  
County of San Bernardino, Claimant  
Penal Code Section 14250  
Statutes 2000, Chapter 822 (SB 1818)  
-and-  
Amendment to *Postmortem Examinations: Unidentified Bodies*, 02-TC-39  
County of Los Angeles, Claimant  
Penal Code Section 14250  
Statutes 2001, Chapter 467 (SB 297)

Eric Feller, Commission Counsel, presented this item. Staff found the test claim to be a reimbursable state mandate for the following three sets of activities:

1. For coroners to collect samples for DNA testing from the remains of unidentified persons, and to send the samples to the Department of Justice in accordance with the DOJ-developed standards and guidelines for preservation and storage.
2. For local law enforcement to:
  - a. inform parents or other appropriate relatives of those missing under high-risk circumstances, as defined in statute, that they may give a voluntary sample of DNA within 30 days after making a report; and
  - b. take a DNA sample, in a manner prescribed by the Department of Justice, including the use of a model DNA collection kit.
3. For local law enforcement to:
  - a. re-verify the status of a missing person before submitting a DNA sample to the Department of Justice; and
  - b. send the DNA sample and any supplemental information to the Department of Justice with a copy of the crime report 30 days after the filing of a report.

Mr. Feller outlined the possible points of disagreement:

1. Whether exhuming unidentified remains to submit to the Department of Justice is reimbursable.

Staff found that this activity was not based on language in Penal Code section 14251.

2. Whether storage of DNA from an unidentified person's remains is reimbursable.

Staff found that neither the test claim statute nor the Department of Justice's guidelines support reimbursement for storing DNA from unidentified remains.

Staff recommended that the Commission approve the test claim for the identified activities.

Parties were represented as follows: Bonnie Ter Keurst, on behalf of the County of San Bernardino; Leonard Kaye and David Campbell, on behalf of the County of Los Angeles; John Tonkyn and Jeannine Willie, with the Department of Justice, Missing Persons DNA Program; and Dirk Anderson, with the Department of Finance.

Ms. Ter Keurst had no issues with staff's analysis of the law enforcement duties. However, she disagreed with staff's findings regarding the exhumation and storage activities for coroners. Reading from Penal Code section 14250, subdivision (c), she pointed out that the legislation was directed to the coroner to collect samples from *all* unidentified persons. Staff interpreted this to apply to those remains held by the coroner, which she disputed.

Ms. Ter Keurst indicated that according to the San Bernardino Deputy Coroner, most skeletal or mummified remains are stored or retained as opposed to buried for economic reasons. However, bodies in various stages of decomposition need to be buried for health and safety reasons. Using staff's interpretation then, she argued that in pre-existing cases where the remains were not mummified, they would not be a part of the DNA investigative process because they had been buried. She disagreed with staff's statement that the Department of Justice did not deem exhumation necessary.

In addition, Ms. Ter Keurst explained that the storage, retention, and refrigeration of evidence represented activities deemed necessary by the coroner's office to carry out the directives of the legislation, which is to provide good samples to the Department of Justice. She disagreed with staff's conclusion that the DOJ Information Bulletin 01-BFS-04 did not address storage, and believed that such costs should be reimbursable.

Mr. Kaye concurred with Ms. Ter Keurst's comments and stated that when the Department of Justice requires the exhumation of bodies, coroners are under a legal compulsion to do so when possible. He suggested that this was the Legislature's specific intent.

Mr. Campbell asserted that the law requires bodies to be exhumed. With advanced DNA technology now available, he stated that it could bring closure to the families. He added that simply because bodies were examined and buried did not mean that coroners relinquished their responsibility.

Mr. Campbell concurred with Ms. Ter Keurst's comments.

Mr. Tonkyn also concurred with the comments made by the claimants. He provided historical information about the records of unidentified human remains and noted that prior to the effective date of this law, many varying methods of remains disposal were used. He indicated that no state-mandated minimum procedure was established.

Mr. Tonkyn explained that in a survey of coroners about three years ago, roughly 350 bodies were buried. Being such a high number, he felt it was necessary that the Commission allow reimbursement for exhumation costs, arguing that Penal Code section 14250, subdivision (c)(1), does not distinguish between “buried remains” and “remains in the possession of the coroner.”

Mr. Anderson concurred with the staff analysis. He commented that as stated in the staff analysis, exhumation was subject to funding, as deemed necessary by the Department of Justice. He mentioned that the statute provided a two-dollar fee per death certificate to help fund this program. Regarding the storage costs, he indicated that the statute did not require the coroner to dispose of the sample.

Mr. Feller stated that under the rules of statutory construction, the specific governs the general. Thus, with regard to exhumation costs, any specific reference to it would trump any other general references in the legislative history or in Penal Code section 14250. He maintained that the funding provision in section 14251 controls in this area because none of the Department of Justice bulletins deemed exhumation necessary. Therefore, staff did not find a reimbursable mandate.

Chairperson Tilton asked a question about the Department of Justice’s requirements for handling samples. Mr. Tonkyn responded and clarified that if an identification of the remains was made, they were returned to the coroner to be given to the family for proper disposal. If an identification was not made, the DNA profile was maintained in the database but the remains were still returned to the coroner.

Mr. Tonkyn also stated for the record that the primary purpose of the funds referenced in section 14251 was to fund the functions of the laboratory. If the Department of Justice deemed it necessary and had the discretionary funds available, they would be used for exhumation. However, he indicated that this has not been the case since DNA is very expensive.

Mr. Kaye added that traditionally, any funds made available were offset from the reimbursement claims. He reiterated that the Department of Justice required that bodies be exhumed under certain specific conditions.

Member Barnes asked if the information bulletins specifically notified coroners to exhume bodies. Mr. Tonkyn said no and reiterated that no distinction was made between “buried remains” and “remains in the possession of the coroner’s office” because it did not seem necessary. Also, Mr. Tonkyn submitted that coroners interpreted a mandate from section 14250, subdivision (c)(1), which states that samples must be collected from all unidentified persons.

Member Barnes asked if there was a definition of unidentified person’s remains. Mr. Feller responded no. He noted that in order for the statute to apply retroactively, there would have to be an indication of Legislative intent, which was not the case here.

Ms. Ter Keurst noted that funds for the program were used for administrative purposes, but asserted that the fee issue was apart from the mandate imposed on coroners to obtain samples from all unidentified bodies.

There was further discussion prompted by questions from Member Barnes about the issue of exhumation and whether the statute was retroactive, or governed prior to its enactment.

Chairperson Tilton commented that this was a good example of where Legislative intent was unclear. As a member, he felt that he had no basis to make a determination on this test claim. Rather than guess what was intended, he proposed that clarifying legislation be sought.



Mr. Kaye proposed that staff's analysis be modified to specify that anyone buried on or after September 2000 was included by the term "all unidentified persons."

Ms. Willie, administrator of the Department of Justice Missing Persons DNA Program, reviewed the history of the legislation, Senate Bill 1818, which was initiated by the families of missing persons. She stated that the intent was to get all unidentified bodies identified by the Department of Justice using the new DNA technology. She added that lack of funding prevented the bodies from being exhumed; not a misunderstanding or thinking that it was not a law.

Member Barnes indicated that after rereading the language, he felt that there was a reasonable presumption that the Legislature intended this to apply to all unidentified bodies.

Mr. Anderson commented that the Department of Justice's requirements were completely lacking as far as requiring exhumation. He noted that the Commission's decision should be based on what was required.

Chairperson Tilton asked if there were examples of satisfying the requirement to get DNA tests without exhuming the body. Ms. Campbell responded that it was possible in some, but not all. Ms. Ter Keurst added that DNA tests were more like a final resort.

Chairperson Tilton requested comments as to Mr. Kaye's suggestion to modify the language. Mr. Tonkyn replied that the intent of the legislation was to not distinguish between the statute's effective date or the burial date of the remains, nor to distinguish between buried remains or remains at the coroner's office.

Ms. Willie clarified that the only bodies that would be exhumed were those for which there was no biological evidence in storage.

Chairperson Tilton articulated that all bodies did not have to be exhumed because there were other ways to obtain proper DNA. Ms. Willie indicated that there would not be a large number of exhumations. Mr. Tonkyn added that this should not be an ongoing problem because as of January 2001, coroners are required to take biological samples.

After further discussion, Member Barnes stated that he had enough information to make a decision and give guidance to staff in the development of the parameters and guidelines. He felt that exhumation costs should be covered to the extent that it is the only way to comply with the law. Chairperson Tilton agreed in general.

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

Mr. Feller recommended that the Commission adopt the final staff analysis, with any amendments they wished to make, and allow staff to re-draft the proposed Statement of Decision to incorporate the hearing testimony and present it at the next hearing.

Member Barnes made a motion to adopt the staff recommendation with an amendment to allow for exhumation costs in those circumstances where it is the only alternative available to meet the reporting needs under this particular law. With a second by Member Lazar, the motion carried 4-0. Member Boel abstained.

Item 8 Proposed Statement of Decision: *DNA Database*, 00-TC-27, 02-TC-39, as described in Item 7

Item 8 was postponed to the next hearing.

Item 9      *Cancer Presumption (K-14)*; 02-TC-15  
Santa Monica Community College District, Claimant  
Labor Code Section 3212.1  
Statutes 1982, Chapter 1568 (AB 3011)  
Statutes 1984, Chapter 114 (AB 1399)  
Statutes 1988, Chapter 1038 (SB 1145)  
Statutes 1989, Chapter 1171 (SB 89)  
Statutes 1999, Chapter 595 (AB 539)  
Statutes 2000, Chapter 887 (SB 1820)

Camille Shelton, Senior Commission Counsel, presented this item. She noted that Labor Code section 3212.1 provides an evidentiary presumption in workers' compensation cases to specified firefighters and peace officers that develop cancer during employment. She stated the claimant's contention that the test claim statute imposed a reimbursable state-mandated program by requiring school districts and community college districts to pay additional costs of claims caused by the shifting of the burden of proof of the cause of the cancer from the police officer employee to the district.

Staff concluded that school districts and community college districts are not eligible claimants for this test claim because the test claim statute does not provide a rebuttable cancer presumption to employees of a school district or community college district. However, if it is assumed that Labor Code section 3212.1 does apply, staff further concludes that Labor Code section 3212.1 is not subject to article XIII B, section 6 of the California Constitution because school districts are not required by the state to employ peace officers and/or firefighters. Therefore, Ms. Shelton maintained that pursuant to the *Department of Finance v. Commission on State Mandates* case, litigating a workers' compensation case under this test claim statute does not impose a state-mandated program on school districts and community college districts.

Staff recommended that the Commission adopt the staff analysis to deny the test claim. Ms. Shelton noted that an errata sheet was issued for the executive summary because a line was mistakenly omitted from the last analysis.

Parties were represented as follows: Leo Shaw, on behalf of the claimant; and Thomas Todd, with the Department of Finance.

Mr. Shaw stated that based on prior decisions of the Commission regarding this issue, the claimant submitted on the record.

Mr. Todd concurred with the staff analysis.

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

Item 10      Proposed Statement of Decision: *Cancer Presumption (K-14)*, 02-TC-15, as described in Item 9

Camille Shelton, Senior Commission Counsel, presented this item. Staff recommended that the Commission adopt the proposed Statement of Decision, and allow staff to make minor changes to reflect the vote count and witnesses present at the hearing.

Member Lazar made a motion to adopt the proposed Statement of Decision. With a second by Member Van Houten, the motion carried unanimously.

## STAFF REPORTS

### Item 16 Hearing Schedule (info/action)

Paula Higashi, Executive Director, presented the proposed hearing schedule for 2005.

Chairperson Tilton noted that as authorized by statute and budget, the Commission was still holding bimonthly hearings.

Member Barnes made a motion to adopt the proposed hearing schedule for 2005. With a second by Member Van Houten, the motion carried unanimously.

### Item 17 Chief Legal Counsel's Report (info) Recent Decisions, Litigation Calendar

Mr. Starkey reported that the decision from the Third District Court of Appeal in the *San Diego Unified School District* case was received. He noted that it was an unpublished decision that upheld the Commission's decision in the *Physical Performance Tests and Standardized Testing and Reporting* case. However, he stated the possibility that it may be appealed to the Supreme Court.

### Item 18 Executive Director's Report (info/action) Workload, Budget, Assembly Special Committee on State Mandates, Legislation, Next Hearing

Ms. Higashi noted the following:

- *Workload.* Prior to this hearing, there were 117 test claims pending determination.

Chairperson Tilton requested that at the next hearing, an overview be provided about the Legislative discussions regarding reforms to the mandate process, as well as the status of backlogged cases and resources. Ms. Higashi affirmed.

Proposed changes in a few budget trailer bills were discussed. Ms. Higashi stated that the total impact of the proposed changes would significantly increase the Commission's workload. The members discussed the potential workload, and dealing with the issue through budget change proposals.

Member Barnes asked about the status of the Butte County application. Nancy Patton, Assistant Executive Director, provided an update.

- *Legislation.* One bill related to elections procedures has been enrolled. All other bills were going to Appropriations.
- *Next Agenda.* The test claims for *Acquisition of Agricultural Land for a School Site* and *California English Language Development Test* are scheduled for the next hearing, along with proposed parameters and guidelines and statewide cost estimates.

## 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. *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*]
2. *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*]
3. *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*]
4. *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*]
5. *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*]
6. *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*]
7. *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*]
8. *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*]
9. *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*]
10. *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*]
11. *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*]
12. *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.*]
13. *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*]

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 Tilton 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 Tilton 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

Ms. Higashi introduced a new student assistant, Latoya Jackson.

Hearing no further business, and upon motion by Member Lazar and second by Member Boel, Chairperson Tilton adjourned the meeting at 12:30 p.m.



PAULA HIGASHI  
Executive Director