

Item 1
PROPOSED MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447

Sacramento, California

November 9, 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 J. Steven Worthley
County Supervisor
Member Sarah Olsen
Public Member
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Bryant called the meeting to order at 10:32 a.m. Executive Director Paula Higashi called the roll.

APPROVAL OF MINUTES

Item 1 September 30, 2010

The September 30, 2010 hearing minutes were adopted by a vote of 7-0, on a motion by Member Olsen and second by Member Glaab.

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

Item 2 Staff Report (if necessary)

There were no appeals to consider.

PROPOSED CONSENT CALENDAR

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

A, ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

Item 4* *Pupil Discipline Records, Notification to Teachers: Pupils Subject to
Suspension or Expulsion II, 00-TC-10/00-TC-11*
Education Code Sections 48201 and 49079
Statutes 2000, Chapter 345 (AB 29)
Carpinteria Unified School District, Sweetwater Union High School District,
and Grant Joint Union High school District, Co-Claimants

B. ADOPTION OF PROPOSED ORDER TO INITIATE RULEMAKING

- Item 7* Proposed Regulations to Amend Conflict of Interest Code
California Code of Regulations, Title 2, Chapter 2.5., Article 9, Section
1189.10 and Appendix.

Member Glaab made a motion to adopt items 4 and 7 on the consent calendar. With a second by Member Worthley, the consent calendar was adopted by a vote of 7-0.

STAFF REPORT

- Item 3 Budget Act and Budget Trailer Bills

Paula Higashi presented this item. She reviewed local government and education trailer bills, and identified the mandates in the budget, both funded and suspended. She pointed out additional programs where funding was deleted by the Governor, and reviewed the new redetermination program enacted by SB 856.

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

- A. ADOPTION OF EMERGENCY REGULATIONS PURSUANT TO
GOVERNMENT CODE SECTIONS 17527 SUBDIVISION (g) AND 17570,
SUBDIVISION (e)**

- Item 5 Proposed Emergency Regulations to Implement Mandate Redetermination
Process Pursuant to Government Code Section 17570, Subdivision (d)
(Stats. 2010, Ch. 719, eff. October 19, 2010 (SB 856)):
California Code of Regulations
Title 2, Chapter 2.5., New Article 10, Sections 1190-1190.05

Program Analyst Heidi Palchik presented this item. Ms. Palchik stated that trailer bill SB 856 established a process for redetermining existing mandates, and required the Commission to adopt emergency regulations to implement this process. The proposed emergency regulations set up procedures for receiving requests to adopt new test claim decisions and providing notice of the hearing on those requests. Ms. Palchik explained that the statutory process is in effect now and it is critical to have procedures in place. The Commission conducted a workshop on the emergency regulations, and parties voiced concerns about adopting emergency regulations. Ms. Palchik pointed out that emergency regulations are only in effect for six months while permanent regulations are being adopted. Staff recommended the Commission adopt the emergency regulations.

Allan Burdick, CSAC-SB 90 Service, stated that there was some trepidation about the emergency regulations, because there is uncertainty about this new redetermination process. With a motion by Member Olsen, and a second by Member Cox, the emergency regulations were adopted by a vote of 7-0.

- B. ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING
PURSUANT TO GOVERNMENT CODE SECTION 17527 SUBDIVISION (g)
AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1189.2**

- Item 6 Proposed Regulations to Implement Mandate Redetermination Process
Pursuant to Government Code Section 17570, Subdivision (d) (Stats. 2010,
Ch. 719, eff. October 19, 2010 (SB 856))
California Code of Regulations
Title 2, Chapter 2.5., New Article 10, Sections 1190-1190.05

Ms. Palchik also presented this item. She stated that this item was the order to initiate permanent

rulemaking on the redetermination process, and recommended that the Commission adopt the order to initiate rulemaking. With a motion by Member Worthley, and a second by Member Olsen, the order to initiate rulemaking for the mandate redetermination process was approved by a vote of 7-0.

STAFF REPORTS

Ms. Higashi stated there was nothing new to report on Item 8 (SB 1033 Applications).

Item 9 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Ms. Shelton reported that a cross-petition was filed against the state and the Commission by local agencies in the Los Angeles County water permit case. There was a dismissal filed on the *Behavioral Intervention Plans* lawsuit. On November 19, 2010, there is a hearing on the Commission and state's demurrer and motion to strike in the *County of Santa Clara* case dealing with their *Handicapped and Disabled Students* incorrect reduction claim.

Regarding cases of interest, there was a final published decision on the *Clovis* case. Briefing is complete and hearing will be set on the *California School Boards Association v. State of California* case challenging the practice of deferring mandate reimbursement to schools. Ms. Shelton also reported on the *San Diego Unified School District v. State Controller* case, regarding whether the Controller began an audit of reimbursement claims for the *STAR* program after the audit period. The next case reviewed was *Fenton Avenue Charter School v. State Controller's Office*, filed by many charter school districts alleging that the Controller improperly returned reimbursement claims. Ms. Shelton also discussed the injunction and declaratory relief in *County of Sacramento v. State of California*, where 23 counties are suing the state on the Governor's veto and suspension of funding for the *Handicapped and Disabled Students* program.

Member Worthley asked if the mandate would be rescinded for the *Handicapped* case. Ms. Shelton responded that there are interagency agreements and dispute resolution procedure between the school districts and counties, and they are trying to have the court place an injunction on suspension of the mandate.

Item 10 Executive Director's Report

Ms. Higashi noted that staff is in the process of reviewing 37 filings on a Bay Area water permit. It is probable that not all filings will be accepted. She also noted the increase in incorrect reduction claim filings. Ms. Higashi stated the Commission's budget has been reduced by \$64,000 for both 2010-11 and 2011-12 fiscal years. She also explained that with ratification of the Bargaining Unit 1 and 4 contracts, most of the staff is no longer furloughed. However, since Bargaining Unit 2 has not reached agreement, Commission attorneys continue to be furloughed three days per month.

Member Cox asked if staff was moving to self-directed furloughs. Ms. Higashi responded yes.

Ms. Higashi reminded members and parties that e-filing provisions will go into effect on January 3, 2011, and staff will conduct a workshop at the next meeting in December.

Ms. Higashi reviewed the tentative agenda items for the next nine months, and reported on the negotiations regarding the *Investment Reports* incorrect reduction claims.

PUBLIC COMMENT

Alan Burdick, CSAC-SB 90 Service, asked if requests for adoption of new test claim decisions are filed, will they take precedence over the existing test claim caseload. Ms. Higashi responded that the statute does not direct the Commission to treat these requests differently from the existing caseload. Therefore, unless the Commission directs staff to treat the requests differently, they will be added to the existing caseload.

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

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).

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):

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *State of California, Department of Finance v. Commission on State Mandates*, Sacramento, Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]
3. *County of Santa Clara v. Commission on State Mandates, State Controller's Office, et al.*, Sacramento County Superior Court Case No.34-2010-80000592 [*Handicapped and Disabled Students*, Incorrect Reduction Claim CSM 09-4282-I-5, Fiscal years 2003-2004 through 2005-2006]
4. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego*, et. al., Sacramento County Superior Court Case No. 34-2010-80000604 [*Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L*]
5. Cross Petition Filed: *County of San Diego, and Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solano Beach, and Vista v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Control Board San Diego Region*, Sacramento County Superior Court Case No. 34-2010-80000604 [*Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L*]

6. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles*, et. al., Sacramento County Superior Court Case No. 34-2010-80000605 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

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. REPORT FROM PERSONNEL SUBCOMMITTEE

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

- Review of Executive Director Applications

REPORT FROM CLOSED EXECUTIVE SESSION

At 12:17 p.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 12:17 p.m.

PAULA HIGASHI
Executive Director