

MINUTES

COMMISSION ON STATE MANDATES

Department of Social Services Building
744 P Street, First Floor, Auditorium
Sacramento, California
March 30, 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 9:32 a.m.

APPROVAL OF MINUTES

Item 1 January 27, 2005

Upon motion by Member Boel and second by Member Lujano, the minutes were unanimously adopted.

PROPOSED CONSENT CALENDAR

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

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

Item 11 *Differential Pay and Reemployment*, 99-TC-02
Palmdale School District, Claimant
Education Code Sections 44977 and 44978.1
Statutes 1998, Chapter 30 (SB 1019)

ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING

Item 12 Implementation of Statutes 2004, Chapter 890 (AB 2856)
Proposed Amendments to California Code of Regulations, Title 2,
Chapter 2.5, Article 1. General, Article 3. Test Claims, Article 4.
Mandates Recognized by the Legislature, Article 7. Hearings, and
Article 8.5. Forms

Member Boel moved for adoption of the consent calendar, which consisted of items 11 and 12. With a second by Member Lujano, the consent calendar was unanimously adopted.

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

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

- Item 2 Executive Director's Decision that section 1188.4 of the Commission's Regulations does not apply to the reconsideration of the *Regional Housing Needs Determination: Councils of Governments* decision (Items 5-6 below). Association of Bay Area Governments, Appellant

Eric Feller, Commission Counsel, presented this item. He stated that the Association of Bay Area Governments appeals the Executive Director's decision that section 1188.4 of the Commission's regulations does not apply to the reconsideration of the decision in *Regional Housing Needs Determination: Councils of Governments*, arguing that its application is necessary to secure procedural safeguards and due process for the reconsideration.

Mr. Feller noted that staff complied with proper notice and due process procedures on the *Regional Housing Needs Determination: Councils of Governments* reconsideration. He indicated that if the Commission were to apply section 1188.4 to this matter, it could conflict with the directive in SB 1102 to reconsider the original Board of Control decision. Section 1188.4 requires five affirmative commissioner votes to overturn a prior decision. This five-vote requirement is not found in statute.

Staff found that section 1188.4 does not apply to this reconsideration because, by its own terms, it does not apply to prior decisions made before July 1998, the operative date of the regulation, or to decisions more than 30 days old. More importantly, the section only applies to reconsiderations requested by a party or a commissioner, not to court-ordered reconsiderations. Therefore, staff found the same rationale exists for not applying it to legislative reconsiderations and recommended that the Commission deny the appeal.

Parties were represented as follows: Kenneth Moy, on behalf of the appellant.

Mr. Moy disagreed with staff's conclusion, stating that it was unfair for the five-vote requirement not to be applied to legislative reconsiderations. He urged the Commission to impose the requirements of section 1188.4 in this matter.

Mr. Feller noted that while Mr. Moy urged the five-vote requirement of section 1188.4 to apply, he did not urge the other requirements. Mr. Feller stated that the regulation could not thwart the intent of the Legislature in SB 1102, which was enacted notwithstanding any other provision of law.

Member Smith and Member Boel asked clarifying questions regarding the regulation, to which Mr. Feller responded. Regarding Member Boel's question about the number of currently appointed Commission members, Paul Starkey, Chief Legal Counsel, responded that under the regulations, the number of appointed members establishes the quorum.

Member Boel made a motion to deny the appeal, which was seconded by Member Smith. The motion carried unanimously.

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

RECONSIDERATION OF TEST CLAIM DECISIONS DIRECTED BY THE LEGISLATURE AND PROPOSED STATEMENTS OF DECISION

- Item 3 *Regional Housing Needs Determination*, 04-RL-3759-02, 04-RL-3760-03, and 04-RL-3916-04
Statutes 1980, Chapter 1143
Directed by Statutes 2004, Chapter 227, Sections 109-110 (SB 1102)

Eric Feller, Commission Counsel, presented this item. He stated that the Legislature requested the reconsideration of this matter in SB 1102.

Because cities and counties have fee authority in Government Code sections 65104 and 65584.1, staff found that the test claim legislation did not impose costs mandated by the state on cities and counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17556. Staff recommended that the Commission adopt the staff analysis, which denies the Board of Control decisions (claim numbers 3759, 3760, and 3916) effective July 1, 2004.

Parties were represented as follows: Betsy Strauss, with the League of California Cities; Leonard Kaye, on behalf of the County of Los Angeles; Annette Chinn, with Cost Recovery Systems; and Susan Geanacou, with the Department of Finance.

Ms. Strauss argued that although Government Code sections 65104 and 65584.1 provide fee authority, they do not provide sufficient legal authority to actually impose the fees. She explained that they were general authority statutes to impose fees on developers for the work of the city's planning agencies. She clarified her concern that it was not possible in many cases to actually spread the mandate's costs, or quantify them in a way that is legally accurate to the developers. Therefore, she argued that the authority really cannot be used, and thus, should not be a valid basis for denying the matter.

Chairperson Sheehan asked what steps the cities had taken to impose the fees. Ms. Strauss responded that she did not know of a good example.

Mr. Kaye stated that counties did not have unfettered discretion to impose fees. He noted staff's reliance on the 1997 *Connell* case to support its position, which he believed implied that there is both a service provider and service user in this matter. Mr. Kaye argued, however, that in many communities, there are no builders or developers to charge, and therefore, there is insufficient fee authority.

As an example, Mr. Kaye described that in the case of the *Sudden Infant Death Syndrome* program, the court ruled that it was impractical and impossible to implement the firefighter fees. Though he acknowledged the situations were different, he maintained that they could not just impose a fee if there was no service end user to impose the fee upon.

Chairperson Sheehan asked for clarification about the *Connell* decision. Mr. Kaye responded that unlike this matter, there was clearly someone to charge in the *Connell* case.

Ms. Geanacou stated that she had nothing further to add to her written comments, which were consistent with the staff analysis.

After being sworn in by Ms. Higashi, Ms. Chinn indicated that prior to becoming a consultant, she worked in the area of developer impact fees. Because it was an area that local governments could not be reimbursed for, she stated that they were not allowed to include the costs of housing elements in developer fees. In addition, Ms. Chinn asked the Commission to consider the amount of land available for development. She noted that in cities with growth potential, the money could be recovered, but in those cities that are already overbuilt, there was no one to impose the fees upon.

Mr. Feller stated that, under the reasoning of *Connel*, local governments have legal authority to impose the fees; that controls.

Member Smith commented that the State Controller did not agree with the policy behind the legislative intent to pass along fees for a state-mandated program to developers and ultimately to homebuyers. Acknowledging that the Commission was not a policy body, he indicated that they had questions regarding the ability of local governments to pass along fees to a relatively small segment of society. Therefore, he stated his intent to abstain from the item because the Controller needed more information.

Member Boel made a motion to adopt the staff analysis and recommendation, which was seconded by Member Lujano. The motion carried 3-0. Member Smith abstained.

- Item 4 Proposed Statement of Decision: *Regional Housing Needs Determination*, 04-RL-3759-02, 04-RL-3760-03, and 04-RL-3916-04
See Above

Eric Feller, Commission Counsel, presented this item. He stated that unless there was objection, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the Commission's decision. He also recommended that staff be allowed to make minor changes, including those to reflect the hearing testimony and vote count, before issuing the final decision.

Member Boel made a motion to adopt the proposed Statement of Decision, which was seconded by Member Lujano. The motion carried 3-0. Member Smith abstained.

- Item 5 *Regional Housing Needs Determination: Councils of Governments*, 04-RL-3929-05
Statutes 1980, Chapter 1143
Directed by Statutes 2004, Chapter 227, Sections 109-110 (SB 1102)

Eric Feller, Commission Counsel, presented this item. He stated that the Legislature requested the reconsideration of this matter in SB 1102.

Staff found that councils of governments are not eligible claimants for purposes of mandate reimbursement under article XIII B, section 6 of the California Constitution. As an alternative ground for dismissal, staff also found that the test claim legislation did not impose costs mandated by the state on councils of governments within the meaning of article XIII B, section 6 and Government Code section 17556 because Government Code section 65584.1 provides councils of governments with fee authority. Therefore, staff recommended that the Commission adopt the staff analysis, which denies Board of Control claim number 3929, effective July 1, 2004.

Parties were represented as follows: Scott Haggerty and Rose Jacobs Gibson, on behalf of the Association of Bay Area Governments; Karen Tachiki and Lynn Harris, with the Southern California Association of Governments; Rusty Selix, with the Association of Councils of Governments; and Susan Geanacou, with the Department of Finance.

Mr. Haggerty noted that the Association of Bay Area Governments was strictly a membership organization and that its revenues come directly from its membership fees, which come from proceeds of taxes. Noting Commission staff's position that councils of governments must be treated like redevelopment agencies because they do not have the power to tax, he argued that unlike redevelopment agencies, the Association of Bay Area Governments had no dedicated source of revenue to perform the housing needs mandate.

Mr. Haggerty felt it was absurd for the state to refuse to fund the Association of Bay Area Governments for the mandate because it had no power to tax. Although councils of government have the power to impose fees, he asserted that the solution was untested because of questions about the legality of the fee, and also impractical because of the obstacles to implementing the fee.

As a membership organization, Mr. Haggerty explained that a general assembly and an executive board govern the Association of Bay Area Governments. He stated that the board represents its members on issues such as the imposition of fees and would not vote to tax themselves to fund a state mandate. Moreover, he indicated that even if a majority of the membership voted to impose the fee, there would be problems in collecting the fee. Mr. Haggerty urged the Commission to affirm the prior Board of Control decision.

Ms. Gibson provided background information about the Association of Bay Area Governments and the Bay Area's local housing needs. She asserted that if the Association of Bay Area Governments were not funded for this program, local funds would not be available. She noted that without councils of government, the state would be responsible for addressing housing needs. Thus, to ensure continued success in implementing the mandate, she stated that councils of governments need state funding.

Further, Ms. Gibson noted that it was bad policy to fund housing needs with fees passed on to developers, which ultimately increases the cost of housing. She urged the Commission to uphold the prior Board of Control decision.

Ms. Tachiki provided background information about the Southern California Association of Governments. As to the issue of eligibility, she believed that staff's recommendation was based on a very strained interpretation of the definition of "local agency," and argued that there was nothing in statute that requires that all powers be common in the listing of agencies. She added that the definition of local agency includes other political subdivisions of the state, in which joint powers agencies would fit.

Regarding the ability to impose fees, Ms. Tachiki noted that councils of governments were established solely by agreement of their agencies. Thus, unless their joint powers agreements are amended, they do not have authority to levy the fees. She asserted that the authority provided in the Government Code cannot force councils of government to amend their agreements. She added that under the statute that establishes and provides the parameters for establishing a joint powers authority, the Legislature states that only those powers provided for by agreement can be exercised. Therefore, Ms. Tachiki maintained that councils of government did not have the

ability to impose fees.

Ms. Geanacou had nothing further to add to her written comments, which were consistent with the staff analysis.

Mr. Selix submitted that all councils of governments view this mandate as an unfunded mandate. He asserted that unlike local governments, there was no ability to collect a fee because no one comes before councils of governments as an applicant. He felt that the existing funding scheme was inadequate to carry out the mandate, and thus, the matter would end up in court.

As to the eligibility issue, Mr. Feller responded that based on the *Bell Community Redevelopment Agency v. Woolsey* case, staff found that the only relevant authority for eligibility is the power to tax. Because councils of governments do not have this power, he maintained that they were not eligible claimants. Furthermore, he indicated that the Legislature purposely removed redevelopment agencies and joint powers agencies from the definition of eligible claimants and the statutory scheme. Regarding the imposition of the fee, Mr. Feller maintained that it was the legal authority that was relevant rather than the practical implications.

Member Smith stated that the Controller wished to consider the two issues – overall eligibility of councils of government, versus specific eligibility for this mandate – separately. Mr. Starkey stated that a motion was necessary for the procedure.

Member Smith made a motion to take the two rationales separately and vote first on whether councils of governments are eligible claimants for purposes of mandate reimbursement under article XIII B, section 6; and second, whether the test claim legislation imposes costs mandated by the state on councils of government for the *Regional Housing Needs Determination: Councils of Governments* program.

Member Boel requested Mr. Feller's comments as to the motion. Mr. Feller responded that the Commission could take the action. However, he recommended that the proposed Statement of Decision be taken back if the votes were different so that the rationale for the bifurcation could be included.

Mr. Starkey added that it was acceptable to separate the two issues, and noted that the current staff recommendation addresses both issues as separate grounds for denial. He stated that the Commission needed to vote on the motion to separate the issues.

After some discussion about the issues, Member Lujano seconded Member Smith's motion to divide the issues. The motion failed 2-2, with Member Boel and Chairperson Sheehan voting "No."

Member Smith stated the Controller's belief that until further legislative guidance is provided, there may be instances where councils of governments are eligible claimants. They did not believe that courts had specifically addressed the issue. He stated that they disagreed with the policy and felt that there would be considerable challenges for councils of governments to comply with the legislation. Without enough facts, Member Smith stated his intent to abstain from the item.

Member Boel made a motion to adopt the staff analysis and recommendation, which was seconded by Member Lujano. The motion carried 3-0. Member Smith abstained.

- Item 6 Proposed Statement of Decision: *Regional Housing Needs Determination: Councils of Governments*, 04-RL-3929-05
See Above

Eric Feller, Commission Counsel, presented this item. He stated that unless there was objection, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the Commission's decision. He also recommended that staff be allowed to make minor changes, including those to reflect the hearing testimony and vote count, before issuing the final decision.

Member Boel made a motion to adopt the proposed Statement of Decision, which was seconded by Member Lujano. The motion carried 3-0. Member Smith abstained.

Chairperson Sheehan commented that this issue would resurface, and thus, she encouraged discussion with the Legislature because of all the policy issues involved.

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

REMAND OF TEST CLAIM DECISION DIRECTED BY THE COURT AND PROPOSED STATEMENT OF DECISION

- Item 7 *School Bus Safety II*, 97-TC-22 (Peremptory Writ of Mandamus from the Superior Court, *Department of Finance v. Commission on State Mandates* (02CS00994))
Education Code Sections 38048 [Renumbered 39831.5], 39831.3, and 39831.5,
Vehicle Code Section 22112
Statutes 1994, Chapter 831 (SB 2019)
Statutes 1996, Chapter 277 (SB 1562)
Statutes 1997, Chapter 739 (AB 1297)

Katherine Tokarski, Commission Counsel, presented this item. She stated that the Clovis Unified School District submitted a test claim in 1997 alleging a reimbursable state mandate for school districts to perform new activities by instructing pupils and informing parents of school bus safety procedures. The Commission's Statement of Decision, adopted July 29, 1999, found that the test claim legislation imposed reimbursable state-mandated activities.

Ms. Tokarski indicated that the Department of Finance challenged the decision in the Sacramento County Superior Court. The court found that the test claim was not a reimbursable state-mandated program to the extent that the underlying school bus transportation services were discretionary, and left one issue for remand. Thus, the Commission must reconsider the limited issue of whether the federal Individuals with Disabilities Education Act, or any other federal law, requires school districts to transport any students; and if so, whether the test claim statutes mandate a new program or higher level of service beyond federal requirements for which there are reimbursable state-mandated costs.

Staff concluded that although federal law may require transportation of disabled children under certain circumstances, the law does not require school districts to provide a school bus transportation program. Therefore, pursuant to the court decision and article XIII B, section 6 of the California Constitution, staff found that the *School Bus Safety II* test claim statutes do not

impose a reimbursable state-mandate program. Staff recommended that the Commission adopt the final staff analysis, which denies the claim.

Parties were represented as follows: Keith Petersen, on behalf of the claimant; and Susan Geanacou, with the Department of Finance.

Mr. Petersen made no further arguments.

Ms. Geanacou supported the staff analysis.

Member Boel made a motion to adopt the staff analysis, which was seconded by Member Lujano. The motion carried unanimously.

Item 8 Proposed Statement of Decision: *School Bus Safety II*, 97-TC-22
See above

Katherine Tokarski, Commission Counsel, presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the Commission's decision to adopt the staff recommendation on the remanded test claim. She indicated that minor changes, including those to reflect the hearing testimony and vote count, would be included before issuing the final decision.

Member Boel made a motion to adopt the proposed Statement of Decision, which was seconded 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 PARAMETERS AND GUIDELINES

Item 9 *False Reports of Police Misconduct*, 00-TC-26
County of San Bernardino, Claimant
Penal Section 148.6, subdivisions (a)(2) and (a)(3)
Statutes 1995, Chapter 590 (AB 1732)
Statutes 2000, Chapter 289 (SB 2133)

Nancy Patton, Assistant Executive Director, presented this item. She stated that the Commission adopted the Statement of Decision for the *False Reports of Police Misconduct* on February 20, 2004, which found that any new law enforcement agency accepting an allegation of misconduct against a peace officer must have the complainant read and sign an information advisory informing the complainant that it is a misdemeanor to knowingly file a false complaint against a peace officer. The test claim legislation also requires the advisory to be made available in multiple languages.

Ms. Patton noted that staff deleted two activities from the proposed parameters and guidelines: 1) training, and 2) interviewing the complainant and addressing questions or concerns. She explained that these activities were not identified in the Statement of Decision and were not found to be reasonably necessary to comply with the mandate. Staff also clarified the reimbursement periods and reduced the proposed uniform time allowance to reflect the deleted activities.

Staff recommended that the Commission adopt staff's proposed parameters and guidelines.

Parties were represented as follows: Bonnie Ter Keurst, on behalf of the claimant; and Susan Geanacou, with the Department of Finance.

Ms. Ter Keurst stated that at the hearing to adopt the Statement of Decision, she raised issues regarding the two activities that staff proposed for deletion. Her concern at the time was that the decision would eliminate activities that would be reasonably necessary to accomplish the intent of law because it included a statement that said, “The Commission denies any remaining alleged activities or costs.” Now at the parameters and guidelines phase, this in fact was the problem – the intent of law versus exact wording.

As to the issue of training, Ms. Ter Keurst recognized that original training already took place but she argued that there are new employees and possible changes in procedures that could involve training. She asserted that while staff believes any training costs would be minimal, it still translated into costs for counties. Thus, she recommended that the Commission approve one-time training per employee that actually performs the reimbursable activities. Further, Ms. Ter Keurst disagreed with staff’s conclusion as to the second issue of interviewing complainants and addressing questions or concerns, asserting that the counties must do what is reasonable to provide the service to the public. She suggested that the Commission include the activities in the parameters and guidelines.

Ms. Ter Keurst also disagreed with staff’s proposed uniform time allowance of two minutes because she felt that staff could not take the county’s time study and make their own assumptions. She asserted that the county cannot provide the service to complainants within two minutes. Lastly, she suggested a technical modification to the period of reimbursement section.

Ms. Patton indicated that the two activities the claimant was requesting were specifically denied in the Commission’s Statement of Decision. In fact, she noted that as the legislation went through the process, the bill was amended to specifically delete those activities. As to the issue of the uniform cost allowance, she maintained that the claimant proposed two minutes for the activity of handing the form to the complainant. She explained that staff simply reduced the minutes from the time study that corresponded with the deleted activities.

Ms. Ter Keurst responded that eliminating both ends of the time study was inappropriate. She felt that if the interaction before and after handing the form to the complainant was not going to be part of the mandate, then the time it takes to complete the actual mandate must be readdressed.

Ms. Tokarski stated that the test claim legislation did not newly allow for people to complain about peace officer misconduct. She maintained that taking the complaint itself had nothing to do with the Penal Code section 148.6 activity of providing the complainant with information about the possibility of misdemeanor charges in the event of a false complaint.

Ms. Geanacou supported the staff analysis.

Member Boel made a motion to adopt the staff recommendation, which was seconded by Member Lujano. The motion carried unanimously.

- Item 10 *Integrated Waste Management, 00-TC-07*
Santa Monica and Lake Tahoe Community College Districts,
Co-Claimants
Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1
Statutes 1999, Chapter 764 (AB 75)
Statutes 1992, Chapter 1116 (AB 3521)
State Agency Model Integrated Waste Management Plan (February 1999)

Eric Feller, Commission Counsel, presented the proposed parameters and guidelines for this item. He stated that the primary issue as raised by the Integrated Waste Management Board was whether reduced disposal costs should count as offsetting savings and calculating reimbursement claims. He indicated that the Board would have these savings subtracted from each claim.

Staff found that the offsetting savings for reduced disposal costs cannot be counted against claims because there was no mandate for disposal at issue. Rather, the focus of the reimbursable activities was diversion of solid waste via activities listed in the Statement of Decision and the proposed parameters and guidelines. Therefore, because there was no mandate for diversion or disposal upon which to calculate savings before the test claim statute, Mr. Feller indicated that there could be no offsetting savings for those costs. He explained that the offsetting revenues in this program are those from the sale of recyclable materials, as directed in accordance with the Public Contract Code and a student center fee, if applicable.

Staff recommended that the Commission adopt the staff's proposed parameters and guidelines.

Parties were represented as follows: Keith Petersen, on behalf of the claimant; Deborah Borzelleri, Trevor O'Shaughnessy, Phil Morales, and Eddie Fox, with the Integrated Waste Management Board; and Susan Geanacou, with the Department of Finance.

Ms. Borzelleri stated that at the hearing on the Statement of Decision, the Board provided information regarding significant cost savings that could be realized by implementing diversion programs as required by the test claim statutes. She also stated that the Board experienced significant cost savings through local government implementation of diversion programs. She argued that while the Commission's regulations provide that all proposed parameters and guidelines must allow for any offsetting savings realized in the same program, she felt that staff summarily dismissed the information that the Board brought forward.

Ms. Borzelleri disagreed with the staff opinion. She discussed the relationship between disposal and diversion, arguing that increased diversion directly results in disposal reduction, meaning that any diversion will directly result in reduced disposal and reduced costs. She submitted that a rough calculation of actual diversion reported by 117 community colleges and district offices in 2003 indicated an aggregate cost savings of almost \$2 million as a result of the diversion programs.

Moreover, Ms. Borzelleri noted that the Board submitted a proposed cost savings worksheet that claimants could use as a tool to identify costs and the commensurate savings realized as a result of implementing diversion programs. She clarified that the Board was not requiring the form, but offered it as a useful tool that could be adopted as part of the parameters and guidelines. Also, she suggested language for the reimbursable activities section regarding actual costs.

Mr. O'Shaughnessy provided two examples of activities to illustrate the Board's point that the activities implemented and mandated by this legislation went above and beyond what was traditionally required.

Mr. Peterson stated the Integrated Waste Management Board had a common misperception about mandate reimbursement. He explained that only increased costs are reimbursed, and therefore, doing what you used to do is not an increased cost. Additionally, he argued that the Board did not have the same understanding of the legal meaning of cost savings. He indicated that as a matter of law, cost savings require a mandate to be in effect in 1975. Because there was no mandate for waste disposal reduction or source reduction recycling in 1975, he maintained that there was no mandate to be relieved, and thus, no cost savings.

Mr. Petersen noted that claimants do not claim costs that are not incurred. Therefore, if there is no mandate, costs will not be incurred, and there will be no increased costs to claim.

Ms. Geanacou deferred to the programmatic expertise of the Board. She noted, however, a reference in the Public Resources Code section 42955, subdivision (a), which renders permissive the community colleges' obligation to direct any cost savings to implement the waste management plan. Thus, she noted that there was some amount of discretion for community colleges as to what to do with any cost savings.

Mr. Petersen responded that there is a statute to offset recycling income and the Legislature can speak to the issue if it exceeds \$2,000.

Member Boel made a motion to adopt the staff recommendation, which was seconded by Member Lujano. The motion carried unanimously.

STAFF REPORTS

Item 13 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Mr. Starkey reported that the *Animal Adoption* cases listed in the litigation calendar were consolidated and will be heard in the Sacramento Superior Court.

Item 14 Executive Director's Report (info/action)
Workload, SB 1033, Governor's Proposed 2005-06 Budget, Reports to
the Legislature, Legislation, and Next Hearing

Ms. Higashi's report included the following:

- *Workload.* Chairperson Sheehan reminded the Commission members that they would be traveling to Butte County on May 12 for the hearing in Oroville. Ms. Higashi reported that the Department of Finance audit staff had been retained to review the county's application and to prepare the analysis, and that Shirley Opie, former Commission assistant executive director, was rehired to manage the process. She stated that the Commission would be adopting a Statement of Decision on June 10.
- *Budget.* Ms. Higashi reported that there have been no meetings with Budget Committee staff but hearings were coming up in the next few weeks. She stated that she would keep the Commission posted.

Member Smith noted that the Controller was concerned about the large number of pending test claims. He stated that the Controller supported the Commission's budget augmentation and offered support from his office.

PUBLIC COMMENT

An unidentified woman in the audience indicated that she had a hard time hearing from the back of the room.

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 No. 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*]

POTENTIAL LITIGATION

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 11:34 a.m.

PAULA HIGASHI
Executive Director