

ITEM 2
PROPOSED MINUTES
COMMISSION ON STATE MANDATES

State Capitol, Room 447
Sacramento, California
December 2, 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

I. CALL TO ORDER AND ROLL CALL

Chairperson Bryant called the meeting to order at 9:38 a.m. Executive Director Paula Higashi called the roll. Member Chivaro was absent.

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 listed on the published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126, subdivision (a)(1), to appoint the new Executive Director and Interim Executive Director pursuant to Government Code section 17530.

Member Chivaro entered the hearing room.

II. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTION 11126 (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)(2)(A):

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*]

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 (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126, subdivision (a)(1), to appoint the new Executive Director and Interim Executive Director pursuant to Government Code section 17530.

III. REPORT FROM CLOSED EXECUTIVE SESSION

At 10:17 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 published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; to confer on personnel matters pursuant to Government Code section 11126, subdivision (a)(1), to appoint the new Executive Director and interim Executive Director pursuant to Government Code section 17530.

Chairperson Bryant congratulated Members Worthley, Olsen, and Glaab on their recent reappointments to the Commission and Member Worthley on his reelection as Tulare County Supervisor, representing the Fourth District.

IV. APPROVAL OF MINUTES

Item 1 November 9, 2010

The November 9, 2010 hearing minutes were adopted by a vote of 7-0, on a motion by Member Chivaro and second by Member Glaab.

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

Item 2 *Appeal of Executive Director's Decision to Deny the County of Santa Clara's Request for an Expedited Hearing on its Incorrect Reduction Claim: Handicapped and Disabled Students, 09-4282I-05*
County of Santa Clara, Appellant

Chief Counsel Camille Shelton presented this item. Ms. Shelton stated that this is an appeal of the Executive Director's decision that denies a request by the County of Santa Clara to expedite the hearing on its incorrect reduction claim which was originally filed April 13, 2010.

The incorrect reduction claim challenges the Controller's reduction of mental health rehabilitation costs for fiscal years 2003-2004 through 2005-2006 under the Handicapped and Disabled Students program.

Staff recommends that the Commission uphold the Executive Director's decision to deny the County's request for an expedited hearing. The County has not submitted evidence to justify prioritizing its claim over old or pending incorrect reduction claims.

Furthermore, as discussed in prior commission meetings, the analysis for this item contains a plan for addressing the incorrect reduction claims that remain pending.

Consistent with the Commission's practice and under the new regulations adopted in September, and operative January 1, 2011, the County's incorrect reduction claim on Handicapped and Disabled Students will be noticed for hearing when the draft staff analysis is issued.

Parties were represented as follows: Patrick Premo, Fenwick and West, representing the County of Santa Clara, and Jenny Yelin with the County of Santa Clara.

Mr. Premo stated that the IRC involves \$8 million that pays for critical federal and state rehabilitation services for extremely needy members of the local community. These services are

for children who are severely emotionally disturbed; who have been exposed to drugs in utero; who have suffered major abuse. The services that are being provided are in-home services that are helping these children get educational benefits that they would not otherwise obtain.

According to Mr. Premo, the County is in a very difficult and untenable position because it must decide whether to continue funding this program or wait and possibly violate the state and federal mandate to provide these services. The County is willing to go through the incorrect reduction claim (IRC) process, and has attempted to comply with that process and to expedite it. But due to the backlog of claims there is an indefinite delay.

Mr. Premo stated that the County has reviewed the appeal of its request for an expedited hearing and noticed dates that said that optimistically, the hearing could be September 2012. Mr. Premo went on to state that he thinks it would be just speculation that the incorrect reduction claim could be decided in that time frame. And he believes that the decision about the funding needs to take place soon.

As part of the appeal, the county was asked what was unique about their situation that should be handled differently from other claims. Mr. Premo stated that he believed that the county's situation was unique, because the expenditure is ongoing and "extremely sizable." Additionally, because of the benefits that are at issue and the possibility of being in violation of this federal and state mandate if the funding is not continued, there is an urgency here that he believes requires this to be on an expedited process.

Member Worthley stated that although he was sympathetic to the plight of the county, the Commission has a large backlog of claims and that all claimants likely view their claims as critical. Additionally, he pointed out that there is no procedure in place to "leapfrog" one claim over another, although the Commission has discussed some policy changes that may allow for headway to be made in the backlog. He noted that the county was, effectively, looking for declaratory relief and that the Commission could not offer that remedy.

Mr. Premo pointed out that the Bureau of State Audits addressed the claim backlog and recommended that IRCs be prioritized.

Member Worthley repeated that the Commission would need to make policy changes before any sort of claim prioritization could occur, and he noted that the rights of other claimants before the Commission must be respected.

Ms. Shelton noted that many IRCs include reductions for ongoing costs. All mandated programs provide a service to the public which the Legislature felt was important enough to enact and therefore, it is difficult for the Commission to say one is more important than another.

Mr. Premo acknowledged that Santa Cara's claim was not the only claim that has ongoing expenditures, and stated that all such claims should be prioritized based on the impact of the amount. He pointed out that the way the claims are prioritized by age will not effectively address the backlog. If this urgent matter cannot be expedited then, at minimum, the September 2012 date needs to be made a certain date.

Ms. Shelton clarified that the way the Commission must comply with the BSA recommendation to prioritize the workload efficiently and as expeditiously as possible, is to batch the claims by program because there are usually multiple incorrect reduction claims filed over the years on each program. She stated that she is hopeful that the same procedure the Commission is discussing using for Investment Reports can be used for other programs without having to go through a full hearing process. The problem with the County's claim, is that the program that it is filed on is relatively new and the county's issue of rehabilitation costs is an isolated claim.

Therefore, the Commission’s decision won’t have any effect on any of the other claims pending. Chairperson Bryant warned that prioritizing by dollar value might not be the best method since county budgets vary widely in size.

Member Glaab echoed Member Worthley’s sentiment that the Commission is very sensitive to prioritizing claims. He suggested that the Commission should look into a way to prioritize claims based on set criteria.

Ms. Higashi suggested that if the commission wants to address claim prioritization it should place the matter on the agenda for another meeting because that is not the topic currently before them.

Chairperson Bryant agreed and suggested that the members also consider whether working on prioritization criteria might keep staff from actually doing the work itself.

Ms. Shelton pointed out that the Commission’s regulations do provide for an informal conference procedure which would be available to discuss these issues with all interested parties.

Mr. Premo reiterated the county’s position that claims should be prioritized based on the “real impact” that the claim has on the members of the community rather than on the age of the claim.

Ms. Shelton highlighted the fact that there are currently other lawsuits pending on programs that deal with what is going to happen next to the county and the program. The governor’s decision to blue pencil the appropriation for the Handicapped and Disabled Students program and declare it suspended created an issue as to the rights and responsibilities of the state, the Department of Education, the school districts, and the counties as to who was going to provide those services.

With a motion by Member Olsen, and a second from Member Cox, the staff recommendation to deny the appeal was adopted by a vote of 7-0.

Item 3 Appeals of Executive Director’s Decisions regarding this month’s agenda items. (Placeholder item)

Ms. Higashi indicated that there were no other appeals under Item 3.

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

PROPOSED PARAMETERS AND GUIDELINES

Item 4 *Comprehensive School Safety Plans II*
Draft Proposed Parameters and Guidelines
02-TC-33, from January 1, 2002 through June 30, 2009
07-TC-11, from January 1, 2005 through June 30, 2009
and
Comprehensive School Safety Plans I and II
Draft Proposed Consolidated Parameters and Guidelines
98-TC-01, 99-TC-10, 02-TC-33, 07-TC-11
Beginning Fiscal Year 2009-2010
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 Claimants

Ms. Shelton presented Item 4, stating that this item includes the proposed parameters and guidelines for the initial year's cost for *Comprehensive School Safety Plans II* and proposed consolidated parameters and guidelines for *Comprehensive School Safety Plans I and II* for costs incurred beginning July 1, 2009. She confirmed that the Commission received and responded to comments on the draft staff analysis and proposed parameters and guidelines from the State Controller's Office.

Staff recommended that the Commission adopt the proposed parameters and guidelines for *Comprehensive School Safety Plans II*, test claim number 02-TC-33, for reimbursement from January 1, 2002 through June 30, 2009; to adopt the Proposed Parameters and Guidelines for *Comprehensive School Safety Plans* for the amendment in 07-TC-11 for reimbursement from January 1, 2005, through June 30th, 2009; and to adopt the proposed consolidated parameters and guidelines for *Comprehensive School Safety Plans I* and *Comprehensive School Safety Plans II* for costs incurred beginning July 1, 2009. She also recommended that the Commission authorize staff to make any non-substantive and technical corrections to the parameters and guidelines following the hearing.

Parties were represented as follows: Keith Petersen, SixTen and Associates, representing test claimant, and Jill Kanemasu, State Controller's Office.

Mr. Petersen stated that he had no objections. Ms. Kanemasu stated that once the changes requested by the State Controller were made, the Controller's Office concurs with the proposed parameters and guidelines.

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

VII. STAFF REPORTS

Item 5 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.

Ms. Higashi announced that there was nothing to report on Item 5.

Item 6 Update on Final Report to State Auditor: Implementation of Recommendations from Bureau of State Audits October 15, 2009 Report 2009-501: *State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and Controlling Costs and Liabilities*

Assistant Executive Director Nancy Patton presented Item 6. She explained that in September 2010, the Commission submitted its final report on the implementation of the 2009 BSA audit. BSA has responded that the Commission has not fully implemented Recommendation 1: to work with the Department of Finance to seek additional resources to reduce backlog. BSA required the Commission to submit a form, explaining why the recommendation is not being implemented and whether we plan to fully implement it. The Commission did not implement this recommendation because we could not meet the criteria for filing a budget change proposal. However, we will continue to seek additional resources. Ms. Patton recommended the Commission approve the report for submission next week.

Member Cox commented that the form for BSA should include the exact language from the Department of Finance to explain why no BCP was filed.

Member Olsen commented that there needs to be some sort of exception for small organizations because there is no way that a small organization, a single purpose organization, can meet the requirements for the BCP proposal.

Member Worthley moved to approve the staff recommendation with the caveat that it include Member Cox's suggestion. The motion was approved unanimously (7-0)

Item 7 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Camille Shelton presented Item 7. She stated that there were only two things to report. First, the court sustained the demurrer of the Commission in the *County of Santa Clara* case and the State Controller's Office has leave to amend on or before December 17, 2010. Second, Ms. Shelton pointed out that in the *California School Boards Association v. Schwarzenegger*, the court has now listed the Commission as a respondent and so the case will be put on the closed-session litigation report now.

Item 8 Executive Director's Report

Ms. Higashi indicated that since she was retiring, this was her last Executive Director report. She noted that the Commission's emergency regulations on the mandate redetermination process have been filed and are in effect. She recognized Heather Halsey, Heidi Palchik, Nancy Patton, and Camille Shelton for the work that they did on the regulations and thanked them for meeting the timelines.

Ms. Higashi pointed out that she was not reporting on the budget. She stated that there have been letters sent asking the Commission to identify further cuts but the Commission is still in discussions with Finance to determine what the cuts will be. The Commission has until December 23 to identify what the cuts will be.

According to Ms. Higashi, the Commission received the State Controller's AB 3000 report which was included in the members' binders. The reports are also available online.

Ms. Higashi stated that there is a laundry list of tentative agenda items for the coming year on the following pages. The only one that needs to be removed from the list is *Comprehensive School Safety Plans* because the Commission just heard that one. She stated that most of the cases on the list are works in progress.

VIII. PUBLIC COMMENT

Chairperson Bryant opened public comment and read the report from closed-executive session which stated:

"The Commission on State Mandates appointed Drew Bohan as the Executive Director. Drew is currently the assistant secretary for climate change programs at the California Natural Resources Agency, and he has previously held the following positions: chief counsel, California Department of Conservation; executive policy officer for the California Ocean Protection Council; deputy cabinet secretary in the Office of the Governor; assistant secretary for Policy at the California Environmental Agency; and executive director of Santa Barbara Channelkeeper."

Additionally, Chairperson Bryant announced that the Commission also appointed Nancy Patton as interim Executive Director from December 17 until the date on which Drew Bohan assumes the Executive Director position.

Chairperson Bryant congratulated Mr. Bohan on his new position. She commented that she and Member Cox have both worked with Mr. Bohan in the past and agree that he will be terrific at the Commission. She also thanked Nancy for her continued stewardship of the Commission.

Ms. Patton presented a resolution to Ms. Higashi that gave an overview of Ms. Higashi's 35-year career with the state and that honored her upon her retirement and thanked her for her dedicated service to the state. Chairperson Bryant opened the floor to additional public comment.

Mr. Allen Burdick thanked Ms. Higashi on behalf of local government. He commented that they felt that they had been treated fairly by her during her tenure as Executive Director. He also thanked her for all of her work to try to bring about reforms in the mandate filing process. He stated that local government representatives have enjoyed working with her and have appreciated her help.

Chairperson Bryant also announced that after four years serving on the Commission, this would be her last meeting as well. She thanked the Commission staff, the Department of Finance staff and the OPR staff.

IX. ADJOURNMENT

Hearing no further business, Chairperson Bryant adjourned the meeting at 12:17 p.m.

Drew Bohan
Executive Director