

# Minutes

## COMMISSION ON STATE MANDATES

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
January 27, 2012

Present: Member Diana Ducay, Chairperson  
Representative of the Director of the Department of Finance  
Member Francisco Lujano, Vice Chairperson  
Representative of the State Treasurer  
Member Richard Chivaro  
Representative of the State Controller  
Member Ken Alex  
Director of the Office of Planning and Research  
Member Sarah Olsen  
Public Member

*NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.*

### CALL TO ORDER AND ROLL CALL

Chairperson Ducay called the meeting to order at 9:29 a.m. Acting Executive Director Nancy Patton called the roll.

### ELECTION OF OFFICERS

Item 1 Staff Report

Ms. Patton stated that the annual election of officers is the first order of business for the first meeting of the year and asked for nominations for chairperson.

Member Alex nominated the Director of Finance. Member Chivaro seconded. Director of Finance Ana Matosantos was elected chairperson by a vote of 5-0.

Chairperson Ducay asked for nominations for vice-chairperson. Member Chivaro nominated the Treasurer. With a second by Member Olsen, the Treasurer, Bill Lockyer was voted vice chairperson by a vote of 5-0.

### APPROVAL OF MINUTES

Item 1 December 1, 2011

With a motion for approval by Member Olsen and a second by Member Chivaro, the December 1, 2011 hearing minutes were adopted by a vote of 4-0. Member Ducay Abstained.

### CONSENT CALENDAR

HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND GUIDELINES, AND INCORRECT REDUCTION CLAIMS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

- PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS

Item 6\* *Pupil Promotion and Retention*, 10-PGA-03  
Education Code Sections 37252, 37252.2 (formerly 37252.5), 48070, and 48070.5

Statutes 1981, Chapter 100; Statutes 1982, Chapter 1388; Statutes 1983, Chapter 498; Statutes 1990, Chapter 1263; Statutes 1998, Chapters 742 and 743

State Controller's Office, Requestor

**INFORMATIONAL HEARING ON PARAMETERS AND GUIDELINES AMENDMENTS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)**

• **ADOPTION OF PROPOSED RULEMAKING CALENDAR**

Item 8\* Proposed Rulemaking Calendar, 2012

Member Chivaro made a motion to adopt the consent calendar. With a second by Member Olsen, the consent calendar was adopted by a vote of 5-0.

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

Item 3 Staff Report (if necessary)

There were no appeals to consider.

**HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND GUIDELINES, AND INCORRECT REDUCTION CLAIMS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)**

Acting Executive Director Nancy Patton swore in parties and witnesses participating in the hearing.

Ms. Patton stated that Item 4: test claim on the *California Community Colleges Budget and Accounting Manual* program, was removed from the agenda because the test claim was withdrawn by the claimant.

**A. TEST CLAIMS AND STATEMENTS OF DECISION**

Item 5 *Charter Schools IV*, 03-TC-03  
Education Code Sections 1628, 42100, 47602, 47604.3, 47604.4, 47605, 47605.1, 47605.6, 47605.8, 47611.5, 47612.1, 47613.1, 47626, 47652  
Government Code Section 3540.1  
Statutes 1999, Chapter 828, Statutes 2002, Chapter 1058  
San Diego Unified School District, Claimant

This is a test claim filed by San Diego Unified School District that addresses collective bargaining statutes for charter schools, petition requirements for charter schools, and charter school oversight activities.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission partially approve the test claim.

Parties were represented as follows: Art Palkowitz, Stutz Artiano Shinoff & Holtz, representing claimant San Diego Unified School District, and Donna Ferebee representing the Department of Finance.

Mr. Palkowitz agreed with staff's recommendation that a portion of the test claim was reimbursable with the sole objection that clarifying language should be added that states "following a review and a public hearing" to page 6, paragraph 1.

Ms. Ferebee stated that Department of Finance has no objection to the staff's recommendation for partial approval of the test claim.

After further discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation and statement of decision with the addition of the clarifying language. With a second by Member Alex, the staff recommendation to partially approve the test claim and adopt the statement of decision was adopted by a vote of 5-0.

Item 7      *Absentee Ballots*, 02-3713-I-01  
Statutes 1978, Chapter 77  
Fiscal Years 1996-1997, 1997-1998, and 1998-1999  
Riverside County, Claimant

This incorrect reduction claim challenges the reductions made by the State Controller's Office to the County's reimbursement claims for costs incurred in fiscal years 1996-1997, 1997-1998, and 1998-1999 for the *Absentee Ballots* program.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission deny the incorrect reduction claim for the last two fiscal years but grant the incorrect reduction claim for the first year and remand the claim back to the Controller for further review and reimbursement for the reasonable costs incurred and supported by documentation.

Parties were represented as follows: Allan Burdick, CSAC SB 90 Service, representing claimant Riverside County; and Jim Spano and Jay Lal, State Controller's Office.

Mr. Burdick urged adoption of the staff recommendation on behalf of the claimant. Mr. Spano stated that the State Controller's Office supported the staff recommendation regarding the 1997-98 and 1998-99 audits. Mr. Lal stated that the State Controller's Office supported the staff recommendation regarding the 1996-97 audit.

Member Olsen made a motion to adopt the staff recommendation and statement of decision. With a second by Member Chivaro, the staff recommendation to partially approve the incorrect reduction claim and adopt the statement of decision was adopted by a vote of 5-0.

**HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)**

Item 8      Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer  
*Note: This item will only be taken up if an application is filed.*

No applications were filed.

**STAFF REPORTS**

Item 10      Chief Legal Counsel: Recent Decisions, Litigation Calendar

Ms. Shelton presented this item.

Item 11      Executive Director's Report

Ms. Patton presented this item.

**PUBLIC COMMENT**

There was no public comment.

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (action).**

**A. 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(e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]
2. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego*, et al., Sacramento County Superior Court Case No. 34-2010-80000604 [Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
3. Cross Petition Filed: *County of San Diego, and Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solano Beach, and Vista v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Control Board San Diego Region*, Sacramento County Superior Court Case No. 34-2010-80000604 [[Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
4. *California School Board Association (CSBA) v. State of California et al.*, Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
5. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al.*  
Second District Court of Appeal, Case No. B237153 (Los Angeles County Superior Court, Case No. BS130730)  
[Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

## B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a)(1):

Hearing no further comments, Chairperson Ducay adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

### **REPORT FROM CLOSED EXECUTIVE SESSION**

At 9:57 a.m., Chairperson Ducay reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(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 public notice and agenda, and potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

### **ADJOURNMENT**

Hearing no further business, Chairperson Ducay adjourned the meeting at 9:58 a.m.



Heather Halsey  
Executive Director