

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
January 25, 2007

Present: Member Anne Sheehan, Chairperson
Representative of the Director of the Department of Finance
Member Francisco Lujano, Vice Chairperson
Representative of the State Treasurer
Member Richard Chivaro¹
Representative of the State Controller
Member Cynthia Bryant
Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Paul Glaab
City Council Member
Member Sarah Olsen
Public Member

CALL TO ORDER AND ROLL CALL

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

Chairperson Sheehan welcomed Member Bryant to the Commission on State Mandates.

ELECTION OF OFFICERS

Item 1 Staff Report

Paula Higashi, Executive Director, noted that the annual election of officers is usually held in January. She stated that the members eligible for election as chairperson and vice-chairperson are the statutorily named members of the Commission.

Member Bryant nominated Mike Genest, Director of the Department of Finance, for chairperson and Bill Lockyer, State Treasurer, for vice-chairperson. Member Glaab seconded the motion for Mr. Genest and Member Worthley seconded the motion for Mr. Lockyer. The motions carried unanimously.

APPROVAL OF MINUTES

Item 2 December 4, 2006

Member Glaab made a motion to adopt the December 4, 2006 hearing minutes, which was seconded by Member Olsen. The motion carried 5-0. Member Worthley abstained.

¹ Arrived during the hearing of Item 7.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS ON CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)

DISMISSAL OF WITHDRAWN TEST CLAIM

- Item 11 Proposed Statement of Decision
Test Claim Dismissal: *De-Certification of Punch-Card Voting Systems*
02-TC-20
Secretary of State's September 18, 2001 Order, As Amended
December 17, 2001 and May 23, 2002
County of Los Angeles, Claimant

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

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

- Item 13 *DNA Database* (00-TC-27) and Amendment to
Postmortem Examinations: Unidentified Bodies (02-TC-39)
Penal Code Section 14250
Statutes 2000, Chapter 822 and Statutes 2001, Chapter 467
County of San Bernardino and County of Los Angeles, Claimants

ADOPTION OF PROPOSED RULEMAKING CALENDAR

- Item 14 Proposed Rulemaking Calendar, 2007

Member Worthley made a motion to adopt items 11, 13, and 14 on the consent calendar. With a second by Member Glaab, the items were unanimously adopted.

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

- Item 4 Staff Report (if necessary)

There were no appeals to consider.

HEARINGS AND DECISIONS ON TEST CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)

Ms. Higashi swore in the parties and witnesses participating in the hearing.

TEST CLAIM

- Item 7 *Training Requirements for Instructors and Academy Staff*, 02-TC-03
California Code of Regulations, Title 11, Sections 1001, 1052, 1053,
1055, 1070, 1071, and 1082 (Register 2001, No. 29)
County of Sacramento, Claimant

Deborah Borzelleri, Senior Commission Counsel, presented this item. She noted that the test claim addresses regulations adopted by the Commission on Peace Officers Standards and Training, or "POST," which requires specified training for certain POST instructors and key staff

of POST training academies. She stated that POST training is provided to law enforcement officers by POST-approved institutions, and POST can certify training courses and curriculum developed by other entities as meeting required minimum training standards.

Staff found that the regulations at issue establish requirements that flow from a discretionary decision by the local agency to participate in POST, and a discretionary decision to provide POST-certified training or establish a POST training academy. Staff further found that local agencies have alternatives to providing POST-certified training or establishing a POST training academy.

Therefore, staff found that the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution. Staff recommended that the Commission adopt the staff analysis and deny the test claim.

Parties were represented as follows: Allan Burdick and Pamela Stone, on behalf of the California State Association of Counties SB 90 Service; Bryon Gustafson, on behalf of the Commission on POST; and Susan Geanacou and Carla Castaneda, with the Department of Finance.

Mr. Burdick stated that the representative for the County of Sacramento was planning to be present. He asked if this item could be put over to the end of the agenda so he could find out what happened to the representative.

Chairperson Sheehan stated that he could make the call while the Commission heard from the other parties that were present.

Ms. Castaneda concurred with the staff analysis that the POST requirements are discretionary and that any activities required are not reimbursable.

Mr. Gustafson did not object to the staff analysis.

[At this time, Member Chivaro entered the room.]

Chairperson Sheehan stated that this item would be put on hold until the end of the meeting.

REQUEST FOR RECONSIDERATION OF PRIOR FINAL DECISION PURSUANT
TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1188.4

Item 5 *Binding Arbitration*, 01-TC-07
Code of Civil Procedure, Sections 1281.1, 1299, 1299.2, 1299.3,
1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9
Statutes 2000, Chapter 906 (SB 402)
City of Palos Verdes Estates, Claimant
Chair, Commission on State Mandates, Requestor

Deborah Borzelleri, Senior Commission Counsel, presented this item. She noted that this item was the reconsideration of a prior final decision on the *Binding Arbitration* test claim, which was adopted by the Commission on July 28, 2006. She stated that the binding arbitration statutes in the context of labor relations between local public agencies and their law enforcement officers and firefighters provide that where an impasse in negotiations has been declared and if the employee organization requests it, the parties would be subjected to binding arbitration.

Ms. Borzelleri explained that the statutes were effective January 1, 2001, and were declared unconstitutional on April 21, 2003. She noted that the final staff analysis released earlier in the month recommended denial of the test claim because the claimant, City of Palos Verdes, stated

that binding arbitration had not been triggered in its jurisdiction. Thus, no costs mandated by the state were imposed. However, on January 23, 2007, the County of Napa joined as a co-claimant on this test claim, and submitted a declaration signed under penalty of perjury that it did reach an impasse in negotiations with its deputy sheriffs association and engaged in some of the activities that staff is recommending as being mandated by the binding arbitration statutes. She indicated that the County of Napa alleged costs incurred of at least \$1,000.

Accordingly, Ms. Borzelleri stated that staff issued a supplemental staff analysis modifying the staff's recommendation to a partial approve. The reimbursement period would be limited to January 1, 2001, through April 20, 2003. She indicated that the regulations required a super majority of five affirmative votes of the Commission to adopt the staff recommendation and change the prior final decision adopted on July 28, 2006.

Parties were represented as follows: Pamela Stone and Judy Smith, representing the City of Palos Verdes; Jacqueline Gong, on behalf of the County of Napa, and Donna Ferebee and Carla Castaneda, with the Department of Finance.

Ms. Stone encouraged the Commission to adopt the new staff analysis.

Ms. Gong stated full support of the staff analysis. She added that the County of Napa is so far the only county in California that has gone through the entire binding arbitration process in 2001.

Ms. Smith stated support for the County of Napa to join as a co-test claimant.

Ms. Castaneda stated no objections to the staff analysis.

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

Item 6 Proposed Statement Of Decision
Binding Arbitration, 01-TC-07
See Above

Item 6 was postponed to the next hearing.

Regarding item 7, Mr. Burdick reported that he still could not locate the representative for the County of Sacramento.

TEST CLAIM

Item 9 *Pupil Discipline Records, 00-TC-10*
Education Code Sections 48201, 48900.8, and 49079
Statutes 1997, Chapter 637 (AB 412), Statutes 2000, Chapter 345
(AB 29), Sweetwater Union High School District, Claimant
Consolidated with
Notification to Teachers: Pupils Subject to Suspension or Expulsion II,
00-TC-11
Education Code Sections 48201 and 49079; Statutes 2000, Chapter 345
(AB 29), Carpinteria Unified School District and Sweetwater Union and
Grant Joint Union High School District, Co-Claimants

Item 9 was postponed.

- Item 10 Proposed Statement of Decision
Pupil Discipline Records, 00-TC-10 and *Notification to Teachers: Pupils Subject to Suspension or Expulsion II*, 00-TC-11
See Above

Item 10 was postponed.

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS

- Item 12 Requests to Amend Parameters and Guidelines
Handicapped and Disabled Students, 00-PGA-03/04 (CSM 4282)
Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (AB 3632)
Statutes 1985, Chapter 1274 (AB 882)
California Code of Regulations, Title 2, Sections 60000-60610
(Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and re-filed June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28))
Counties of Los Angeles and Stanislaus, Requestors
(Continued from December 4, 2006 Hearing)

Camille Shelton, Chief Legal Counsel, presented this item. She noted that the Commission heard this item in December and that it was continued to obtain evidence regarding the fiscal impact of potential claims being filed or re-filed for costs incurred for fiscal years 2000-2001 through 2003-2004. She stated that staff obtained documentation from the State Controller's Office, the Department of Mental Health, and the Department of Education, which suggests that there will be increased costs that are eligible for reimbursement if the Commission amends the parameters and guidelines.

Staff continued to recommend that the Commission approve the request to amend the parameters and guidelines with respect to the offsetting revenue provision only, because the original parameters and guidelines incorrectly state that Medi-Cal and private-pay insurance proceeds cannot be used as offsetting revenue. Ms. Shelton noted that, as determined by the Commission when it reconsidered the original program, federal law under specified circumstances allows agencies to use these proceeds for this program. Therefore, the proposed amended parameters and guidelines include Medi-Cal and private-pay insurance as sources of offsetting revenue.

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

Parties were represented as follows: Leonard Kaye, representing the County of Los Angeles; Pamela Stone, on behalf of the County of Stanislaus; Allan Burdick, on behalf of the California State Association of Counties SB 90 Service; Jim Spano and Ginny Brummels, with the State Controller's Office; and Susan Geanacou and Carla Castaneda, with the Department of Finance.

Mr. Kaye agreed with the staff analysis and urged the Commission to adopt the staff recommendation.

Ms. Stone noted that the representative for the County of Stanislaus intended to be present for the hearing; however, could not appear due to an emergency. She stated full support of the staff analysis.

Mr. Burdick asserted that this particular test claim affects rural counties and would allow them to be reimbursed for only 10 percent of their costs. On behalf of the California State Association of Counties, he did not support giving rural counties 10 percent when urban counties received 100 percent. Mr. Burdick stated that he was not arguing the legal merits, but just wanted to note for the record that legislative intent originally resulted in larger counties getting 100 percent reimbursement and 10 percent for smaller counties.

Ms. Shelton clarified that the staff analysis does not change the percentages for reimbursing psychotherapy or other treatment services, which was affirmed by the Sixth District Court of Appeal, and thus, the Commission does not have jurisdiction to change that finding. She explained that the statute referred to by Mr. Burdick required the State Controller's Office not to audit those claims for counties that filed up to 100 percent. The statute also did not allow those counties that actually claimed the 90/10 percent split to go back and re-file their claims. She indicated that the staff analysis simply opens up the reimbursement period from 2000 to 2004 and clarifies the offsetting revenue provision; it does not change the reimbursable activities.

Mr. Kaye commented that Mr. Burdick's points were well taken. He noted that his comments were premised upon the very narrow issue before the Commission and in that regard, the County of Los Angeles agreed.

Chairperson Sheehan stated appreciation for the information that was provided since the December hearing.

Ms. Castaneda stated no objections to the correction of the legal error. She noted that the additional costs may be in the neighborhood of \$25 million because they have not been able to find data for the Medi-Cal offsets.

Ms. Shelton agreed that the data suggests there would be an increased cost to the state.

Member Worthley noted that he consulted with his county regarding this program and he was assured by the Health and Human Services financial director that most of the county's claims were covered by Medi-Cal. He also noted that they received funding from other sources, and so the county did not file a claim.

Ms. Shelton clarified that the data in the staff analysis does not reflect any potential categorical funds that were appropriated by the state during that time period.

Member Olsen made a motion to adopt the staff analysis. With a second by Member Worthley, the motion carried 6-0. Chairperson Sheehan abstained.

HEARINGS AND DECISIONS ON TEST CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)

TEST CLAIM

- Item 7 *Training Requirements for Instructors and Academy Staff, 02-TC-03*
California Code of Regulations, Title 11, Sections 1001, 1052, 1053,
1055, 1070, 1071, and 1082 (Register 2001, No. 29)
County of Sacramento, Claimant

The Commission resumed the hearing on item 7.

Ms. Higashi noted that there were no comments filed on the draft staff analysis by the County of Sacramento. She stated that the Commission could decide to proceed or postpone the item to the next meeting.

Mr. Burdick stated that he has not received a response from the County of Sacramento. He noted that this was very unusual for the county because they have been an active participant in the process.

Ms. Higashi suggested that the Commission members ask any questions they have because witnesses from the state agencies were present. She indicated that adoption of the Statement of Decision could be put over to the next meeting so the County of Sacramento could enter an appearance.

Member Olsen asked what the procedure would be if the County of Sacramento came in with a compelling argument and the staff analysis was already adopted. Ms. Higashi clarified that the Commission would have to rehear the test claim.

Mr. Burdick commented that because all of the witnesses are local, there would be no imposition if the item were postponed.

Chairperson Sheehan and Member Chivaro stated no objection to continuing the item.

Item 7 was continued to the next hearing.

- Item 8 Proposed Statement of Decision
Training Requirements for Instructors and Academy Staff, 02-TC-03
See Above

Item 8 was postponed.

STAFF REPORTS

- Item 15 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Ms. Shelton reported that the Department of Finance filed a lawsuit in the Sacramento County Superior Court challenging the Commission's decision on the *Peace Officer Procedural Bill of Rights* test claim, with respect to the finding that approves reimbursement for school districts and special districts.

Item 16 Executive Director's Report (info/action)
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi reported the following:

- *Next Hearing.* The March 29th hearing will have a long agenda. Staff proposed the addition of an April hearing and will contact the members to determine the date.
- *Other.* The Commission staff will undergo office construction next month.

PUBLIC COMMENT

There was no public comment.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526 (action)

PERSONNEL

Report from Personnel Subcommittee and to confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), 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.*, Sacramento Superior Court Case No. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
3. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Second District Court of Appeal, Case Number B188169, on appeal from Los Angeles Superior Court Case No. BS092146, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*], consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS095456, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]
4. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]
5. *County of San Bernardino v. Commission on State Mandates, et al.*, San Bernardino County Superior Court, Case No. SCVSS 138622 [*Standardized Emergency Management Systems (SEMs)*]

6. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller, Sacramento County Superior Court, Case No. 06CS01335; [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]*

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).)

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 with a motion by Member Worthley and second by Member Glaab, Chairperson Sheehan adjourned the meeting at 10:26 a.m.


PAULA HIGASHI
Executive Director