

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
March 28, 2014

Present: Member Eraina Ortega, Chairperson
Representative of the Director of the Department of Finance
Member Andre Rivera, Vice Chairperson
Representative of the State Treasurer
Member Ken Alex
Director of the Office of Planning and Research
Member Richard Chivaro
Representative of the State Controller
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 Ortega called the meeting to order at 10:02 a.m. Executive Director Heather Halsey called the roll. Member Chivaro was absent at roll call, but entered the room after adoption of the consent calendar.

APPROVAL OF MINUTES

Member Olsen made a motion to adopt the minutes. With a second by Member Ramirez, the January 24, 2014 hearing minutes were adopted by a vote of 6-0.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

The Chairperson asked if there was any public comment. There was no response.

CONSENT CALENDAR

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

- Item 7 *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*, 08-TC-03
- Penal Code Sections 290.05, 290.06, 290.07, 1202.8, 1203, 1203c, and 1203e
- Statutes 2006, Chapter 336 (SB 1178); Statutes 2006, Chapter 337 (SB 1128); Statutes 2006, Chapter 886 (AB 1849); Statutes 2007, Chapter 579 (SB 172)
- California Department of Mental Health's Executive Order, State

Authorized Risk Assessment Tool for Sex Offenders Review Committee
Notification, issued on February 1, 2008

County of Los Angeles, Claimant

Item 8* *Medi-Cal Eligibility of Juvenile Offenders*, 08-TC-04

Welfare and Institution Code Section 14029.5

Statutes 2006, Chapter 657

County of Alameda, Claimant

Item 9* *Filipino Employee Survey (CSM-2142)*, 12-PGA-02

Government Code Section 50087

Statutes 1978, Chapter 845

As Repealed by: Statutes 2012, Chapter 32 (SB 1006)

Department of Finance, Requestor

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

ADOPTION OF PROPOSED REGULATION AMENDMENTS

Item 10* General Cleanup Provisions
California Code of Regulations, Title 2, Division 2, Chapter 2.5,
Articles 1, 2, 3, 4.5, 5, 6, 6.5, 7, 8, 8.5, and 10,
Sections 1181 through 1189.61 and 1190 through 1190.05

Executive Director Halsey announced that the parties agreed to add Item 7 to the Consent Calendar. Chairperson Ortega asked if there was any objection to adding Item 7 to the Consent Calendar and if there were any comments from the public. No objection was made and there was no public comment. Member Olsen 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.

**HEARINGS AND DECISIONS 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.

**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.

Member Chivaro entered the room.

TEST CLAIMS

- Item 3 *Special Education Services for Adult Students in County Jail*, 10-TC-04
January 2010 Compliance Report from the California Department of
Education
Los Angeles Unified School District, Claimant

This test claim seeks reimbursement for costs incurred by school districts for providing special education services to eligible students in county jail.

Senior Commission Counsel Tyler Asmundson presented this item and recommended that the Commission adopt the proposed statement of decision to deny the test claim.

Parties were represented as follows: Barrett Green, representing the claimant; Kathleen Lynch and Lisa Mierczynski representing the Department of Finance.

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

- Item 4 *Race to the Top*, 10-TC-06

Education Code Section 60601, as added and amended by Statutes 1995, Chapter 975, Section 1 (AB 265); Statutes 1996, Chapter 69, Section 1 (SB 430); Statutes 2001, Chapter 722, Section 2 (SB 233); Statutes 2004, Chapter 233, Section 1 (SB 1448); Statutes 2007, Chapter 174,

Section 11 (SB 80); and Statutes 2009-2010, 5th Extraordinary Session, Chapter 2, Section 9 (SBX5 1);

Education Code Sections 48353, 48354, 48355, 48356, 48357, 48358, 48359, 48359.5, 48360 and 48361, as added by Statutes 2009-2010, 5th Extraordinary Session, Chapter 3, Section 1 (SBX5 4);

Education Code Sections 53100, 53101, 53200, 53201, 53201.5, 53202 and 53203, as added by Statutes 2009-2010, 5th Extraordinary Session, Chapter 2, Section 8 (SBX5 1);

Education Code Sections 53300, 53301 and 53303, as added by Statutes 2009-2010, 5th Extraordinary Session, Chapter 3, Section 2 (SBX5 4);

California Code of Regulations, Title 5, Section 4702 (Register 2010, No. 32)

Twin Rivers School District, Claimant

This test claim addresses state statutes enacted by the Legislature in 2009 and 2010 to make California competitive in the federal Race to the Top education grant program.

Senior Commission Counsel Giny Chandler presented this item and recommended that the Commission adopt the proposed statement of decision to partially approve the test claim.

Parties were represented as follows: Arthur Palkowitz, representing the claimant; Kathleen Lynch and Jillian Kisse, representing the Department of Finance.

Member Saylor left the room.

Following discussion among the Commission members, staff, and parties, Member Ramirez made a motion to adopt the staff recommendation. With a second by Member Rivera, the motion

to adopt the staff recommendation to partially approve the test claim was adopted by a vote of 6-0.

- Item 5 *Post Election Manual Tally (PEMT)*, 10-TC-08
Former California Code of Regulations, Title 2, Sections 20120, 20121, 20122, 20123, 20124, 20125, 20126 and 20127.
Register 2008, No. 43
County of Santa Barbara, Claimant

This test claim was postponed to the May 30, 2014 hearing, upon the March 24, 2014 request of the Department of Finance.

Member Saylor entered the room.

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

- Item 6 *Sexually Violent Predators*, CSM-4509 (12-MR-01)
Welfare and Institutions Code Sections ~~6250 and 6600~~ through ~~6608~~ 6602
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763;
Statutes 1996, Chapter 4
As Modified by:
Proposition 83, General Election, November 7, 2006
California Department of Finance, Requestor

These parameters and guidelines pertain to the new test claim decision adopted for the *Sexually Violent Predators* mandate under the mandate redetermination process.

Commission Counsel Matt Jones presented this item and, because the Counties of San Diego and Los Angeles presented new evidence regarding the alleged reasonably necessary activity of providing housing for potential SVPs pending the probable cause hearing, recommended that the Commission postpone action on the item until the proposed statement of decision and parameters and guidelines could be amended to clarify the reimbursable activities.

Parties were represented as follows: Timothy Barry, Office of County Counsel, on behalf of the San Diego County District Attorney's Office, Probation Department, and Sheriff; Hasmik Yaghobyan on behalf of County of Los Angeles; Craig Osaki with the County of Los Angeles Public Defender's Office; Lee Scott and Michael Byrne, representing Requestor, Department of Finance.

Following discussion among the Commission members, staff, and parties, Chair Ortega asked if there were any objections to postponing action on the item to a future hearing. No objection was made and the item was postponed to a future hearing.

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 11 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 12 Legislative Update (info)

Assistant Executive Director Jason Hone presented this item.

Item 13 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

Item 14 Executive Director: Workload Update and Tentative Agenda Items for Next Meeting (info)

Executive Director Heather Halsey presented this item and reported on the Commission's budget as it was heard in the budget subcommittees of the Senate and Assembly earlier in the week.

Member Ramirez asked Ms. Halsey to elaborate on her response to the budget subcommittee regarding the reduction of the Commission's backlog. Ms. Halsey reported that she had discussed the increase in number of items heard attributable to the staffing augmentation the Commission received in the 2013 budget. She also reported that she had explained the time savings achieved by way of expedited parameters and guidelines, as it is now policy to offer the claimant expedited parameters and guidelines for every approved or partially approved test claim.

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, 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]
2. *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]
3. *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).
California Supreme Court, Case No. S214855
(Los Angeles County Superior Court, Case No. BS130730, Second District Court of Appeal, Case No. B237153)

[*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]

4. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*
San Diego County Superior Court
Case No. 37-2014-00005050-CU-WM-CTL
Mandate Redetermination, *Sexually Violent Predators*,
(12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496)
As modified by Proposition 83, General Election, November 7, 2006
Date Filed: February 28, 2014

B. PERSONNEL

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

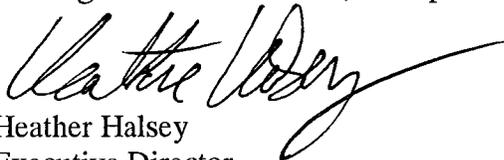
The Commission adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice 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 11:17 a.m., Chairperson Ortega 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) and that no action was taken.

ADJOURNMENT

Hearing no further business, Chairperson Ortega adjourned the meeting at 11:18 a.m.



Heather Halsey
Executive Director