

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
April 19, 2013

Present: Member Richard Gillihan, Chairperson
Representative of the Director of the Department of Finance
Member Richard Chivaro, Vice Chairperson
Representative of the State Controller
Member Andre Rivera
Representative of the State Treasurer
Member Ken Alex
Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member Don Saylor
County Supervisor

Absent: Member Carmen Ramirez
City Council Member

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.

CALL TO ORDER AND ROLL CALL

Chairperson Gillihan called the meeting to order at 10:00 a.m.

Executive Director Heather Halsey called the roll.

To accommodate the schedules of parties and witnesses, items at this hearing were heard out of numerical order.

HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND GUIDELINES, AND INCORRECT REDUCTION CLAIMS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

Executive Director Heather Halsey swore in parties and witnesses participating in the hearing.

A. TEST CLAIMS

Item 3 *Teacher Credentialing*, 03-TC-09

Education Code Sections 44225, 44225.7, 44300, 44301, 44326, 44327, 44332, 44830, 44830.3, 44842, 44885.5, 44901, 45037

Statutes 1975, Chapter 228; Statutes 1981, Chapter 1136; Statutes 1982, Chapter 206; Statutes 1982, Chapter 434; Statutes 1982, Chapter 471; Statutes 1982, Chapter 1388; Statutes 1983, Chapter 498; Statutes 1983, Chapter 536; Statutes 1983, Chapter 1038; Statutes 1983, Chapter 1302; Statutes 1984, Chapter 482; Statutes 1985, Chapter 747; Statutes 1986, Chapter 989; Statutes 1987, Chapter 1468; Statutes 1988, Chapter 1355; Statutes 1989, Chapter 375; Statutes 1991, Chapter 590; Statutes 1992, Chapter 1050; Statutes 1993, Chapter 378; Statutes 1994, Chapter 673; Statutes 1994, Chapter 922; Statutes 1996, Chapter 303; Statutes 1996, Chapter 948; Statutes 1997, Chapter 934;

Statutes 1998, Chapter 533; Statutes 1998, Chapter 547; Statutes 1999, Chapter 281; Statutes 1999, Chapter 381; Statutes 2001, Chapter 585; Statutes 2002, Chapter 1069; and Statutes 2002, Chapter 1087

California Code of Regulations, Title 5, Sections 80005, 80016, 80020.4.1, 80023.1, 80023.2, 80025, 80025.1, 80025.5, 80026, 80026.1, 80026.5, 80026.6, 80027, 80035, 80035.5, 80036, 80036.1, 80036.3, 80037, 80037.5, 80038, 80040, 80043, 80045, 80047.2, 80047.4, 80048.2, 80048.3, 80048.3.1, 80048.4, 80054, 80055.1, 80055.2, 80058.2, 80070.2, 80070.3, 80070.4, 80070.6, 80071.4, 80413.3, 80435, 80441, 80466, 80556, 80556.1, 80601

Register 75, No. 16 (April 16, 1975); Register 75, No. 25 (June 20, 1975); Register 75, No. 27 (Aug. 2, 1975); Register 76, No. 5 (Feb. 27, 1976); Register 76, No. 21 (June 20, 1976); Register 76, No. 49 (Jan. 2, 1977); Register 77, No. 21 (June 19, 1977); Register 77, No. 51 (Jan. 15, 1978); Register 78, No. 10 (April 7, 1978); Register 78, No. 22 (June 29, 1978); Register 78, No. 48 (Dec. 29, 1978); Register 79, No. 23 (July 5, 1979); Register 80, No. 6 (March 7, 1980); Register 80, No. 32 (Sept. 5, 1980); Register 81, No. 15 (May 6, 2001); Register 81, No. 23 (July 3, 1981); Register 82, No. 41 (Jan. 1, 1983); Register 82, No. 45 (Dec. 2, 1982); Register 82, No. 48 (Nov. 10, 1982); Register 83, No. 12 (March 15, 1983); Register 83, No. 23 (July 3, 1983); Register 83, No. 30 (Aug. 21, 1983); Register 83, No. 31 (Aug. 28, 1983); Register 83, No. 40 (Sept. 27, 1983); Register 84, No. 8 (Mar. 23, 1984); Register 84, No. 40 (Nov. 3, 1984); Register 86, No. 40 (Oct. 31, 1986); Register 86, No. 50 (Jan. 9, 1987); Register 86, No. 52 (Jan. 1, 1987); Register 89, No. 11 (April 9, 1989); Register 89, No. 12 (April 16, 1989); Register 89, No. 46 (Dec. 13, 1989); Register 90, No. 42 (Sept. 4, 1990); Register 92, No. 39 (Sept. 21, 1992); Register 93, No. 25 (July 15, 1993); Register 94, No. 16 (May 20, 1994); Register 94, No. 19 (June 9, 1994); Register 95, No. 9 (Mar. 3, 1995); Register 95, No. 15 (May 10, 1995); Register 95, No. 32 (Sept. 7, 1995); Register 96, No. 26 (July 27, 1996); Register 96, No. 41 (Nov. 10, 1996); Register 97, No. 39 (Oct. 26, 1997); Register 97, No. 51 (Dec. 16, 1997); Register 98, No. 3 (Jan. 13, 1998); Register 98, No. 12 (April 17, 1998); Register 98, No. 28 (July 6, 1998); Register 98, No. 32 (Sept. 5, 1998); Register 98, No. 49 (Dec. 2, 1998); Register 99, No. 11 (April 10, 1999); Register 99, No. 41 (Nov. 7, 1999); Register 99, No. 46 (Nov. 12, 1999); Register 99, No. 51 (Jan. 15, 2000); Register 2000, No. 15 (May 14, 2000); Register 2000, No. 16 (May 21, 2000); Register 2000, No. 22 (June 20, 2000); Register 2001, No. 17 (May 25, 2001); Register 2001, No. 24 (June 15, 2001); Register 2001, No. 47 (Oct. 9, 2001); Register 2002, No. 21 (June 20, 2002); Register 2002, No. 50 (Jan. 8, 2002); Register 2002, No. 52 (Jan. 22, 2003); Register 2003, No. 5 (Mar. 1, 2003).

San Diego County Office of Education, Claimant

This test claim addresses the teacher credentialing process and employment of K-12 teachers and the activities of school districts related to credentialing teachers and other general employment.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission approve the test claim for the regulations regarding professional growth advisors but deny the statutes and remaining regulations because they do not mandate a new program or higher level of service; thereby adopting the staff analysis and the proposed statement of decision to partially approve the test claim.

Parties were represented as follows: Arthur Palkowitz of the law offices of Stutz Artiano Shinoff & Holtz, representing the claimants. Finance did not participate in the hearing for this item.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Olsen, the staff recommendation to adopt the staff analysis and proposed statement of decision partially approving the test claim was adopted by a vote of 6-0.

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

- Item 2 *Appeal of Executive Director Decision to Deny the California School Boards Association (CSBA) request to postpone the April 19, 2013 Hearing of the Proposed Parameters and Guidelines: California Public Records Act, 02-TC-10 and 02-TC-51*
Allan P. Burdick, Executive Director, CSAC SB 90 Service, Appellant

This item is an appeal to the Commission filed by CSAC SB-90 Service of the Executive Director's decision to deny a request made by the California School Boards Association (CSBA) to postpone hearing of Item 5, the adoption of parameters and guidelines for the *California Public Records Act* program.

Following discussion among the Commission members, staff, and appellant, Member Saylor made a motion to adopt the staff recommendation. With a second by Member Olsen, the staff recommendation to adopt the staff analysis to uphold the executive director's decision to deny the CSBA request to postpone and proceed to consider Item 5 on this agenda was adopted by a vote of 6-0.

(Member Olsen stepped out of the meeting room.)

CONSENT CALENDAR

If there are no objections to any of the following action items designated by an asterisk (), the Executive Director will include each one on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

HEARINGS AND DECISIONS ON TEST CLAIMS AND PARAMETERS AND GUIDELINES PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

- Item 5* *California Public Records Act, 02-TC-10 and 02-TC-51*
Government Code Sections 6253, 6253.1, 6253.5, 6253.9, 6254.3, and 6255
Statutes 1992, Chapter 463 (AB 1040); Statutes 2000, Chapter 982

AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

County of Los Angeles and Riverside Unified School District,
Co-Claimants

Item 9* *Parental Involvement Programs*, 03-TC-16

Education Code Sections 11504, 49091.10, 51101, 51101.1

Statutes 1990, Chapter 1400; Statutes 1998, Chapter 864; Statutes 1998,
Chapter 1031; and Statutes 2002, Chapter 1037

San Jose Unified School District, Claimant

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

STATEWIDE COST ESTIMATE

Item 10* *Developer Fees*, 02-TC-42

Government Code Sections 65970, 65971, 65972, 65973, 65974, 65974.5,
65975, 65976, 65977, 65978, 65979, 65980, 65981

Statutes 1977, Chapter 955; Statutes 1979, Chapter 282; Statutes 1980,
Chapter 1354; Statutes 1981, Chapter 201; Statutes 1982, Chapter 923;
Statutes 1983, Chapter 1254; Statutes 1984, Chapter 1062; Statutes 1985,
Chapter 1498; Statutes 1986, Chapters 136 and 887; Statutes 1994,
Chapter 1228

Clovis Unified School District, Claimant

Chairperson Gilihan announced that the parties requested to move Item 5 to the Consent Calendar and asked if there was any objection. No objection was made. Then, Member Chivaro moved to adopt the consent calendar. Member Saylor seconded the motion and Chairperson Gilihan asked if there was any public comment. There was no response. The consent calendar was adopted by a vote of 5-0. Member Olsen was not present for the vote.

**HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND
GUIDELINES, AND INCORRECT REDUCTION CLAIMS PURSUANT TO
CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7
(GOV. CODE, § 17551, 17557, and 17559) (action)**

A. TEST CLAIMS

Item 4 *County Formation Cost Recovery*, 06-TC-02

Government Code Sections 23300-23397

Statutes 1974, Chapter 1392, Sections 2 and 3; Statutes 1975, Chapter 1247;
Statutes 1976, Chapter 1143; Statutes 1977, Chapter 1175; Statutes 1978,
Chapter 465; Statutes 1979, Chapter 370; Statutes 1980, Chapter 676; Statutes
1981, Chapter 1114; Statutes 1984, Chapter 226; Statutes 1985, Chapter 702;
Statutes 1986, Chapter 248; Statutes 1994, Chapter 923; and Statutes 2002,
Chapter 784; Statutes 2004, Chapter 227

Governor's Press Release, May 10, 2004

Santa Barbara County, Claimant

This test claim arises from the failed attempt to partition the north area of Santa Barbara County into a separate county, Mission County. The test claim statutes require the formation of a

County Formation Review Commission which conducts a fiscal and economic study, and the holding of an election, a popular election to determine whether to form the new county.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the staff analysis and proposed statement of decision to deny the test claim.

(Member Olsen returned to the meeting room.)

Parties were represented as follows: Anne Rierson, Deputy County Counsel, representing Santa Barbara County; Carla Shelton representing the Department of Finance.

Following discussion among Commission members, staff, and parties, Member Saylor made a motion to adopt the staff recommendation. With a second by Member Chivaro, the staff recommendation to adopt the statement of decision denying the test claim was adopted by a vote of 6-0.

APPROVAL OF MINUTES (action)

Item 1 January 25, 2013

Member Chivaro made a motion to adopt the minutes. With a second by Member Rivera, the January 25, 2013 hearing minutes were adopted by a vote of 5-0 with Chairperson Gillihan abstaining.

HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND GUIDELINES, AND INCORRECT REDUCTION CLAIMS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

B. PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

Item 6 *Behavioral Intervention Plans (BIPs), CSM 4464 - TO ADOPT STATEMENT OF DECISION AND PARAMETERS AND GUIDELINES CONFORMING TO THE VOTE TAKEN ON JANUARY 25, 2013*

California Code of Regulations, Title 5, Sections 3001 and 3052

Register 93, No. 17; Register 96, No. 8; Register 96, No. 32.

Butte County Office of Education, San Diego Unified School District,
San Joaquin County Office of Education, Claimants

The sole issue before the Commission for this item is to determine what was intended by the Commission's vote at the January 25, 2013 hearing. At that hearing, the Commission adopted portions of two analyses and both methodologies for reimbursement, requiring staff to redraft the proposed statement of decision to reflect a reasonable reimbursement methodology (RRM) for the initial period of time, and actual cost claiming thereafter. There was some confusion over the date to which the RRM should apply and the time when actual cost claiming should begin.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the staff analysis and proposed statement of decision to clarify that the Commission vote at the January 25, 2013 hearing intended that either (1) the RRM extend to the entire initial claiming period, which, based on the timing of the hearing and the production of claiming instructions by the State Controller's Office would include fiscal year 2012-2013; or (2) the RRM extend only to fiscal 2011-2012, meaning the initial claims filed by the districts and SELPAs would include both the RRM for fiscal years 1993-1994 through 2011-2012, and actual costs for fiscal year 2012-2013.

Parties were represented as follows: Diana McDonough of the law offices of Fagen Friedman & Fulfroost representing the claimants; Jim Spano and Jill Kanemasu representing the State Controller's Office; Christian Osmena representing the Department of Finance.

Following discussion among the Commission members, staff, parties, and the public, Member Saylor made a motion. With a second by Member Rivera, the staff recommendation to adopt the proposed parameters and guidelines and statement of decision approving the RRM from July 1, 1993 to June 30, 2012 and approving actual cost reimbursement for claims beginning July 1, 2012 was adopted by a vote of 6-0.

- Item 7 *Williams Case Implementation I, II, III*
05-TC-04, 07-TC-06, and 08-TC-01
- Education Code sections 14501, 33126(b), 35186, 41020, and 42127.6
- Statutes 2004, Chapter 900 (SB 550); Statutes 2004, Chapter 902 (AB 3001); Statutes 2004, Chapter 903 (AB 2727); Statutes 2005, Chapter 118 (AB 831); Statutes 2006, Chapter 704 (AB 607);
and Statutes 2007, Chapter 526 (AB 347)
- San Diego County Office of Education and Sweetwater Union High School District, Claimants

These parameters and guidelines address the activities required with respect to annual compliance audits of school districts, school accountability report cards, fiscal oversight by the county offices of education, and a new Williams complaint process.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed statement of decision and parameters and guidelines.

Parties were represented as follows: Arthur Palkowitz of the law offices of Stutz Artiano Shinoff & Holtz representing the claimants; Christian Osmena representing the Department of Finance.

Following concurrence of the parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Alex, the staff recommendation to adopt the proposed statement of decision and parameters and guidelines was adopted by a vote of 6-0.

- Item 8 *Minimum Conditions for State Aid*, 02-TC-25 and 02-TC-31
- Education Code Sections 66010.2, 66010.7 66721.5, 66731, 66732, 66736, 66738, 66740, 66742, 70902, 78015, and 78016
- Statutes 1988, Chapter 973; Statutes 1991, Chapter 1188; Statutes 1998, Chapter 365; and Statutes 2000, Chapter 187
- California Code of Regulations, Title 5, Sections 53203, 53207, 55001, 55002, 55005, 55006, 55150, 55201, 55202, 55750, 55751, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759, 55760, 55761, 55764, 55800, 55805, 55805.5, 55806, 58102, 58104, and 58106
- Register 91, Number 23; Register 93, Number 25; Register 93, Number 42; Register 94, Number 38; Register 98, Number 7; Register 2000, Number 50; Register 2002, Number 8; and Register 2003, Number 18.
- Los Rios Community College District, Santa Monica Community College District, and West Kern Community College District, Co-Claimants

These parameters and guidelines address standards for the formation of basic operation of the California community colleges.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the proposed statement of decision and parameters and guidelines.

Parties were represented as follows: Keith Petersen of SixTen and Associates representing the claimants; Christian Osmena representing the Department of Finance.

(Member Saylor stepped out of the meeting room.)

Following concurrence of the parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Rivera, the staff recommendation to adopt the proposed statement of decision and parameters and guidelines was adopted by a vote of 5-0. Member Saylor was not present for the vote.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)

- Item 11 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

Note: This item will only be taken up if an application is filed.

No applications were filed.

STAFF REPORTS

- Item 12 Legislative Update (info)

Assistant Executive Director Jason Hone presented this item.

- Item 13 Chief Legal Counsel: Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 14 Executive Director: Workload, Budget, and Tentative Agenda Items for Next Meeting (info)

(Member Saylor returned to the meeting room.)

Executive Director Heather Halsey presented this item.

PUBLIC COMMENT

Mr. Allan Burdick commented on Item 5, *California Public Records Act*, having been put on the Consent Calendar and sought clarification on the language of the adopted parameters and guidelines. Chief Counsel Camille Shelton replied that the item was on consent and that Commission staff could point to areas in the staff analysis for that item to answer Mr. Burdick's questions.

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(e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]
2. *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.* (petition and cross-petition), Third District Court of Appeal, Case No. C070357 (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*]
3. *California School Board Association (CSBA) v. State of California et al.*, Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
4. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al* (petition and cross-petition). Second District Court of Appeal, Case No. B237153 (Los Angeles County Superior Court, Case No. BS130730) [*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(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 or staff.

B. PERSONNEL

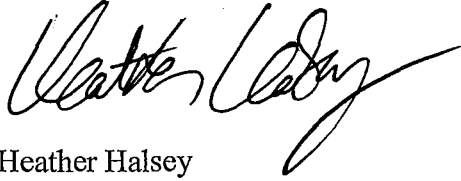
To confer on personnel matters pursuant to Government Code section 11126(a).

REPORT FROM CLOSED EXECUTIVE SESSION

At 11:54 a.m., Chairperson Gillihan reconvened in open session and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2), to confer and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed in the published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; and pursuant to Government Code section 11126(a)(1), to confer on personnel matters.

ADJOURNMENT

Hearing no further business, Chairperson Gillihan adjourned the meeting at 11:55 a.m.

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director