

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
May 27, 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
- Absent: 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 9:33 a.m.

APPROVAL OF MINUTES

Item 1 March 25, 2004

Chairperson Tilton made an amendment to his comments for item 7. Member Barnes made a motion to approve the minutes as amended. With a second by Member Boel, the minutes were unanimously adopted.

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

Item 2 Staff Report

No appeals were filed.

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 11 *Differential Pay and Reemployment*, 99-TC-02
Palmdale School District, Claimant
Education Code Sections 44977 and 44978.1
Statutes 1998, Chapter 30 (SB 1019)

ADOPTION OF PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 14 *School District of Choice: Transfers and Appeals*
State Controller's Office, Requestor, 02-PGA-05
Education Code Sections 48209.1, 48209.7, 48209.10, 48209.13, and 48209.14
Statutes 1993, Chapter 160 (AB 19)
Statutes 1994, Chapter 1262 (AB 2768)

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

- Item 16 *Grand Jury Proceedings, 98-TC-27*
Penal Code Sections 914, 933, 933.05, and 938.4
Statutes 1996, Chapter 1170 (SB 11457)
Statutes 1997, Chapter 443 (AB 829)
Statutes 1998, Chapter 230 (AB 1907)

Member Barnes moved for adoption of the consent calendar, which consisted of items 11, 14, and 16. With a second by Member Sherwood, the consent calendar was unanimously adopted.

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

Paula Higashi, Executive Director, swore the parties and witnesses participating in the hearing of agenda items 5, 6, 9, and 10.

TEST CLAIMS AND PROPOSED STATEMENTS OF DECISION

- Item 5 *Cancer Presumption for Law Enforcement and Firefighters, 01-TC-19*
CSAC-EIA and County of Tehama, Co-Claimants
Labor Code Section 3212.1
Statutes 1999, Chapter 595 (AB 539)
Statutes 2000, Chapter 887 (SB 1820)

Camille Shelton, Senior Commission Counsel, presented this item. She noted that the test claim involved Labor Code section 3212.1, which provides an evidentiary presumption in workers' compensation cases for specified law enforcement officers and firefighters that develop cancer during the course of employment. In such cases, the employee must show that he or she was exposed to a known carcinogen during employment. However, if an employer decides to dispute the claim, the burden of proof then shifts to the employer to prove that the carcinogen was not reasonably linked to the cancer, and thus, the cancer was not an industrial injury.

Ms. Shelton stated that the test claim was filed by the County of Tehama and the California State Association of Counties – Excess Insurance Authority. She explained that the California State Association of Counties – Excess Insurance Authority was a joint powers authority established by contracting counties for insurance and risk management purposes. She explained that it does not employ peace officers and would not be a party to a workers' compensation claim filed by a peace officer against a local agency employer. It also does not have the authority to raise tax revenue and is not bound by the spending limitations of article XIII B. Therefore, staff recommended that the Commission deny the test claim and make the following findings:

1. The California State Association of Counties – Excess Insurance Authority does not have standing and is not a proper claimant for this test claim.

2. Labor Code section 3212.1, as amended by the test claim legislation, is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on local agencies.

Parties were represented as follows: Juliana Gmur, on behalf of the claimants; Gina Dean, with the California State Association of Counties – Excess Insurance Authority; Allan Burdick, with the California State Association of Counties; and Jaci Nitschke, with the Department of Finance.

Ms. Gmur asserted that *Cancer Presumption for Law Enforcement and Firefighters* was not new because it was a revision of an existing program. She explained that the original claim involved only firefighters and was determined to be a mandate in 1985 by the Board of Control. The law was subsequently amended to add peace officers and a second test claim was determined to be a mandate in 1992. She contended that before the Commission now was another change in the same statute, which should also be determined to be a mandate. Specifically, the statute added leukemia and shifted the burden of proof to the employer.

Ms. Gmur quoted the statute, arguing that the inclusion of the word “shall” in the first sentence created a mandatory presumption that the cancer arose out of and in the course of employment. She disagreed with staff’s position, noting that staff focused only on the second sentence, which states that the presumption is disputable and may be controverted. Ms. Gmur also believed that staff’s reliance on the *City of Merced* case was misplaced.

Another issue raised by Ms. Gmur related to the California State Association of Counties – Excess Insurance Authority’s standing. She argued that according to the plain language of Government Code section 17520, a joint powers agency or entity is a special district that can file claims. She explained that unlike a redevelopment agency, a joint powers authority is created by contract and uses the monies that counties acquired as proceeds of taxes. She stated that though counties assigned the administration of the funds to the joint powers authority, the character of the funds was not altered.

Ms. Dean stated that the California State Association of Counties – Excess Insurance Authority was formed in 1979 by a group of California counties that came together for the common need and purpose of insurance and risk management. She indicated that 53 of the 58 counties participated in one or more of the insurance pools, which were funded on an actuarial basis, based on each county’s own historical losses. Ms. Dean contended that when counties received reimbursement, they then reimbursed the pool. She concluded that this burden could be eased if the pool could file claims on its own behalf.

Ms. Gmur submitted that since this joint powers authority used the proceeds of taxes, the *San Marcos* case did not apply.

Ms. Shelton noted that prior Commission decisions were not precedential and that case law clearly shows that it is not arbitrary for a quasi-judicial agency to not rely on older decisions if it is found that the law supports the conclusions in the current case. Here, she maintained that the Supreme Court decision in the *Department of Finance* case clearly states that an entity needs to be either legally compelled by the state or practically compelled to comply with the statute for reimbursement to be required.

Regarding the presumption language contained in the statute, Ms. Shelton indicated that it does not impose any activities on the employer. Rather, it was the second sentence that creates activities within the discretion of the local agency if it decides to dispute a claim. She

maintained that the state was not forcing local agencies to engage in litigation. She also noted that staff quoted the *City of Merced* case because the Supreme Court affirmed this finding in that case.

There was some discussion between Member Sherwood and Ms. Shelton about the Supreme Court's definition of the substantial penalty.

With regard to the California State Association of Counties – Excess Insurance Authority's standing issue, Ms. Shelton stated that there were two reasons for staff's position that it was not an eligible claimant in this case. First, the authority was not directly affected by the test claim legislation because it is not a party to the litigation in a workers' compensation case and it does not employ peace officers. A Supreme Court ruling in the *Kinlaw* case states that a party must be directly affected by the legislation.

Secondly, staff believed that the redevelopment agency case referenced in the analysis applies because the court relied on the Supreme Court's ruling and interpretation of article XIII B, section 6 in the *County of San Diego* case. The court explained that section 6 represents a recognition that articles XIII A and B together severely restrict the taxing and spending powers of local agencies. Ms. Shelton explained that the purpose of the section is to preclude the state from shifting financial responsibility for governmental functions to local agencies. She also indicated that the 3rd District Court of Appeals ruled that redevelopment agencies had no independent powers of taxation, and that there were admissions from the California State Association of Counties – Excess Insurance Authority in the record that they did not have an independent power to tax and were not subject to the spending limitations.

Ms. Gmur reiterated her earlier arguments.

Member Boel commented that it was not unusual for different associations to have a pooling arrangement. She asked what made the California State Association of Counties unique that they should be considered a claimant in this case. Ms. Gmur responded that Government Code section 17520 provides the statutory authority.

Ms. Shelton clarified that multiple courts and jurisdictions have made clear that only entities that have standing are those that have the ability to tax taxpayers directly and are subject to spending limitations. She restated that there were admissions in the record that the California State Association of Counties – Excess Insurance Authority does not have that capability. Ms. Shelton added that there was also testimony in the record that joining the authority was a voluntary decision on the part of the counties.

Ms. Nitschke supported the staff analysis based on the *Department of Finance* case.

On the standing issue, Mr. Burdick submitted that the California State Association of Counties – Excess Insurance Authority was a special district under law that reports to the State Controller. Further, to point out the cost impact on some local agencies, he provided some background information on the history of the test claim legislation and the two existing mandate determinations.

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

Item 6 *Proposed Statement of Decision: Cancer Presumption for Law Enforcement and Firefighters, 01-TC-19, as described above in Item 5.*

Camille Shelton, Senior Commission Counsel, presented this item. She indicated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflects the Commission's decision. She noted that minor changes to reflect the vote count would be included in the final decision that would be issued. Unless the parties objected, staff recommended that the Commission adopt the proposed Statement of Decision.

Allan Burdick, on behalf of the California State Association of Counties, pointed out that the proposed decision did not include any of the discussions or comments made at the hearing. Although he did not expect any changes to be made on this particular item, he noted as a general matter that having a decision prepared prior to any discussion seemed a little troublesome.

Member Sherwood stated that Mr. Burdick's comments were warranted and that it caused a little concern for him as well. He added that nothing was really said that affected this proposed decision but acknowledged that the possibility was there that changes might be necessary.

Ms. Shelton responded that the Commission's regulations do not require that the proposed Statement of Decision be issued for comment, and that the Commission had discretion to adopt the proposal or wait until the next hearing. She noted that for this particular item, she would not change the recommendation because new evidence was not presented.

Member Sherwood submitted that this was something that should be monitored because there could be occurrences where the vote on a proposed decision would have to be delayed in order to incorporate additional information.

Ms. Shelton stated that staff would recommend the Commission not adopt a decision at the same hearing if evidence were presented that needed to be incorporated into the final decision.

Member Barnes commented that there had been cases where the proposed Statement of Decision was still adopted when a change was made, but with the expectation that the changes would be reflected in the final decision. He encouraged the claimants to inform staff and offer suggestions if they felt that something more should be incorporated into the final decision.

Chairperson Tilton added that the Commission should be more aware that its decisions accurately reflect the Commission's action. Ms. Higashi assured the Commission that staff's intent was to always accurately reflect the Commission's action.

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

Item 7 *Algebra Instruction, 00-TC-14*
Sweetwater Union High School District, Claimant
Education Code Section 51224.5
Statutes 2000, Chapter 1024 (SB 1354)

Item 8 *Proposed Statement of Decision: Algebra Instruction, 00-TC-14, as described above in Item 7.*

Items 7 and 8 were postponed by the claimant.

- Item 9 *The Stull Act, 98-TC-25*
Denair Unified School District, Claimant
Education Code Sections 44660 – 44665 (formerly Ed. Code, §§ 13485 – 13490)
Statutes 1975, Chapter 1216 (SB 777)
Statutes 1983, Chapter 498 (SB 813)
Statutes 1986, Chapter 393 (AB 3878)
Statutes 1995, Chapter 392 (AB 729)
Statutes 1999, Chapter 4 (ABX1 1)
- Item 10 *Proposed Statement of Decision: The Stull Act, 98-TC-25, as described above in Item 9.*

Camille Shelton, Senior Commission Counsel, presented these items. She indicated that the Stull Act was originally enacted in 1971 to establish a uniform system of evaluation and assessment of the performance of certificated personnel within each school district. The Stull Act was amended by the test claim legislation, which was enacted between 1975 and 1999. The claimant alleged that these amendments constituted a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Staff found that the test claim legislation constitutes a partial reimbursable state-mandated program for the reasons provided in the staff analysis.

Parties were represented as follows: David Scribner, on behalf of the claimant; and Barbara Taylor, with the Department of Finance.

Mr. Scribner and Ms. Taylor supported the staff analysis.

Ms. Shelton noted that a request for additional briefing on issues was sent out but responses were not received. She stated that staff found several mandated educational programs and used the court’s opinion in the *Department of Finance* case to show the programs that were local discretionary programs. However, she indicated that more of the mandated educational programs still had to be identified and encouraged the parties’ participation during the parameters and guidelines phase.

Member Sherwood made a motion to adopt the staff recommendation for item 9. With a second by Member Barnes, the motion carried unanimously.

Item 10 was adoption of the proposed Statement of Decision. Member Barnes made a motion to adopt the proposed Statement of Decision, which was seconded by Member Boel. The motion carried unanimously.

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 12 *Law Enforcement Agency Notifications, 01-PGA-11 (CSM-4505)*
Clovis Unified School District, Requestor
Education Code Section 48902, Subdivision (c)
Statutes 1989, Chapter 1117 (SB 1275)

ADOPTION OF PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 13 *Pupil Residence Verification and Appeals*, 01-PGA-08 (CSM-96-348-01)
Clovis Unified School District, Requestor
Education Code Sections 48204.5 and 48204.6
Revenue and Taxation Code Section 97.3
Statutes 1995, Chapter 309 (AB 687)
- Item 14 *School District of Choice: Transfers and Appeals*
Clovis Unified School District, Requestor, 01-PGA-12
Education Code Sections 48209.1, 48209.7, 48209.10, 48209.13, and 48209.14
Statutes 1993, Chapter 160 (AB 19)
Statutes 1994, Chapter 1262 (AB 2768)

Items 12, 13, and 14 (01-PGA-12 only) were withdrawn by the claimant.

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES

- Item 15 *Immunization Records: Hepatitis B*, 98-TC-05
Los Angeles County Office of Education, Claimant
Education Code Section 48216
Health and Safety Code Sections 120325, 120335, 120340, and 120375
Statutes 1978, Chapter 325 (AB 2260); Statutes 1979, Chapter 435 (AB 805);
Statutes 1982, Chapter 472 (SB 818); Statutes 1991, Chapter 984 (SB 407);
Statutes 1992, Chapter 13 (AB 2798); Statutes 1994, Chapter 1172 (AB 2971)
Statutes 1995, Chapters 219 and 415 (AB 382 and SB 1360)
Statutes 1996, Chapter 1023 (SB 1497)
Statutes 1997, Chapters 855 and 882 (SB 727 and AB 381)
California Code of Regulations, Title 17, Sections 6020, 6035,
6040, 6055, 6065, 6070, and 6075

Nancy Patton, Assistant Executive Director, presented this item. She explained that the test claim legislation for this mandate added mumps, rubella, and hepatitis B to the list of diseases an entering student must be immunized against prior to first admission into a school. Hepatitis B immunizations were also required for students entering the seventh grade. She also stated that the legislation amended statutes requiring the Department of Health Services to amend regulations relating to the monitoring, record keeping, reporting, and parent notification requirements for pupil immunizations.

Ms. Patton indicated that reimbursement for this program was based on uniform cost allowances and that staff reviewed actual reimbursement claims to develop the proposed statewide cost estimate. For fiscal years 1997-1998 through 2002-2003, she explained that the estimates were based on 2,694 unaudited actual reimbursement claims, and for fiscal years 2003-2004 and 2004-2005, the estimates were developed using projected enrollment figures for kindergarteners and seventh graders and multiplying them by the uniform cost allowance adopted by the Commission and adjusted by the Implicit Price Deflator.

The proposed statewide cost estimate included eight fiscal years for a total of \$29,629,000, averaging to \$3,703,600 in annual costs to the state. Staff recommended that the Commission adopt the proposed statewide cost estimate.

Parties were represented as follows: Dr. Carol Berg, with the Education Mandated Cost Network; and Nelson Cayago, with the Department of Finance.

Dr. Berg pointed out that the \$29 million estimate represented eight full years of reimbursement. She urged the Commission to support the staff recommendation.

Mr. Cayago stated that the proposed statewide cost estimate was consistent with the actions of the Commission. However, he noted that the Department of Finance's concerns related to the underlying basis for the cost estimate because it should be based on audited rather than unaudited reimbursement claims. Thus, he felt that the proposed statewide cost estimate was overstated.

Ms. Patton responded that the estimate was based on the adopted uniform cost allowances. She explained that staff's analysis assumed that the cost would exceed the estimate if amended or late claims are filed and that costs could be less if the State Controller audited the program and determined that the claims were excessive or unreasonable.

Member Sherwood asked staff to respond to the issue of the claims being unaudited. Ms. Patton stated that the Commission had to complete the test claim process within a statutory timeline, and thus, the statewide cost estimate was based on the best data available.

Chairperson Tilton asked if it was fair to describe the basis of the estimate as a budget methodology. Ms. Patton affirmed.

Ms. Higashi explained that the proposed statewide cost estimate was based on the actual claims currently on file with the State Controller's Office and on pupil enrollment figures that were multiplied by the adopted uniform cost allowances. She also explained that unless an amendment to the parameters and guidelines is filed and adopted by the Commission, no changes can be made to the uniform allowances.

Chairperson Tilton recognized that the variable was enrollment figures. Dr. Berg noted that only the number of pupils would be audited.

Member Sherwood made a motion to adopt the proposed statewide cost estimate. With a second by Member Boel, the motion carried unanimously.

STAFF REPORT

- Item 17 Conduct of Hearings on County Applications for Findings of Significant Financial Distress, Welfare. & Institutions Code Section 17000.6 and Cal. Code Regs., Title 2, Chapter 2.5, Article 6.5 (info/action)

Nancy Patton, Assistant Executive Director, presented this item. She stated that the County of Butte notified the Commission of its intent to file an SB 1033 application on or about September 1, 2004. She explained that an SB 1033 application would require the Commission to review county applications for findings of significant financial distress. Within 90 days of receipt, the Commission is required to review the applications, which include program and financial reports; conduct at least two public hearings on the matter; and determine if the applicant county is facing significant financial distress.

Ms. Patton stated that county applications are complex because they include budgets; budget forecasts; descriptions of county efforts to constrain expenditures; and information on flexibility, spending and resources, debt and cash flow, and unmet budget needs. The Commission's regulations authorize the Commission to assign this application to a hearing panel consisting of

one or more Commission members acting on behalf of the Commission, or to a hearing officer for hearing and preparation of a preliminary decision. However, if an assignment is not made, then the application will be set for hearing before the Commission itself.

Ms. Patton noted that in 1999, the Commission spent \$70,000 to contract with the Department of Finance to provide the budget and program analysis for a previous Butte County application. The amount did not include the cost for Commission staff time spent in processing the application and reviewing the Department of Finance's analysis. If Finance staff is available for this assignment, staff proposes to continue this practice.

Also, Ms. Patton indicated that the Commission's budget contained no funding for the SB 1033 program, but if a county application is filed, the Commission is authorized to request augmentation of its budget to fund the cost of completing the application. However, she noted that the Commission did not have adequate staffing to complete both test claim work and SB 1033 applications.

Before the Commission were options for how the future Butte County application will be heard and determined. Ms. Patton outlined them as follows:

- Option 1: Hearing before the Commission. All Commission members would travel to Oroville for one hearing. Salary, travel, and per diem costs would be provided for public members, and state agency members would file travel expense claims with their respective agencies. The Commission would also contract with the Department of Finance for review of the application.
- Option 2: Hearing Panel. A limited number of Commission members would travel to Oroville. Costs will vary depending on which members are on the panel. The Commission would contract with the Department of Finance for review of the application and preparation of an analysis.
- Option 3: OAH Hearing Officer. The Office of Administrative Hearings could provide a hearing officer to review the application, conduct the hearing, consider the evidence, and prepare a proposed Statement of Decision that would be presented to the Commission members for a determination.
- Option 4: Expert Hearing Officer. A person with expertise in county fiscal program matters would be appointed to be the hearing officer and to present findings and a recommended Statement of Decision to the Commission. This option may require an exemption from the Department of Finance. The necessity of contracting with the Department of Finance would be assessed.

Staff recommended that the Commission adopt Option 4.

Member Barnes asked questions about the timeline and the process for the previous application filed by Butte County in 1999. Acknowledging the sensitivity of the issue, he raised for discussion the idea of having the hearing before the Commission.

Member Sherwood noted several points. First, he stated that the process is a very significant undertaking for the members and for staff. Secondly, he indicated that the Commission's job is to make a finding about significant financial distress and the Board of Supervisors determines whether they will actually implement any cuts. Thirdly, he noted that those affected are people

on general assistance. Thus, he felt that as difficult as it may be, it would be important to be there for the meeting.

After further discussion amongst the members, Chairperson Tilton and Member Barnes concurred with Member Sherwood that the application should be heard and determined by the full Commission.

Ms. Higashi suggested that a short break be taken.

[As this time, a short recess was taken.]

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

Ms. Higashi swore the parties and witnesses participating in the hearing of agenda items 3 and 4.

TEST CLAIM AND PROPOSED STATEMENT OF DECISION

Item 3 *Distracted Drivers*, 01-TC-12
City of Newport Beach, Claimant
Vehicle Code Section 2407.5
Statutes 2001, Chapter 710 (AB 770)

Eric Feller, Commission Counsel, presented this item. He stated that the test claim legislation requires traffic collision reports prepared by the California Highway Patrol or any other peace officer to include information as to whether a cellular telephone or other driver distraction or inattention was a known or suspected associated factor in the cause of the collision. The statute requires that the information be collected and transmitted to the California Highway Patrol from January to July 2002.

Staff found that the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Mr. Feller explained that state law does not require local agency peace officers, except county coroners, to prepare traffic collision reports. Therefore, they were not mandated by the state to include in a traffic collision report any information about the use of a cellular telephone or other distraction.

Mr. Feller indicated that the test claim was subject to article XIII B, section 6 with respect to county coroners by requiring them to include in the report required by Vehicle Code section 20011 information as to whether a cellular telephone or other driver distraction or inattention was a known or suspected associated factor to the cause of the traffic collision that results in death, and to collect and transmit the information to the California Highway Patrol. However, he stated that there was no evidence in the record to support a finding of costs mandated by the state on county coroners.

Therefore, staff recommended that the Commission adopt the staff analysis, which denies the test claim.

Parties were represented as follows: Pam Stone, Glen Everroad, and Sergeant Dale Johnson, on behalf of the City of Newport Beach; Captain Scott Howland, with the California Highway Patrol; and Elliott Mandell, with the Department of Finance.

Ms. Stone indicated that the period of compliance was from January through December 2002. After noting her points of agreement with staff's analysis, she disagreed with staff's conclusion

that the test claim statute did not constitute a reimbursable mandate. She stated the claimant's belief that there is an underlying common law constitutional obligation to enforce the law, which also includes enforcement of the Vehicle Code and completion of the resulting traffic collision reports.

Ms. Stone argued that nowhere could a mandate be found that a peace officer shall investigate all of any particular type of crime or prepare traffic collision reports for every collision occurring in its jurisdiction. Thus, she disagreed with staff's position that it is a discretionary local decision to prepare accident reports since there is no specific underlying statutory requirement, especially since the information provided by the reports were used by the California Highway Patrol for data. She notes that staff's citations to case law does not consider whether the statutory requirements constitute a reimbursable program. Therefore, she stated the claimant's belief that the incremental increase in completing the report as to the inclusion of known or suspected driver distractions should be reimbursable. She was also concerned that the logical extension of staff's analysis is that without any specific underlying statutory requirement, there was no obligation for local governments to do anything.

Sergeant Johnson noted that police departments responded to traffic collisions as a result of a call for service. He stated that the primary reason for responding to traffic collisions was to enforce the law by conducting investigations to determine what provisions of the Vehicle Code were violated. He felt that it was inaccurate to suggest that police departments were not mandated to conduct investigations and that they do so only at their own discretion. Further, he asserted that there was a mandate and an obligation both to the community and to the legislative process for local police agencies to complete the standard collision investigation forms.

Member Sherwood asked Sergeant Johnson if he had ever seen a case where a call for service had been turned down. Sergeant Johnson responded that it was the policy of the City of Newport Beach not to respond to collisions on private property because the Vehicle Code could not be enforced.

Mr. Feller stated that staff did not make a finding as to the general common law duty to enforce the law. He explained that this program related to vehicle collision reports, and staff's reading of all the state statutes and cases in the area indicated that it was not a duty mandated by the state. He added that Vehicle Code section 20008 imposes a duty on the driver to report accidents to the California Highway Patrol, or if it was an unincorporated area, to the local police, and the police had the duty to forward the reports to the California Highway Patrol. He reiterated that there was no duty on the police themselves to prepare accident reports.

In addition, Mr. Feller disagreed with the claimant's argument that there would be nothing to report to the California Highway Patrol pursuant to Vehicle Code section 2407 or 2408. He referenced the staff analysis to address the issue and added that there would be sufficient data for the California Highway Patrol to meet its other requirements under the Vehicle Code to statistically compile accident information.

Mr. Mandell agreed with staff that there was no reimbursable mandate here. However, if the Commission were to determine otherwise, he pointed out that the period of reimbursement should only be for a six-month period beginning January 1, 2002. He explained that even though the statute sunsetted January 1, 2003, it was clear that the California Highway Patrol only had to collect information up through July 1, 2002.

Captain Howland commented that when Vehicle Code section 2407 became effective, it did not require any additional reports or any change in reporting for law enforcement agencies to the California Highway Patrol. He added that it enabled the California Highway Patrol to complete the report that was mandated on them.

Mr. Everroad submitted that the City of Newport Beach was only seeking reimbursement for the incremental increase statutorily required by the Legislature to investigate, record, and report to the California Highway Patrol those accidents that involved a driver distraction. He added that the costs associated with this test claim were not significant as it was for a limited period of time. He urged the Commission to find a mandate in this case.

Ms. Stone reiterated her earlier concern about staff's position that there was no mandate, and that the activity was voluntary because there was no statutory requirement for the underlying traffic collision report.

Member Barnes expressed concern about what local governments were obligated to do.

Mr. Feller maintained that state law did not mandate anything, but suggested that the obligation may be pursuant to local ordinance.

There was some discussion between Member Barnes and Captain Howland about responding to vehicle collisions and the corresponding report. Captain Howland clarified that the required information was already being gathered prior to passage of the legislation. He also explained that the legislation only changed how the information was being requested, but not what was being reported.

Chairperson Tilton summarized his understanding of staff's recommendation, which Mr. Feller confirmed.

Member Barnes stated that after all the discussion, he agreed with the staff recommendation. However, he restated that he was troubled by the legal justification.

Paul Starkey, Chief Legal Counsel, explained that staff's position was based upon a statutory analysis combined with the *Department of Finance* case. He stated that this was not about the generalized duty or moral duty of officers to respond to situations. Rather, staff looked at the statute to determine whether there was a requirement imposed by the state. From the plain meaning of the statute, local peace officers were not mandated to do anything.

Member Barnes noted that he did not see a particular conclusion that there was no obligation or duty to respond to traffic collisions.

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

Item 4 *Proposed Statement of Decision: Distracted Drivers, 01-TC-12,
as described above in Item 3.*

Eric Feller, Commission Counsel, presented this item. He indicated that unless the parties objected, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the decision on the test claim. Staff requested that the Commission allow staff to make minor changes to reflect the errata sheet, hearing testimony, and vote count before issuing the final Statement of Decision.

Ms. Stone reiterated the comments made by Mr. Burdick in item 6. She noted that there was extensive discussion regarding the concept of duty that was not reflected in the proposed decision. She commented that this implied that the Commission made decisions prior to hearing any testimony.

Chairperson Tilton and Member Sherwood responded that they were conscious of the concern and assured her that the Commission does not automatically adopt the staff recommendation.

Ms. Stone requested that the Statement of Decision reflect that the basis of the decision was that there was no statute requiring police officers to prepare a traffic collision report.

Mr. Feller stated that Ms. Stone's request was appropriate with modified wording. Ms. Higashi added that the decision could be modified as requested because it was consistent with staff's request that the Commission allow staff to make changes to reflect hearing testimony. However, she noted that staff would need to wait until the hearing transcript was received to issue the final decision.

Chairperson Tilton instructed staff to make the requested modification.

Member Barnes reiterated his earlier point that claimants should inform staff and offer suggestions if they feel that something more should be incorporated into the final decision.

Mr. Starkey noted for the record that decisions should only be read as an interpretation of the test claim statute and what was before the Commission, not anything broader.

Member Boel made a motion to adopt the proposed Statement of Decision and to authorize staff to update the decision to reflect the vote, the witnesses, and any hearing testimony not previously in the record. With a second by Member Sherwood, the motion carried unanimously.

Member Sherwood noted that the work currently being provided by Commission staff was excellent.

STAFF REPORTS

Item 18 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Mr. Starkey reported that there was nothing further to add with regard to litigation updates. He also introduced the summer law clerks: Micah Martin, Todd Ratshin, and William Tunick.

Item 19 Executive Director's Report (info/action)
Budget, Workload, Assembly Special Committee on State Mandates,
Legislation, Next Hearing

Nancy Patton, Assistant Executive Director, noted that the Governor's Office had requested all boards and commissions to prepare bill analyses and recommend positions on pending legislation. She indicated that during previous administrations, the Governor's Office did not make this request, nor did the Commission routinely prepare analyses or recommend positions on pending legislation.

Ms. Patton explained that there may be a very short turnaround time of three to five days to submit a completed bill analysis in the event one was requested by the Governor's Office. Thus, staff recommended that the Commission authorize the Executive Director to submit bill analyses with positions on bills that impact the Commission's statutory authority and workload. She

noted that each bill analysis would include the following statement: "This analysis was prepared by Commission staff. It has not been reviewed by the Commission members, and it is not intended to reflect the position of any individual member or of the Commission itself." Ms. Patton added that this process would not preclude the Commission from voting to take positions on bills as staff would continue to present bills to the Commission for action.

Member Boel expressed support for staff's recommendation. She noted that it was necessary in order to continue the high quality of staff work being received. Chairperson Tilton and Member Sherwood agreed.

Member Sherwood made a motion to authorize the Executive Director to take legislative positions and to report them to the Governor's Office. With a second by Member Boel, the motion carried unanimously.

Ms. Higashi noted the following:

- *Assembly Special Committee on State Mandates.* The committee will resume hearings in about a week. There are a number of proposals before it.
- *Legislation.* Legislation updates are available on the Commission's website.
- *Next Agenda.* Staff is still in the process of finalizing the items.

Member Sherwood pointed out a typographical error regarding the State Controller's Report to the Director of Finance.

Ms. Higashi and Ms. Patton responded to questions from Member Boel and Member Barnes about the process and timeframes for the future Butte County application.

PUBLIC COMMENT

A short presentation was made in honor of Vice Chairperson, William Sherwood, who is retiring. He was presented with a resolution by Chairperson Tilton and tokens of appreciation by Dr. Carol Berg, on behalf of the Education Mandated Cost Network; and Mr. Allan Burdick, on behalf of the California State Association of Counties. Member Sherwood thanked his fellow members, as well as the Commission staff.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

Mr. Starkey indicated that there would be no closed session meeting.

ADJOURNMENT

Hearing no further business, Chairperson Tilton adjourned the meeting at 12:46 p.m.


PAULA HIGASHI
Executive Director