

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
July 28, 2011

Present: Member Diana Ducay, Chairperson
Representative of the Director of the Department of Finance
Member Richard Chivaro, Vice Chairperson
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Wade Crowfoot
Representative of the Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Sarah Olsen
Public Member

Absent: Paul Glaab
City Council Member

NOTE: The transcript for this hearing is attached. These abbreviated 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 9:36 a.m. Executive Director Drew Bohan called the roll. Member Glaab was absent and Member Chivaro was out of the room.

NOTE: The Chairman chose to take items out of order, so the following reflects the order of the items as they were heard by the Commission. The complete transcript of this Commission meeting is attached.

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)

PARAMETERS AND GUIDELINES AND STATEMENTS OF DECISION

- Item 5* *Domestic Violence Background Checks, 01-TC-29*
Penal Code Sections 273.75(a) and (c)
Statutes 2001, Chapter 713 (AB 1129)
County of Alameda, Claimant
- Item 6* *Identity Theft, 03-TC-08*
Penal Code Section 530.6(a)
Statutes 2000, Chapter 956 (AB 1897)
City of Newport Beach, Claimant

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

PROPOSED STATEWIDE COST ESTIMATES

Item 11* *Tuition Fee Waivers*

02-TC-21

Education Code Sections 68044(a), (b), and (c), 68051, 68074,
68075.5, 68076(d), 68077, 68078(b), 68082, 68083, 68084, 68121, 68130.5,
and 76140

Statutes 1977, Chapter 36 (AB 447); Statutes 1980, Chapter 580 (AB 2567);
Statutes 1981, Chapter 102 (AB 251); Statutes 1982, Chapter 1070
(AB 2627); Statutes 1988, Chapter 753 (AB 3958); Statutes 1989, Chapters
424, 900, and 985 (AB 1237, AB 259, and SB 716); Statutes 1990, Chapter
1372 (SB 1854); Statutes 1991, Chapter 455 (AB 1745); Statutes 1993,
Chapter 8 (AB 46); Statutes 1995, Chapter 389 (AB 723); Statutes 1997,
Chapter 438 (AB 1317); Statutes 1998, Chapter 952 (AB 639); Statutes
2000, Chapters 571 and 949 (AB 1346 and AB 632); Statutes 2001, Chapter
814 (AB 540); and Statutes 2002, Chapter 450 (AB 1746)

California Code of Regulations, Title 5, Sections 54012(b), (c), and (d),
54024(e) and (f); 54030, 54032(a); 54041, 54045(b) and (c); 54045.5(b);
54046, 54060(a) and (b)

Register 77, No. 45 (Nov. 5, 1977); Register 82, No. 48 (Nov. 27, 1982);
Register 83, No. 24 (Jun. 11, 1983) Register 86, No. 10 (Mar. 8, 1986);
Register 91, No. 23 (April 5, 1991); Register 92, No. 4 (Jan. 24, 1992);
Register 95, No. 19 (May 19, 1995); Register 99, No. 20 (May 14, 1999);
Register 02, No. 25 (Jun. 21, 2002)

Revised Guidelines and Information, "Exemption from Nonresident Tuition"
Chancellor of the California Community Colleges, May 2002

Contra Costa Community College District, Claimant

Item 12* *Crime Victims' Domestic Violence Incident Reports II*

02-TC-18

Penal Code Sections 13730(c)(3), 12028.5;

Statutes 2001, Chapter 483 (AB 469); Statutes 2002, Chapter 833 (SB 1807)

County of Los Angeles, Claimant

Item 13* *Child Abuse and Neglect Reporting*

01-TC-21

Penal Code Sections 11165.7(d) and 11174.3(a)

Statutes 1987, Chapters 640 (AB 285) and 1459 (SB 1219), Statutes 1991,
Chapter 132 (AB 1133); Statutes 1992, Chapter 459 (SB 1695); Statutes
1998, Chapter 311 (SB 933); Statutes 2000, Chapters 916 (AB 1241);
Statutes 2001, Chapters 133 (AB 102) and 754 (AB 1697)

San Bernardino Community College District, Claimant

ADOPTION OF PROPOSED AMENDMENTS TO REGULATIONS

Item 14* Conflict of Interest

Member Olsen made a motion to adopt items 5, 6, 11, 12, 13, and 14 on the consent calendar.
With a second by Member Worthley, the consent calendar was adopted by a vote of 6-0.

APPROVAL OF MINUTES

Item 1 May 26, 2011

With a motion for approval by Member Worthley and a second by Member Lujano, the May 26, 2011 hearing minutes were adopted by a vote of 4-0, with Chair Ducay and Member Crowfoot abstaining.

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

Item 2 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)

Executive Director Drew Bohan swore in parties and witnesses participating in the hearing.

- TEST CLAIMS

Item 3 *Employment of College Faculty and Administrators, 02-TC-27*
Education Code Sections 70901(b)(1)(B), 87356, 87357, 87358, 87359, 87360, 87610.1, 87611, 87663, 87714, 87740, 87743.2, 87743.3, 87743.4, 87743.5
Statutes 1981, Chapter 470 (AB 1726), Statutes 1988, Chapter 973 (AB 1725), Statutes 1990, Chapter 1302 (SB 2298), Statutes 1993, Chapter 506 (SB 343), Statutes 1995, Chapter 758 (AB 446), Statutes 1998, Chapter 1023 (AB 2329), Statutes 2000, Chapter 124 (AB 1337)
California Code of Regulations, Title 5, Sections 53130, 53403, 53406, 53407, 53410, 53410.1, 53412, 53414, 53415, 53416, 53417, 53420, 53430
Register 90, No. 37 (July 5, 1990), Register 90, No. 49 (Nov. 30, 1990), Register 91, No. 23 (June 7, 1991), Register 91, No. 50 (July 19, 1991), Register 92, No. 9 (Nov. 24, 1991), Register 92, No. 26 (July 27, 1992), Register 92, No. 45 (Nov. 6, 1992), Register 93, No. 25 (June 4, 1993), Register 93, No. 42 (Nov. 4, 1993), Register 93, No. 46 (Oct. 8, 1993), Register 94, No. 38 (Oct. 6, 1994), Register 95, No. 19 (Mar. 19, 1995), Register 96, No. 40 (Oct. 4, 1996)

Santa Monica Community College District, Claimant

This is a test claim filed by Santa Monica Community College District regarding various activities related to determining the minimum qualifications for employees in community colleges, and hiring and tenure grievance procedures.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission deny the test claim on the ground that funding sufficient to pay for the mandated activities has been specifically appropriated by the Legislature.

Parties were represented as follows: Keith Petersen, representing claimant Santa Monica Community College District; Steve Bruckman, representing the California Community College Chancellor's Office; Ed Hansen and Donna Ferebee, representing the Department of Finance.

Mr. Petersen stated his willingness to proceed on the written submissions and offered to answer any questions. Department of Finance then went on record as concurring with the revised final staff analysis.

With a motion by Member Chivaro to adopt the staff recommendation, and a second by Member Olsen, the staff recommendation to deny the test claim was adopted by a vote of 6-0.

Item 4 Proposed Statement of Decision
See Item 3 Above

Member Chivaro made a motion to adopt the proposed statement of decision. With a second by Member Crowfoot, the statement of decision was adopted by a vote of 6-0.

C. INCORRECT REDUCTION CLAIMS

Item 7 *Emergency Procedures, Earthquake and Disasters*, 01-4241-I-03
Statutes 1984, Chapter 1659 (AB 2786)
Fiscal Years 1996-1997 and 1997-1998

San Diego Unified School District, Claimant

This incorrect reduction claim was filed by San Diego Unified School District (District) challenging a reduction made by the State Controller's Office to the District's reimbursement claim for costs incurred in fiscal years 1996-1997 and 1997-1998 for the *Emergency Procedures, Earthquake and Disasters* program. Under that program, local agencies and school districts are eligible to claim reimbursement for the costs to school districts to establish an earthquake emergency procedure system in every public or private school building having an occupant capacity of 50 or more students or more than one classroom.

Mr. Bohan presented this item, and recommended that the Commission:

- Find that the State Controller's Office properly reduced the District's fiscal year 1996-1997 reimbursement claim by \$174,957 for the costs incurred to pay the salaries of teachers for in-classroom time spent on earthquake preparedness, because under the 1991 amended parameters and guidelines, no reimbursement can be claimed for in-classroom teacher time.
- Find that the State Controller's Office properly reduced the District's reimbursement claims to the extent they sought reimbursement for activities not related to earthquake emergencies.
- Find that the State Controller's Office incorrectly reduced the remaining costs incurred by San Diego Unified School District in fiscal years 1996-1997 and 1997-1998 for the *Emergency Procedures, Earthquake and Disasters* program.
- Remand this claim back to the State Controller's Office to request that it determine the amount of the District's reimbursement claim that is attributable to earthquake emergencies, and reimburse the District for that amount, less the \$174,957 for in-classroom time that the State Controller's Office properly reduced

Parties were represented as follows: Art Palkowitz, representing claimant San Diego Unified School District and Jim Spano, representing the State Controller's Office.

Member Worthley made a motion to adopt a modified version of the staff recommendation. He recommended that the statutory definition of "subject to audit within a two-year time frame" be interpreted to mean that the audit had to be completed within the two-year time frame. With a second by Member Olsen, Member Worthley's motion was denied by a vote of 2-4.

Member Chivaro then moved to adopt the staff recommendation, and with a second by

Member Crowfoot, the staff recommendation was adopted by a vote of 6-0.

- Item 8 Proposed Statement of Decision
See Item 7 Above

Member Chivaro made a motion to adopt the proposed statement of decision. With a second by Member Crowfoot, the statement of decision was adopted by a vote of 6-0.

- Item 9 *Handicapped and Disabled Students*, 05-4282-I-02, 09-4282-I-04
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 effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28])
Fiscal Years 1997-1998, 1998-1999, 2000-2001
County of Orange, Claimant

This incorrect reduction claim was filed by the County of Orange regarding reductions made by the State Controller's Office to reimbursement claims for costs incurred in three fiscal years (1997-1998, 1998-1999, and 2000-2001), in the total amount of \$2,676,659 to provide medication monitoring services to seriously emotionally disturbed pupils under the *Handicapped and Disabled Students* program.

The *Handicapped and Disabled Students* program was enacted by the Legislature to implement federal law that requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services, including psychological and other mental health services, designed to meet the pupil's unique educational needs. The program shifted to counties the responsibility and funding to provide mental health services required by a pupil's individualized education plan (IEP).

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission deny the incorrect reduction claim on the ground that medication monitoring costs were not eligible for reimbursement until July 1, 2001.

Parties were represented as follows: Jim Spano, representing the State Controller's Office.

With a motion by Member Olsen to adopt the staff recommendation, and a second by Member Chivaro, the staff recommendation to deny the incorrect reduction claim was adopted by a vote of 6-0.

- Item 10 Proposed Statement of Decision
See Item 9 Above

Member Worthley made a motion to adopt the proposed statement of decision. With a second by Member Chivaro, the statement of decision was adopted by a vote of 6-0.

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 16 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 17 Legislative Update

Assistant Executive Director Nancy Patton presented this item.

Item 18 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Ms. Shelton presented this item.

Item 19 Executive Director's Report

Mr. Bohan presented this item.

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, 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. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles*, et. al., 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]

5. *California School Board Association (CSBA) v. State of California et. al., Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Redetermination Process]*
6. *Cross Petition: County of Los Angeles and Cities of Bellflower, Carson, Commerce, Covina, Downey and Signal Hill v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region, 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]*

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.

REPORT FROM CLOSED EXECUTIVE SESSION

At 10:41 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.

ADJOURNMENT

Hearing no further business, Chairperson Ducay adjourned the meeting at 10:42 am.


Drew Bohan
Executive Director