

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
April 24, 2003

Present: Chairperson Robert Miyashiro
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Sherry Williams
Representative of the Director of the Office of Planning and Research
Member Walter Barnes
Representative of the State Controller
Member John Lazar
City Council Member

Vacant: Local Elected Official
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Miyashiro called the meeting to order at 9:35 a.m.

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

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, subdivision (e)(1):

1. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00816, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 01-L-04 [*Physical Performance Tests*]
2. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
3. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-17 [*Domestic Violence*]
4. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-18 [*SEMS*]
5. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*]

6. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California.
CSM Case No. 02-L-02 [*Pupil Expulsions*]
7. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number S109219, in the Supreme Court of the State of California.
CSM Case No. 02-L-03 [*School Site Councils*]
8. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number B163801, in the Appellate Court of the State of California, Second Appellate District.
CSM Case No. 02-L-04 [*Property Tax Administration*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate on report from the Personnel Sub-Committee.

Chairperson Miyashiro announced that the Commission would meet in closed executive session pursuant to Government Code section 11126, subdivision (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 published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

The Commission reconvened in public session at 10:20 a.m.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Miyashiro reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (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 published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

APPROVAL OF MINUTES

Item 1 March 27, 2003

Upon motion by Member Lazar and second by Member Williams, the minutes were unanimously adopted.

PROPOSED CONSENT CALENDAR

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

INCORRECT REDUCTION CLAIM

Item 6 *Graduation Requirements*, 01-4435-I-41
Sweetwater Union High School District, Claimant
Education Code Section 51225.3
Statutes 1983, Chapter 498 (SB 813)

PROPOSED STATEMENT OF DECISION – TEST CLAIM

Item 8 *Enrollment Fee Collection*, 99-TC-13
Los Rios Community College District, Claimant
Consolidated With:
Enrollment Fee Waivers, 00-TC-15
Glendale Community College District, Claimant
Education Code Section 76300, as added and amended by Statutes 1984xx, Chapter 1 (AB 1xx); Statutes 1984, Chapters 274 and 1401 (AB 207 and AB 3776); Statutes 1985, Chapters 920 and 1454 (AB 602 and AB 2262); Statutes 1986, Chapters 46 and 394 (AB 2352 and SB 993); Statutes 1987, Chapter 1118 (AB 2336); Statutes 1989, Chapter 136 (SB 653); Statutes 1991, Chapter 114 (SB 381); Statutes 1992, Chapter 703 (SB 766); Statutes 1993, Chapters 8 (AB 46), 66 (SB 399), 67 (SB 1012), and 1124 (AB 1561); Statutes 1994, Chapters 153 (AB 2480) and 422 (AB 2589); Statutes 1995, Chapter 308 (AB 825); Statutes 1996, Chapter 63 (AB 3031); Statutes 1999, Chapter 72 (AB 1118)
California Code of Regulations, Title 5, Sections 58500 – 58508, 58600, 58601, 58610 – 58613, 58620, 58630

Member Williams moved for adoption of the consent calendar, which consisted of items 6 and 8. 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)

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

Item 2 Staff Report

Paula Higashi, Executive Director, stated that this item was created to address appeals that are filed regarding items on the agenda. There was nothing before the Commission at this hearing.

The parties and witnesses for items 3, 4, and 5 were sworn.

REQUEST FOR RECONSIDERATION OF STATEMENT OF DECISION

Item 3 *Teacher Incentive Program, 99-TC-15*
San Diego Unified School District, Requester
Education Code Sections 44395 and 44396
Statutes 1998, Chapter 331 (AB 858)

Camille Shelton, Senior Commission Counsel, presented this item. She stated that this item was a request for reconsideration of the Commission's Statement of Decision on the *Teacher Incentive Program*, and noted that under the Commission's regulations, five affirmative votes were required to grant the request and schedule the matter for hearing on the merits of the request.

Ms. Shelton indicated that the *Teacher Incentive Program* concerned the administration of a \$10,000 merit award to teachers certified by the National Board for Professional Teaching Standards. The Commission approved the test claim for the administrative activities associated with the program, but denied reimbursement for the benefits and employer contributions associated with the merit award, including contributions to STRS, PERS, unemployment insurance, workers' compensation, Medicare, and life insurance. The claimant requested reconsideration on the denied portions of the claim, contending that the Commission's decision constituted an error of law.

Staff recommended that the Commission deny the request for reconsideration because the claimant raised the same allegations at the test claim hearing, and the Commission disagreed. Ms. Shelton added that the Commission's decision to deny reimbursement for the benefits and employer costs associated with the merit award under article XIII B, section 6 was supported by case law, including the *City of Richmond v. Commission on State Mandates* case.

Parties were represented as follows: Arthur Palkowitz, representing the San Diego Unified School District; and Barbara Taylor and Susan Geanacou, for the Department of Finance.

Mr. Palkowitz withdrew the request to reconsider reimbursement for employer contributions to STRS and PERS. Therefore, the request was for other employee-related benefits.

Mr. Palkowitz contended that there was an error of law in the application of the cases cited by the Commission staff. He asserted that the cases were irrelevant and did not apply to this claim because the Commission found in those cases that no mandate existed. In addition, those cases applied to the general public and were not unique to school districts. He explained that legislation gave merit awards to teachers in the amount of \$10,000, and as each payment was made, the school district incurred an expense of approximately 10 percent of the amount. The district, he argued, should not incur this expense since the burden was shifted from the state. He noted that there was not enough discussion on the two cases relied on by Commission staff and that it was unclear as to what the term "employee benefits" included.

Further, Mr. Palkowitz presented a hypothetical related to employee benefits associated with a mandated teacher salary increase.

Ms. Geanacou supported the staff analysis.

Ms. Shelton explained that the hypothetical posed by Mr. Palkowitz was a different case because when the state requires a district to pay a teacher's salary, there is no higher level of service.

Since school districts have always been performing that activity, it was not, in and of itself, a reimbursable state-mandated activity.

Regarding the *City of Richmond* and *County of Los Angeles* cases, Ms. Shelton noted that reimbursement was denied because the program was not unique to local government *and* there was not a new program or higher level of service. In the *City of Richmond* case, although costs were imposed upon local government, there still needed to be a new program or higher level of service for it to be a reimbursable state-mandated program. In this case, based on the reasoning of the court's interpretation of article XIII B, there was no new program or higher level of service associated with the employer's contributions.

Member Barnes requested clarification from Mr. Palkowitz as to what benefits and employer contributions were left in his request for reconsideration. Mr. Palkowitz responded that what remained were federal and state taxes, unemployment insurance, workers' compensation, and Medicare. Ms. Shelton added life insurance.

Mr. Palkowitz noted that STRS and PERS were related to collective bargaining issues, and therefore, the district had no choice but to provide those contributions. However, he argued that the *Teacher Incentive Program* was found to be a new program or higher level of service, and therefore, the payments made, which directly relate to the program, should also be found to be a new program or higher level of service.

Member Barnes asked for clarification regarding the applicability of the *City of Richmond* case. Ms. Shelton clarified that the case, along with a couple of others, state that a cost has to occur as a direct result of a new activity or service. The activities that the Commission found to be reimbursable did result in a new program or higher level of service and increased costs mandated by the state. The Commission also found that the plain language of the statute did not require benefits to increase. Although the increase in benefits may have been a result of the legislation, it was not directly tied to the administrative activities performed by the district. She asserted that the payment of benefits were not, in and of themselves, a new program or higher level of service. Ms. Shelton indicated that case law did not support a decision that the districts were entitled to any increases in benefits.

Member Barnes expressed concern regarding the additional cost incurred by the districts. Ms. Shelton acknowledged that both the *City of Richmond* and *County of Los Angeles* cases were different from this case since they were completely denied by the court. However, she explained that the activities approved in this claim met the elements for reimbursement. She maintained that the elements for reimbursement were not satisfied with the employer contributions because they did not constitute a new program or higher level of service.

Member Williams made a motion to adopt the staff recommendation and deny the request for reconsideration. The motion was seconded by Member Sherwood.

Member Barnes continued to express concern regarding the associated benefits that school districts had to pay. He stated that he was reluctant to make a decision without a little bit more discussion.

Paul Starkey, Chief Legal Counsel, stated that the Commission had the ability to reconsider either a portion of or the entire Statement of Decision. However, he indicated that there would have to be a separate motion to do so.

Ms. Shelton pointed out a paragraph in the staff analysis that provided more detail regarding the

individual costs. She noted that Medicare originated in federal law and that the courts have held that increases in workers' compensation and unemployment insurance were not costs that were unique to local government. She added that the Supreme Court and the Third District Court of Appeal have already denied claims on those types of costs.

Mr. Palkowitz reiterated that in those cases, it was found that there was no new program or higher level of service, as there was in this case. He added that before this program, the district did not have to pay this amount. But then the state sent the district \$10,000, and the district incurred additional costs, which relate to the activities performed in compliance with the mandate.

Chairperson Miyashiro commented that the distinction was that there was no higher level of service provided to the public. But Mr. Palkowitz argued that the activities that relate to the merit award were a new program or higher level of service.

Member Barnes asked if it was possible to put the item over so that staff could provide more information on the issue. Ms. Shelton stated that under the Commission's regulations, this was a two-step process. At this step, she indicated that staff was not analyzing the merits of the error of law. She explained that if the Commission felt that there was enough question in the Statement of Decision, then there would have to be a motion to accept the request for reconsideration and five affirmative votes. Then, staff would do an analysis, parties would file comments, and a hearing would be set to discuss the merits of the claim.

Member Barnes made a substitute motion to grant the request for reconsideration. With a courtesy second by Member Lazar, the motion failed 1 – 4, with Member Lazar, Member Sherwood, Member Williams, and Chairperson Miyashiro voting "No."

Member Williams's original motion to adopt the staff recommendation and deny the request for reconsideration that was seconded by Member Sherwood carried unanimously.

TEST CLAIM AND PROPOSED STATEMENT OF DECISION

Item 4 *Absentee Ballots II*, 00-TC-08
County of Orange, Claimant
Statutes 1999, Chapter 697 (AB 1530)

Eric Feller, Commission Counsel, presented this item. He noted that the Commission's regulations allow for an expedited process for adopting the Statement of Decision if there are no objections from the parties on the test claim. In this test claim, all parties acknowledged the existence of a mandated program. Therefore, before the Commission was the final staff analysis and the proposed Statement of Decision. Mr. Feller indicated that if the Commission declined to adopt the proposed Statement of Decision at this hearing, another one would be presented at the next hearing.

Staff found the following activities to constitute new programs or higher levels of service:

- Including the precinct of each absentee voter on the elections official's absentee ballot list. (Mr. Feller noted that this activity was ongoing but that offsets were available due to county authority to bill other local agencies for elections services.)
- Tabulating, by precinct, the votes cast by absentee ballots and ballots cast at polling places.

- Making available to the Legislature and appropriate committees the election returns for each precinct reflecting the total for all ballots cast, including both absentee ballots and ballots cast at polling places.

Mr. Feller noted that the last two activities were limited to statewide or special elections to fill a vacant congressional or legislative office conducted between June 1, 2000, and January 1, 2001.

Staff recommended that the Commission approve the test claim and adopt the proposed Statement of Decision, and authorize staff to make any technical changes to complete the proposed Statement of Decision.

Parties were represented as follows: Pamela Stone, Steve Rodermund, and Rosalyn Lever, representing the County of Orange; and Tom Lutzenburger and Susan Geanacou, for the Department of Finance.

Ms. Stone, Mr. Rodermund, and Ms. Lever concurred with the staff analysis and proposed Statement of Decision.

Mr. Lutzenburger and Ms. Geanacou also concurred.

Member Barnes noted that a decision was recently made on *Absentee Ballots* and asked if there were any objections or concerns about combining the two sets of parameters and guidelines. Ms. Higashi commented that this mandate was primarily a one-time cost. Ms. Stone added that it was better to not combine the activities into the existing parameters and guidelines and then remove them again.

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

TEST CLAIM

- Item 5 *Crime Victims' Domestic Violence Incident Reports*, 99-TC-08
County of Los Angeles, Claimant
Penal Code Section 13730 and Family Code Section 6228
Statutes 1984, Chapter 1609 (SB 1472)
Statutes 1995, Chapter 965 (SB 132)
Statutes 1999, Chapter 1022 (AB 403)

Camille Shelton, Senior Commission Counsel, presented this item. She noted that this test claim was filed on Penal Code section 13730, as added in 1984 and amended in 1995, and Family Code section 6228, which is also known as the Access to Domestic Violence Reports Act of 1999. The claimant sought reimbursement for the activities of preparing domestic violence incident reports after each law enforcement call; storing those reports for five years; and providing, retrieving, and copying the reports upon request by a victim of domestic violence.

As plead, staff recommended that the Commission find that it does not have jurisdiction over Penal Code section 13730 because the Commission had previously approved two test claims on the statute, as added in 1984 and 1995. Ms. Shelton indicated that the statute required law enforcement agencies to develop an incident report form and to report local domestic violence information to the Department of Justice on a monthly basis. Under the parameters and guidelines for the prior program, claimants were eligible to receive reimbursement for the cost of writing the reports.

Staff further recommended that the Commission approve Family Code section 6228 as a reimbursable state-mandated program only for the activity of storing the report for five years after it is completed.

Ms. Shelton noted that additional handouts were given to the members. The document on the blue sheet provided supplemental information to clarify the budget bills that suspended Penal Code section 13730, as originated in 1984 by chapter 1609, and the document in yellow completed Exhibit C, the 1995 Commission Statement of Decision.

Parties were represented as follows: Leonard Kaye and Wayne Bilowit, representing the County of Los Angeles; and Dirk Anderson and Susan Geanacou, for the Department of Finance.

Mr. Kaye and Mr. Bilowit were sworn.

Mr. Kaye concurred with staff's finding that storing domestic violence incident reports was a reimbursable activity. However, he disagreed with staff's contention that preparing, retrieving, and copying the reports were not reimbursable activities, and asserted that those duties were mandatory. If those duties were not mandatory, he argued that the Legislature could not assure victims access to the reports. He added that the Department of Finance, in its Enrolled Bill Report on Assembly Bill 403 (Stats. 1999, ch. 1022), found that \$2.2 million of one-time costs and \$440,000 in continuing costs would be imposed upon local law enforcement agencies under this test claim legislation.

Mr. Kaye believed that Family Code section 6228 plainly requires that a domestic violence incident report and face sheet be made available to the victim. Therefore, the county has no alternative but to prepare them. He noted that this type of mandatory duty was found to be reimbursable in Case Number C037645 (*School Site Councils*). This was a Commission case in which the Third District Court of Appeal issued a decision on July 17, 2002, that a state mandate was not construed as limited to situations of legal compulsion. Rather, it was construed to also encompass situations where there was no reasonable alternative or no true choice but to participate in the state's scheme. Mr. Kaye argued that this was the case here.

Further, Mr. Kaye contended that the duty to prepare the report in order to make it and the face sheet available to a victim under Family Code section 6228 survives even if Penal Code section 13730 was optional, as suggested by staff. He added that such duty was independent and apart from the duties set forth in section 13730. He suggested that the Commission adopt the following language instead of staff's proposal: Family Code section 6228 imposes a new program or higher level of service and costs mandated by the state for the activity of preparing in order to provide requested domestic violence incident reports and face sheets.

Mr. Bilowit stated that as a sergeant with the Los Angeles County Sheriff's Department and as the sheriff's legislative advocate, he could answer any questions concerning domestic violence reports and domestic violence legislation.

Ms. Geanacou supported the staff analysis and reiterated that Family Code section 6228 did not require the preparation of the report. Regarding the case cited by Mr. Kaye, she noted that it was before the California Supreme Court and was scheduled to be argued on May 6, 2003.

Member Lazar asked staff to respond to Mr. Kaye's comments. Ms. Shelton agreed with Ms. Geanacou, adding that the Commission was prohibited by law from relying on the holding of the Third District Court of Appeal in the *School Site Councils* case. She repeated staff's recommendation that the Commission find that it does not have jurisdiction over Penal Code

section 13730 because of the two prior Commission decisions. Ms. Shelton explained that the law states that once a decision is final, an administrative agency does not have jurisdiction to re-hear something unless there is an express statutory authority. For the Commission, the only statutory authority to re-hear something is if a request for reconsideration is filed within 30 days of the date the decision was issued. There is also a statute of limitations to appeal the Commission's decisions in court, but that was not done on the two prior cases.

In addition, Ms. Shelton clarified that the plain language of Family Code section 6228 requires that the agency provide a copy of the domestic violence incident report and the face sheet to the victim upon request within a specified time period at no charge, and that those incident reports be kept for a period of five years after it is completed. She noted that the claimant asked for a number of activities related to the preparation of the report, but by the plain language of the code section, she asserted that it does not require that the agency prepare the report.

Regarding the suspension of the domestic violence incident report by the Legislature, Ms. Shelton clarified that it was the 1984 statute that was suspended. She noted that the Commission agreed that the 1995 amendment and the 1984 statute were optional because it had to do with the same part of the report. She pointed out that there was no Commission decision on the 1993 amendment to Penal Code section 13730, which states, by the plain language, that all domestic violence-related calls for assistance shall be supported with a written incident report as described in subdivision (c). Clearly the preparation of the report was not mandated by the statutes that were plead. There was no test claim finding on the 1993 amendment, and although it could be the subject of another test claim, it was not before the Commission here.

Ms. Shelton noted that the activities of providing and copying the report are already required by the California Public Records Act, which requires an agency to provide copies of public records upon request. The courts have found that a domestic violence incident report was a record that had to be produced. However, she indicated that there was a difference between this program and the Public Records Act in that under the Public Records Act, a fee could be charged to anyone requesting a public record. Under the Family Code, a victim was entitled to a free copy of the report. She contended that the *County of Sonoma* case states that elimination of a revenue source does not result in a reimbursable state-mandated program. Therefore, since the actual activities required by the statute were also required by the California Public Records Act, the only new activity is storage of the report since there was no state requirement related to record retention policies under prior law.

Chairperson Miyashiro asked Mr. Kaye to comment on the issue of the Commission's jurisdiction as to section 13730. Mr. Kaye believed that the Commission had sole and exclusive jurisdiction to determine whether a statute was reimbursable. He asserted that it was factually impossible for the Legislature to give a victim of domestic violence an unqualified right to receive the report and then view preparation of the report as optional.

Mr. Kaye noted that on March 10, he requested postponement of this matter until the Supreme Court issued a decision in the case cited. However, the request was denied.

Chairperson Miyashiro requested the Department of Finance to comment regarding the suspension of the mandate and asked whether local agencies received reimbursement for the preparation of the report. Ms. Geanacou stated that she did not have the information.

Ms. Shelton clarified that in the parameters and guidelines for the program under the 1984 statute, the Commission approved reimbursement to write the reports. But since 1992, the 1984 statute had been suspended and has been suspended over the last four years. Subsequently in 1993, the Legislature amended section 13730, which specifically requires that all calls of domestic violence be recorded on an incident report form. However, the 1993 amendment could not be suspended yet because there has been no mandate determination. Ms. Shelton explained that the plain language of the suspension statute, Government Code section 17581, requires that there first be a mandate determination by either the Commission or the Court of Appeal, and then a zero dollar appropriation by the Legislature identifying the statute that is to be suspended. Therefore, she asserted that the Commission's recommendation that preparation of the report not be reimbursable was based on the plain language of the statute, which does not require the preparation. She stated that even if it were required, it would not be a new program or higher level of service because there was a preexisting duty in law based on Penal Code section 13730, as amended in 1993, for an agency to prepare the domestic violence incident report for each call made.

Chairperson Miyashiro asked the Department of Finance if it could be concluded that no reimbursement was provided for the preparation of the incident report during the four-year period of suspension. Ms. Geanacou affirmed that the conclusion is reasonable, but she did not have personal knowledge of that fact.

Member Sherwood asked Ms. Higashi to address the reason for denying the claimant's request for postponement of the matter. Ms. Higashi explained that cases have been postponed or set aside due to pending litigation on the same statutes and code sections. Here, the *School Site Councils* decision did not include any of the statutes that were included in the test claim. She stated that if the Commission were to begin that practice, the Commission could virtually stop meeting because there was always pending litigation. She indicated that the issue could be studied and a new policy be established if the Commission wished to change the approach taken on such requests. She also noted that Mr. Kaye had not filed an appeal of the decision to deny the request for postponement.

Member Sherwood recognized that decisions at the court level could go on for a long period of time. He had other technical questions regarding the suspension of Penal Code section 13730, which were responded to by Ms. Higashi and Ms. Shelton.

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

INCORRECT REDUCTION CLAIM

Item 7 *Graduation Requirements*, 01-4435-I-42
Irvine Unified School District
Education Code Section 51225.3
Statutes 1983, Chapter 498 (SB 813)

Item 7 was postponed.

PROPOSED STATEMENT OF DECISION – INCORRECT REDUCTION CLAIM

- Item 9 *Graduation Requirements, 4435-I-09*
Lompoc Unified School District, Claimant
Education Code Section 51225.3
Statutes 1983, Chapter 498 (SB 813)

Item 9 was postponed.

STAFF REPORTS

- Item 10 Pending Legislation: AB 637-Harman (action/info)

Nancy Patton, Staff Services Manager, presented this item. She noted that at the March 27, 2003 Commission hearing, the members requested that staff prepare an analysis of Assembly Bill 637. This bill would:

- Prohibit Commission on State Mandates' legal representation or appearances in any court action or proceeding involving Commission decisions;
- Add an alternate Commission member;
- Revise deadlines for filing reimbursement claims; and
- Modify the State Mandates Apportionment System.

Ms. Patton stated that Assembly Bill 637 passed the Assembly Local Government Committee on April 9, 2003, with a vote of 9 to 0. Currently, the bill is pending in the Assembly Appropriations Committee with no hearing date set. She stated that in the members' binders were a copy of the bill, a staff analysis, and the Assembly Local Government Committee analysis. A copy of the bill analysis was forwarded to the Appropriations Committee staff and the author's staff upon request.

- Item 11 Executive Director's Report on Pending Workload, Budget, and Future Agendas

Ms. Higashi noted the following:

- *Workload.* No new filings were received.
- *Legislation.* The Assembly Subcommittee approved the Commission's budget, but the Senate Subcommittee had not yet acted. In both hearings, there were discussions about the mandates within their jurisdiction, and mandates that have been suspended or funded. There is tremendous interest in the Capitol and Commission staff continues to respond to an increased number of questions from the Legislature and their staff.

Chairperson Miyashiro asked if a hearing had been set for the Senate Subcommittee and if there were any issues raised. Dirk Anderson from the Department of Finance stated that Judy Smith, consultant for the Senate Subcommittee, would be setting the date for the committee hearing possibly at the very end of the month. He noted that no questions had been raised.

- *Future Hearing Agendas.* There will not be a June hearing as the Commission moves into the new bi-monthly hearings schedule. Member Lazar and Member Barnes asked procedural questions, which were responded to by Ms. Higashi. She added that

Commission staff would have a more detailed proposal about new procedures at the next hearing.

- *Personnel.* Gary Lindsey, Jr., Commission Law Clerk, was thanked and acknowledged for his contributions to the office throughout his tenure with the Commission.

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

Hearing no further comments, Chairperson Miyashiro reconvened the closed executive session pursuant to Government Code section 11126, subdivision (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 published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Miyashiro reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (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 published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, Chairperson Miyashiro adjourned the meeting at 12:45 p.m.


PAULA HIGASHI
Executive Director