

## MINUTES

### COMMISSION ON STATE MANDATES

State Capitol, Room 126  
Sacramento, California  
December 9, 2004

Present: Chairperson Anne Sheehan  
Representative of the Director of the Department of Finance  
Member John Hiber  
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

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

The Commission conducted an election because the chairperson position was vacant. Member Boel nominated Mr. Tom Campbell, the Director of the Department of Finance, as Chairperson. Mr. Campbell was unanimously elected.

### APPROVAL OF MINUTES

Item 1      September 30, 2004

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

### CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

Chairperson Sheehan announced that the Commission would meet 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 filing in the Los Angeles County Superior Court, titled case number BS091246, *CSAC-Excess Insurance Authority v. the Commission on State Mandates*, which was served on the Commission on December 2, 2004, and to confer with and receive advice from legal counsel regarding potential litigation.

The Commission reconvened in public session at 9:51 a.m.

## **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 filing in the Los Angeles County Superior Court, titled case number BS091246, *CSAC-Excess Insurance Authority v. the Commission on State Mandates*, and to confer with and receive advice from legal counsel regarding potential litigation.

## **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 AND AMENDMENTS**

- Item 11     *Mandate Reimbursement Process*, CSM-4485  
Statutes 1975, Chapter 486 (AB 1375); Statutes 1984, Chapter 1459 (SB 2337); Statutes 1995, Chapter 303 (AB 903 - Budget Act of 1995); Statutes 1996, Chapter 162 (SB 1393 - Budget Act of 1996); Statutes 1997, Chapter 282 (AB 107 - Budget Act of 1997); Statutes 1998, Chapter 324 (AB 1656 - Budget Act of 1998); Statutes 1999, Chapter 50 (SB 160 - Budget Act of 1999); Statutes 2000, Chapter 52 (AB 1740 - Budget Act of 2000); Statutes 2001, Chapter 106 (SB 739 - Budget Act of 2001); Statutes 2002, Chapter 379 (AB 425 - Budget Act of 2002); Statutes 2003, Chapter 157 (AB 1765 - Budget Act of 2003); Statutes 2004, Chapter 208 (SB 1113 - Budget Act of 2004)

### **ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE**

- Item 13     *Administrative License Suspension – Per Se*, 98-TC-16  
City of Newport Beach, Claimant  
Vehicle Code Sections 13202.3, 13353, 13353.1, 13353.2, 14100, 23136, 23137, 23157, 23158.2, 23158.5  
Statutes 1989, Chapter 1460 (SB 1623); Statutes 1990, Chapter 431 (SB 1150); Statutes 1992, Chapter 1281 (AB 3580); Statutes 1993, Chapters 899 and 1244 (SB 689 and SB 126); Statutes 1994, Chapter 938 (SB 1295), and Statutes 1997, Chapter 5 (AB 74)

Member Lazar moved for adoption of the consent calendar, which consisted of items 11 and 13. With a second by Member Hiber, the consent calendar was unanimously adopted.

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

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

No appeals were filed.

## **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      *Lower Back Injury Presumption for Law Enforcement*, 01-TC-25  
CSAC-EIA & County of Tehama, Claimants  
Labor Code Section 3213.2  
Statutes 2001, Chapter 834 (SB 424)

Katherine Tokarski, Commission Counsel, presented this item. She stated that in 2001, the Legislature added Labor Code section 3213.2. For the first time, certain local agency and state peace officers with at least five years of full-time service who wore a duty belt were granted a rebuttable presumption that lower back impairment developing or manifesting itself in the peace officer shall be presumed to arise out of and in the course of employment. Employers may offer evidence disputing the presumption under the statute.

The claimants allege that the legislation causes an increase in workers' compensation claims for lower back injury and decreases the possibility that any defenses can be raised by the employer to defeat the claims. Thus, the claimants believe that the total costs of these claims, from initial presentation to ultimate resolution, are reimbursable.

Ms. Tokarski noted that CSAC-EIA is a joint powers authority established by contracting counties for insurance and risk management purposes. She added that it does not employ peace officers and is not a party to a workers' compensation claim filed by a peace officer against the local agency employer. Moreover, CSAC-EIA does not have authority to raise tax revenue and is not bound by the spending limitations of article XIII B. Further, Ms. Tokarski indicated that the claimants submitted a late filing requesting an indefinite postponement of the test claim hearing until the litigation on the *Cancer Presumption for Law Enforcement and Firefighters* test claim was resolved.

Staff recommended that the Commission deny the test claim, finding that CSAC-EIA does not have standing and is not a proper claimant for this test claim, and that Labor Code section 3213.2 is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on local agencies.

Parties were represented as follows: Juliana Gmur, on behalf of the claimants; Gina Dean, with the CSAC-Excess Insurance Authority; and Susan Geanacou and Jaci Thompson, with the Department of Finance.

Ms. Gmur stated that before the Commission was one of six workers' compensation presumption test claims. The first, which was filed and heard in May, was denied and is now the subject of a writ. She indicated that although it involved a different statute, the legal issues were identical in each of the claims. Therefore, she asked the Commission whether it would like to continue with the proceeding or wait for the court's review in order to possibly resolve all six matters at once.

Member Boel made a motion to proceed with the hearing.

Member Lazar requested the chief legal counsel's recommendation. Mr. Paul Starkey requested the Commission to ask the other parties' positions.

Ms. Geanacou stated that the Department of Finance had no particular position on the late filing. She indicated that they supported the Commission moving forward with the hearing.

Mr. Starkey stated that under the statute and regulations, the Commission had the discretion to decide how to proceed in this matter and that there was no legal impediment to proceeding.

Member Hiber seconded Member Boel's motion to proceed. The motion carried unanimously.

Ms. Gmur addressed two issues – whether CSAC-EIA was a proper claimant, and whether a reimbursable state mandate existed. As to the first issue, she argued that the Commission staff's reliance on a redevelopment agency case was misplaced. She stated that there was no existing case law on joint powers authorities and whether they would be proper parties. Rather she argued that the statute, on its face, says that the joint powers authority is a proper party as a special district that can file a test claim.

Regarding the second issue, Ms. Gmur provided background about workers' compensation law. She asserted that staff relied on only the second sentence of the statute, which involves the rebuttable presumption. She argued that it was the first sentence, which states that "it shall be presumed..." that creates the mandate, and the second sentence limits the mandate but does not cancel it out. She further argued that the *Kern High School* and *City of Merced* cases were not controlling.

Member Lazar requested the claimant respond to the Department of Industrial Relations position that local governments are not required to accept all workers' compensation claims. Ms. Gmur reiterated that the ability to defend against the presumption was a limitation that does not negate the existence of the mandate.

Chairperson Sheehan asked that Ms. Gmur address the other two points made by the Department of Industrial Relations. Ms. Gmur responded that the test claim legislation was a new program because it created a presumption that otherwise did not exist, and even though there was no shift of a financial burden from the states to local governments, a mandate can still exist.

Ms. Geanacou supported the staff analysis.

Member Lazar asked Ms. Tokarski to respond to the claimant's comments. Ms. Tokarski explained that not every piece of statutory language creates a new program or higher level of service. In this case, the statute is new, but the presumption is part of the underlying claim for an injury occurring on the job, which predates the presumption. Therefore, staff found that the excess costs that would result from a presumption in favor of the employee are not reimbursable costs because the presumption itself is not a new program or higher level of service as defined by the courts. Moreover, Ms. Tokarski indicated that the "shall" language was not referring to something that local agencies must do proactively, but rather that the workers' compensation courts shall presume, for purposes of the claims, that the injury occurred on the job.

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

Item 4 Proposed Statement of Decision: *Lower Back Injury Presumption for Law Enforcement*, 01-TC-25.

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. She noted that minor changes to reflect the hearing testimony and vote count would be included with the final decision.

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

Item 5      *Skin Cancer Presumption for Lifeguards*, 01-TC-27  
City of Newport Beach, Claimant  
Labor Code Section 3212.11  
Statutes 2001, Chapter 846 (AB 663)

Katherine Tokarski, Commission Counsel, presented this item. She stated that in 2001, the Legislature added Labor Code section 3212.11. For the first time, publicly-employed lifeguards were granted a rebuttable presumption that skin cancer developing or manifesting itself during or for a defined period immediately following employment shall be presumed to arise out of and in the course of employment. Employers may offer evidence disputing the presumption under the statute.

The claimant, City of Newport Beach, alleges that the legislation causes an increase in workers' compensation claims for skin cancer and decreases the possibility that any defenses can be raised by the employer to defeat the claims. Thus, the claimant believes that the total costs of these claims, from initial presentation to ultimate resolution, are reimbursable.

Ms. Tokarski indicated that the claimant submitted a late filing requesting an indefinite postponement of the test claim hearing until pending litigation was resolved.

Staff recommended that the Commission deny the test claim, finding Labor Code section 3212.11 is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on local agencies.

Parties were represented as follows: Juliana Gmur and Glen Everroad, on behalf of the City of Newport Beach; and Susan Geanacou and Jaci Thompson, with the Department of Finance.

Ms. Gmur stated that before the Commission was one of six workers' compensation presumption test claims. The first, which was filed and heard in May, was denied and is now the subject of a writ. Therefore, she asked the Commission whether it would like to continue with the proceeding or wait for the court's review in order to possibly resolve all six matters at once.

Member Lazar stated that he would like to move forward with the hearing. Member Boel agreed and Chairperson Sheehan indicated that there were no objections.

Mr. Starkey explained that procedurally, counsel may incorporate her comments from the previous item and apply them to this case if, in fact, the type of testimony and discussion are exactly the same. Ms. Gmur stated her hesitation to simply incorporate her comments because this case involved a different claimant, a different source of a possible writ.

Member Lazar asked Mr. Everroad for his thoughts. Mr. Everroad deferred to his counsel on the issue. Member Lazar maintained that he would like the item to proceed, and that the Commission should allow the claimant to state their comments into the record. The members did not object.

Ms. Gmur provided background about workers' compensation law. She noted that staff points to the *City of Merced* case, which was decided on the avoidance doctrine. However, she argued that in the present case, the employer has no way to avoid the mandate. Therefore, she requested that the Commission find a reimbursable state mandate.

Ms. Geanacou supported the staff analysis.

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

Item 6 Proposed Statement of Decision: *Skin Cancer Presumption for Lifeguards*, 01-TC-27.

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. She noted that minor changes to reflect the hearing testimony and vote count would be included with the final decision.

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

Item 7 *Lifeguard Skin Cancer Presumption (K-14)*, 02-TC-16  
Santa Monica Community College District, Claimant  
Labor Code Section 3212.11  
Statutes 2001, Chapter 846 (AB 663)

Katherine Tokarski, Commission Counsel, presented this item. She noted that the Commission received a local agency test claim on *Skin Cancer Presumption for Lifeguards* in 2002. On February 27, 2003, a second test claim on Labor Code section 3212.11 was filed by the Santa Monica Community College District, alleging a reimbursable state mandate imposed on kindergarten through grade 14 school districts. However, the two claims were not consolidated.

Ms. Tokarski stated that the activities or costs alleged by the claimant include all of the costs associated with the payment of claims caused by presumption, or payment of the additional costs of insurance premiums to cover such claims; physical exams to screen lifeguard applicants for preexisting skin cancer; and training lifeguards to take precautionary measures to prevent skin cancer on the job.

Staff recommended that the Commission deny the test claim, and find that Labor Code section 3212.11 is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on school districts.

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

Mr. Petersen stood by the administrative record for the test claim.

Ms. Geanacou supported the staff analysis.

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

Item 8 Proposed Statement of Decision: *Lifeguard Skin Cancer Presumption (K-14)*, 02-TC-16.

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. She noted that minor changes to reflect the hearing testimony and vote count would be included with the final decision.

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

Item 9      *Domestic Violence Arrests and Victim Assistance*, 98-TC-14  
County of Los Angeles, Claimant  
Penal Code Sections 264.2, 13701, and 13519  
Statutes 1998, Chapters 698, 701 & 702 (AB 1201, AB 2172, AB 2177)

Eric Feller, Commission Counsel, presented this item. Mr. Feller outlined the requirements of the test claim statutes:

1. One test claim statute amended Penal Code section 264.2 to add two crimes for which a victim of domestic violence receives a card: victims of spousal battery, and victims of corporal injury on a spouse or other specified victim.
2. Another statute amended Penal Code section 13519 to add the signs of domestic violence to the Commission on Peace Officer Standards and Training's domestic violence training course and response guidelines.
3. A third statute amended Penal Code section 13701, law enforcement's Domestic Violence policy, to add transportation to a hospital and safe passage out of a victim's residence, and providing contact information for the California Victims Compensation Program. Moreover, this statute adds to the card the phone number or county hotlines for battered women's shelters and a statement that domestic violence or assault by a person known to the victim is a crime. Further, this statute amends subdivision (b) by adding orders issued by other states, tribes, or territories to a list of enforceable protective orders in the domestic violence arrest policy.

Staff found that Penal Code sections 13701, subdivisions (c)(9)(D) and (c)(9)(H), and section 264.2, subdivision (a), as amended by the test claim statutes, impose a reimbursable state-mandated program for specific activities.

Parties were represented as follows: Leonard Kaye, on behalf of the County of Los Angeles; and Susan Geanacou and Brendan Murphy, with the Department of Finance.

Mr. Kaye concurred with the reimbursable activities as identified by Mr. Feller. However, because domestic violence was the subject of numerous test claims, he commented that it would be exceptionally difficult for anyone to ascertain what exactly was reimbursable under a particular program for a particular fiscal year. As a practical matter, Mr. Kaye believed that the parameters and guidelines must relate back to the Statement of Decision. Therefore, he announced his intent to include clarifying language regarding suspended statutes into the proposed parameters and guidelines to provide guidance to the claimants and auditors.

Mr. Murphy concurred with the staff analysis.

Mr. Feller disagreed with Mr. Kaye. He stated that the activities Mr. Kaye was referring to were either encompassed in a prior domestic violence test claim or were discretionary. He also clarified that only one program involving Statutes 1984, chapter 1609 and Statutes 1985, chapter 668 was suspended through fiscal year 2002-2003.

Ms. Higashi asked if the claimant was proposing to consolidate parameters and guidelines.

Mr. Kaye said no and that his intent was just to indicate that should a suspension not be enforced in a particular year, that those activities would be mandated.

Member Barnes noted that the consideration of what goes into the parameters and guidelines is a separate issue, and would be addressed at that phase. He also suggested that in the Controller's

claiming instructions there be some references to the other programs. He encouraged the claimant to contact the Division of Accounting and Reporting to work out the issues.

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

Item 10 Proposed Statement of Decision: *Domestic Violence Arrests and Victim Assistance*, 98-TC-14.

Eric Feller, Commission Counsel, presented this item. He 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. He noted that minor changes to reflect the hearing testimony and vote count would be included with the final decision.

Member Hiber made a motion to adopt the proposed Statement of Decision. With a second by Member Boel, 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 AND AMENDMENTS**

Item 12 *Pupil Health Screenings*, 01-PGA-09  
Clovis Unified School District, Requestor  
Health and Safety Code Sections 324.2 and 324.3  
Statutes 1976, Chapter 1208 (AB 4284); Statutes 1991, Chapter 373 (AB 52);  
Statutes 1992, Chapter 759 (AB 1248)

Cathy Cruz, Program Analyst, presented this item. She stated that on May 6, 2002, the Clovis Unified School District requested an amendment to the original parameters and guidelines in order to establish a uniform cost allowance for the *Pupil Health Screenings* program. Staff proposed separate uniform allowances for each reimbursable component to limit the rates to the applicable portion of the population of enrolled kindergarteners and new first-grade pupils for each component. The proposed allowances cover all the direct and indirect costs of performing the activities described in the reimbursable activities section. Moreover, Ms. Cruz explained that the proposed allowances were based on the Controller's claims data for fiscal year 1998-1999 through 2000-2001.

Ms. Cruz also stated that on September 29, 2004, Governor Schwarzenegger signed Assembly Bill 2855, which, operative January 1, 2005, eliminates the statistical reporting requirement. Accordingly, staff limited the reimbursement period for this activity.

The final staff analysis for this item was issued on November 4, 2004. Ms. Cruz indicated that no comments were received. However, the Department of Finance requested that this item be removed from the consent calendar so that they could read their comments into the record. Staff recommended that the Commission adopt the proposed amendment and authorize staff to make any non-substantive technical corrections following the hearing.

Parties were represented as follows: Nelson Cayago, with the Department of Finance.

Mr. Cayago stated that the Department of Finance preferred that uniform costs be based on audited claims rather than unaudited claims.

Ms. Cruz responded that the Department of Finance previously raised this argument, which staff addressed in the analysis. She stated that use of unaudited claims had been the practice even when claims were requested to be placed in the State Mandates Apportionment System. She added that unaudited claims were the best information available.

Member Barnes commented that there was insufficient time to go out and conduct field audits of all claims prior to developing a cost estimate, given the thousands of claims that are filed. He stated that as a conceptual idea, we would all like to see estimates based on audited claims. However, as a practical matter, it just was not feasible. Chairperson Sheehan agreed.

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

#### ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES

- Item 14     *Pupil Promotion and Retention*, 98-TC-19  
San Diego Unified School District, Claimant  
Education Code Sections 37252, 37252.5, 48070 and 48070.5  
Statutes 1998, Chapters 742 and 743, et al. (AB 1626 and AB 1639)

Item 14 was postponed.

Member Barnes asked what the reason was for postponing the item. Ms. Higashi clarified that one of the claimant representatives indicated that there was a plan to amend claims previously filed, which would affect the proposed estimate.

- Item 15     *Comprehensive School Safety Plans*, 98-TC-01 and 99-TC-10  
Kern High School District, Claimant  
Former Education Code Sections 35294.1, 35294.2, 35294.6, and 35294.8  
Statutes 1997, Chapter 736 (SB 187) and Statutes 1999, Chapter 996 (SB 334)  
[Amended and Re-numbered as Education Code Sections 32280, 32281, 32282, 32286, 32288 by Statutes 2003, Chapter 828 (SB 719)]

Nancy Patton, Assistant Executive Director, presented this item. She noted that the test claim legislation requires each school district and county office of education to develop, adopt, and update comprehensive school safety plans that are relevant to the safety needs of each school.

Ms. Patton explained that staff developed the proposed statewide cost estimate using summary claims data submitted by the claimants and compiled by the Controller's Office. For fiscal years 1997-1998 through 2002-2003, 381 school districts claimed costs. The proposed estimate included eight fiscal years for a total of over \$37 million.

The final staff analysis for this item was issued on November 22, 2004. Ms. Patton indicated that no comments were filed on the proposed estimate. However, the Department of Finance requested that the item be removed from the consent calendar so that they could read their concerns regarding the methodology into the record. Staff recommended that the Commission adopt the proposed estimate.

Parties were represented as follows: Nelson Cayago and Matt Aguilera, with the Department of Finance; Dr. Carol Berg, with Education Cost Mandated Network; and Art Palkowitz, with the

San Diego Unified School District.

Mr. Cayago stated that the Department of Finance preferred that the statewide cost estimate be based on audited claims rather than unaudited claims.

Dr. Berg requested that the Department of Finance's application to remove an item from the consent calendar at the last minute when they do not submit written comments be denied in the future. Mr. Palkowitz agreed.

Mr. Aguilera explained that they were just taking the opportunity to articulate their concerns via the public hearing.

Dr. Berg argued that they should follow the protocol that the claimants were required to follow, which is to file written comments in a proper and timely manner.

Chairperson Sheehan appreciated the comments and indicated that the Commission would take them into consideration.

Member Lazar inquired what was a timely time frame. Mr. Starkey responded that there were time frames for various proceedings. He suggested that if a party objects to a scheduled action, that they notify the Executive Director right away.

Ms. Higashi noted Ms. Patton's statement that no party filed comments during the normal comment period for this matter.

Mr. Aguilera maintained that although the Department of Finance did not file comments, it was just continuing to articulate its same concerns.

Chairperson Sheehan suggested that they work to submit comments for the record so that the Department of Finance's position is reflected.

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

## **STAFF REPORTS**

### Item 16 Chief Legal Counsel's Report (info) Recent Decisions, Litigation Calendar

Paul Starkey, Chief Legal Counsel, reported that there was one new filing – the *CSAC-Excess Insurance Authority* case. There were no recent decisions to report.

Regarding the litigation calendar, Mr. Starkey stated that the *County of Los Angeles and Los Angeles County Flood Control District* case and the *City of Artesia* case have been consolidated and will appear as one agenda item in the future. There will be a status conference on January 31, 2005.

### Item 17 Staff Report: Implementation of AB 2856 (info)

Nancy Patton, Assistant Executive Director, reported that the governor signed Assembly Bill 2856 on September 29, 2004. Since that time, the Commission staff began implementing the provisions of the bill:

- The first workshop was conducted on December 8 with the Department of Finance, State Controller's Office, Department of Education, and numerous claimant representatives.
- A second workshop is planned for January 27, 2005.

- A new test claim submission form has been proposed and staff is requesting that comments be submitted by December 22, 2004.
- Staff is planning a rulemaking calendar and is in the process of comparing new law with existing law, and its effect on the Commission's regulations. The proposed rulemaking calendar for 2005 will be before the Commission at the January hearing.

Item 18 Executive Director's Report (info/action)  
Workload, Implementation of Legislation, Meetings, and Next Hearing

Ms. Higashi reported the following:

- *Workload.* Because of the reconsiderations mandated by the Legislature, the Commission's workload greatly increased. As reconsiderations have a statutory timeline for completion, they have become a priority workload matter, not including matters already in progress.
- *Budget and Legislation.* Ms. Higashi provided brief updates about meetings she attended. The Commission submitted a budget change proposal that is pending approval.
- *Next Hearing Agenda.* There will be modifications made to the next agenda.

Member Barnes asked if there was a filing from Butte County. Ms. Patton responded that the county now plans to file its SB 1033 application in mid-January.

#### **PUBLIC COMMENT**

There was no public comment.

#### **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. *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*]
3. *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*]
4. *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*]
5. *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*]

6. *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*]
7. *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*]
8. *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*]
9. *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*]
10. *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*]
11. *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.*]
12. *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 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**

Regarding the 2005 hearing schedule, Member Barnes suggested an early December hearing rather than a November hearing. The other members agreed. Ms. Higashi stated that she would check with the parties and report back to the Commission.

Hearing no further business, and upon motion by Member Boel and second by Member Lazar, Chairperson Sheehan adjourned the meeting at 11:31 a.m.



PAULA HIGASHI  
Executive Director