

ITEM 2

PROPOSED MINUTES

COMMISSION ON STATE MANDATES

Location of Meeting: State Treasurer's Office
915 Capitol Mall, Room 587
Sacramento, California
May 3, 2010

Teleconference Locations:

Tulare County Administrative Office
Administration Building
2800 West Burrel Avenue
Visalia, California

City Hall
27801 La Paz Road
Laguna Niguel, CA

Present: Sacramento
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 Sarah Olsen
Public Member

Visalia
Member J. Steven Worthley
County Supervisor

Laguna Niguel
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Bryant called the meeting to order at 11:35 a.m. Executive Director Paula Higashi called the roll.

Item 1 Legislative Update

Ms. Patton reported that staff is tracking three bills that may affect the Commission on State Mandates (Commission). SB 894 contains the Commission's language to include additional language in our Reports to the Legislature. This will implement a BSA recommendation. The Commission previously took a support position on this bill. AB 349 would require Department of Finance to provide repeal

language to the Legislature for all mandates proposed for suspension. Staff will prepare a bill analysis and staff recommendation of AB 349 for the May 27, 2010 hearing.

Ms. Patton presented a staff analysis of AB 2082 for discussion and Commission action.

AB 2082 would transfer the authority to decide incorrect reduction claims (IRCs) from the Commission Mandates to the Education Audit Appeals Panel or EAAP; expand the reporting requirements on mandated programs for the Legislative Analyst; and require Legislative Counsel to include language in bills that impose mandates on school districts, that automatically repeals or sunsets the provisions in five years.

Ms. Patton identified the following legal issues raised by AB 2082:

- It authorizes the EAAP to adjudicate an IRC under a “substantial compliance” standard, which may conflict with existing mandates law, may result in an invalid retroactive application of the law, and may change the rights and liabilities of the state, and increase state-mandated costs.
- May result in conflicting decisions on the same state-mandated program, may result in increased litigation.
- Creates a conflict in law regarding jurisdiction over incorrect reduction claims.
- Does not address the relationship between the Commission and its decisions, and the EAAP and its decisions.

Due to these numerous legal issues, staff recommended the Commission take an “Oppose Unless Amended” position unless the provisions regarding transfer of incorrect reduction claims is removed.

Member Glaab asked if Commission staff had pointed out the bill’s deficiencies to the Legislature when the bill was pending in Assembly Education Committee. Ms. Higashi responded that no testimony was given at the committee hearing, because the bill was on the consent calendar, the Commission did not have a position on the bill, and committee staff discouraged comments since it was a committee bill and the last policy committee hearing.

Allan Burdick, CSAC-League SB 90 Service, commented that the Commission is the appropriate agency to adjudicate IRCs. However, the Commission should take steps to complete the IRC process by scheduling IRCs for hearing. He asked how the Commission places IRCs among priorities. Mr. Burdick pointed out that some IRCs are over five years old and that a lot of local agencies have not filed IRCs due to the lack of a timeline for completion.

Dick Hamilton, General Counsel, California School Boards Association (CSBA) agreed with Mr. Burdick and stated that funding is the issue. The Commission is not getting funding and the logical response is increased funding. Ms. Olsen asked if the issue is getting the IRCs dealt with.

Mr. Burdick commented that the Commission does not have expertise in cost accounting issues, and normally, locals think the Commission is the better place to be for legal issues. He provided examples of the issues raised by different IRC filings, including lack of supporting documentation and disputes over reimbursable activities, offsets, and excessive or unreasonable costs claimed. He concluded that if the Commission is the best body to determine IRCs, and claimants still need certainty as to the process.

Mr. Hamilton stated that funding is an issue for the EAAP or the Commission. One agency should be funded to complete the IRC workload, rather than providing funding to two different

agencies. Mr. Hamilton also stated that he did not understand the rationale behind splitting responsibilities for completion of IRCs between two agencies.

Mr. Burdick suggested that an alternative process would be to allow the Commission to pass on an IRC so claimants can go to court.

Member Worthley asked Mr. Burdick and Mr. Hamilton if they agreed with the staff recommendation. Mr. Burdick agreed. Mr. Hamilton stated that CSBA has not taken a position on this bill.

Member Olsen asked how important the “substantial compliance” issue is to schools.

Mr. Hamilton explained the intent behind providing the EAAP with a substantial compliance standard, was to provide flexibility to EAAP to avoid the circumstance in an audit when schools’ funding is reduced to zero even though they substantially complied with required provisions.

Mr. Burdick noted that even when there is no question that the service has been provided, the SCO has reduced claims because of the lack of supporting documentation. He provided other examples of SCO reductions.

Member Olsen requested staff to respond to the testimony.

Ms. Higashi addressed the workload issue and the fact that the Commission is not staffed to do IRCs. Following the recommendations from the recent BSA report, staff had intended to prepare a BCP for additional positions. Unfortunately, no BCPs were accepted this year. Thus, staff created a work plan that allows the Chief Legal Counsel and Executive Director to address IRCs as time is available. The IRCs are being reviewed to determine if any may be consolidated for analysis and hearing. Staff will convene informal conferences with the State Controller’s staff to encourage settlement once the Commission has adopted a decision. The Los Angeles County Investment Reports IRC is scheduled to be heard at the May 27, 2010 hearing.

Ms. Higashi noted that at the same time, there is still a backlog of pending test claims. Since there is no statutory deadline for completing IRCs, staff is focusing on elimination of the test claim backlog. Meanwhile, audits continue to be issued.

Chief Legal Counsel Camille Shelton discussed the substantial compliance standard, and that depending on how the standard is applied, it may conflict with the requirements of article XIII B, section 6. The courts have held that article XIII B, section 6 requires reimbursement for actual costs incurred, and that reimbursement is a question of law and not equity. In addition, many IRCs analyzed in the past dealt with pure questions of law; whether an activity is reimbursable in the first place. Ms. Shelton also addressed Mr. Hamilton’s concern about State Controller reductions to zero when the local entity performed the program activities. The Commission has addressed those issues on IRCs in the past, approving the IRC on the ground that the Controller’s reductions were arbitrary and capricious and not based on evidence in the record.

Chairperson Bryant and Member Olsen asked staff if they are recommending that the provisions regarding the EAAP be dropped entirely from the bill. Ms. Shelton and Ms. Patton responded that the recommendation is for the language regarding IRCs to be deleted. Chairperson Bryant stated that staffs’ arguments were compelling. Chairperson Bryant asked if there was public comment.

With a motion by Member Chivaro, and a second by Member Worthley, the recommendation to Oppose AB 2082 unless it is amended was approved by a vote of 7-0.

**Item 2 Budget Update: Working Group’s Draft Legislation to Allow
Commission to Adopt New Test Claim Decision to Replace Prior
Decision Based on a Subsequent Change in Law
(a.k.a *Reconsiderations and Mandate Redeterminations*)**

Ms. Higashi reviewed the work completed on the proposed reconsideration or redetermination process, since the last hearing. The working group continues to meet to discuss this new process, which legislative staff describes as “redetermination process.”

She stated that language was added regarding the provision of free copies of archival material to Commission staff. She also noted that legislative staff met with Legislative Counsel to discuss whether the Legislature should have a role in requesting redeterminations. Legislative Counsel stated that the Legislature should not have a direct role. But, it could request that Department of Finance request the Commission to redetermine an existing program.

Ms. Higashi reviewed new sections added to the Working Group’s April 26, 2010 draft, including amendments to clarify when parameters and guidelines amendments could be requested (Gov. Code, § 17557), and changes to exclusions from costs mandated by the state Gov. Code, § 17556). She also stated that a letter opposing the draft language had been received.

Mr. Hamilton summarized a letter from CSAC, League of California Cities, and CSBA. He described the proposed language as “too broad.” He asked if the Commission were serious about its quasi-judicial role and the fact that the Commission’s determinations are final. He suggested that the proposal went too far and should be limited and narrowed to require a two-hearing process, and language clarifying the burden of proof.

Mr. Burdick added that the proposed language must be very limited in scope, and recommended that the language not be placed in a trailer bill, which would prevent local agencies from airing their concerns.

Member Worthley agreed that it must be limited in scope. To repeatedly reopen and go over test claims is not good law and is not good in a practical sense.

Ms. Higashi and Chairperson Bryant agreed that the language should be narrowed and that for the next meeting, staff would review the Working Group draft for its impact on Commission workload.

Chairperson Bryant stated that she would like to see stakeholder participation in the Working Group. She then asked for public comment.

Hearing no further comments, at 12:30 p.m., 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).

CLOSED EXECUTIVE SESSION

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, subdivision (e)(1):

State of California, Department of Finance v. Commission on State Mandates, et al., Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]

Department of Finance v. Commission on State Mandates, et al., Sacramento County Superior Court Number 34-2010-80000529 (Graduation Requirements Parameters and Guidelines Amendments) that was filed and served on April 30, 2010

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. PERSONNEL

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

REPORT FROM CLOSED EXECUTIVE SESSION

At 12:48 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).

Item 3 Salary Adjustment: Executive Director, Commission on State Mandates, pursuant to Government Code Section 17530

Member Lujano reported that the Commission met in closed executive session to confer on personnel matters. He stated that a change in the salary level of the executive director position from Level F to Level D had been approved by the Department of Personnel Administration and the Governor's Office. Therefore, based on the Commission's recent evaluation, the Personnel Subcommittee recommended that the executive director's salary be increased by 5.83 percent, effective June 1, 2010.

On a motion by Member Olsen, and a second by Member Chivaro to increase the executive director's salary by 5.83% effective June 1, 2010, the Commission approved the motion by a voted of 5-2 with Member Cox and Chairperson Bryant voting no.

ADJOURNMENT

Hearing no further business, Chairperson Bryant adjourned the meeting at 12:50 pm.

PAULA HIGASHI
Executive Director