

# MINUTES

## COMMISSION ON STATE MANDATES

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

Present: Chairperson James Tilton  
Representative of the Director of the Department of Finance  
Member William Sherwood  
Representative of the State Treasurer  
Member Walter Barnes  
Representative of the State Controller  
Member Jan Boel  
Acting Director of the Office of Planning and Research  
Member John Lazar  
City Council Member

Vacant: Local Elected Official  
Public Member

### CALL TO ORDER AND ROLL CALL

Chairperson Tilton called the meeting to order at 9:35 a.m.

Chairperson Tilton welcomed Jan Boel to the Commission.

### ELECTION OF CHAIRPERSON

Item 1 Staff Report

Paula Higashi, Executive Director, conducted the election of officers. Member Sherwood nominated Ms. Donna Arduin, the Director of the Department of Finance, as Chairperson. With a second by Member Lazar, Ms. Arduin was unanimously elected. Member Lazar nominated Mr. Philip Angelides, State Treasurer, as Vice Chairperson. With a second by Member Barnes, Mr. Angelides was unanimously elected.

### APPROVAL OF MINUTES

Item 2 December 2, 2003

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

**PROPOSED CONSENT CALENDAR**

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 14     *Teacher Incentive Program, 99-TC-15*  
San Diego Unified School District, Claimant  
Education Code Sections 44395 and 44396  
Statutes 1998, Chapter 331 (AB 858)

Member Sherwood moved for adoption of the consent calendar, which consisted of item 14. With a second by Member Lazar, the consent calendar was unanimously adopted.

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

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

- Item 3     Staff Report

No appeals were filed.

TEST CLAIM

- Item 4     *School Safety Officer Training, 01-TC-05, amended by 01-TC-10*  
San Diego Unified School District, Claimant  
Business and Professions Code Section 7583.45;  
Education Code Sections 35021.5, 38001.5, subdivision (b),  
39672 subdivision (a), 72330.2, subdivision (a), and 72330.5, subdivision (b);  
Penal Code Sections 830.32, 832.2, and 832.3  
As added or amended by Statutes 1998, Chapter 745 (SB 1626)  
Statutes 1998, Chapter 746 (SB 1627)

Camille Shelton, Senior Commission Counsel, presented this item. She noted that the test claim legislation requires school districts and community college districts employing school police officers and security officers or contracting with a private security company to ensure that new and existing officers complete a required course of training, obtain fingerprint cards from the officers, forward the cards to the Department of Justice, and determine if the employee is a person who is not prohibited from employment.

Staff found that the test claim legislation was not subject to article XIII B, section 6 of the California Constitution. Ms. Shelton stated that state law did not mandate school districts or community college districts to maintain a campus police department or hire police officers, security officers, or reserve officers. Therefore, pursuant to the Supreme Court’s holding in the *Department of Finance v. Commission on State Mandates* case, staff found that the statutory duties imposed by the test claim legislation that follow from the discretionary decision to hire police officers did not impose a reimbursable state-mandated program.

Staff recommended that the Commission adopt the final staff analysis, which denied the *School Safety Officer Training* test claim.

Parties were represented as follows: Art Palkowitz, on behalf of the San Diego Unified School District; and Susan Geanacou and Matt Aguilera, with the Department of Finance.

Mr. Palkowitz explained that the test claim legislation required school district security and peace officers to complete additional training. This requirement emerged from a recommendation by the Commission on Peace Officer Standards and Training after a study was conducted in 1997. Thus, he contended that this constituted a reimbursable state mandate for two reasons: 1) training was not previously required, and 2) training is necessary to comply with the constitutional requirement that schools ensure a safe and peaceful environment. He added that the Commission previously approved test claims involving training, such as the *Law Enforcement Sexual Harassment Training* and *Sudden Infant Death Syndrome* programs.

Mr. Palkowitz also provided argument regarding the Supreme Court case cited by Commission staff. Whereas eight of the programs involved in the case were being funded, no funding was being provided here. Therefore, he argued that staff's reference to the case was misplaced.

Member Barnes requested Mr. Palkowitz comment on staff's reference to another case, *Leger v. Stockton Unified School District*. Mr. Palkowitz discussed the case, in which a student was assaulted in a school restroom. He noted that there was dictum about the constitutional requirement that schools had to ensure a safe environment; however, he contended that schools were not guarantors and could not be held civilly liable for a criminal act.

Ms. Shelton added that the plaintiff in the case brought three causes of action before the court. The first two were based on the constitutional provision about the right to safe schools, and the plaintiff sought declaratory relief and damages from that provision. The third cause of action was torts, in which the plaintiff argued that the school district did not act reasonably in preventing the incident. The court found that there was no mandatory duty under the Constitution because the provision was not self-executing. Here, with regard to peace officers, Ms. Shelton maintained that there was no state mandate either from the Constitution or the Legislature requiring school districts to have a police force.

Mr. Aguilera concurred with staff's findings.

Ms. Geanacou noted that the claimant's interpretation of the *Department of Finance v. Commission on State Mandates* case was too narrow. She clarified that eight of the nine programs at issue focused on the underlying voluntary nature of the programs, and the ninth program was the one in which the court found program funds available for the claimed Brown Act activities.

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

#### PROPOSED STATEMENT OF DECISION – TEST CLAIM

Item 9      *School Safety Officer Training*, 01-TC-05, amended by 01-TC-10  
San Diego Unified School District, Claimant  
See Item 4 Above

Camille Shelton, Senior Commission Counsel, presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the decision just made in item 4. Staff recommended that the Commission adopt the proposed Statement of Decision, noting that changes would be made to the document to indicate the vote count and to include the witnesses that were present.

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

Member Sherwood noted that the Commission had a tremendous amount of backlogged test claims and acknowledged that changing the process to adopt Statements of Decision at the same hearing when the test claim was being determined was an attempt to keep things moving. He also expressed the importance of being prepared to move items forward properly and expediently. Ms. Higashi clarified that the Commission was operating within the structure of the current procedures and had significant changes been made to the staff recommendation, it would have been recommended that the proposed Statement of Decision be continued.

#### TEST CLAIM

- Item 5      *False Reports of Police Misconduct (K-14)*, 02-TC-09  
Santa Monica Community College District, Claimant  
Penal Code Section 148.6  
Statutes 1995, Chapter 590 (AB 1732)  
Statutes 1996, Chapter 586 (AB 2637)  
Statutes 2000, Chapter 289 (SB 2133)

Katherine Tokarski, Commission Counsel, presented this item. She indicated that two test claims were filed on Penal Code section 148.6. This section specifies that any law enforcement agency accepting allegations of police officer misconduct must require the complainant to read and sign a specific advisory. The County of San Bernardino filed the first test claim in 2001, and the second was filed in September 2002 by the Santa Monica Community College District. Although the same statutory provisions are involved, these claims were not consolidated.

Ms. Tokarski restated the Department of Finance's contention that the additional costs incurred by school districts were not reimbursable based on the observation that the establishment of school district police departments was undertaken at the discretion of the district's governing board. Staff agreed with the Department of Finance's conclusions given the Supreme Court's holding in the *Department of Finance v. Commission on State Mandates* case. Staff found that pursuant to state law, school districts and community college districts remain free to discontinue providing their own police department and employing peace officers, and thus, any statutory duties imposed by Penal Code section 148.6 that follow from such discretionary activities do not impose a reimbursable state mandate.

Staff recommended that the Commission adopt the final staff analysis, which denied the *False Reports of Police Misconduct* test claim as filed on behalf of kindergarten through grade 14 school districts.

Parties were represented as follows: Keith Petersen, on behalf of the Santa Monica Community College District; and Susan Geanacou, with the Department of Finance.

Mr. Petersen stated that he was going to stand on his written submissions.

Ms. Geanacou concurred with the staff analysis.

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

PROPOSED STATEMENT OF DECISION – TEST CLAIM

- Item 10     *False Reports of Police Misconduct (K-14)*, 02-TC-09  
Santa Monica Community College District, Claimant  
See Item 5 Above

Katherine Tokarski, Commission Counsel, presented this item. She noted that changes would be made to the document to indicate the vote count and to include the witnesses that were present. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the decision just made in item 5.

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

TEST CLAIM

- Item 6     *Healthy Schools Act of 2000*, 00-TC-04  
Alum Rock Union Elementary School District, Claimant  
Education Code Sections 17608-17613 and 48980.3  
Food and Agricultural Code Sections 13181-13188  
Statutes 2000, Chapter 718 (AB 2260)

Camille Shelton, Senior Commission Counsel, presented this item. She noted that the legislation encourages school districts to adopt and implement the integrated pest management program established by the Department of Pesticide regulation, which also requires school districts to provide notification, post warning signs, and maintain and make available records of pesticide use when a district decides that pesticides are necessary.

Staff found that the test claim legislation was not subject to article XIII B, section 6 of the California Constitution, and that it did not mandate school districts to adopt an integrated pest management program. Thus, Ms. Shelton explained that once a school district decides to use a pesticide, the downstream activities of providing notice, posting warning signs, and maintaining and making available records of pesticide use do not constitute a reimbursable state-mandated program pursuant to the Supreme Court’s decision in the *Department of Finance v. Commission on State Mandates* case.

Staff recommended that the Commission adopt the final staff analysis, which denied the *Healthy Schools Act of 2000* test claim.

Ms. Shelton noted that two late filings were received. One was from the Department of Finance agreeing with the staff recommendation, and the second was a signed authorization from the claimant designating the Schools Mandate Group as their representative. Therefore, she stated that the comments to the draft staff analysis prepared by the Schools Mandate Group could now be considered the claimant’s comments.

Parties were represented as follows: David Scribner, on behalf of the Alum Rock Union Elementary School District; and Susan Geanacou and Matt Aguilera, with the Department of Finance.

Mr. Scribner stated that while the *Department of Finance v. Commission on State Mandates* case will apply, the real issue was whether the Commission as a body could find that there was either a legal compulsion or practical compulsion to use a pesticide at a school site. He argued that the issues in the court case were different from the issues here regarding pesticide use since the districts did not receive funding. Further, he asserted that in those cases where a district has an

integrated pest management program to address pest problems or other vector issues that might arise at a school site and that program fails, the district, being legally or practically compelled to use the pesticide to ensure a healthy and safe school environment, should be reimbursed under the rules of the Healthy Schools Act of 2000.

Ms. Shelton indicated that Mr. Scribner’s testimony described a tort standard, which applies to all owners of property. The standard requires the property owner to act reasonably and to post proper notifications and warnings in the event of problems such as pests or crime. She maintained that the standard in a mandates case was not the same as a torts case. Rather, mandates is analyzed strictly under the Constitution. She noted the Supreme Court’s decision that a mandate had to be from the state through either the Constitution or a statute that requires a local agency to do something. In this case, nothing in the Constitution or statutes mandate schools to apply a pesticide.

Regarding Mr. Scribner’s practical compulsion argument, Ms. Shelton noted that the issue had been considered by the Supreme Court in the *City of Sacramento* case that dealt with federal unemployment tax issues. However, in that case, penalties for failure to comply with the legislation were listed in the statutes. Ms. Shelton believed that the practical compulsion standard described by the court in the *Department of Finance* case did not apply to the fact pattern here because no penalties were listed in the statutes.

Mr. Aguilera concurred with the staff recommendation. He noted that schools did receive general purpose funding and some deferred maintenance funding that could be used to ensure safe facilities.

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

#### PROPOSED STATEMENT OF DECISION – TEST CLAIM

- Item 11     *Healthy Schools Act of 2000*, 00-TC-04  
Alum Rock Union Elementary School District, Claimant  
See Item 6 Above

Camille Shelton, Senior Commission Counsel, presented this item. She noted that changes would be made to the document to indicate the vote count and to include the witnesses that were present. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the decision just made in item 6.

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

#### TEST CLAIM

- Item 7     *Integrated Waste Management*, 00-TC-07  
Santa Monica and Lake Tahoe Community College Districts, Co-Claimants  
Public Resources Code Sections 40148, 40196.3, and 42920-42928  
Public Contract Code Sections 12167 and 12167.1  
Statutes 1992, Chapter 1116 (AB 3521)  
Statutes 1999, Chapter 764 (AB 75)  
Manuals of the California Integrated Waste Management Board

## PROPOSED STATEMENT OF DECISION – TEST CLAIM

- Item 12     *Integrated Waste Management*, 00-TC-07  
Santa Monica and Lake Tahoe Community College Districts, Co-Claimants  
See Item 7 Above

Items 7 and 12 were postponed.

### TEST CLAIM

- Item 8     *False Reports of Police Misconduct*, 00-TC-26  
County of San Bernardino, Claimant  
Penal Code Section 148.6  
Statutes 1995, Chapter 590 (AB 1732)  
Statutes 1996, Chapter 586 (AB 2637)  
Statutes 2000, Chapter 289 (SB 2133)

Katherine Tokarski, Commission Counsel, presented this item. She noted that the claimant, County of San Bernardino, alleged that Penal Code section 148.6 requires a local government to engage in the following reimbursable state mandated activities: 1) warn all citizens making a complaint against a peace officer and advise that a false report can be a misdemeanor; 2) make the advisory available in the language of the complainant; and 3) explain the form to the citizen. The claimant alleged costs from spending approximately 15 minutes explaining the form to each complainant.

Ms. Tokarski restated the Department of Finance's argument that there was no reimbursable state mandate stemming from the test claim legislation. Staff concluded that Penal Code section 148.6, subdivisions (a)(2) and (a)(3), constitute a state mandate for the enforcement agency to require the complainant to read and sign the advisory prescribed and to make the advisory available in multiple languages utilizing the translations available from the State. Staff recommended denial of any remaining alleged activities or costs.

Staff recommended that the Commission adopt the final staff analysis, which partially approved the *False Reports of Police Misconduct* test claim for cities and counties.

Parties were represented as follows: Bonnie Ter Keurst, on behalf of the County of San Bernardino; Allan Burdick and Pam Stone, with the California State Association of Counties; and Susan Geanacou, with the Department of Finance.

Ms. Ter Keurst addressed two issues: the activity of explaining the form to the citizen, and training. Regarding the activity of explaining the form, she agreed that there was no directive, but argued that the primary goal of the police is to serve the public. Thus, they have a legal and moral responsibility to ensure that the complainant understands what needs to be signed. She also asked what would happen if the complainant refused to sign. As to the issue of training, Ms. Ter Keurst stated that training within the sheriff's department or the district attorney's office was necessary to comply with the program.

Mr. Burdick agreed with staff's primary findings. However, he suggested that the last paragraph in the conclusion, in which staff recommends denial of any remaining alleged activities or costs, be deleted because these items should be looked at during the parameters and guidelines stage where people have the opportunity to discuss the issues.

Ms. Tokarski stated that several of the activities stemming from Penal Code section 148.6 that the claimant specifically alleged were not required by the legislation, including the activity to explain the form. She added that subdivisions (a)(1) and (b) of Penal Code section 148.6 were misdemeanor provisions and were not reimbursable.

Ms. Geanacou agreed with the staff analysis. She expressed concern about removing the provision referred to by the claimant because it could potentially open the door for activities already found not to be reimbursable.

Chairperson Tilton believed that the law was intended to reduce workload when a claim was filed against a peace officer, leading to some savings. He noted that there was not enough information before the Commission to conclude that the program resulted in an increased cost and that more work needed to be done.

Camille Shelton, responding as acting Chief Legal Counsel,<sup>1</sup> commented that the Commission had to make a finding at this stage as to whether there were increased costs mandated by the state. She noted Government Code section 17556, subdivision (e), states that the Commission shall not find costs mandated by the state if the statute or executive order provides for offsetting savings to local agencies or school districts that result in no net cost. In this case, Ms. Shelton maintained that the legislation imposed two requirements, and though there may be savings in the long run, there was no evidence in the record to show that the claimant had not incurred increased costs for those two activities. She added that the Commission had the option to continue the item so that substantial evidence could be entered into the record.

Ms. Ter Keurst asserted that Assemblywoman Boland's stated intent with the bill, from a letter to former Governor Pete Wilson dated September 5, 1995, was not to use the money to finance the legislation, but instead to put more officers on the street to enhance public safety.

Chairperson Tilton responded that his general conclusion that there were net savings was supported.

Ms. Ter Keurst contended that any savings achieved was to the state, whereas costs were borne by local agencies.

Addressing the issue of cost savings, Ms. Stone contended that there would be a reduction in the total number of claims filed for the *Peace Officer Bill of Rights* program, rather than an actual savings in the *False Reports of Police Misconduct* program itself.

Mr. Burdick reiterated his argument that any remaining alleged activities or costs should be discussed at the parameters and guidelines stage.

Member Barnes commented that the provision should not be removed because it would provide vague guidance to staff in developing the parameters and guidelines. He added that staff could be directed to look into the issue of offsetting savings in connection to this mandate.

Member Barnes asked what would happen if the complainant did not sign the form. Ms. Tokarski responded that there was no reference in the advisory language as to the consequences. However, she maintained that this did not change the fact that the law enforcement agency was required to give the complainant the form and attempt to have the person sign.

Distinguishing between the test claim and the parameters and guidelines, Ms. Shelton explained that the activities recommended for approval are those expressly required by statute. These were

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<sup>1</sup> Mr. Paul Starkey, Chief Legal Counsel to the Commission, was unable to attend this hearing.

legal findings. If the Commission adopts the staff recommendation, the activities would be included in the parameters and guidelines. However, other activities may also be included if they are reasonably necessary to comply with the mandate.

As to the issue of savings, Ms. Shelton explained that to approve the test claim, the Commission must find that there are increased costs mandated by the state. If there were questions as to the possibility of overall net savings resulting from the mandate, she noted that the item would need to be continued because once it moves to the parameters and guidelines stage, then a finding is made that there are increased costs and the Commission loses jurisdiction over the issue.

Member Barnes stated that any associated savings would not be known until claims were filed, and claims were filed based on the parameters and guidelines and claiming instructions. He asked if staff thought the issue should be dealt with here. Ms. Shelton responded that there was absolutely no evidence in the record of any cost savings, and there was testimony that there were two overlapping programs.

Ms. Higashi reviewed the cost savings claims process, which was enacted in the Commission's original statutory scheme. She noted that when that statute was repealed, Government Code section 17556 was not amended.

After further discussion about the process and relation to the *Peace Officer Bill of Rights* program, Member Barnes made a motion to approve the staff recommendation with the direction that in developing the parameters and guidelines, the effect on the *Peace Officer Bill of Rights* program be taken into account. With a second by Member Sherwood, the motion carried 4-1, with Chairperson Tilton voting "No."

#### PROPOSED STATEMENT OF DECISION – TEST CLAIM

Item 13     *False Reports of Police Misconduct*, 00-TC-26  
County of San Bernardino, Claimant  
See Item 8 Above

Katherine Tokarski, Commission Counsel, presented this item. She noted that changes would be made to the document to reflect the hearing testimony, direction from the Commission members regarding the parameters and guidelines, and to indicate the vote count. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the decision just made in item 8.

Member Barnes made a motion to adopt the proposed Statement of Decision, consistent with the guidance given in connection with the test claim. With a second by Member Sherwood, the motion carried unanimously.

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

##### PROPOSED 2004 RULEMAKING CALENDAR

Item 15     Staff Report

Paula Higashi, Executive Director, presented this item. She noted that the annual rulemaking calendar was submitted to the Office of Administrative Law. As presented, it includes three potential rulemaking actions: 1) implementation of the Bureau of State Audits audit recommendations in the *Peace Officer Bill of Rights* and *Animal Adoption* programs; 2) streamlining of the Commission's internal processes and procedures; and 3) development of a

procedure for appeals of executive director decisions. Ms. Higashi recommended that the Commission adopt the rulemaking calendar as presented.

Member Barnes made a motion to adopt the 2004 rulemaking calendar. With a second by Member Boel, the motion carried unanimously.

## STAFF REPORTS

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

Camille Shelton, acting Chief Legal Counsel, reported the following:

- *New Filings.* There were several new filings related to the *Graduation Requirements* program. Six cases were now pending in the Sacramento County Superior Court.
- *Recent Decisions.* The Second District Court of Appeal issued their unpublished decision in the *County of San Bernardino v. the Commission on State Mandates* case concerning property tax administration. Also, the Sacramento County Superior Court heard the *Department of Finance v. Commission on State Mandates (School Bus Safety II)* case, granted the writ in part, and remanded a portion back to the Commission. The court agreed that school bus transportation was a discretionary activity on the part of the school districts, but remanded the issue back with respect to special education students. Moreover, in an unpublished decision, the Fourth District Court of Appeal granted the writ in the *County of San Diego v. Commission on State Mandates* case that dealt with the *Medically Indigent Adult* program.

### Item 17 Executive Director's Report Budget, Workload, Legislation, Next Hearing

Ms. Higashi noted the following:

- *Workload.* The Commission currently had 131 test claims to be heard and determined.
- *Budget.* The Commission's budget was reduced by one and a half positions for a savings of \$102,000.
- *Legislation.* The Commission was not carrying a local government claims bill for the third consecutive year. During the last couple of weeks, the Assembly Special Committee on Mandates, chaired by Assembly Member Laird, will be sponsoring legislation to repeal some old mandates that have been suspended for many years. The committee will also be taking on some recommendations to direct some of the Commission's prior decisions back to the Commission for reconsideration. It is also expected that a special committee or task force will be created within the state Senate.

The report to the Legislature detailing the denied mandates was filed in January. A report on the approved mandates will be submitted once statewide cost estimates are adopted in the spring.

## PUBLIC COMMENT

Allan Burdick, on behalf of the California State Association of Counties, asked if there was additional information as to why the Commission was not submitting a claims bill to the Legislature.

Ms. Higashi clarified that the statutes required the Commission to report statewide cost estimates to the Legislature, and the Legislature introduces the claims bill. She noted that the Legislature received the information.

Ms. Higashi announced that Nancy Patton was now the Assistant Executive Director. She also introduced three law clerks: Sigrid Asmundson, Shela Barker, and Micah Martin.

**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. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*]
2. *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*]
3. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number B163801, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 02-L-04 [*Property Tax Administration*]
4. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number C044162, in the Appellate Court of the State of California, Third Appellate District. CSM Case No. 02-L-05 [*Physical Performance Tests*]
5. *Palos Verdes Peninsula Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS00897, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-06. [*Eastview Optional Attendance Area*]
6. *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*]
7. *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*]
8. *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*]
9. *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*]

10. *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*]
11. *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*]
12. *San Diego County v. Commission on State Mandates, et al.*, Case Number S120209, petition for review, in the Supreme Court of the State of California. CSM Case No. 03-L-07 [*San Diego MIA*]
13. *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*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

#### PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

Hearing no further comments, Chairperson Tilton adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

#### REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Tilton reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

#### ADJOURNMENT

Hearing no further business, and with a motion by Member Barnes and second by Member Sherwood, Chairperson Tilton adjourned the meeting at 11:25 a.m.



PAULA HIGASHI  
Executive Director