

**ITEM 1
PROPOSED MINUTES**

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
January 27, 2005

Present: Chairperson Anne Sheehan
 Representative of the Director of the Department of Finance
 Member Walter Barnes
 Representative of the State Controller
 Member John Hiber
 Representative of the State Treasurer
 Member Jan Boel
 Acting Director of the Office of Planning and Research
 Member John Lazar¹
 City Council Member

Vacant: Local Elected Official
 Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:30 a.m. She announced the Commission on State Mandates' 20th anniversary.

ELECTION OF OFFICERS

Item 1 Election of Chairperson and Vice Chairperson

Paula Higashi, Executive Director, conducted the election of officers. Member Boel nominated Mr. Tom Campbell, the Director of the Department of Finance, as Chairperson. With a second by Member Barnes, Mr. Campbell was unanimously elected.

[Member Lazar entered the room.]

Member Boel nominated Mr. Steve Westly, State Controller, as Vice Chairperson. With a second by Member Lazar, Mr. Westly was unanimously elected.

APPROVAL OF MINUTES

Item 2 December 9, 2004

Upon motion by Member Hiber and second by Member Boel, the minutes were unanimously adopted.

¹ Member Lazar arrived during the election of officers.

PROPOSED CONSENT CALENDAR

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

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES (action)

- Item 6 *Pupil Promotion and Retention, 98-TC-19*
San Diego Unified School District, Claimant
Education Code Sections 37252, 37252.5, 48070 and 48070.5
Statutes 1998, Chapters 742 and 743, et al. (AB 1626 and AB 1639)

- Item 7 *AIDS Prevention Instruction II, 99-TC-07, 00-TC-01*
Sweetwater Union High School District, Claimant
Education Code Sections 51201.5, 51229.8, 51553 and 51554
Statutes 1991, Chapter 818 (AB 11), Statutes 1998, Chapter 403 (SB 1110),
and Statutes 1999, Chapter 234 (AB 246)

- Item 8 *Teacher Incentive Program, 99-TC-15*
San Diego Unified School District, Claimant
Education Code Sections 44395 and 44396
Statutes 1998, Chapter 331 (AB 858)

Member Lazar moved for adoption of the consent calendar, which consisted of items 6, 7, and 8. With a second by Member Boel, the consent calendar was unanimously adopted.

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

- Item 3 Staff Report on Appeals Related To Current Agenda Items (if necessary)

No appeals were filed.

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

TEST CLAIMS AND PROPOSED STATEMENTS OF DECISION

- Item 4 *Missing Children Reports, 01-TC-09*
San Jose Unified School District, Claimant
Education Code Sections 38139, 49068.5, 49068.6, 49370
Statutes 1986, Chapter 249, Section 14 (AB 606); Statutes 1999,
Chapter 1013, (SB 570); Statutes 1999, Chapter 832 (AB 646);
Statutes 1996, Chapter 277 (SB 1562); and Statutes 1994, Chapter 922
(AB 2587)

Eric Feller, Commission Counsel, presented this item. He stated that the test claim statutes require school districts to undertake various activities with regard to missing children. Staff found the test claim to be a reimbursable state mandate for school districts to perform the following activities:

- 1) Post information regarding missing children in the appropriate areas;
- 2) If notified of a missing child, post a notice that the child has been reported missing on the front of the missing child’s school record; and

3) Notify law enforcement if the school receives a record inquiry about a missing child.

Staff recommended that the Commission approve the test claim for the specified activities.

Parties were represented as follows: Keith Petersen, on behalf of the claimant; and Matt Aguilera, with the Department of Finance. Ms. Higashi swore in the parties participating in the hearing of items 4 and 5.

Mr. Petersen noted that several code sections in the test claim legislation urge principals and school officials to take certain actions regarding missing or apparently missing students. He argued that the Legislature used slightly different language in Education Code section 49370, which states: “The Legislature hereby declares its intent in enacting this article to require [the activity].” He disagreed with staff’s conclusion that this statement is not mandatory, and said that the plain meaning of the statement is that school district personnel are required to report missing children to a law enforcement agency.

Mr. Aguilera supported the staff recommendation. He noted that findings, declarations, and intent language generally do not constitute the force of law. He added that, in terms of policy, the latter sections of a bill provide the actual substance of an effectuated law.

Member Boel requested clarification from Mr. Aguilera, who responded that oftentimes bills include findings and declarations to provide background information as to specific intent, but it is the latter sections of bills that impose the specific requirements on state departments or local government.

Mr. Petersen asserted that nothing in the legislation indicated that school districts not call the police if a child was missing. He submitted that Mr. Aguilera was referring to descriptive language, usually from the Legislative Counsel, which precedes the actual code section. He explained that this was the code section, not background information. He reiterated that the plain meaning of the code section requires districts to call the police.

Mr. Aguilera maintained that the statement was intent language, which is background information.

Member Barnes asked staff to comment. Mr. Feller agreed that the statute was ambiguous, but maintained that the Legislature did not use the word “shall,” which indicates that it is not legally required. He added that the legislative history indicated a change from a Penal Code section titled “Mandatory Reporting of Missing Children” to an Education Code section titled “The Reporting of Missing Children.” Mr. Feller noted that such a change is legally significant according to how courts have analyzed statutes. Moreover, he stated that the Legislative Counsel’s Digest indicates that this was legislative intent language, which courts have used in the past to construe statutes.

Mr. Feller maintained that after looking through the legislative history, staff concluded that the statement was legislative intent language and not an actual legal requirement.

Member Barnes requested clarification as to whether Mr. Petersen’s arguments were limited to the activity to report missing children to law enforcement in a timely manner. Mr. Petersen affirmed.

Mr. Petersen submitted that staff was ignoring the plain language of the code section and was instead looking for the Legislature’s intent in legislative history and the Legislative Counsel’s Digest. He asserted that “require” also means “shall,” and therefore, the code section requires

the districts to call the police.

Member Barnes asked Paul Starkey, Chief Legal Counsel, if the whole intent of the bill would be undermined if the Commission were to find that this is not a reimbursable mandate.

Mr. Starkey responded that in construing statutes, staff looks for a clear statement from the Legislature that an activity is required. He explained that for purposes of mandate analysis, staff looks at everything surrounding the statute, including legislative history, for further meaning if there is any kind of ambiguity in the language. In this case, he maintained that staff disagreed with Mr. Petersen regarding the plain meaning of the statute.

Mr. Starkey further explained that if in fact the Legislature determined that its intent was not being carried out, it could come back and specifically say that the activity is mandatory. He also stated that the Commission's role is to discover the Legislature's expressed intent using the tools of statutory construction that the courts would use to review this matter.

Mr. Petersen reiterated his argument that the Commission was not looking at the plain language of the statute. He asserted that the language is sufficient on its own for the Commission to decide that "intent to require" also means "shall."

Mr. Starkey stated that in his judgment, for purposes of mandates analysis, the statement "intent to require" is not a clear statement of the Legislature ordering or requiring the activity.

Member Boel made a motion to adopt the staff analysis and recommendation, which was seconded by Member Hiber. The motion carried 4-1, with Member Lazar voting "No."

Mr. Petersen requested clarification, as a matter of law, whether districts had to call the police when a child is missing. Chairperson Sheehan responded that the Commission determined that the Legislature did not provide clear direction that districts were mandated to call.

Mr. Starkey agreed, and noted that it was inappropriate at this point for the representative to say what the Commission had declared as to the duties with respect to local entities.

Item 5 Proposed Statement of Decision: *Missing Children Reports*, 01-TC-09
See Above

Eric Feller, Commission Counsel, presented this item. He stated that unless there was objection, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the Commission's decision. He also recommended that staff be allowed to make minor changes, including those to reflect the hearing testimony and vote count, before issuing the final decision.

Member Boel made a motion to adopt the proposed Statement of Decision, which was seconded by Member Hiber. The motion carried 4-1, with Member Lazar voting "No."

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

PROPOSED 2005 RULEMAKING CALENDAR

Item 9 Staff Report

Nancy Patton, Assistant Executive Director, presented this item. She stated that Government Code section 11017.6 requires state agencies to prepare annual rulemaking calendars for publication in the *California Regulatory Notice Register*. Accordingly, staff proposed two rulemakings for 2005. The first amends the current regulations to implement statutory changes

required by Assembly Bill 2856. The second amends the current regulations to specify procedures for the appeal of an Executive Director's decision.

Staff recommended that the Commission adopt the proposed 2005 rulemaking calendar for transmittal to the Office of Administrative Law.

Member Boel made a motion to adopt the proposed rulemaking calendar for 2005. With a second by Member Lazar, the motion carried unanimously.

ADOPTION OF NEW TEST CLAIM FORM

Item 10 Staff Report

Nancy Patton, Assistant Executive Director, presented this item. She reported that Governor Schwarzenegger signed Assembly Bill 2856 on September 29, 2004. This bill made significant reforms to the process for filing test claims, and the changes to Government Code section 17553 required the Commission to adopt a new test claim form.

Ms. Patton noted that staff conducted a workshop and issued a draft test claim form in December 2004 for public comment. No comments were filed. Therefore, staff recommended that the Commission approve the proposed test claim form. Ms. Patton stated that if approved, the executive director will immediately disseminate the form, which will become effective on February 7, 2005.

Member Lazar asked if it was standard policy for the Commission to get involved in the detail of staff's work. Ms. Higashi responded that the Commission had not adopted a new test claim form in years, and because of the nature of the changes, staff felt it was necessary to bring it before the Commission.

Chairperson Sheehan noted that it was not uncommon for regulatory bodies to go through the process of adopting applications or forms.

Member Boel made a motion to adopt the new test claim form. With a second by Member Hiber, the motion carried unanimously.

STAFF REPORTS

Item 11 Chief Legal Counsel's Report (info) Recent Decisions, Litigation Calendar

Paul Starkey, Chief Legal Counsel, had nothing to add to his report.

Item 12 Executive Director's Report (info/action) Workload, SB 1033, Governor's Proposed 2005-06 Budget, Implementation of AB 2856, 2005 Hearing Calendar, and Next Hearing

Ms. Higashi reported the following:

- *Workload.* Butte County confirmed that their application for a finding of significant financial distress was sent to the printer. The Commission should expect to see the application around February 10. Staff needs to work with the Department of Finance to obtain the additional funding, and once it is received, there is a 90-day timeline to process the application.
- *2005 Hearing Calendar.* There are two changes to the 2005 hearing calendar. First, the March hearing was moved up one day because of a state holiday. Second, the November hearing was moved to early December because of the Thanksgiving holiday.

Member Boel made a motion to adopt the revised 2005 hearing calendar. With a second by Member Barnes, the motion carried unanimously.

PUBLIC COMMENT

On behalf of the Commission, Chairperson Sheehan presented a resolution to Member Lazar in honor of his five years of service on the Commission on State Mandates.

Allan Burdick, on behalf of the California League of Cities and the California State Association of Counties, presented Member Lazar with a token of appreciation to thank him for his contributions to the Commission. He noted that the Commission would have no local representation with Member Lazar's departure.

Chairperson Sheehan responded that the Governor's Office is working on filling the positions of vacant local government representatives.

Member Lazar thanked the Commission staff and members for the courtesy extended to him over the past five years. He also thanked former Governor Davis for the appointment and opportunity to participate in state government.

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. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01069 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-01 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01432 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
3. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01401 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
4. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01568 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
5. *San Jose Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01569 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
6. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Case Number 03CS01570 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
7. *Clovis Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01702 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-09 [*Graduation Requirements IRC*]

8. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Case Number 04CS00028 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
9. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS087959, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-11 [*Animal Adoption*]
10. *County of Los Angeles and Los Angeles County Flood Control District v. State of California, Commission on State Mandates, et al.*, Case Number BS089769, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-12 [*Transit Trash Receptacles, et al.*]
11. *City of Artesia, et al. v. State of California, Commission on State Mandates, et al.*, Case Number BS089785, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-13 [*Waste Discharge Requirements*]
12. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Case No. BS092146, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters*]

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.

Hearing no further comments, Chairperson Sheehan 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 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 Sheehan 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, and upon motion by Member Boel and second by Member Barnes, Chairperson Sheehan adjourned the meeting at 10:21 a.m.

PAULA HIGASHI
Executive Director