

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
December 7, 2012

Present: Member Pedro Reyes, 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
Member Carmen Ramirez
City Council Member
Member Don Saylor
County Supervisor

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 Reyes called the meeting to order at 10:00 a.m.

Executive Director Heather Halsey called the roll. Member Alex was absent from the meeting room.

APPROVAL OF MINUTES

Item 1 September 28, 2012

Member Lujano made a motion to adopt the minutes. With a second by Member Olsen, the September 28, 2012 hearing minutes were adopted by a vote of 6-0.

CONSENT CALENDAR

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

If there are no objections to any of the following action items designated by an asterisk (), the Executive Director will include each one on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

A. STATEWIDE COST ESTIMATE

- Item 6* *Community College Construction, 02-TC-47*
Education Code Sections 81820, 81821(a), (b), (e), and (f)
Statutes 1980, Chapter 910; Statutes 1981, Chapter 470; Statutes 1981,
Chapter 891; and Statutes 1995, Chapter 758
Santa Monica Community College District, Claimant

Member Ramirez made a motion to adopt the consent calendar. With a second by Member Saylor, the consent calendar was adopted by a vote of 6-0.

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

- Item 2 Appeal of Executive Director Decisions.

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 Heather Halsey swore in parties and witnesses participating in the hearing. (*Member Alex entered the meeting room.*)

A. TEST CLAIMS

- Item 3 *Parental Involvement Programs, 03-TC-16*
Education Code Sections 11500, 11501, 11502, 11503, 11504, 11506,
49091.10, 49091.14, 51101, 51101.1
Statutes 1990, Chapter 1400; Statutes 1998, Chapter 864; Statutes 1998,
Chapter 1031; Statutes 2001, Chapter 749; and Statutes 2002,
Chapter 1037
San Jose Unified School District, Claimant

This test claim addresses activities associated with parent involvement and rights with regard to the education of their children pursuant to various Education Code sections. The reimbursable activities alleged by the claimant include the adoption of parent involvement policies, providing parents access to classrooms and class materials, and providing notice to parents of specific education related rights.

Commission Counsel Kenny Louie presented this item and recommended that the Commission adopt the proposed final staff analysis and statement of decision partially approving the test claim.

Parties were represented as follows: Keith Petersen, representing San Jose Unified School District; Elisa Wynne and Jessica Palyo representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Olsen, the staff recommendation to adopt the statement of decision denying the test claim was adopted by a vote of 7-0.

Item 4 *Williams Case Implementation I, II, and III*, 05-TC-04, 07-TC-06, and 08-TC-01

Education Code Sections 88, 1240, 1242, 1242.5, 14501, 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, 17089, 17592.70, 17592.71, 17592.72, 17592.73, 32228.6, 33126, 33126.1, 35186, 41020, 41207.5, 41344.4, 41500, 41501, 41572, 42127.6, 44225.6, 44258.9, 44274, 44275.3, 44325, 44453, 44511, 48642, 49436, 52055.625, 52055.640, 52055.662, 52059, 52295.35, 56836.165, 60119, 60240, 60252, and 62000.4

Statutes 2004, Chapter 899 (SB 6); Statutes 2004, Chapter 900 (SB 550); Statutes 2004, Chapter 902 (AB 3001); Statutes 2004, Chapter 903 (AB 2727); Statutes 2005, Chapter 118 (AB 831); Statutes 2006, Chapter 704 (AB 607); and Statutes 2007, Chapter 526 (AB 347)

California Code of Regulations Title 5, Sections 4600-4671 and Title 2, Sections 1859.300-1859.330 as added or amended by Register 2005, No. 52; Register 2005, No. 22; Register 2005, No. 45; Register 2007, No. 27; Register 2007, No. 51.

State Allocation Board Forms: Certification of Eligibility, Interim Evaluation Instrument, Needs Assessment Report, Needs Assessment Report Worksheet, Expenditure Report, Application for Reimbursement and Expenditure Report, Web-Based Progress Report Survey, and, Web-Based Needs Assessment.

San Diego County Office of Education and Sweetwater Union High School District, Claimants

This test claim addresses costs incurred by school districts and county offices of education resulting from the test claim statutes, regulations and alleged executive orders which implement the settlement agreement addressing alleged deficiencies in public education identified by the class action suit *Eliezer Williams, et al. v. State of California (Williams)*.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the staff analysis and the proposed statement of decision to partially approve the test claim.

Parties were represented as follows: Art Palkowitz of the law offices of Stutz Artiano Shinoff & Holtz, representing the claimants; Elisa Wynne and Christian Osmena representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Chivaro, the staff recommendation to adopt the staff analysis and the proposed statement of decision partially approving the test claim was adopted by a vote of 7-0.

B. PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

Item 5 *Tuberculosis Control, 03-TC-14*

Health and Safety Code sections 121361, 121362 and 121366
Statutes 1993, Chapter 676; Statutes 1994, Chapter 685;
Statutes 1997, Chapter 116; and Statutes 2002, Chapter 763

County of Santa Clara, Claimant

This item addresses the activities required of local detention facilities and local health officers relating to tuberculosis control.

Commission Analyst Kerry Ortman presented this item and recommended that the Commission adopt the proposed parameters and guidelines and statement of decision.

Parties were represented as follows: Juliana Gmur, representing the claimant; Randall Ward and Carla Shelton, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Ramirez made a motion to adopt the staff recommendation. With a second by Member Saylor, the staff recommendation to adopt the proposed parameters and guidelines and statement of decision was adopted by a vote of 7-0.

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 7 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 8 Assistant Executive Director: Update on New Commission Practices Being Implemented

Assistant Executive Director Jason Hone presented this item.

There was discussion regarding the Commission's web based system for tracking matters and providing service and access to Commission documents. There was also a discussion of the scope and cost of the Commission going paperless.

Item 9 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Chief Legal Counsel Camille Shelton presented this item. Ms. Shelton also thanked Commission Counsel Kenny Louie for all of his hardwork during his six years with the Commission.

Item 10 Executive Director's Report

Executive Director Heather Halsey presented this item.

There was discussion among the Commission members, staff, and parties regarding the adoption of the Strategic Plan. In particular, Member Saylor had questions about whether or not interested parties had any input in the formation of the Strategic Plan and if that would be possible. Member Alex questioned whether or not any of the parties on the listserv filed comments on the Strategic Plan. Following the discussion, Member Saylor made a motion to adopt the staff

recommendation as amended to direct Commission staff to seek stakeholder input by survey or other means. With a second by Member Alex, the Strategic Plan was adopted by a vote of 7-0.

PUBLIC COMMENT

Allan Burdick, on behalf of the CSAC SB-90 Service, spoke about the legal concept of “practical compulsion”. Mr. Burdick requested that the Commission pursue legislation that would clarify, for the claimant community, the meaning of practical compulsion.

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. (petition and cross-petition), Third District Court of Appeal, Case No. C070357 (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. *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]
4. *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 (petition and cross-petition). 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):

The Commission 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 11:22 a.m., Chairperson Reyes 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).

PERSONNEL (action)

Item 11 [TENTATIVE] Salary Adjustment: Attorney to the Commission/Chief Legal Counsel (CEA IV), pursuant to Government Code Section 17529

This item was continued to the January hearing.

Item 12 [TENTATIVE] Salary Adjustment: Executive Director, pursuant to Government Code Section 17530

This item was continued to the January hearing.

ADJOURNMENT

Hearing no further business, Chairperson Reyes adjourned the meeting at 11:22 a.m.



Heather Halsey
Executive Director