

Item 1

PROPOSED MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447
Sacramento, California
January 29, 2010

Present: Member Cynthia Bryant, 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 Cathleen Cox
Acting Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member J. Steven Worthley
County Supervisor
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Bryant called the meeting to order at 9:36 a.m. Executive Director Paula Higashi called the roll.

ELECTION OF OFFICERS

Item 1 Staff Report

Ms. Higashi stated that the annual election of officers is the first order of business for the first meeting of the year. Ms. Higashi asked for nominations for chairperson.

Member Olsen nominated the Director of the Department of Finance Ana Matosantos. With a second by Member Glaab, Director of Finance Ana Matosantos was elected chairperson by a vote of 7-0.

Chairperson Bryant asked for nominations for vice-chairperson. Member Worthley nominated State Treasurer Bill Lockyer for vice-chairperson. With a second by Member Glaab, State Treasurer Bill Lockyer was elected vice-chairperson by a vote of 7-0.

APPROVAL OF MINUTES

Item 2 October 30, 2009

The October 30, 2009 hearing minutes were adopted by a vote of 7-0.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS ON TEST CLAIMS AND STATEMENT OF DECISIONS,
PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5,
ARTICLE 7 (GOV. CODE, § 17551) (action)

DISMISSAL OF WITHDRAWN PORTIONS OF TEST CLAIM

- Item 12* *Crime Statistics Reports (K-14)*, 02-TC-12
Penal Code Sections 646.91, 12028, 12028.5, 13012, 13014, 13020,
13021, 13023, 13700, 13701, 13702, 13710, and 13730;
Family Code Sections 6240, 6250, and 6250.5
Statutes 1979, Chapters 255 and 860 (SB 281 and AB 1421);
Statutes 1980, Chapter 1340 (SB 1447); Statutes 1982, Chapters 142 and
147 (SB 561 and Senate Resolution 64); Statutes 1984, Chapter 1609
(SB 1472); Statutes 1989, Chapter 1172 (SB 202); Statutes 1992,
Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250);
Statutes 1995, Chapters 803 and 965 (AB 488 and SB 132); Statutes
1996, Chapters 872 and 1142 (AB 3472 and SB 1797); Statutes 1998,
Chapter 933 (AB 1999); Statutes 1999, Chapters 561, 659, 661, and 662
(AB 59, SB 355, AB 825, and SB 218); Statutes 2000, Chapters 254,
626, and 1001 (SB 2052, AB 715, and SB 1944); Statutes 2001,
Chapters 468 and 483 (SB 314 and AB 469); Statutes 2002, Chapter 833
(SB 1807)
California Department of Justice, Criminal Statistics Reporting
Requirements, March 2000
Santa Monica Community College District, Claimant

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

A. PROPOSED PARAMETERS AND GUIDELINES

- Item 13* *Cal Grants*, 02-TC-28,
Education Code Section 69432.9, Subdivision (b)(3)(C)
Statutes 2000, Chapter 403 (SB 1644)
California Code of Regulations, Title 5, Sections 30007, 30023,
Subdivisions (a) and (d), and 30026
Long Beach Community College District, Claimant
- Item 14* *Prevailing Wage Rates*, 01-TC-28
Education Code Section 69432.9, Subdivision (b)(3)(C)
Statutes 2000, Chapter 403 (SB 1644)
California Code of Regulations, Title 5, Sections 30007, 30023,
Subdivisions (a) and (d), and 30026
Grossmont Union High School District, Claimant

B. PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES
STATE CONTROLLER'S OFFICE REQUEST TO UPDATE BOILERPLATE
LANGUAGE

Item 16* SCHOOL DISTRICT PROGRAMS

- A. *Habitual Truant*, 05-PGA-51
Education Code Sections 48262 and 48264.2
Statutes 1975, Chapter 1184; Statutes 1994, Chapter 1023
- B. *Juvenile Court Notices II*, 05-PGA-54
Welfare and Institutions Code Section 827
Statutes 1984, Chapter 1423; Statutes 1994, Chapter 1019;
Statutes 1995, Chapter 71
- C. *Health Fee Eliminations*, 05-PGA-69
Statutes 1984, 2nd E.S., Chapter 1
Statutes 1987, Chapter 1118

Item 17* LOCAL AGENCY PROGRAMS

- A. *Search Warrants: AIDS*, 05-PGA-17
Penal Code Section 1524.1; Statutes 1988, Chapter 1088
- B. *Airport Land Use Commissions/Plans*, 05-PGA-23
Public Utilities Code Sections 21670 and 21670.1
Statutes 1994, Chapter 644; Statutes 1995, Chapter 66;
Statutes 995, Chapter 91
- C. *Allocation of Property Tax Revenues*, 05-PGA-24
Revenue and Taxation Code Sections 97, 97.01, 97.02,
97.03, 97.035, 97.5, 98 and 99;
Statutes 1992, Chapters 697, 699, 700, 899 and 1369;
Statutes 1993, Chapters 66, 68, 904, 905 and 1279
- D. *Brendon Maguire Act*, 05-PGA-25
Elections Code Sections 6490.3, 6490.4, 14205.5, and 14005.4
Statutes 1988, Chapter 391
- E. *Countywide Tax Rates*, 05-PGA-27
Revenue and Taxation Code Section 98.9
Statutes 1987, Chapter 921
- F. *Crime Victim's Rights*, 05-PGA-28
Penal Code Section 679.02, Subdivision (a)(12)
Statutes 1995, Chapters 411
- G. *Domestic Violence Treatment Services –
Authorization and Case management*, 05-PGA-30
Penal Code Sections 1000.93, 1000.94 and 1000.95
Penal Code Sections 273.5, subdivisions (e), (f), (g), (h) and (i)
Penal Code Section 1203.097
Statutes 1992, Chapters 183, and 184, Statutes 1994, Chapter 28X,
Statutes 1995, Chapter 641

- H. *Cancer Presumption – Firefighters*, 05-PGA-31
Labor Code Section 3212.1
Statutes 1982, Chapter 1568
Statutes 2006, Chapter 78, Section 8 (AB 1805)
- I. *Health Benefits for Survivors of Peace Officers and Firefighters*, 05-PGA-32
Labor Code Section 4856; Government Code Section 21635;
Statutes 1996, Chapter 1120; Statutes 1997, Chapter 193
- J. *Medi-Cal Beneficiary Probate*, 05-PGA-33
Statutes 1981, Chapters 102 and 1163
And DHS All County Letters
- K. *Mentally Disordered Offenders: Extended Commitment Proceedings*, 05-PGA-34
Penal Code Sections 2970, 2972, and 2972.1 r 658
Statutes 1989, Chapter 228; Statutes 1991, Chapter 435;
Statutes 2000, Chapter 324
- L. *Not Guilty by Reason of Insanity*, 05-PGA-35
Penal Code Sections 1026 and 1026.5
Statutes 1979, Chapter 1114; Statutes 1982, Chapter 650
- M. *Pacific Beach Safety: Water Quality and Closures*, 05-PGA-36
Health and Safety Code Sections 427.12, Subdivision (a), and 427.13
Statutes 1992, Chapter 961
- N. *Cancer Presumptions – Peace Officers*, 05-PGA-37
Labor Code Section 3212.1
Statutes of 1989, Chapter 1171; Statutes 2006, Chapter 78, Section 8 (AB 1805)
- O. *Perinatal Services*, 05-PGA-38
Health and Safety Code Section 10901(a), (b), (c)
Statutes 1990, Chapter 1603
- P. *Pesticide Use Reports*, 05-PGA-39
Food and Agricultural Code Section 12979
Statutes 1989, Chapter 1200
California Code of Regulations, Title 3, Sections 6000, 6393 (c), 6562, 6568, 6619, 6622, 6624, 6626, 6627, 6627.1, 6628; Register 90, No, 1
- Q. *Prisoner Parental Rights*, 05-PGA-40
Penal Code Section 2625
Statutes 1991, Chapter 820
- R. *Rape Victims Counseling Center Notice*, 05-PGA-41
Penal Code Section 264.2, Subdivisions (b)(1) and (b)(2)
Penal Code Section 13701
Statutes 1991, Chapter 999, Statutes 1992, Chapter 224
- S. *Threats Against Peace Officers*, 05-PGA-44
Penal Code Section 832.9
Statutes 1992, Chapter 1249; Statutes 1995, Chapter 666

- T. *Photographic Record of Evidence*, 05-PGA-59
Penal Code Section 1417.3
Statutes 1985, Chapter 875; Statutes 1986, Chapter 734;
Statutes 1990, Chapter 382
- U. *Stolen Vehicle Notification*, 05-PGA-68
Vehicle Code § 10500
Statutes 1990, Chapter 337

ADOPTION OF PROPOSED RULEMAKING CALENDAR

Item 19* Proposed Rulemaking Calendar, 2010

Member Olsen made a motion to adopt items 12, 13, 14, 16A-16C, 17A-17U and 19 on the consent calendar. With a second by Member Chivaro, the consent calendar was adopted by a vote of 7-0.

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

Item 3 Staff Report (if necessary)

There were no appeals to consider.

HEARING AND DECISIONS ON TEST CLAIMS AND STATEMENTS OF DECISION, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)

Paula Higashi, Executive Director, swore in parties and witnesses participating in the hearing.

TEST CLAIMS

Item 4 *Redistricting: Senate and Congressional Districts*, 02-TC-50
Elections Code, Division 21, Chapter 2 (§ 21100 et seq.), and Chapter 5 (§21400 et seq.)
Statutes 2001, Chapter 348 (AB 632)
Senate’s Election and Reapportionment Committee Instructions (Dated September 24, 2001)
County of Los Angeles, Claimant

Kenny Louie, Commission Counsel presented this item. Mr. Louie stated that, under Article XXI of the California Constitution, the Legislature is required to adjust the boundary lines of the Senate, Assembly, Board of Equalization, and congressional districts in the year after the national decennial census is taken. The test claim statute pled by the claimant is the Legislature’s adjustment to the boundary lines of the Senate and congressional districts for the 2001 redistricting plan as required by Article XXI.

Section 4 of the test claim statute requires county election officials to rely on maps prepared by the Legislature to determine the Senate and congressional boundary lines if a census tract or census block is not listed, listed more than once, or is only partially accounted for, or an ambiguity or a dispute arises.

However, staff finds that there is no evidence in the record of costs mandated by the state. In addition, staff finds that the remainder of the test claim statute does not impose any state-mandated activities on the claimant.

Mr. Louie recommended that the Commission adopt the staff analysis and deny the test claim.

Parties were represented as follows: Leonard Kaye representing the County of Los Angeles; Jeff Carosone, Susan Geanacou and Lorena Romero representing the Department of Finance.

Leonard Kaye, County of Los Angeles stated that the administrative record spans over seven years and is over one thousand pages. He provided the following overview:

- In 1980, California voters approved Proposition 6, adding Article XXI to the California Constitution, which sets forth minimum standards for redistricting and, in particular, these standards require, under subsection B, “A population of all districts of a particular type shall be *reasonably equal*.”
- Prior to the 2001 redistricting, an entire census tract standard was required to achieve the “*reasonably equal* population” standard in Proposition 6. It is not the split census tract or census block standard necessary to achieve the more precise strict population standard. Therefore *strict population standard* is a new phrase, new concept and higher standard embodied in the test claim statute.
- The new split census tract standard was not required or necessary prior to the test claim legislation to implement the “*reasonably equal*” population standard in Article XXI of the California Constitution added by Proposition 6 in 1980.
- The population standard in Article XXI was met. It exceeded the prior “*reasonably equal*” population standard in Article XXI, by the test claim legislation and thereby imposed a higher standard of exactitude of population equality among like districts, as well as a new program which Commission staff. The County agrees it is of benefit to the electorate.
- There is case law which supports this. In *Wilson v. Eu*, 1 Cal.4th 707 on page 76, they state the strict population equality standard was not required and necessary to implement Proposition 6, and it requires plans with near-zero population deviations which are based on census blocks instead of tracts.
- This strict population equality standard is not required and necessary to implement Proposition 6, and requires formulating districts on a block basis, which is enormously expensive, as the cost of computer software and experts to deal efficiently with this greater amount of data is exponentially higher than a comparable system in which the bulk of the redistricting work is done by census tract.
- The new mandated duties are imposed on the County under Chapter 348, Statutes of 2001, due to the order of the California Legislature mandating Los Angeles County to redistrict state Senate and U.S. congressional districts using a new split census tract standard.

Mr. Kaye also cited and quoted from the following documents filed by the County:

- Rose Institute of State and Local Government Report entitled “Proposition 6 and Redistricting: A Legal Perspective.” (See exhibit to the County’s June 18, 2009, filing.)
- Attorney General Opinion, 80-1109, issued on July 21, 1981. (See attachment to the County’s August 19, 2009 filing.)

Mr. Kaye added that Los Angeles County agrees with the Commission staff finding that section 4 of the test claim statute, AB 632, Statutes of 2001, Chapter 634(a), requires county election officials to rely on detailed maps prepared by committees of the Legislature pursuant to Election Code Section 21001 to determine the boundary line in the event that a census tract or census block is not listed, listed more than once, or is only partially accounted for, and it results in a dispute regarding the location of a boundary line. But Los Angeles County disagrees with staff on their assertion that as a general rule, counties need not follow these detailed maps in sections 1 and 2.

Lorena Romero stated that the Department of Finance concurs with the staff analysis to deny the test claim.

Member Worthley reiterated Mr. Kaye's point that there is a tremendous amount of work involved in pursuing this new standard.

Mr. Kaye stated that the claimants go beyond that point to show a higher standard. It is not so much the cause or the process or the methodology that was different or required greater expense, rather it is the result. He reiterated that the County achieved a higher standard of population equality as a result of the test claim statute and that they are asking for the incremental cost in meeting this higher standard.

Mr. Kaye cited an example of firefighter clothing and equipment where a fire-retardant pair of pants is SB-90 reimbursable for the increased cost in meeting the higher standard.

Member Olsen asked to hear staff's response.

Mr. Louie responded that staff and the Commission are limited by what has been pled. Statutes 2001, chapter 348, which lists the block description and tract description of the Senate districts, does not mandate any activities. While there might be duties outside of Statutes 2001, chapter 348, the statutes that require those duties have not been pled.

Member Olsen asked if the claimants could come back with a new filing pleading those statutes.

Mr. Louie stated that most of those activities would be outside of the statute of limitations to plead.

Mr. Kaye stated that in July 2003, the Commission issued a completeness letter. He explained that in order to receive a completeness letter, the claimants had to demonstrate the specific code sections that mandated these new activities or higher level of service. By receipt of the letter, the test claim was complete and the claimant had pled all the statutory provisions that were required to at least get a prima facie case before the Commission. The claimant detrimentally relied on that letter.

Ms. Shelton stated that the completeness review is not a legal review. It is simply an administrative process to determine if the claimants have complied with the requirements of filing a test claim. At no point during the completeness review does staff even look at what has been pled and get into the substance or the merits of the claim. That is done on a legal review when the draft staff analysis is issued.

Mr. Louie noted that Statutes 2001, chapter 348 did not mandate an activity, and that finding has been in the draft staff analysis beginning in 2007. Therefore the claimant was put on notice that this statute does not require those activities.

Mr. Kaye noted that it was four years after the test claim filing. Mr. Louie stated that there was a chance to amend the test claim after the draft staff analysis was issued.

Member Worthley stated that justice delayed is justice denied. Part of the problem that the Commission frequently deals with is statute of limitations for the applicant which is unfortunate but reality.

With a motion by Member Lujano and a second by Member Chivaro, the staff recommendation was adopted by a vote of 5-2 with Members Glaab and Worthley voting no.

- Item 5 Proposed Statement of Decision: *Redistricting: Senate and Congressional Districts, 02-TC-50*
[See Item 4 above.]

Member Chivaro made a motion to adopt the proposed Statement of Decision. With a second by Member Lujano, the Statement of Decision was adopted by a vote of 6-1 with Member Glaab voting no.

- Item 6 *California Environmental Quality Act (CEQA), 03-TC-17*
Education Code Section 17025 added by Statutes 1996, Chapter 1562
Government Code Sections 66031 and 66034 as amended by
Statutes 1994, Chapter 300 (SB 517), and Statutes 1990, Chapter 1455
(SB 2374)
Public Resources Code Sections 21002.1, 21003, 21003.1, 21080.09,
21080.1, 21080.3, 21080.4, 21081, 21082, 21082.1, 21082.2, 21083,
21083.2, 21091, 21092, 21092.1, 21092.2, 21092.3, 21092.4, 21092.5,
21092.6, 21094, 21100, 21102, 21150, 21151, 21151.2, 21151.8, 21152,
21153, 21154, 21157, 21157.1, 21157.5, 21158, 21161, 21165, 21166,
21167, 21167.6, 21167.6.5, 21167.8, 21168.9 as added or amended by
Statutes 1970, Chapter 1433 (AB 2045); Statutes 1972, Chapter 1154
(AB 899); Statutes 1975, Chapter 222 (AB 335); Statutes 1976, Chapter
1312 (AB 2679); Statutes 1977, Chapter 1200 (AB 884); Statutes 1983,
Chapter 967 (AB 1829); Statutes 1984, Chapter 571 (AB 2527); Statutes
1985, Chapter 85 (AB 841); Statutes 1987, Chapter 1452 (SB 998);
Statutes 1989, Chapter 626 (AB 40); Statutes 1989, Chapter 659
(SB 896); Statutes 1991, Chapter 905 (AB 1642); Statutes 1991,
Chapter 1183 (AB 928); Statutes 1991, Chapter 1212 (SB 948);
Statutes 1993, Chapter 375 (SB 104); Statutes 1993, Chapter 1130
(AB 1888); Statutes 1993, Chapter 1131 (SB 919); Statutes 1994,
Chapter 1230(SB 749); Statutes 1994, Chapter 1294 (AB 314);
Statutes 1995, Chapter 801 (AB 1860); Statutes 1996, Chapter 444
(SB 2073); Statutes 1996, Chapter 547 (AB 298); Statutes 1997,
Chapter 415 (AB 175); Statutes 2000, Chapter 738 (AB 1807);
Statutes 2001, Chapter 867 (AB 1532); Statutes 2002, Chapter 1052
(AB 3041); Statutes 2002, Chapter 1121 (SB 1393)
California Code of Regulations, Title 5, Sections 14011 and 57121 as
added or amended by Register 77, Nos. 01 & 45; Register 83, No. 18;
Register 91, No. 23; Register 93, No. 46; and, Register 2000, No. 44
California Code of Regulations, Title 14, Sections 15002, 15004, 15020,

15021, 15022, 15025, 15041, 15042, 15043, 15050, 15053, 15060, 15061, 15062, 15063, 15064 15064.5, 15064.5, 15064.7 15070, 15071, 15072, 15073, 15073.5, 15074, 15074.1, 15075, 15081.5, 15082, 15084, 15085, 15086, 15087, 15088, 15088.5, 15089, 15090, 15091, 15092, 15093, 15094, 15095, 15100, 15104, 15122, 15123, 15124, 15125, 15126, 15126.2, 15126.4, 15126.6, 15128, 15129, 15130, 15132, 15140, 15142, 15143, 15145, 15147, 15148, 15149, 15150, 15152, 15153, 15162, 15164, 15165, 15167, 51568, 15176, 15177, 15178, 15179, 15184, 15185, 15186, 15201, 15203, 15205, 15206, 15208, 15223, 15225, 15367 as added or amended by register 75, No. 01; Register 75, Nos. 05, 18 & 22; Register 76, Nos. 02, 14 & 41; Register 77, No. 01; Register 78, No. 05; Register 80, No. 19; Register 83, Nos. 29; Register 86, No. 05; Register 94, No. 33; Register 97, No. 22; Register 98, No. 35; Register 98, No. 44; Register 2001, No. 05; Register 2003, No. 30
California State Clearinghouse Handbook
Governor's Office of Planning and Research (January 2000)
Clovis Unified School District, Claimant

Commission Counsel Heather Halsey presented this item. Ms. Halsey stated that this test claim addresses the activities required of school districts and community college districts pursuant to the California Environmental Quality Act, or CEQA, and related statutes and regulations. She added that the requirement to comply with CEQA is triggered by the district's decision to acquire new school sites or build new school facilities or additions to existing school facilities.

Ms. Halsey stated that staff finds that the decisions to acquire new school sites or build new school facilities or additions to existing schools are discretionary decisions, and that based on the analysis in *Kern*, the downstream requirement to comply with CEQA is not reimbursable. She also noted that Claimant disagrees that school districts are not legally and practically compelled to build new schools, and asserts that they are, thus, mandated to comply with CEQA.

Ms. Halsey recommended that the Commission adopt the staff analysis to deny the test claim.

The parties were represented as follows: Art Palkowitz representing the claimant and Donna Ferebee representing the Department of Finance.

Art Palkowitz stated the position of the claimant, Clovis Unified School District:

- CEQA is a process for evaluating the environmental effects on a project. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an environmental impact report.
- The requirements under CEQA are mandated based on numerous Education Code sections.
- The California Constitution requires that students be housed and educated. Education Code section 15700 clearly states that the education of the student in California is an obligation of the state and therefore classrooms are required to be provided for education. Children are required to attend schools.

- Based on the Education Code sections, there is clearly a requirement that in order to have education; in order for students to attend schools, we must build schools.
- Further, Education Code section 17576 requires sufficient restrooms. It is challenging to have restrooms without schools for students. It also required that a warm and healthful place for children to learn be provided. Clearly, all of the code sections combined indicates that schools are required for children.

Mr. Palkowitz cited the staff analysis which states that there is no mandatory requirement to have schools. He argued that it is difficult, if not impossible, to comply with these sections without having a school. Although one could say there is no legal requirement, as no code section was found, there is practical compliance. The Supreme Court of California has held that practical compliance can constitute a mandate. He further argued that K-12 schools do not have discretion to turn kids away when they live in their geographical area; they are compelled to accept students. The only way to house students that are in the area is to build new schools.

Donna Ferebee stated that the Department of Finance concurs with the final staff analysis.

Member Worthley stated that while he understands the staff analysis, he believes it flies in the face of reality. School buildings are not discretionary in the sense that if we have education, we have school buildings; and that if you have to build a school building, you have to comply today with CEQA. Therefore this is not a traditional type of discretionary act.

The building of school buildings is so fundamentally tied into education that to call it discretionary is beyond reality. School buildings are built to house students so they can be educated.

Member Worthley stated that if this takes judicial determination, it would seem that where something is so fundamentally tied to the mission and purpose of a governmental entity, such as building a school, much like educating a student, that is not a discretionary act; that is something which is mandated at least in a practical sense if not a legal sense; and therefore, it would effectively address the issue of discretionary act. If this was not a discretionary act, this would qualify as an unfunded mandate. As schools receive state funding, they receive funding to pay towards this situation. If there is a cost to CEQA compliance which exceeds that which the state pays, then that would be the unfunded portion that would need to be made up by the state.

Ms. Halsey clarified that the claimant agrees with counsel that there is no legal compulsion but still argues there is practical compulsion. She explained no evidence was submitted in the record about whether there was practical compulsion. Practical compulsion requires evidence to be submitted by districts to show that they are practically compelled for the Commission to make such a finding.

Member Glaab commended staff for doing a tremendous job. However, he agreed that Mr. Worthley's comments reflect reality. Schools have to be built. Children cannot be out in tents or sitting in the fields, so there is a practical compulsion.

Member Glaab stated he disagreed with staff's conclusion and that he will vote accordingly.

Member Olsen asked staff and Mr. Palkowitz to speak to when CEQA was originally put into place and the extent to which the laws that came after it are a substantial modification of CEQA or simply implement CEQA in the contemporaneous environment.

Ms. Halsey stated the history of CEQA is discussed in the analysis. CEQA was enacted before 1975 and many of the provisions pled and requirements imposed are pre-1975.

Also there is no discussion of a new program or higher level of service since staff found that there were no required activities. If staff were to find required activities under CEQA, staff would need to revisit the analysis to do that new program or higher level of service for each required activity. There have obviously been several amendments to CEQA but there were several preexisting requirements that would predate 1975.

Member Worthley asked if that could be addressed in the parameters and guidelines.

Ms. Halsey said no. This would have to be a fundamental mandates issue in terms of determining what predates 1975 and what would be the higher level of service required since then.

Ms. Shelton stated that the mandate issue, the new program or higher level of service issue and the cost mandated by the state issue all have to be determined at the test claim phase because it is a question of law.

Member Glaab suggested putting this item over and asking the claimant to come back with information on the practical compulsion issue.

Ms. Higashi stated that staff issued the draft at least eight weeks before the hearing and it has been out for comment. Staff has not received any documentary evidence in response to that draft.

Member Worthley asked to clarify a statement by staff, that there are other statutes that are pled from which the implication is that school buildings must exist because of obligations on schools to house students.

Ms. Halsey responded that there is no requirement to establish a school district. However, if a district is established, students need to be housed. Districts can house students in existing schools, they can renovate existing schools, they can do joint projects with parks and recreation and other governmental entities to house students. Districts can have year-round school and other kinds of alternative scheduling, so there are many ways to house students besides building new buildings.

Member Worthley stated that schools have to be replaced because they are old, they do not meet seismic requirements, and they do not meet the needs of the district. Again, people do not build buildings just to be building buildings. They build them in relationship to a need. The need is student housing.

Member Worthley expressed his concern with that type of analysis and wondered about the Commission's ability to have judicial notice of those kinds of issues as a body.

Ms. Halsey stated that the question before the Commission is not whether schools are needed but whether school districts are legally compelled by a state statute or regulation or practically compelled and, thus, mandated by the state to comply with CEQA. Staff could not find anything in the law that required that.

Ms. Halsey clarified that staff is not asserting that schools are not needed or that it would not be good to build schools or that there is not a number of publications expressing the need for schools; but rather that there is nothing in the law requiring it.

Member Worthley agreed that there is not a requirement to build schools. But schools do have to be built. Once they have to be built; now we have to comply with CEQA. That is the mandatory portion of it. If there is a practical compulsion because we have to house students and we have to build buildings to do that, then we get beyond this issue of being a discretionary act.

Ms. Halsey stated that there has been no evidence submitted in the record to show the practical compulsion.

Ms. Shelton clarified that these are issues that staff has been struggling with. It started with *Department of Finance v. Commission on State Mandates POBOR* case. There had been significant evidence of crime in school districts and certainly the Legislature recognized that and gave schools the authority to retain and hire peace officers.

Based on statements made by the U.S. Supreme Court that peace officers hired by a school district are necessary, it was asserted in the *POBOR* case that there was practical compulsion for school districts to retain their own peace officers and then comply with the downstream requirements.

Ms. Shelton explained that this is what the Commission is doing here too; except the Third District Court of Appeal said you cannot do that. When there is an issue of practical compulsion and there is an allegation that we have to build a new school, which the law says it is the school district's decision when and if to do that, you need to have evidence in the record that it was something they were practically compelled to do.

Ms. Shelton stated that staff is not suggesting that they are not required to house the students. Certainly they are. Staff does not have the evidence.

If the case is litigated under Government Code section 17559, the court is going to look if there is substantial evidence in the record. In this case, just like the *POBOR* case, there isn't any. That is the problem.

Mr. Palkowitz stated that the code sections show that there would be practical compulsion in order to have restrooms, in order to house students, in order to educate them, in order to provide a healthful, warm place.

Mr. Palkowitz added that he is amiable to the suggestion of putting the matter off to provide additional consequences that would show practical compulsion, that schools could be taken over by the state for not providing for the students and that the governing board has obligations to house students that are in their geographical area.

Ms. Shelton stated that staff has the law in the record and has considered all the law. So what would be required is a showing of factual evidence submitted under penalty of perjury or testimony under penalty of perjury that the district was practically compelled during the period of reimbursement to build a new school building or do substantial remodeling of a building during that time period.

Mr. Palkowitz stated that the claimant would like that opportunity to present that to the Commission.

Donna Ferebee stated that the Department of Finance does not believe that the standard for practical compulsion has been met and urges the Commission to adopt the staff recommendation as it is written.

Ms. Ferebee stated that staff does an excellent job of going through each component and also showing how there are other mechanisms for the schools to use. Finance does not believe that by holding the matter over the Commission would see any additional evidence of practical compulsion that would meet that very difficult threshold standard. Finance urges that the Commission adopt this item.

Chairperson Bryant stated that this is her first day as chair of the Mandates Commission, but she has been sitting in this seat for the last three years. There is a schedule, there are the arguments that the claimants are making. Every time the Commission puts one of these off, it just further delays it. And the Commission gets into the situation where they are considering a redistricting mandate at the same time they are about ready to do the census for the next redistricting ten years later.

Member Bryant stated that she is prepared to support the staff analysis as it is currently drafted. She sensed that other members may not share this view.

When staff goes back and they look, the Commission has to have evidence on the practical mandate issue; and then we would see that CEQA existed prior, and probably is not a mandate. And we get into that argument, and we would probably come back with the same result.

Ms. Shelton stated that it would take a lot longer to do that analysis, because there are over a hundred code sections pled. To do the whole legislative history on each individual section pled would take a lot longer. Staff would not be able to bring this back in March or May. It would be a year from now to do a new program or higher level of service. Staff would be happy to do so if that is the desire of the Commission.

Chairperson Bryant asked if there is any way that we can get some of this off the table today; is the only option in front of us to go all the way back and start at the beginning; or is there any way to divide the question a little bit to create less work, less time.

Mr. Palkowitz stated that the claimant is trying to focus on the issue that deals with new schools, not with the maintenance or emergency repairs or the Items A and B; rather, Item C.

Item C includes statutes subsequent to 1976, and also is the basis of the claimant's "practical compulsion" argument. So that would be the area that the claimant would ask for additional time to submit.

Mr. Palkowitz stated that although he is very cognizant of the long period of time it takes to get here, the law is evolving during those five or six years, too. He finds it reasonable to take a few more months to deal with that one issue.

Ms. Shelton stated that the issue of bifurcation could be a little troublesome because staff does not know how that is going to work out when they do further analysis. If the Commission is going to want to continue it, they need to continue the whole thing. Certainly comments that come in from Mr. Palkowitz and his clients can be limited to that issue, and further analysis can be limited to that issue. Ms. Shelton concluded that she is hesitant to recommend a bifurcation when it is not clear how that would affect the other portions.

Member Worthley stated that the claimant did not actually indicate or say "bifurcation." The idea is that the claimant is going to focus on a particular and limited portion of the claim.

Member Worthley moved to continue this matter to a date uncertain, because it would take some time for this to happen, and give the opportunity for the claimant to amend their pleadings as to the issue of practical compulsion.

Member Glaab conveyed to staff his extreme sensitivity to workload and the backlog of claims. However, he believes that the Commission needs to give the claimant more time to make a practical compulsion argument.

Member Worthley made a motion to continue this item. With a second by Member Glaab, the recommendation to continue this item was adopted by a vote of 6-1 with Chairperson Bryant voting no.

Chairperson Bryant commented that the staff analysis was so well done that one could literally lift the CEQA discussion and place it in a primer on CEQA.

Member Worthley also commented that the staff analysis was a great primer on CEQA and appreciated the review of CEQA as he deals in local government. Mr. Palkowitz echoed Member Worthley's comments.

Item 10 *Mandate Reimbursement Process II*, 05-TC-05
Government Code Sections 17553, 17557, and 17564;
Statutes 2004, Chapter 890 (AB 2856)
California Code of Regulations, Title 2, Sections 1183 and 1183.13
(Register 2005, No. 36, effective September 6, 2005)
On Remand from *California School Boards Assoc. v. State of California*
(2009) 171 Cal.App.4th 1183; Judgment and Peremptory Writ of
Mandate Issued by Sacramento County Superior Court,
Case No. 06CS01335
City of Newport Beach, Claimant

Chief Counsel Camille Shelton presented this item. Ms. Shelton stated that this test claim is on remand from the Court in the *California School Board Association (CSBA) v. State of California* case, and addresses statutes and regulations which amended the test claim process for seeking reimbursement for state-mandated costs under Article XIII B of the California Constitution.

Based on the Court's decision in *CSBA*, staff finds that Government Code Section 17553 and Section 1183 of the Commission's regulations mandate a new program or higher level of service on school districts and local agencies for the new activities required when filing a test claim or a test claim amendment.

Staff further finds that the exception to reimbursement in Government Code section 17556, subdivision (f), does not apply to deny this claim.

Ms. Shelton recommended that the Commission adopt the staff analysis and approve the test claim for the activities listed beginning on page 23.

The parties were represented as follows: Glen Everroad and Juliana Gmur representing the City of Newport Beach; Jeff Carosone, Donna Ferebee and Lorena Romero representing the Department of Finance.

Juliana Gmur complimented staff, specifically Ms. Shelton on a "very elegant analysis."

Ms. Gmur stated that there is a late filing by the California School Boards Association dated January 28, 2010. The City of Newport Beach concurs with the CSBA and joins with them to support the staff analysis and urge its adoption.

Lorena Romero stated the Department of Finance agrees with some portions of the staff analysis, that sections 17557 and 17564 of the Government Code, and sections 1183.13 of the Commission's regulations as amended by the test claim statutes do not constitute a state reimbursable mandate.

However, Finance does not agree with the Commission staff analysis that section 17553, subdivisions (b)(1)(C) through (G) and (b)(2) impose state-mandated reimbursable activities.

Finance believes that the mandate reimbursement process is absolutely necessary to implement the subvention of funds required by the voter approved measure, Proposition 4. Without a process, the state could not identify costs and ensure that the amounts reimbursed to local agencies are accurate.

Finance also does not agree with the staff analysis that the constitutional provision should have to require activities of the local agencies to participate in the process.

Additionally, Finance does not believe that the amendments to Government Code section 17553, subdivision (b)(1)(C) impose new programs or higher level of service. Certain of the items within these sections were previously required under other statutes. The other sections do not impose a higher level of service or a new program and are de minimis.

With a motion by Member Worthley and a second by Member Chivaro, the recommendation to adopt the staff analysis was approved by a vote of 7-0.

- Item 11 Proposed Statement of Decision: *Mandate Reimbursement Process II*, 05-TC-05
[See Item 10 above.]

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Chivaro, the Statement of Decision was adopted by a vote of 7-0.

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES STATE CONTROLLER'S OFFICE REQUEST TO UPDATE BOILERPLATE LANGUAGE

- Item 15 SCHOOL DISTRICT PROGRAMS
 - A. *Collective Bargaining and Collective Bargaining Agreement Disclosure*, 05-PGA-48
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
 - B. *Intradistrict Attendance*, 05-PGA-53
Education Code Section 35160.5, Subdivision (c)
Statutes 1993, Chapter 161; Statutes 1993, Chapter 915

Assistant Executive Director Nancy Patton presented these items.

- A. *Collective Bargaining and Collective Bargaining Agreement Disclosure* Program.

Ms. Patton explained that this is one of 49 requests filed by the State Controller's Office to amend the parameters and guidelines to add language regarding source documentation and record-retention requirements. She noted that there was no opposition to similar amendments to

the parameters and guidelines that were adopted earlier on the Consent Calendar. However, there is opposition to amending the *Collective Bargaining* parameters and guidelines. She reviewed the background of this request:

- On October 14, 2009, the petitioners in the *Clovis Unified School District v. State Controller* case filed comments objecting to the SCO requested amendments because the proposed language is unrealistic and inconsistent with the day-to-day operations of school and community college districts.
- In the *Clovis* case, school districts and community college districts challenged reductions made by the State Controller's Office to reimbursement claims for several mandated programs. The districts argued that reductions made on the ground that school districts do not have contemporaneous source documents are invalid.
- In 2009, the trial court issued a judgment holding that the Controller has no authority to reduce a claim on the ground that a claimant did not maintain contemporaneous source documents absent statutory or regulatory authority to require contemporaneous source documents or language in the parameters and guidelines requiring it.
- This case is pending in the Third District Court of Appeal.
- Opponents recommend the Commission postpone this matter until the court fully resolves the issue.
- By letter on January 14, 2010, opponents stated that they would not appear at this hearing; and requested that the Commission fully consider their arguments in their October 14, 2009 letter; and that it be made a part of the record.

Ms. Patton stated that staff finds that the parameters and guidelines for the *Collective Bargaining/Collective Bargaining Agreement Disclosure* Program should be amended to insert the requested language because it would conform the parameters and guidelines for this program with the parameters and guidelines adopted for other programs, and is consistent with Section 1183.1 of the Commission's regulations. Therefore, staff included the language requested by the SCO and recommends that the Commission adopt the SCO's proposed amendments to the parameters and guidelines for this program.

The parties were represented as follows: Susan Geanacou representing the Department of Finance and Jim Spano representing the State Controller's Office.

Susan Geanacou stated that the Department of Finance supports the proposed amendments to the parameters and guidelines.

Jim Spano stated that the State Controller's Office supports the final staff analysis and related recommendation. Mr. Spano explained, as follows:

- The proposed language for source documentation and record retention is the same language as in the parameters and guidelines adopted by the Commission since 2003 for other state-mandated cost programs.
- The Commission has properly amended many other parameters and guidelines to include the updated source documentation rule. The *Collective Bargaining* and *Intradistrict Attendance* program should be no different.

- The requirement to maintain contemporaneous source document records to support costs claimed is neither unrealistic nor inconsistent with the day-to-day operation of schools and community colleges.
- Districts are required to support its costs with sufficient competent evidential matter for its many state and federal programs. Such requirement is consistent with the guidance provided by the California Department of Education in its California School Accounting Manual, and principles and standards applicable to federal funds prescribed in a Code of Federal Regulations also known as Office of Management Budget, Circular A87 and A21.
- The State Controller's Office believes the litigation has no impact on the Commission in meeting the parameters and guidelines for the *Collective Bargaining* and *Intradistrict Attendance* program.
- In fact, the Superior Court peremptory writ of mandate dated February 19, 2009, states that many of the parameters and guidelines is one of three options to validate contemporaneous source document rules for the *Collective Bargaining* and *Intradistrict Attendance* program.

With a motion by Member Chivaro and a second by Member Olsen, the staff recommendation to adopt the staff analysis was adopted by a vote of 7-0.

B. *Intradistrict Attendance*

Ms. Patton stated that the petitioners in the *Clovis* case are also opposed to amending this set of parameters and guidelines. Opponents recommend the Commission postpone this matter until the court fully resolves the issue. She added that the January 14, 2009 letter filed by opponents pertains also to this item. Staff recommends adopting the proposed amendments to the parameters and guidelines for the *Intradistrict Attendance* program.

Mr. Spano stated the State Controller's Office response is the same as in Part A.

With a motion by Member Chivaro and a second by Member Cox, the staff recommendation to adopt the staff analysis was adopted by a vote of 7-0.

Chairperson Bryant complimented Ms. Patton on the great work on these items as well as all the amendments that were on the consent calendar.

STAFF REPORTS

Item 21 Legislative Update

Ms. Patton reviewed AB 349, AB 548, and AB 917.

AB 349 would require the Department of Finance to provide the Legislature with all proposed statutory changes necessary to repeal any local agency mandates proposed for suspension in the Governor's budget, and include each affected section of law, effective January 2012.

The author is concerned that there are over two dozen mandates that have been suspended for at least three years, ten of which have been suspended for at least 18 years. AB 349 is supported by local government and peace-officer associations and there is no known opposition. It is pending in Senate budget and fiscal review committee.

AB 548 would lengthen the period in which a reimbursement claim for actual costs would be subject to an initiation of an audit by the State Controller from three to four years after the date that the actual reimbursement claim is filed or amended; and it would eliminate the State Controller's authority to extend the audit period when funds are not appropriated or no payment is made to a claimant.

This bill is sponsored by several school district and local agency associations; supported by the State Controller and opposed by the Department of Finance. It is pending on the Senate floor.

AB 917 would require the state, commencing with the 2009-10 fiscal year, to either fully fund school district mandates or suspend them, and would authorize the state to recommend mandates for years prior to the 2009-10 or over a five year period.

This bill may not be necessary. The Governor's proposed budget for 2010-11 already suspends the school district mandates. There is no known support or opposition at this time, and it is pending in the Assembly Education Committee.

Item 22 Chief Legal Counsel's Report (info)

Ms. Shelton reported that the hearing date for the *Behavioral Intervention Plans* case has been moved to December 2010; briefing is complete on the *Clovis* case; and the California School Boards Association has applied to file an amicus brief on the pending appeal. She explained that if the Court accepts the CSBA brief, there will be further briefing before the court sets a hearing date and that she will continue to keep the members informed on that case.

Item 23 Executive Director's Report (info)

Ms. Higashi reviewed the pending workload, stating that the number of test claims continues to be reduced; and that the number of proposed parameters and guidelines amendments was substantially reduced at the January meeting. She acknowledged the work done by Nancy Patton and her team: Heidi Palchik, Jason Rogers, Lorenzo Duran, and Kerry Ortman to pull and scan records, write analyses and amendments, and organize and upload items and exhibits on the Web site; and thanked them for their hard work.

Ms. Higashi introduced Jeff Carosone from the Department of Finance Mandates Unit.

Mr. Carosone stated that he is replacing Carla Castañeda as the principal on the mandates assignment. He took the opportunity to thank Carla for her years on the mandates assignment, and congratulate her and wish her luck on her new assignment within Finance. She has transferred to a different unit in Finance.

Chairperson Bryant stated that Mr. Carosone used to do the OPR budgets.

Ms. Higashi stated that the report includes information excerpted from the Governor's budget. She added that there are additional budget drills pending that may lead to additional reductions.

The Commission has filed its Report to the Legislature on approved mandates; and will soon file the report on denied mandates.

Ms. Higashi described the tentative agendas for the next two meetings, and noted that the *Clean Restrooms* test claim will be added to the March agenda. She added that there are more parameters and guidelines amendments, and a rulemaking workshop will be held with all parties to review staff's first draft of proposed cleanup amendments to our regulations. She also invited Commission Members to identify or propose amendments.

PUBLIC COMMENT

There was no public comment.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (action).

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

State of California, Department of Finance v. Commission on State Mandates, et al.,
Sacramento Superior Court Case No. 03CS01432,
[Behavioral Intervention Plans]

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).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a)(1).

- Personnel Subcommittee Report

Hearing no further comments, Chairperson Bryant adjourned into 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 published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation; and also to confer on personnel matters and a report from the personnel subcommittee pursuant to Government Code section 11125, subdivision (a)(1).

REPORT FROM CLOSED EXECUTIVE SESSION

At 11:14 a.m., Chairperson Bryant reconvened in open session, and 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 public notice and agenda, and potential litigation, and also to confer on personnel matters listed on the published notice and agenda pursuant to Government Code section 11126, subdivision (a)(1).

ADJOURNMENT

Hearing no further business, Chairperson Bryant adjourned the meeting at 11:15 am.

PAULA HIGASHI
Executive Director