

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
December 1, 2011

Present: Member Pedro Reyes, Chairperson
Representative of the Director of the Department of Finance
Member Richard Chivaro, Vice Chairperson
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Ken Alex
Director of the Office of Planning and Research
Member Sarah Olsen
Public 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 Reyes called the meeting to order at 9:00 a.m. Acting Executive Director Nancy Patton called the roll. Member Chivaro was absent.

APPROVAL OF MINUTES

Item 1 October 27, 2011

With a motion for approval by Member Olsen and a second by Member Alex, the October 27, 2011 hearing minutes were adopted by a vote of 4-0.

CONSENT CALENDAR

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)

- PROPOSED PARAMETERS AND GUIDELINES

Item 5 Proposed Parameters and Guidelines
Permanent Absent Voters II, 03-TC-11
Elections Code Sections 3201 through 3206
Statutes 2001, Chapter 922; Statutes 2002, Chapter 664;
Statutes 2003, Chapter 347
And
Proposed Amendment to Parameters and Guidelines
Permanent Absent Voters (CSM 4358)
Former Elections Code Sections 1450 through 1456
Statutes 1982, Chapter 1422
County of Sacramento, Claimant

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

• STATEWIDE COST ESTIMATE

- Item 7 *Comprehensive School Safety Plans II, and Amendment*
02-TC-33, 07-TC-11, 98-TC-01, 99-TC-10
Education Code Sections 32281, 32282, 32286, and 32288
Statutes 1997, Chapter 736; Statutes 1999, Chapter 996;
Statutes 2001, Chapter 890; Statutes 2002, Chapter 506;
Statutes 2004, Chapter 895

Bakersfield City School District, Sweetwater Union High School
District, and San Diego Unified School District, Co-Claimants

Member Olsen made a motion to adopt the consent calendar. With a second by Member Lujano, the consent calendar was adopted by a vote of 4-0.

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

- Item 2 Staff Report (if necessary)

There were no appeals to consider.

**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)**

Acting Executive Director Nancy Patton swore in parties and witnesses participating in the hearing.

A. TEST CLAIMS AND STATEMENTS OF DECISION

- Item 3 *Developer Fees, 02-TC-42*
Education Code Sections 17620, 17621, 17622, 17623, 17624, 17625,
and 17626 as Renumbered or Amended by Statutes 1996, Chapter, 277,
Statutes 1998, Chapter 207, Statutes 1999, Chapter 300 and Statutes
2000, Chapter 135
Government Code Sections 65970, 65971, 65972, 65973, 65974,
65974.5, 65975, 65976, 65977, 65978, 65979, 65980, 65981, 65995,
65995.1, 65995.2, 65995.5, 65995.6, 65995.7, 65996, 65997, 65998,
66002, 66004, 66005, 66006, 66007, 66008, 66016, 66017, 66018,
66018.5, 66020, 66022, 66023, 66024, 66025, 66030, 66031, 66032,
66034, and 66037 as Added, Amended or Renumbered by Statutes 1977,
Chapter 955; Statutes 1979, Chapter 282; Statutes 1980, Chapter 1354;
Statutes 1981, Chapter 201; Statutes 1982, Chapter 923; Statutes 1983,
Chapters 921 and 1254; Statutes 1984, Chapter 1062; Statutes 1985,
Chapter 1498, Statutes 1986, Chapters 136, 685, 887, and 888; Statutes
1987, Chapters 927, 1002, 1037, 1184, and 1346; Statutes 1988,
Chapters 29, 160, 418, 912, and 926; Statutes 1989, Chapters 170, 1209,
and 1217; Statutes 1990, Chapters 633 and 1572; Statutes 1992,
Chapters 169, 231, 487, 605, and 1354; Statutes 1993, Chapters 589 and
1195; Statutes 1994, Chapters 300, 686, 983, and 1228; Statutes 1995,
Chapter 686; Statutes 1996, Chapters 277, 549, 569, and 799; Statutes
1997, Chapter 772; Statutes 1998, Chapters 207, 407, and 689; Statutes

1999, Chapters 300 and 858; Statutes 2000, Chapter 135; and Statutes 2002, Chapters 33 and 1016

Clovis Unified School District, Claimant

This is a test claim filed by Clovis Unified School District that addresses activities required by the School Facilities Act, the AB 2926 program, and the Mitigation Fee Act as a condition of imposing developer fees to help pay for school facilities. This test claim also addresses mediation and settlement proceedings authorized by the Mediation and Resolution of Land Use Disputes Law that assists in settling disputes about developer fees imposed under AB 2926.

Senior Commission Counsel Heather Halsey presented this item and recommended that the Commission partially approve the test claim.

Parties were represented as follows: Art Palkowitz, Stutz Artiano Shinoff & Holtz, representing claimant Clovis Unified School District, and Susan Geanacou and Chris Ferguson representing the Department of Finance.

Mr. Palkowitz agreed with staff's recommendation that a portion of the test claim was reimbursable. However, he disagreed with staff on the portions of the test claim that staff recommended be denied.

Mr. Ferguson and Ms. Geanacou stated that Department of Finance disagreed with staff's recommendation for partial approval of the test claim, and recommended that the claim be denied.

[Chairperson Reyes noted that Member Chivaro was now present.]

After further discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation and statement of decision. With a second by Member Lujano, the staff recommendation to partially approve the test claim and adopt the statement of decision was adopted by a vote of 5-0.

Item 4 *Peace Officer Procedural Bill of Rights II*, 03-TC-18
Government Code Sections 3304, 3306.5, 3309, and 3312
Statutes 1976, Chapter 465; Statutes 1994, Chapter 1259; Statutes 1997,
Chapter 148; Statutes 1998, Chapter 786; Statutes 1998, Chapter 263;
Statutes 1998, Chapter 112; Statutes 1999, Chapter 338; Statutes 2000,
Chapter 209; Statutes 2002, Chapter 1156; and Statutes 2002, Chapter
170

City of Newport Beach, Claimant

This test claim addresses statutes that provide a series of rights and procedural protections to peace officers who are facing discipline or investigation by their employers.

Commission Counsel Kenny Louie presented this item and recommended that the Commission partially approve the test claim.

Parties were represented as follows: Juliana Gmur, MAXIMUS, representing claimant City of Newport Beach, and Donna Ferebee and Miranda Jackson, representing Department of Finance.

Ms. Gmur stated that the claimant concurred with the staff analysis. Ms. Ferebee stated that Department of Finance had no significant concerns the staff analysis.

Member Chivaro made a motion to adopt the staff recommendation and statement of decision. With a second by Member Olsen, the staff recommendation to partially approve the test claim and adopt the statement of decision was adopted by a vote of 5-0.

B. REQUEST TO REVIEW CLAIMING INSTRUCTIONS

- Item 6 *Request to Review Claiming Instructions, 09-RCI-01*
Five Amended Parameters and Guidelines Adopted January 29, 2010
Collective Bargaining, 05-PGA-48
Habitual Truant, 05-PGA-51
Intradistrict Attendance, 05-PGA-53
Juvenile Court Notices, 05-PGA-54
Health Fee Elimination, 05-PGA-69
And
Twelve Amended Parameters and Guidelines Adopted March 26, 2010
Caregiver Affidavits, 05-PGA-46
County Office of Education, Fiscal Accountability, 05-PGA-47
Financial Compliance Audits, 05-PGA-49
Graduation Requirements, 05-PGA-50
Law Enforcement Agency Notices, 05-PGA-55
Physical Education Reports, 05-PGA-60
Physical Performance Tests, 05-PGA-61
Pupil Health Screenings, 05-PGA-63
Pupil Residency Verification and Appeal, 05-PGA-64
Removal of Chemicals, 05-PGA-66
School District Fiscal Accountability Reporting, 05-PGA-67
Law Enforcement Jurisdiction Agreements, 05-PGA-70
And
Three Amended Parameters and Guidelines Adopted May 27, 2010
Notification of Truancy, 05-PGA-56
Notification to Teachers: Pupils Subject to Suspension or Expulsion, 05-PGA-57
Pupil Suspensions, Expulsions, and Expulsion Appeals, 05-PGA-65

Castro Valley Unified School District, Grossmont Union High School District, San Jose Unified School District, San Diego County Office of Education, Gavilan Joint Community College District, San Mateo County Community College District, State Center Community College District, Requestors

This is a request to review claiming instructions for parameters and guidelines that were amended by the Commission in 2010 to update boilerplate language to require eligible claimants to retain contemporaneous source documentation to support their reimbursement claims.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the proposed statement of decision to direct the Controller to modify the claiming instructions to conform to the amended parameters and guidelines.

Parties were represented as follows: Keith Petersen, SixTen and Associates, representing the requesting school districts, and Jill Kanemasu, representing the State Controller's Office.

Mr. Petersen stated that the requestors concur with staff's recommendation. Ms. Kanemasu stated that the Controller's Office also agreed with the staff recommendation.

With a motion by Member Alex, and a second by Member Lujano, the staff recommendation and statement of decision were adopted by a vote of 5-0.

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 8 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 9 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Ms. Shelton presented this item.

- Item 10 Executive Director's Report

Ms. Patton presented this item.

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(e)(1):

1. *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]
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., 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. 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]

4. *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.*, 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]
5. Cross Petition: *County of Los Angeles and Cities of Bellflower, Carson, Commerce, Covina, Downey and Signal Hill v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region*, 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]
6. *California School Board Association (CSBA) v. State of California et al.*, Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Redetermination Process]

B. PERSONNEL

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

Hearing no further comments, Chairperson Reyes adjourned into closed executive session pursuant to Government Code section 11126(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 to confer on personnel matters pursuant to Government Code section 11126(a)(1).

REPORT FROM CLOSED EXECUTIVE SESSION

At 10:23 a.m., Chairperson Reyes reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(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 to confer on personnel matters pursuant to Government Code section 11126(a).

ADJOURNMENT

Hearing no further business, Chairperson Reyes adjourned the meeting at 10:24 a.m.



Nancy Patton
Acting Executive Director