

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126

Sacramento, California

July 28, 2005

- Present: Chairperson Anne Sheehan
Representative of the Director of the Department of Finance
Member Nicholas Smith
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Jan Boel
Representative of the Director of the Office of Planning and Research
Member Paul Glaab
City Council Member
- Vacant: Local Elected Official
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:33 a.m.

Chairperson Sheehan welcomed the Commission's newest member, Paul Glaab, a city council member for the City of Laguna Niguel.

APPROVAL OF MINUTES

- Item 1 A. May 26, 2005
 B. June 10, 2005

Upon motion by Member Smith and second by Member Boel, the minutes were adopted. Member Glaab abstained.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

- Item 12 PROPOSED STATEMENT OF DECISION TO DISMISS TEST CLAIM
Tenure Grievance Arbitration, 98-TC-18
Sierra Joint Community College District
Education Code Sections 87610.1 and 87611
Statutes 1988, Chapter 973 (AB 1725)

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

PROPOSED AMENDMENT OF PARAMETERS AND GUIDELINES AS REQUESTED BY CLOVIS UNIFIED SCHOOL DISTRICT

- Item 13 *Consolidation of Employee Benefits Disclosure* 04-PGA-27 (CSM-4502)
Education Code Section 42142, Statutes 1994, Chapter 650 (AB 3141)

-and-

School District Fiscal Reporting, (97-TC-19)
Education Code Sections 42100, 42127, 42127.5, 42127.6, 42128, 42131,
and Government Code Section 3540.2; Statutes 1981, Chapter 100 (AB 777);
Statutes 1985, Chapter 185 (AB 367); Statutes 1986, Chapter 1150 (AB 2861);
Statutes 1987, Chapters 917 (AB 93) and 1452 (SB 998); Statutes 1988,
Chapters 1461 (AB 3403) and 1462 (SB 1677); Statutes 1990, Chapter 525
(SB 1909); Statutes 1991, Chapter 1213 (AB 1200); Statutes 1992, Chapter 323
(AB 2506); Statutes 1993, Chapters 923 (AB 2185) and 924 (AB 1708);
Statutes 1994, Chapters 650 (AB 3141) and 1002 (AB 3627); Statutes 1995,
Chapter 525 (AB 438)

PROPOSED AMENDMENT OF PARAMETERS AND GUIDELINES BASED ON
STATUTES 2004, CHAPTER 895 (AB 2855, SECTION 6)

- Item 14 *Employee Benefits Disclosure* 04-PGA-25 (CSM-4502)
Education Code Sections 42140 and 42142
Statutes 1994, Chapter 650 (AB 3141)
Statutes 1995, Chapter 525 (AB 438)
Statutes 1996, Chapter 1158 (AB 2964)

SET ASIDE PARAMETERS AND GUIDELINES BASED ON STATUTES 2004,
CHAPTER 316, (AB 2851, SECTIONS 2 AND 4) AND REQUEST OF THE STATE
CONTROLLER'S OFFICE

- Item 15 *Mineral Resource Policies*, 04-PGA-11 (4155)
Public Resources Code Section 2762
Statutes 1975, Chapter 1131 (SB 1128)
- Item 16 *Democratic Presidential Delegates*, 04-PGA-10 (4130 and 4131)
Elections Code Sections 6305, subdivision (d) and 6329.2
Statutes 1982, Chapter 1603 (AB 1935)
Statutes 1983, Chapter 1166 (AB 277)
- Item 17 *Annual Short Doyle Audits*, 04-PGA-13 (4238)
Welfare and Institutions Code Section 5712.1, 5712.01
Statutes, 1984, Chapter 1327 (AB 2381)
Statutes 1985, Chapter 1232 (AB 1856)
- Item 18 *Short-Doyle Case Management*, 04-PGA-14 (4246)
Welfare and Institutions Code Sections 5675, 5677, 5678
Statutes 1979, Chapter 875 (AB 1656)
Statutes 1984, Chapter 1327 (AB 2381)
Statutes 1985, Chapter 757 (AB 1214)
DMH Letters 85-23 and 86-06

AMEND PARAMETERS AND GUIDELINES BASED ON STATUTES 2004,
CHAPTER 206 (AB 2854, SECTIONS 1 & 2) AND REQUEST OF THE STATE
CONTROLLER'S OFFICE

- Item 19 *Local Elections: Consolidation*, 04-PGA-21 (CSM-4311)
Statutes 1981, Chapter 1013 (SB 230), Statutes 1982, Chapter 218 (AB 2367),
Statutes 1985, Chapter 896 (SB 572), Statutes 1986, Chapter 188 (AB 2737) and
Chapter 667 (AB 2605), Statutes 1987, Chapters 2 (AB 155), 84 (AB 428), and
1083 (SB 415)

SET ASIDE PARAMETERS AND GUIDELINES BASED ON STATUTES 2004,
CHAPTER 895 (AB 2855, SECTIONS 2) AND REQUEST OF THE STATE
CONTROLLER'S OFFICE

- Item 20 *American Government Course Document Requirements*, 04-PGA-29,
(97-TC-02 (a.k.a. 97-258-01))
Education Code Section 51230,
Statutes 1996, Chapter 778 (AB 3086)

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES (action)

- Item 21 *Postmortem Examinations: Unidentified Bodies, Human Remains*, 00-TC-18
County of Los Angeles, Claimant
Government Code Section 27521.1
Statutes 2000, Chapter 284 (SB 1736)

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, DIVISION 2, CHAPTER 2.5 (action)

- Item 22 Adoption of Proposed Regulatory Action: Implementation of AB 2856
Amendments to California Code of Regulations, Title 2, Division 2, Chapter
2.5, Article 1 – General, Article 3 – Test Claims, Article 4 – Mandates
Recognized by the Legislature, Article 7 – Hearings, Article 8.5 – Forms

Member Boel moved for adoption of the consent calendar, which consisted of items 12 through 22.
With a second by Member Glaab, the consent calendar was unanimously adopted.

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

- Item 3 Staff Report (if necessary)

No appeals were filed.

STAFF REPORT

- Item 24 Executive Director's Report (info)

- *Mandate Reform*. Nancy Patton, Assistant Executive Director, introduced Program Analyst, Cathy Cruz, who is primarily responsible for the analysis of parameters and guidelines, incorrect reduction claims, and statewide cost estimates. On behalf of the Commission staff, Ms. Patton congratulated Ms. Cruz for obtaining her Master's of Public Policy and Administration and for completing her thesis titled, *Reassessing the State Mandates Problem in California*.

Ms. Cruz provided an overview of her thesis, suggesting that there is a fundamental problem with the mandates system itself and with the relationship between state and local government. She noted that the current discourse in California focuses only on specifics of the process, and argued that effective reform would require policymakers to first address the fundamental flaws of the mandates system and the relationships and then modify the overall process as needed. She concluded that lawmakers can ensure an effective mandates system in California by practicing collaboration and delaying mandate effective dates, requiring mandate explanations, implementing pilot projects, and using sunset language. Ms. Cruz noted that the 2005-2006 Budget directs the Department of Finance to evaluate the current mandates reimbursement process and to provide alternatives to the Legislature by March 1, 2006. She stated her hope that the information and recommendations in her thesis would be considered and that it assists all parties in the reform process.

Chairperson Sheehan thanked Ms. Cruz for her work. Member Boel stated that the thesis should be sent to interested parties.

- *California's Sustained Superior Accomplishment Award.* Paula Higashi, Executive Director, announced that Senior Commission Counsel, Camille Shelton, was selected as the Commission's first recipient of the State of California's Sustained Superior Accomplishment Award. She explained that this award was for sustained superior job performance resulting in an exceptional contribution to the efficiency of state government in the area of mandate determination for the period between December 2002 and April 2005. Ms. Shelton received a commemorative plaque and \$250.

Ms. Higashi stated that Ms. Shelton has provided excellent legal advice and service to the Commission since 1997. She noted that Ms. Shelton's accomplishments included: representing the Commission in litigation at all levels in the courts; analyzing the *Handicapped and Disabled Students* program; participating as a trainer in the mandates portion of the Office of Administrative Law's rulemaking training; updating legislative staff on mandates case law; and participating in the audit processes for the *School Bus Safety, Peace Officer Bill of Rights, and Animal Adoption* programs. Paul Starkey, Chief Legal Counsel, also honored Ms. Shelton for her overall sustained achievement in litigation and for her work on the *Handicapped and Disabled Students* program.

Chairperson Sheehan presented Ms. Shelton with a commemorative plaque and letter from the Commission members.

RECONSIDERATION OF PRIOR STATEMENTS OF DECISION AS DIRECTED BY THE LEGISLATURE IN STATUTES 2004, CHAPTER 316 (AB 2851) AND CHAPTER 895 (AB 2855)

Ms. Higashi swore the parties and witnesses participating in the hearing of agenda items 4 through 11.

- Item 4 *Extended Commitment — Youth Authority, 04-RL-9813-07 (98-TC-13)*
Welfare and Institutions Code Sections 1801 and 1801.5
Statutes 1998, Chapter 267 (SB 2187)
Directed by Statutes 2004, Chapter 316, Section 3, Subdivision (b) (AB 2851)

Katherine Tokarski, Commission Counsel, presented this item. She stated that the test claim was filed by the County of Alameda alleging a reimbursable state mandate for Welfare and

Institutions Code sections 1800, 1801, and 1801.5, as amended by Statutes 1984, chapter 546 and Statutes 1998, chapter 267. She noted that these code sections provide procedures for delaying the discharge of a youthful offender when he or she is determined to be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality.

Ms. Tokarski explained that the Legislature required the Commission to reconsider the original Statement of Decision adopted January 25, 2001, which found that reimbursable state-mandated activities were imposed by the 1984 amendment to Welfare and Institutions Code section 1800. However, because the 1984 statute was not included in the express language of the reconsideration statute that otherwise named with specificity the statute and chapter numbers the Commission was directed to reconsider, she stated that the Commission cannot reconsider its prior decision on Statutes 1984, chapter 546. Thus, staff found that the Commission's original findings as to Statutes 1984, chapter 546 stand and that the Commission is limited to reconsidering claims on the amendments by Statutes 1998, chapter 267. Staff found, however, that Statutes 1998, chapter 267 does not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution and does not impose costs mandated by the state pursuant to Government Code section 17514.

Staff recommended that the Commission adopt the staff analysis.

Parties were represented as follows: Zlatko Theodorovic and Lance Christensen, with the Department of Finance.

Mr. Theodorovic concurred with the staff analysis.

Member Boel made a motion to adopt the staff recommendation. With a second by Member Lujano, the motion carried unanimously.

Item 5 Proposed Statement of Decision
 Extended Commitment — Youth Authority, 04-RL-9813-07
 See Above

Katherine Tokarski, Commission Counsel, 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. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the decision on the reconsidered test claim.

Member Boel made a motion to adopt the proposed Statement of Decision. With a second by Member Glaab, the motion carried unanimously.

Item 6 *Photographic Record of Evidence, 04-RL-9807-09 (98-TC-07)*
 Penal Code Section 1417.3
 Statutes 1985, Chapter 875 (AB 556); Statutes 1986, Chapter 734 (AB 2715);
 Statutes 1990, Chapter 382 (AB 3408)
 Directed by Statutes 2004, Chapter 316, Section 3, Subdivision (d) (AB 2851)

Eric Feller, Commission Counsel, presented this item. He stated that Penal Code section 1417.3, subdivision (a), requires, upon order of the court, introducing a photographic record of evidence for exhibits that pose a security storage or safety problem in lieu of the actual exhibits. Penal Code section 1417.3, subdivision (b), requires introducing a photographic record of evidence for exhibits that are toxic, that pose a health hazard to human, and that require submission of a certified chemical analysis of those exhibits.

Mr. Feller stated that article XIII B, section 9, subdivision (b), of the California Constitution applies to Penal Code section 1417.3, subdivision (a), because the activity is triggered by court order. Therefore, staff found that the activity is not reimbursable. As to Penal Code section 1417.3, subdivision (b), staff found that it constitutes a reimbursable state mandate for providing a photographic record and a certified chemical analysis. In addition, staff found that storing exhibits is a reimbursable activity for cities, but not counties because they already have the responsibility for storing exhibits since the days that trial courts were under the umbrella of counties.

Staff recommended that the Commission adopt the staff analysis, which partially approves the test claim.

Parties were represented as follows: Pete Cervinka, with the Department of Finance.

Mr. Cervinka concurred with the staff analysis with one exception. He requested that the Statement of Decision include language that specifically excludes the finding of a mandate for school districts and community colleges. He noted that such a finding was included in the staff's draft analysis. He added that the Education Code permits, but does not require, school districts and community college districts to establish police departments.

Mr. Feller responded that the issue of eligible claimants is addressed during the parameters and guidelines phase. He explained that the finding in the draft staff analysis was removed because staff decided it was premature to determine who the eligible claimants were at the Statement of Decision phase.

Mr. Cervinka noted that the proposed Statement of Decision excludes counties as eligible claimants for part of the mandate.

Mr. Feller explained that there was a direct statutory basis for the county exclusion. He stated that the test claim statute applies to law enforcement that put on evidence in criminal trials but does not mention school districts, community college districts, or special districts. Thus, staff determined that more analysis would be required at the parameters and guidelines phase to determine whether the statute applies to the districts.

Chairperson Sheehan encouraged the Department of Finance to provide any necessary information during the parameters and guidelines phase.

Member Boel made a motion to adopt the staff analysis. With a second by Member Smith, the motion carried unanimously.

Item 7 Proposed Statement of Decision
 Photographic Record of Evidence, 04-RL-9807-09 (98-TC-07)
 See Above

Eric Feller, Commission Counsel, presented this item. He indicated that unless there were objections, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the test claim decision. Staff also recommended that the Commission allow minor changes to be made to the final Statement of Decision, including the hearing testimony and vote count.

Member Smith made a motion to adopt the proposed Statement of Decision. With a second by Member Boel, the motion carried unanimously.

[At this time, a short break was taken.]

Item 8 *Standardized Testing and Reporting (STAR)*, 04-RL-9723-01
Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640,
60641, and 60643, as amended by Statutes 1997, Chapter 828 (SB 376);
Title 5, California Code of Regulations, Sections 850-874, 97-TC-23
Directed by Statutes 2004, Chapter 895, Section 19 (AB 2855)
(CONTINUED FROM MAY 26, 2005)

Eric Feller, Commission Counsel, presented this item. He stated that currently, the *Standardized Testing and Reporting* program, or STAR, consists of four sets of tests: 1) the Spanish Assessment of Basic Education, Second Edition (SABE/2); 2) the California Achievement Tests, Sixth Edition Survey (CAT/6); 3) the California Standards Tests; and 4) the California Alternate Performance Assessment for handicapped people. However, he explained that when the original test claim was filed in 1998, the STAR program only consisted of the SABE/2 and CAT/6. Therefore, staff found that the Commission's jurisdiction in this reconsideration was limited to SABE/2 and CAT/6.

Mr. Feller indicated that the findings from the May hearing were unchanged as to the activities required under the federal Individuals with Disabilities Education Act and the Equal Education Opportunity Act, which are as follows:

- Activities required under the Individuals with Disabilities Education Act.
 1. exempting testing for pupils, if the pupil's individualized education program has an exemption provision;
 2. determining the appropriate grade-level test for each pupil in a special education program; and
 3. providing appropriate testing adaptation or accommodations to pupils in special education programs.
- Activity required under the Equal Education Opportunity Act.
 1. administering an additional test – SABE/2 – to limited-English proficiency pupils enrolled in grades 2 through 11.

Because the SABE/2 is required under federal law, Mr. Feller explained that it is not a reimbursable state mandate; thus, only the CAT/6 was left for analysis. He noted that in the prior analysis, the issue was whether the STAR program was a federal mandate under the federal No Child Left Behind Act. However, he stated that this inquiry was no longer relevant because the CAT/6 is not required by any federal law. Therefore, staff found that the CAT/6 is a reimbursable state mandate. Staff also found that federal Title VI funds and state general funds must be used to offset the CAT/6 administration, even though it is referred to as the STAR program in the budget.

Mr. Feller stated that the Department of Finance requested postponement of this item because of proposed legislation that would clarify legislative intent regarding the effective date of the reconsideration and prior appropriations for the STAR program. The executive director denied the request because enactment of the legislation at this point is speculative, and therefore, does not meet the definition of good cause, which the Commission's regulations require for continuance of agenda items.

Staff recommended that the Commission adopt the staff analysis, which partially approves the prior adopted Statement of Decision.

Parties were represented as follows: Art Palkowitz, on behalf of the San Diego Unified School District; David Scribner, on behalf of the Grant Joint Union High School District; Paul Warren, with the Legislative Analyst's Office; Gerry Shelton, with the California Department of Education; and Pete Cervinka and Lenin Del Castillo, with the Department of Finance.

Mr. Palkowitz raised a concern regarding the reimbursement period in the event that the Department of Finance's proposed legislation is subsequently enacted. Ms. Higashi stated that staff would decide the issue depending on what the legislation says and what the Commission does.

Mr. Feller noted that staff proposed a reimbursement period beginning July 1, 2004. However, he stated that he would have to research how legislative intent works retroactively applied in the event of a subsequently-enacted bill.

Chairperson Sheehan asked the Department of Finance for information about the request and the status of the legislation. Mr. Del Castillo responded that the language is expected to be included in a technical education omnibus bill and should be passed before the end of the 2005 legislative year. Mr. Cervinka added that the language did not make it into a budget trailer bill, but it would be addressed through technical cleanup legislation. He argued that this forthcoming legislation would clarify the Legislature's intent for the Commission to reconsider its decision retroactively to the beginning of the claim period.

Mr. Warren stated that a staff member for Assemblyman Laird who assisted in the development of the bill confirmed the understanding that the reconsideration was to be a complete review of all claims going back to 1997.

Mr. Scribner argued that the legislation has a substantial impact on the decision and he felt that all parties should be entitled to a transparent process. He asked that the Commission staff be informed so that they can in turn inform individuals on the STAR program mailing list.

Mr. Starkey responded that the Commission and staff, as an administrative agency, could not be brought into the legislative process. He maintained that the Commission's concern is to preserve its own process and to act in a way that makes the most sense in light of the matters being presented.

Mr. Scribner clarified that he was not asking the Commission to be involved, but just for notification. He argued that the issue was huge and quick determinations should not occur without there being some discourse.

Chairperson Sheehan stated that the Commission would decide, after all testimony, to take action today or delay action. She felt it was an important issue and because it was already postponed once, she wanted to make sure everyone had the opportunity to testify. She also stated that she agreed with Mr. Starkey, noting that individually each Commissioner could weigh in on legislation, but that was not their role here today. Instead, she encouraged Mr. Scribner to communicate his interest by talking to the individuals involved in the legislation.

Mr. Cervinka added that the Department of Finance noticed its intent regarding the reimbursement period language in its comments to the Commission.

Mr. Starkey noted that the executive director denied a request to have the matter continued. Thus, he stated that depending on what the Commission decides, the issue of why the

Commission is overruling the executive director's decision may need to be addressed.

Mr. Palkowitz argued that the information provided by the California Department of Education after the May hearing failed to show that the state faces severe and certain penalties, and thus, failed to show that STAR was a federal mandate. He noted that the documentation indicated somewhat of a commendation that the California program is doing well and that only two other states have been penalized. Regarding staff's position that the SABE/2 test is not a state mandate, Mr. Palkowitz disagreed. He asserted that the Equal Education Opportunities Act is a broad statute to discourage discrimination. He stated that school districts have to test English learners otherwise it would be discrimination. Moreover, Mr. Palkowitz disagreed with staff's analysis regarding the offsetting of Title VI funds.

Mr. Scribner raised a concern about the Commission's jurisdiction to analyze the STAR program as it currently exists. Although he technically agreed with the staff analysis, he argued that the tests involved were irrelevant because the issue was whether the STAR program was federally mandated under the No Child Left Behind Act.

Mr. Warren supported the continuance of the matter because he felt that the reason why the Legislature requested the Commission to reconsider the decision was to look at the issues related to federal law. He stated that because the proposed Statement of Decision eliminates those issues, further clarification from the Legislature would be helpful. Further, Mr. Warren submitted that by separating the different parts of the STAR program, school districts may be precluded from filing claims for the other tests.

Mr. Warren also said that federal law requires certain and severe consequences for a program to constitute a mandate, but he felt that the test Mr. Palkowitz referred to was unreasonable and argued that it must be looked at from a broader standpoint.

Mr. Shelton asserted that it was overly simplistic to conclude that no threats of penalties exist because the federal government has not assessed penalties on California with respect to the implementation of the No Child Left Behind Act. He noted that any positive comments in the documentation indicated that the California Department of Education is able to implement programs even in an environment of compulsion and coercion. He argued that \$3 billion of federal money is at risk and the California Department of Education feels required to put the programs under the No Child Left Behind Act in place.

Mr. Feller stated that the discussion about the No Child Left Behind Act and whether it is a federal mandate is no longer relevant because the program at issue, the CAT/6, is not required by any federal program. Therefore, the federal penalties in the No Child Left Behind Act are not relevant. He indicated that the staff analysis makes no finding as to whether or not the No Child Left Behind Act is a federal mandate.

Regarding Mr. Palkowitz's comments about the Equal Education Opportunities Act, Mr. Feller noted that the courts have interpreted it to mean that foreign language testing is required. As far as the issue of offsetting Title VI funds, Mr. Feller stated that the Commission was bound by the language in the state budget, which requires the Title VI funds be used to offset the mandated program, or the CAT/6 administration.

With regard to Mr. Scribner's comments, Mr. Feller maintained that the Commission had limited jurisdiction. He explained that no test claim had been filed on the other two STAR tests, and therefore, the issue was whether the program, as it was enacted in 1997, was a federal mandate. In response to Mr. Scribner's contention that it did not matter what tests were involved,

Mr. Feller noted that the *Hayes* case states that it does matter because if the state freely chooses to impose a requirement on local agencies, then it becomes a state mandate. He repeated that the CAT/6 is not required under federal law.

Mr. Feller indicated that any opinion by the Commission on the No Child Left Behind Act would be an advisory opinion at this point.

Chairperson Sheehan asked whether the proposed legislation only addresses the issue of retroactivity. Mr. Cervinka responded that the intent was to address the retroactivity issue for reconsideration. However, he added that he would not preclude the language from also clarifying legislative intent. He maintained that although there is no language in print, the Department of Finance fully intends to see the retroactivity issue addressed in legislation, as well as the Legislature's intent as to the scope of the reconsideration.

Ms. Higashi asked Mr. Warren to clarify his earlier concern about school districts being precluded from filing claims for the other tests pursuant to subsequent amendments to the STAR program's statutes. Mr. Warren explained his concern and noted that the size of the claims in the last few years indicated that districts were claiming on the program as a whole, rather than for those portions under the original law.

Ms. Higashi noted that the subject of the test claim is a 1997 statute and implementing regulations. She clarified that the statute referenced by Mr. Warren was not included in the test claim, and therefore, the issue he raised about higher costs being claimed would be an audit issue for the State Controller's Office.

Chairperson Sheehan stated that the Commission could take action today or delay action to the next hearing; however, she commented that it was very speculative in terms of whether there is legislation. Ms. Higashi added that the Commission could also partially decide an issue, but indicated that if the Commission did take action today, any language from the Legislature could be worded differently based on whatever the Commission decides. For instance, she stated that the direction could be to amend, modify, set-aside, or start over.

Mr. Cervinka asked a clarifying question, to which Ms. Higashi explained her assumption that if the Commission took action, the Legislature would be aware of the action and would draft language accordingly to reflect the current situation. Chairperson Sheehan agreed that such direction was within the Legislature's prerogative.

Mr. Feller maintained that a legislative requirement for the Commission to determine whether the No Child Left Behind Act is a federal mandate would not change the staff recommendation because the Commission's jurisdiction is limited to the prior reconsideration. Mr. Cervinka asked a technical question about the auditing of claims, to which Mr. Feller responded that the State Controller has the authority to do so.

Mr. Starkey noted that if the Commission were to make a decision, the next phase would be adoption of the Statement of Decision, in which the sole issue is whether or not it accurately reflects the Commission's decision. He stated that the Commission could also separate the issues or hold the whole matter open. If the matter is held over, he believed that the parties have the opportunity to comment on what has been presented thus far. As to the issue of good cause, he felt that there was additional information provided at this hearing that gives the Commission a wide discretion to decide whether or not to continue the matter.

Mr. Cervinka stated that the proposed legislation was, in fact, speculative and could be adjusted to reflect any action the Commission takes. Therefore, he withdrew the Department of Finance's request to postpone the matter.

With the understanding that the Legislature can react to the Commission's decision, Member Boel made a motion to adopt the staff analysis. With a second by Member Glaab, the motion carried unanimously.

- Item 9 Proposed Statement of Decision
Standardized Testing and Reporting (STAR), 04-RL-9723-01
See Above
(CONTINUED FROM MAY 26, 2005)

Eric Feller, Commission Counsel, presented this item. He indicated that unless there were objections, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the test claim decision. Staff also recommended that the Commission allow minor changes to be made to the final Statement of Decision, including the hearing testimony and vote count.

Member Boel made a motion to adopt the proposed Statement of Decision. With a second by Member Smith, the motion carried unanimously.

- Item 10 *School Accountability Report Cards I*, 04-RL-9721-11
Education Code Sections 33126, 35356, 35256.1, 35258, 41409 and 41409.3,
Statutes 1989, Chapter 1463 (SB 280); Statutes 1992, Chapter 759 (AB 1248);
Statutes 1993, Chapter 1031 (AB 198), Statutes 1994, Chapter 824 (SB 1665);
Statutes 1997, Chapter 918 (AB 568), 97-TC-21
Directed by Statutes 2004, Chapter 895, Section 18 (AB 2855)
(CONTINUED FROM MAY 26, 2005)

Katherine Tokarski, Commission Counsel, presented this item. She noted that the Commission adopted its original Statement of Decision on April 23, 1998, but AB 2855 directs the Commission to reconsider this prior final decision. She also noted that this matter was originally heard for reconsideration at the May 26, 2005 hearing, resulting in a tie vote.

Ms. Tokarski stated that in enacting Proposition 98, the Classroom Instructional Improvement and Accountability Act, the voters provided public schools with state funding guarantees. As part of the constitutional funding guarantee, the voters required schools to undergo an annual audit and to issue an annual school accountability report card. She stated that the test claim was filed on statutory amendments to the Proposition 98 requirements for a school accountability report card. However, staff found that the Commission does not have authority to reconsider its decision on Statutes 1997, chapter 912 because it was not specifically named in AB 2855.

Ms. Tokarski indicated that Government Code section 17556, subdivision (f), was amended by Statutes 2005, chapter 72, effective July 19, 2005. The amendment provides that the Commission shall not find costs mandated by the state if the test claim legislation was expressly included in a ballot measure or imposes duties that are necessary to implement or that are reasonably within the scope of a ballot measure approved by voters in a statewide or local election. Thus, she stated that pursuant to applicable case law, article XIII B, section 6, and Government Code section 17556, subdivision (f), the Commission must find that the state is imposing newly required activities on school districts beyond the scope of those already imposed by voters through ballot measures in order for the test claim statutes under reconsideration to

require reimbursement.

Ms. Tokarski noted that School Innovations and Advocacy contends that the Commission cannot consider Government Code section 17556, subdivision (f), in its reconsideration because AB 2855 explicitly requests reconsideration in light of only federal statutes enacted and state court decisions rendered since the statutes in the original test claim were enacted. Staff finds that while the Commission's jurisdiction on the *School Accountability Report Cards* program is limited, the Commission must rely on the entire body of applicable existing law including current federal constitutional, case, and regulatory law; as well as state constitutional, statutory, and regulatory law when conducting its reconsideration. She added that Government Code section 17556, subdivision (f), was passed as urgency legislation and the Commission is required to apply the law.

However, Ms. Tokarski explained that staff's recommendation was not based solely on the amendment to Government Code section 17556, subdivision (f). Staff also found that by requiring some new data elements and a new method for publicizing and distributing the existing school accountability report card, the state has not shifted from itself to school districts the burdens of state government when the directive can be complied with by a minimal reallocation of resources, as described by the court in a 2003 decision, *County of Los Angeles v. Commission on State Mandates*. Based on this controlling case law, staff found no higher level of service or costs mandated by the state.

As another ground for finding no costs mandated by the state, Ms. Tokarski stated that in *Department of Finance v. Commission on State Mandates*, the California Supreme Court found that the availability of state program funds precludes a finding of a reimbursable state mandate. Staff finds that there is a unique relationship between the voter-enacted school accountability report card requirement and the Proposition 98 school funding guarantee. Therefore, the billions of dollars in state funds received under Proposition 98 are equivalent to program funds that can be used for the purpose of completing the annual school accountability report card.

Ms. Tokarski noted that school districts have not demonstrated that the state funds received were unavailable for the claimed additional costs of providing the school report card.

Therefore, staff found that the statutes subject to reconsideration do not impose a new program or higher level of service on school districts and do not impose costs mandated by the state. Staff recommended that the Commission adopt the staff analysis to deny the reconsidered portions of the original test claim decision.

Parties were represented as follows: Abe Hajela, with School Innovations and Advocacy; Richard Hamilton, with the California School Boards Association and the Education and Legal Alliance; Robert Miyashiro, with the Education Mandated Cost Network; Estelle Lemieux, with the California Teachers Association and on behalf of the Education Coalition; and Pete Cervinka and Lenin Del Castillo, with the Department of Finance.

Mr. Hajela acknowledged that Government Code section 17556, subdivision (f), changed but argued that when the Commission was asked to reconsider this matter, it was asked to do so on the basis of recently enacted federal statutes or state court decisions. As to staff's position regarding the minimal cost issue, he believed that it was the Commission's job to figure out the cost and to assess whether or not it is minimal. Finally, he disagreed with staff's view of the relationship between Proposition 98 and the *School Accountability Report Card* program because it was not based on any case law. He asserted that there was no case saying that Proposition 98 program funds are just for school accountability report cards.

Mr. Hamilton concurred with Mr. Hajela's comments. He disagreed with staff's reliance on Government Code section 17556, subdivision (f), because there was no opportunity for public comment to point out the impact of such a change.

Regarding the issue about the minor reallocation of resources, Mr. Miyashiro pointed out that the staff analysis includes a discussion about claims that exceed \$5 million, an amount that is not minor for schools to bear. He contended that Proposition 98 makes no appropriation whatsoever. Rather it establishes a constitutional minimum funding level for K-14 education, and it also provides for the Legislature to suspend the amount or provide an amount less than the minimum guarantee. Thus, he felt it was a stretch to argue that a minimum constitutional guarantee for funding constituted program funds.

Moreover, regarding staff's position that school districts have not demonstrated that the state funds received were unavailable for the claimed additional costs of providing the school report card, Mr. Miyashiro asserted that school districts would be unable to make such a demonstration in any case for any program. He contended that staff was using a circular argument.

Ms. Lemieux concurred with the previous testimony.

Mr. Del Castillo commented that the *School Accountability Report Card* program was established by a statewide ballot measure and had the recognition that elements of the program would be subject to change. Thus, he stated that it was not a reimbursable state-mandated program.

Mr. Cervinka added that the amendments to Government Code section 17556, subdivision (f), were included in AB 138, a general trailer bill necessary to implement the budget. He asserted that the legislation was not necessary to provide grounds for the Commission to decide that this program did not constitute a reimbursable state mandate. Mr. Hajela disagreed.

Chairperson Sheehan noted that at the May hearing, before the law was changed, she voted in support of the staff analysis and felt it was justified.

Ms. Tokarski stated that it would be impossible to do an analysis that was limited to federal statutes and state court decisions because it would leave out the state constitution and the Government Code. She noted that it would be a violation of the Commission's duty if the Commission were to ignore current enacted law when making a determination. Regarding the program funds issue, she stated that the analysis of Proposition 98 funding was specific to an analysis of the *School Accountability Report Card* program because it was established as part of Proposition 98. She indicated that based on current law, it was not staff's intention for the recommendation to apply to all future education claims.

Member Smith commented that the amendment to Government Code section 17556, subdivision (f), was not an issue for the State Controller. However, he noted that the Commission cannot enlarge the plain text of what is actually in statute, which clearly says federal law and state case law. He recommended that the Legislature be appropriately notified of the issue so that clarification can be made by including some reference to mandates law in general.

Member Boel made a motion, which was seconded by Member Glaab, to adopt the staff analysis. The motion carried 3-2, with Member Smith and Member Lujano voting "No."

- Item 11 Proposed Statement of Decision
School Accountability Report Cards I, 04-RL-9721-11
See Above
(CONTINUED FROM MAY 26, 2005)

Katherine Tokarski, Commission Counsel, 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. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the reconsidered test claim decision. Minor changes to reflect the hearing testimony and vote count will be included in the final Statement of Decision.

Member Boel made a motion, which was seconded by Member Glaab, to adopt the proposed Statement of Decision. The motion carried 3-2, with Member Smith and Member Lujano voting "No."

STAFF REPORTS

- Item 23 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Paul Starkey, Chief Legal Counsel, reported that there were no updates.

- Item 24 Executive Director's Report (info/action)
New Budget, Workload, Legislation
Hearing Calendar – 2006 (action)

Ms. Higashi reported the following:

- *Budget and Legislation.* Staff received the appropriation for additional staff positions and is now in the process of developing plans and duty statements. Staff will begin recruitment to fill the positions.

The State Controller's Office budget received 10 new positions, nine of which are audit positions for mandate reimbursement claims. She stated that this could result in an increased incorrect reduction claim workload for the Commission.

AB 138 directs the Commission to reconsider the *Mandate Reimbursement Process* program. The mandate is deferred for school districts and suspended for local agencies.

The Statements of Decision adopted at this hearing will be reported to the Legislature.

Regarding the Department of Finance study referenced by Ms. Cruz in an earlier presentation, Ms. Higashi indicated that Commission staff was available to help and to participate in the process. Chairperson Sheehan suggested that in working with the Department of Finance, the Commission should have a special meeting to get feedback from people about the mandates process.

- *Next Hearing.* The September hearing date was changed to Tuesday, September 27.
- *2006 Hearing Calendar.* Ms. Higashi presented a proposed hearing calendar for 2006 to allow the members time to discuss and work out any scheduling conflicts.

PUBLIC COMMENT

There was no public comment.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

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):

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
3. *San Diego Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01401, CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
4. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01568, CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
5. *San Jose Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01569, CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
6. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01570, CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
7. *Clovis Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01702, CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
8. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 04CS00028, CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
9. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS092146, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*], consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS095456, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]
10. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]

11. *Southern California Association of Governments, et al. v. Commission on State Mandates*, Sacramento Superior Court Case No. 05CS00956, CSM Case No. 04-L-04 [*Regional Housing Needs Determination-Councils of Government*]

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).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

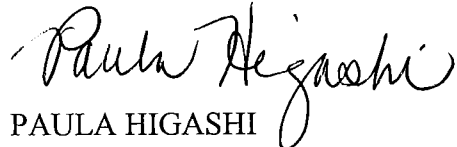
Hearing no further comments, Chairperson Sheehan adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the 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

Chairperson Sheehan 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 Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, and upon motion by Member Glaab and second by Member Smith, Chairperson Sheehan adjourned the meeting at 12:01 p.m.



PAULA HIGASHI
Executive Director