

Item 1

PROPOSED MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447

Sacramento, California

March 27, 2009

Present: Member Miriam Barcelona Ingenito, 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 Anne Houston Schmidt
Representative of the Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member J. Steven Worthley
County Supervisor
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Ingenito called the meeting to order at 9:44 a.m. Executive Director Paula Higashi called the roll and stated that Member Chivaro was on his way.

APPROVAL OF MINUTES

Item 1 January 30, 2009

The January 30, 2009 hearing minutes were adopted by a vote of 6-0.

PROPOSED CONSENT CALENDAR

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

A. STATEWIDE COST ESTIMATE

Item 11 *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses, 05-PGA-04 (CSM-4455)*
San Diego Unified School District, Test Claimant
Education Code Section 48915, subdivisions (a) and (b)
Statutes 1993, Chapters 1255 and 1256
Education Code Section 48918
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes 1983, Chapters 498 and 1302; Statutes 1985, Chapter 856; Statutes 1987, Chapter 134; Statutes 1990, Chapter 1231; and Statutes 1994, Chapter 146

Item 13 *Mentally Disordered Offenders: Treatment as a Condition of Parole*, 00-TC-28
County of San Bernardino, Claimant
Penal Code Section 2966
Statutes 1985, Chapter 1419 (SB 1296); Statutes 1986, Chapter 858 (SB 1845); Statutes 1987, Chapter 687 (SB 425); Statutes 1988, Chapter 658 (SB 538); Statutes 1989, Chapter 228(SB 1625); Statutes 1994, Chapter 706 (1918)

Item 14 *Racial Profiling: Law Enforcement Training*, 01-TC-01
County of Sacramento, Claimant
Penal Code Section 13519.4
Statutes 2000, Chapter 624 (SB 1608)

Item 15 *Domestic Violence Arrests and Victim Assistance*, 98-TC-14
County of Los Angeles, Claimant
Penal Code Sections 264.2 and 13701
Statutes 1998, Chapters 698 and 702 (AB 1201 and AB 2177)

B. ADOPTION OF PROPOSED RULEMAKING CALENDAR

Item 16 Authorize Executive Director to Initiate Correction Pursuant to Government Code Section 87302

Member Olsen made a motion to adopt items 11, 13, 14, 15 and 16 on the consent calendar. With a second by Member Glaab, the consent calendar was adopted by a vote of 6-0.

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.

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

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing. (Member Chivaro arrived.)

TEST CLAIMS

Item 3 *Tuition Fee Waivers*, 02-TC-21
Contra Costa Community College District, Claimant
Education Code Sections 68044, 68051, 68074, 68075, 68075.5, 68076, 68077, 68078, 68082, 68083, 68084, 68121, 68130.5, 76140
Statutes 1975, Chapter 78 (SB 82); Statutes 1976, Chapter 990 (AB 4289); Statutes 1977, Chapters 36 and 242 (AB 447 and AB 645); Statutes 1979, Chapter 797 (AB 1549); Statutes 1980, Chapters 580 and 789 (AB 2567 and AB 2825); Statutes 1981, Chapter 102 (AB 251); Statutes

1982, Chapter 1070 (AB 2627); Statutes 1983, Chapter 317 (SB 646); Statutes 1988, Chapter 753 (AB 3958); Statutes 1989, Chapters 424, 900, and 985 (AB 1237, AB 259, and SB 716); Statutes 1990, Chapter 1372 (SB 1854); Statutes 1991, Chapter 455 (AB 1745); Statutes 1992, Chapters 170 and 1236 (AB 3058 and SB 2000); Statutes 1993, Chapter 8 (AB 46); Statutes 1995, Chapters 389 and 758 (AB 723 and AB 446); Statutes 1997, Chapter 438 (AB 1317); Statutes 1998, Chapter 952 (AB 639); Statutes 2000, Chapters 571 and 949 (AB 1346 and AB 632); Statutes 2001, Chapter 814 (AB 540); and Statutes 2002, Chapter 450 (AB 1746)
California Code of Regulations, Title 5, Sections 54002, 54010, 54012, 54020, 54022, 54024, 54030, 54032, 54041, 54042, 54045, 54045.5, 54046, 54050, 54060, 54070
Register 77, No. 45 (Nov. 5, 1977); Register 82, No. 48 (Nov. 27, 1982); Register 83, No. 24 (Jun. 11, 1983) Register 86, No. 10 (Mar. 8, 1986); Register 91, No. 23 (April 5, 1991); Register 92, No. 4 (Jan. 24, 1992); Register 92, No. 12 (Mar. 27, 1992); Register 92, No. 18 (Feb. 18, 1992); Register 95, No. 19 (May 19, 1995); Register 99, No. 20 (May 14, 1999); Register 02, No. 25 (Jun. 21, 2002)
Revised Guidelines and Information, "Exemption from Nonresident Tuition" Chancellor of the California Community Colleges, May 2002

Eric Feller, Senior Commission Counsel presented this item. Mr. Feller stated that this test claim alleges a reimbursable mandate for costs associated with determining student residence status and nonresident student tuition fee charges or waivers at community colleges.

As indicated in the analysis, staff finds that the activities on pages 2 through 10 and 65 through 73 are reimbursable. The claimants submitted comments as specified on page 50 to 59 of the record, disagreeing with parts of the draft staff analysis. Staff addressed these comments in the final analysis. Staff also received an 11-page late filing from the Department of Finance, disagreeing with portions of the draft staff analysis. As a result of Finance's comments, staff changed its recommendation to delete the activity of adopting rules and regulations regarding nonresident tuition as a reimbursable activity because the Chancellor's Office issues annual memoranda on this topic. Because these memoranda constitute rules for nonresident tuition, local districts would not need to adopt their own rules. Therefore, the activity would not be reimbursable.

As noted in the supplemental staff analysis, staff disagrees with Finance's other comments. Thus, staff recommends the test claim be approved for the activities on pages 2 through 10 and 65 through 73 as revised by the supplemental analysis and the pink replacement sheets.

Parties were represented as follows: Keith Petersen representing the test claimant; Donna Ferebee and Ed Hanson representing the Department of Finance.

Mr. Petersen began by stating that this test claim had no threshold legal issues in dispute. It is the type of test claim where somebody had to go through line by line and look at the law for the last 30 years. Mr. Petersen stated that Commission staff responded to all of the concerns in his rebuttal and, therefore, Mr. Petersen will stand on his filings.

Donna Ferebee, Department of Finance, stated that Finance continues to assert that districts have always had to consider factors establishing student residency. The addition of more examples of factors, such as the exceptions that changed classifications of students who will be considered, does not result in a new program or higher level of service. The ways in which a student could

show residency were never limited by law. Ms. Ferebee stated that the analysis of financial independence may have changed, but districts have always had to consider a student's showing of financial independence when seeking to change residency status. She continued that districts do not have to revise their own questionnaires because the questionnaires are provided by the Chancellor's Office. Also, a signature under penalty of perjury does not create any new activity for the districts. Finally, Ms. Ferebee stated that waiving tuition and fees for dependents of victims of the September 11th terrorist attacks is not a new program or higher level of service because the Victim Compensation and Government Claims Board does the eligibility determinations and the districts already have established processes for waiving tuition and fees.

Member Olsen decided to abstain from the discussion because she just received the information from Finance and was unable to digest it.

Member Worthley stated that upon reviewing the late filing, it appears to be a matter of discretionary versus mandatory conduct. While there are many things that could be done, the statute now makes them mandatory.

Member Worthley concurred with the staff recommendation that this test claim still constitutes a reimbursable mandate.

With a motion by Member Chivaro to adopt the staff recommendation as revised, and a second by Member Worthley, the staff recommendation was adopted by a vote of 6-0, with Member Olsen abstaining.

Item 4 Proposed Statement of Decision: *Tuition Fee Waivers*, 02-TC-21
[See Item 3]

Mr. Feller also presented this item. He stated that the sole issue before the Commission was whether the proposed Statement of Decision as revised by the supplemental staff analysis accurately reflected the Commission's decision to partially approve the *Tuition Fee Waivers* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision including minor changes reflecting the witnesses' hearing testimony and vote count.

Member Worthley made a motion to adopt the proposed Statement of Decision. With a second by Member Glaab, the Statement of Decision was adopted by a vote of 6-0 with Member Olsen abstaining.

Item 5 *Cal Grants*, 02-TC-28,
Long Beach Community College District, Claimant
Education Code Sections 69432.8, 69432.9, 69433, 69433.5, 69433.6,
69433.7, 69434, 69434.5, 69435, 69435.3, 69436, 69436.5, 69437, 69437.3,
69437.6, 69439, 69440, and 69514.5
Statutes 2000, Chapter 403 (SB 1644); Statutes 2001, Chapters 8
(SB 176) and 159 (SB 662)
California Code of Regulations, Title 5, Sections 30002, 30007, 30023,
30026, 30027 and 30032

Chief Legal Counsel Camille Shelton presented this item. Ms. Shelton stated that this test claim addresses the Cal Grant program enacted by the Legislature in 2000 to guarantee Cal Grant awards to college students beginning in the 2001-2002 academic year. The guarantee extends to (1) every California high school student graduating in 2001 or after, and to (2) California community college students transferring to a four-year college that graduated from a California high school after June 2000 and who meet the minimum grade-point average and eligibility requirements. Other students can compete for Cal Grant A and B competitive awards.

For the reasons stated in the analysis, staff finds that the test claim statutes and regulations impose a partial reimbursable state-mandated program for community colleges beginning July 1, 2001, to calculate a college or community college grade-point average pursuant to the instructions and the Student Aid Commission's regulations; to certify under penalty of perjury to the best of the school official's knowledge that the grade-point average is accurately reported, and is subject to review by the Student Aid Commission or its designee; and to complete or correct a grade-point average upon notice that the original submitted graded-point average was not complete or correct.

Parties were represented as follows: Keith Petersen representing the test claimant; Keri Tippins representing the Student Aid Commission; and Susan Geanacou representing the Department of Finance.

Mr. Petersen pointed out that this test claim has a significant threshold issue which is whether there is statutory compulsion or practical compulsion to implement the state mandate. The statutory question is whether community colleges are required to adopt the institutional participation agreement. He commented that the staff analysis concluded and agrees with the Student Aid Commission that the institutional participation agreement is discretionary, although all but one college have adopted it. Students cannot be paid their Cal Grants without the college being a participant. The other half of that analysis is practical compulsion. Mr. Petersen stated that as long as the Commission retains the *Kern* case as the definition of practical compulsion, his arguments cannot win.

Keri Tippins, Student Aid Commission, stated that the Student Aid Commission disagreed with one item regarding completing the community college GPA form. As the Cal Grant Program is voluntary on behalf of all of the institutions, then the obligations and requirements that flow from that program, for example, the different Cal Grant A and B competitive awards and the Cal Grant transfer, are part and parcel of that program.

Ms. Tippins indicated that it is the student that requests the school to submit the GPA. Originally, this was a mechanical paper process. It is now an electronic process. The Student Aid Commission does not require that it be electronic because not every school that participated in the Cal Grant Program had the functionality to do that. It is understood that is no longer the case. They all pretty much upload electronically. So this is really an electronic process now. There is no formal certification. There is no formal paper that comes to the commission. There are occasional ones, but the vast majority is now electronic. Ms. Tippins concluded that therefore, because of the voluntary nature of the program and the fact that it is all an electronic batch process now, the Student Aid Commission respectfully disagrees with the staff recommendation on this item.

Mr. Petersen asked for clarification from the Student Aid Commission that indeed they do not require electronic filing. Ms. Tippins agreed that they do not. Mr. Petersen made the point that if the Student Aid Commission were in the position to require anything, it would constitute a mandate.

Member Schmidt posed a question about the expectation of accuracy in a GPA being a reasonable expectation in a professional environment, and therefore not considered a mandate.

Ms. Shelton responded that regulations require that upon notice, you have ten days to correct an incomplete or inaccurate grade-point average. The grade-point average has to be calculated according to the Student Aid Commission's regulations. The only way for the student to be able to have a successful application filed is if the GPA has been certified as correct. The community college is the only entity that would have that information and be able to certify that information under penalty of perjury.

Ms. Tippins commented that the Student Aid Commission does not have independent knowledge of the GPA. When they determine that something is incorrect, it is because of a typographical error when the information is submitted. The only way they know that something may be incorrect is because some other factor caused it to be kicked back out of the system.

Mr. Petersen noted that reasonable expectation of accuracy of professionalism is not a statutory exemption to reimbursement.

Member Worthley noted that schools do not have to perform this particular form of student aid. He concurred with the staff recommendation and pointed out that the question of cost will come up in the parameters and guidelines.

Susan Geanacou, Department of Finance, stated that Finance believes that community colleges should not be reimbursed for the cost of correcting omissions or mistakes, especially if the Commission votes to reimburse the original incorrect or incomplete GPA calculation. Finance continues to assert that accuracy and completeness should be expected as a preexisting standard in a professional environment.

Finance also reiterated that there is considerable funding provided in the Budget Act that should fully cover the alleged mandated activities. Budget Act Item 6870-101-0001 added funding for community colleges to help students obtain financial aid, including the Cal Grant Program. This funding was added soon after the test-claim legislation was enacted. Although the Cal Grant program was not called out in the Budget Act language, this lack of specificity was to allow local flexibility in how the funds would be used to assist students in obtaining aid. Additionally, general apportionment funding to community colleges, which is approximately \$3 billion in fiscal year 2008-09, can also be used to cover these alleged mandated costs. For those funding reasons, Finance believes Government Code section 17556(e) should apply to find no costs mandated by the State.

Ms. Geanacou asserted that the test claim statutes and regulations activities should be cost-neutral or cost-saving because some activities under the former Cal Grant Program, such as submitting transcripts to the Student Aid Commission, are no longer performed or performed electronically with very minimal cost.

Ms. Shelton responded by saying that Government Code section 17556, subdivision (e), requires that an appropriation be specifically intended to fund the cost of those state-mandated programs. There is a budget line item, as referenced on page 30, which was intended for all financial aid programs for students. It did not specifically target the Cal Grant Program. Staff does recommend that it be identified as a potential offset in the parameters and guidelines, but it cannot be used to deny the claim because it is not specifically intended to fund this particular Cal Grant Program. Also, there is no specific tag to the Cal Grant Program with the Prop. 98 funding and it cannot be used as an offset.

Member Olsen asked if there was any direction from the courts about this issue of professionalism to address the compelling issue that Finance raised regarding community colleges' GPA calculation.

Ms. Shelton responded no. However, the plain language of the statute requires that it be corrected after ten days' notice. If they are the only entity that can correct and sign under penalty of perjury, by the plain language reading, it becomes a mandate.

With a motion by Member Worthley to adopt the staff recommendation, and a second by Member Chivaro, the staff recommendation was adopted by a vote of 7-0.

Item 6 Proposed Statement of Decision: *Cal Grants*, 02-TC-28
[See Item 5]

Ms. Shelton also presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the *Cal Grant* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision including minor changes reflecting the witnesses' hearing testimony and vote count.

Member Worthley moved to adopt the staff recommendation. With a second by member Olsen, the Proposed Statement of Decision, as modified, was adopted by a vote of 7-0.

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

A. REVIEW OF OFFICE OF STATE CONTROLLER'S CLAIMING INSTRUCTIONS

- Item 9 *Graduation Requirements*, 08-RCI-01
(4181A, 05-PGA-05, 06-PGA-04, 06-PGA-05)
Education Code Section 51225.3
Statutes 1983, Chapter 498
Castro Valley Unified, Fullerton Joint Union High, Grossmont Union High, San Jose Unified and Sweetwater Union High School Districts,
Requestors

Ms. Shelton presented this item. She stated that this is a request to review three sets of claiming instructions issued by the State Controller's Office for the *Graduation Requirements* Program pursuant to the amended parameters and guidelines adopted by the Commission on November 6, 2008.

The amended parameters and guidelines include a reasonable reimbursement methodology (RRM) representing the one-quarter class-load method for claiming increased science teachers' salary costs beginning in fiscal year 1995-96. The requestors challenge the requirement in the claiming instructions that school districts that previously filed reimbursement claims for these prior fiscal years need to refile those claims using the reasonable reimbursement methodology if the school district's teacher salary costs change with the use of the RRM.

Staff finds that the Commission, when it adopted the staff analysis and amended the parameters and guidelines, did not require school districts to refile the reimbursement claims for prior fiscal years. Staff further finds that the Government Code does not require eligible claimants to refile reimbursement claims when parameters and guidelines are amended. Staff finds that the three sets of claiming instructions issued by the State Controller's Office do not conform to the amended parameters and guidelines as required by the Government Code section 17571.

Accordingly, pursuant to Government Code section 17571, staff recommends that the Commission adopt the staff analysis and direct the Controller's Office to replace the language on page 1 of the three sets of claiming instructions with the language provided on pages 2 and 3 of the executive summary which conforms to the amended parameters and guidelines for this program and with the Government Code.

Parties were represented as follows: Keith Petersen representing the five requesting school districts; Donna Ferebee, Department of Finance; Chris Ryan and Jim Spano, State Controller's Office.

Mr. Petersen agreed with staff findings and recommendations as they are consistent with Government Code and regulations.

Ms. Ferebee stated that Finance continues to disagree with the Commission's decision to adopt the revised parameters and guidelines last November, but has nothing to add to this item beyond the comments that were already submitted.

Mr. Spano stated that based on audits done so far, the Controller's Office believes that the only reasonable methodology to determine reasonable costs for science teachers' salary costs is the RRM. That being said, the Controller's Office concurs with the staff analysis that neither the adopted parameters and guidelines, nor the analysis adopted by the Commission on the proposed amendments to the parameters and guidelines requires the school districts to refile older claims.

Member Glaab moved to adopt the staff recommendation. With a second by member Chivaro, the Review of Claiming Instructions was adopted by a vote of 6-0 with Member Schmidt abstaining.

B. STATEWIDE COST ESTIMATES

- Item 12 *National Norm-Referenced Achievement Tests (Formerly STAR)*
05-PGA-03 (04-RL-9723-01)
Education Code Sections 60607, subdivision (a), 60609, 60615, 60630,
60640, 60641, and 60643, as added or amended by Statutes 1997,
Chapter 828;
California Code of Regulations, Title 5, Sections 850-904
(Excluding Cal. Code Regs., tit. 5, §§ 853.5, 864.5, 867.5, 894 & 898)

Nancy Patton, Assistant Executive Director, presented this item. She stated that the proposed statewide cost estimate includes four fiscal years, for a total of \$10,809,432 for the *National Norm-Referenced Achievement Test* program.

On July 28, 2005, on reconsideration, the Commission found, effective July 1, 2004, that administering the California Achievement Test, Sixth Edition Survey, CAT/6 in grades 3 and 7 imposes a reimbursable state-mandated program on school districts.

The proposed statewide cost estimate for fiscal years 2004-05 through 2007-08 was developed by totaling the 855 unaudited actual reimbursement claims filed by the State Controller's Office.

No costs are estimated for fiscal year 2008-09 and beyond, because in 2008, the Legislature eliminated the CAT/6 test administration mandate effective September 30, 2008.

The Department of Finance opposes the statewide cost estimate because it believes the reimbursement claims used to develop the estimate may be excessive and, thus, the Commission should wait until the reimbursement claims have been audited by the State Controller's Office before using them to develop the estimate.

Staff disagrees that the cost estimate can be delayed until reimbursement claims are audited because such delay is inconsistent with the statutory scheme governing the mandates process. Therefore, staff finds that the Commission should not delay adoption of this statewide cost estimate, and recommends the Commission adopt the proposed statewide cost estimate for fiscal years 2004-05 through 2007-08.

Elisa Legarra, Department of Finance, expressed concerns with the basis for the statewide cost estimate. She stated that it is based on 855 unaudited actual reimbursement claims resulting in \$10.8 million in costs. Adopting this statewide cost estimate would simply provide a list of

claims to the Legislature, whereas the amount of actual costs could be very different from the estimate. For example, the State Controller's Office has one published audited claim for the *Norm-Referenced Achievement Test* at this time which resulted in over 99 percent of the costs being identified as unallowable.

Ms. Legarra stated that speaking with the State Controller's Office in general, they are going through the process of auditing some other claims for this mandate. They see a general trend with districts claiming for the entire series of STAR tests that they administer, instead of just this very small Norm-Referenced Test that this mandate applies to. Also, Finance is concerned that a lot of districts may not be deducting all or some of the offsetting apportionments they receive for testing. She made a final point that a very similar and related mandate, the STAR mandate, which also allowed districts to claim for testing, has the same high rates of unallowable costs. Specifically, there are seven published audits on the STAR mandate where the average rate of unallowable costs is 66 percent. Therefore, Finance believes it is premature to adopt a statewide cost estimate based on unaudited claims. It would be a much more relevant statewide cost estimate if the information from some audited claims were taken into account.

Chair Ingenito explained that it is laid out in the statute as to what order the audits lay in this process. It is not at the discretion of the Commission on State Mandates to adopt this particular cost estimate after the audits. We have to, based on state law, adopt them prior and then just do an adjustment. Therefore, Finance would revise their numbers in subsequent budget acts when we reconcile.

Member Olsen moved to adopt the statewide cost estimate. With a second by Member Worthley, the statewide cost estimate was adopted by a vote of 7-0.

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

TEST CLAIMS

- Item 7 *Identity Theft, 03-TC-08*
City of Newport Beach, Claimant
Penal Code Section 530.6, subdivision (a)
Statutes 2000, Chapter 956 (AB 1897)

Heather Halsey, Commission Counsel presented this item. Ms. Halsey stated that this test claim concerns increased activities of the local law enforcement agency required by the test claim statute when a complainant residing in the agency's jurisdiction makes a report of identity theft.

Staff finds that this test claim statute imposes a reimbursable state-mandated program for cities and counties for some of the required activities within the meaning of Article XIII B, Section 6, of the California Constitution. Specifically, the requirements to take a police report and begin an investigation of the facts mandate a new program or higher level of service and impose costs mandated by the state because these activities were discretionary prior to enactment of the test claim statute, and the test claim statute makes them mandatory.

However, staff finds that referral of the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts is not a mandated activity and is, therefore, not reimbursable.

Finally, staff finds that the requirement to provide the claimant with a copy of the police report is not a new program or higher level of service because the California Public Records Act already

requires local law enforcement agencies to provide complainants with a copy of the report.

However, after the final staff analysis and the proposed Statement of Decision were issued, the claimant filed a request to amend the proposed Statement of Decision to delete the finding regarding whether the activity of referring the matter may still be considered as reasonably necessary to carry out the mandate within the parameters and guidelines; or in the alternative, a request for continuance of this test claim.

Staff prepared a supplemental staff analysis that addresses the issues raised by the claimant. Staff has no legal objection to granting the request to amend the staff analysis and proposed Statement of Decision since the Commission is equally able to make findings at the hearing on the parameters and guidelines after hearing the claimants' arguments. Therefore, staff recommends that as a courtesy to the claimant, Commission adopt the final staff analysis as modified.

Parties were represented as follows: Juliana Gmur and Glen Everroad representing the City of Newport Beach; Carla Castaneda and Lorena Romero representing the Department of Finance.

Ms. Gmur commented on and concurred with the staff analysis.

Ms. Romero stated that Finance also concurs with the staff recommendations and final analysis and has no objections to the supplemental analysis.

Member Olsen moved to adopt the staff recommendation as modified. With a second by Member Chivaro, the staff recommendation was adopted by a vote of 7-0

Item 8 Proposed Statement of Decision: *Identity Theft*, 03-TC-08
[See Item 7]

Ms. Halsey also presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision as revised by the supplemental staff analysis accurately reflected the Commission's decision to partially approve the *Identity Theft* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision including minor changes reflecting the witnesses' hearing testimony and vote count.

Member Worthley made a motion to adopt the proposed Statement of Decision as modified. With a second by Member Chivaro, the Statement of Decision was adopted by a vote of 7-0.

STAFF REPORTS

Item 18 Report on 2009 Legislation

Ms. Patton stated that in 2004, the Governor's Office requested all boards and commissions to prepare bill analyses and recommend positions on pending legislation. Since deadlines to submit analyses to the Governor's Office may fall outside of scheduled commission meetings, the Commission authorized the Executive Director to submit bill analyses with positions on bills that impact the Commission's statutory authority and workload. The bill analysis must include a statement that the analysis was prepared by staff and does not reflect the Commission's position. When taking positions on bills that do coincide with Commission meetings, staff will seek approval from the Commission to take positions on bills.

Ms. Patton also stated that staff is tracking several bills this year that would amend the mandates process or affect staff workload. AB 661, by Assembly Member Torlakson, is the *Behavioral Intervention Plans* or BIPS test claim, which involves special education services for children with disabilities. It was determined by the Commission to be a mandate in 2000. Instead of

developing parameters and guidelines, the Department of Finance and school officials negotiated a settlement regarding how much school districts would receive in reimbursement for this program. Finance and school officials have reached an agreement, and AB 661 includes that agreement, which would pay schools \$65 million for 2009, \$85 million per year for six additional years, and a one-time appropriation of \$10 million for county offices of education.

Ms. Patton noted that this agreement has been signed by the parties, including Commission staff. As a result of that agreement, the Commission would not have to adopt parameters and guidelines or the statewide cost estimate. Staff recommends that the Commission submit an analysis supporting AB 661.

Member Olsen moved to submit an analysis supporting AB 661. With a second by Member Worthley, the motion to submit the analysis was adopted by a vote of 7-0.

Item 19 Chief Legal Counsel's Report (info)

Ms. Shelton stated that the *Department of Finance vs. Commission on State Mandates* case is now final and is published at 170 Cal.App.4th 1355. In that case, the Third District Court of Appeal reversed the decision of the Commission, finding that school districts and special districts that are permitted by statute to employ peace officers who supplement the general law enforcement units of cities and counties are not mandated by the state to comply with the POBOR legislation. The court went further in discussing the idea of practical compulsion. In that case, whenever a claimant is alleging practical compulsion, it must show that they are facing certain and severe penalties such as double taxation or other draconian consequences with concrete evidence in the record.

The other update is the BIPS stipulation. The real parties in interest, the Department of Finance and the school districts, are attending a hearing to obtain a judge's approval on that joint stipulation.

Item 13 Executive Director's Report (info)

Ms. Higashi reported that staff issued a revised report to provide new information and update the hearing calendars that are pending.

Also, staff has been contacted by a fourth county regarding the SB 1033 process. Alameda County is considering whether or not to prepare an application for significant financial distress. No applications have been filed yet nor has Ms. Patton heard back from the counties as to any more specific intent if they have moved along in their processes.

Staff is scheduled for its first budget hearing on April 23, and we'll be attending a prehearing meeting to determine whether or not any of the long-suspended mandates should be made optional or repealed. For instance, there has been some interest in moving some of the education

mandates. But there is only one bill that Ms. Patton reported on, the Romero bill, which actually starts to make some changes to Education Code statutes. Staff will inform the Commission on developments as they occur as well as additional workload.

Ms. Higashi noted tentative agendas. May 29 is the next hearing at the Department of Finance because a Capitol hearing room could not be reserved. The July hearing is on July 31.

Ms. Geanacou from Finance asked if there will be a June 26 hearing. Ms. Higashi confirmed that there will not be a June 26th hearing at this time.

PUBLIC COMMENT

Patrick Day, San Jose Unified School District, Chairperson for Education Mandated Costs Network, commented on the discussion about a level of professionalism expected from educators. As a professional educator, Mr. Day stated that he does not have a problem with that expectation. However, Mr. Day pointed out that in two education items, *Tuition Fee Waivers* and *Cal Grants*, the Department of Finance requested 11 extensions in each one and all were granted. Mr. Day stated he would want the same level of professionalism expected from all. Timely filings and doing things timely is certainly an expected level of professionalism.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526 (action)

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):

A. PENDING LITIGATION

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Third District Court of Appeal, Case No. C055700; [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]
3. *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833, [Peace Officer Procedural Bill of Rights]
4. *California School Boards Association, Education Legal Alliance, and Sweetwater Union High School Dist. v. State of California, Commission on State Mandates, and John Chiang, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 07CS01399, [School Accountability Report Cards, SARC]

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 sections 11126, subdivision (a) and 17526.

Hearing no further comments, Chairperson Ingenito 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 Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

At 10:39 p.m., Chairperson Ingenito 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 pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

Member Glaab requested to change his vote on the minutes to an abstention as he was not present at the January 30, 2009 hearing.

ADJOURNMENT

Hearing no further business, Chairperson Ingenito adjourned the meeting at 10:39 p.m.

PAULA HIGASHI
Executive Director