

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
September 25, 2003

Present: Chairperson Shelley Mateo
Representative of the Director of the Department of Finance
Member Bruce Van Houten
Representative of the State Treasurer
Member Sherry Williams
Representative of the Director of the Office of Planning and Research
Member Walter Barnes
Representative of the State Controller
Member John Lazar
City Council Member
Member David Rosenberg
County Supervisor

Vacant: Public Member

CALL TO ORDER AND ROLL CALL

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

Chairperson Mateo introduced herself.

APPROVAL OF MINUTES

Item 1 July 31, 2003

Upon motion by Member Rosenberg and second by Member Williams, the minutes were adopted. Member Van Houten abstained.

PROPOSED CONSENT CALENDAR

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

PROPOSED STATEMENTS OF DECISION – TEST CLAIMS

Item 6 *Postmortem Examinations: Unidentified Bodies, Human Remains*, 00-TC-18
County of Los Angeles, Claimant
Government Code Sections 27521 & 27521.1
Health and Safety Code Section 102870
Penal Code Section 14202
Statutes 2000, Chapter 284 (SB 1736)

COURT ORDERS TO SET ASIDE PRIOR STATEMENTS OF DECISION
PURSUANT TO GOVERNMENT CODE SECTION 17559, SUBDIVISION (b).

- Item 9 *Standardized Emergency Management System (SEMS)*, CSM 4506
Government Code Section 8607
Statutes 1992, Chapter 1069 (SB 1841)
California Code of Regulations, Title 19, Sections 2400-2450
Adopted on May 25, 2000, and remanded by County of Los Angeles, Superior
Court of California, Case No. BS069611 (*County of San Bernardino v.
Commission on State Mandates*)

- Item 10 *School Site Councils and Brown Act Reform*, CSM 4501 and
Portions of CSM 4469
Government Code Section 54952 and Education Code Section 35147
Statutes 1993, Chapter 1138 (SB 1140); Statutes 1994, Chapter 239 (SB 355)
Adopted on April 27, 2000, and remanded by County of Sacramento, Superior
Court of California, Case No. 00CS00866, pursuant to the opinion of the
*California Supreme Court, Department of Finance v. Commission on State
Mandates, et al (2003) 30 Cal.4th 727.*

PROPOSED STATEMENT OF DECISION – INCORRECT REDUCTION CLAIM

- Item 11 *Graduation Requirements – Remodeling Costs*, 01-4435-I-43
Paso Robles Joint Unified School District, Claimant
Education Code Section 51225.3
Statutes 1983, Chapter 498 (SB 813)

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 12 *Mandate Reimbursement Process*, CSM-4485
Statutes 1975, Chapter 486 (AB 1375)
Statutes 1984, Chapter 1459 (SB 2337)
Statutes 2003, Chapter 157 (Budget Act of 2003)

- Item 14 *Pupil Promotion and Retention*, 98-TC-19
San Diego Unified School District, Claimant
Education Code Sections 37252, 37252.5, 48070 and 48070.5
Statutes of 1998, Chapters 742 and 743, et al. (AB 1626 and AB 1639)

- Item 15 *Redevelopment Agencies – Tax Disbursement Reporting*, 99-TC-06
County of Los Angeles, Claimant
Health and Safety Code Section 33672.7
Statutes 1998, Chapter 39 (SB 258)

Member Lazar moved for adoption of the consent calendar, which consisted of items 6, 9, 10, 11, 12, 14, and 15. With a second by Member Williams, the consent calendar was unanimously adopted.

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

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

Item 2 Staff Report

Paula Higashi, Executive Director, reported that no appeals were filed.

The parties and witnesses participating in the hearing of the agenda items were sworn.

[At this time, Member Barnes entered the hearing room.]

TEST CLAIM

- Item 3** *Standardized Account Code Structure, 97-TC-17, 02-TC-14*
Brentwood Union School District, Claimant
Statutes 1993, Chapter 237 et al. (SB 94)

PROPOSED STATEMENT OF DECISION – TEST CLAIM

- Item 7** *Standardized Account Code Structure, 97-TC-17, 02-TC-14*
Brentwood Union School District, Claimant
(See code sections and statutes in Item 3)

Items 3 and 7 were withdrawn by the claimant.

TEST CLAIM

- Item 4** *Peace Officer Personnel Records: Unfounded Complaints and Discovery, 00-TC-24, 00-TC-25, 02-TC-07, 02-TC-08*
Santa Monica Community College District, Claimant
Evidence Code Sections 1043, 1044, 1045, 1046 and 1047
Penal Code Sections 832.5, 832.7 and 832.8
Statutes 1978, Chapter 630 (SB 1436); Statutes 1982, Chapter 946 (SB 1065); Statutes 1985, Chapter 539 (AB 1112); Statutes 1988, Chapter 685 (SB 1027); Statutes 1989, Chapters 615 (AB 2222) and 693 (SB 859)
Statutes 1994, Chapter 741 (SB 2058); Statutes 1996, Chapters 220 (SB 1839) and 1108 (AB 3434); Statutes 1998, Chapter 25 (AB 1016);
Statutes 2000, Chapter 971 (AB 2559); Statutes 2002, Chapter 63 (AB 1873)

Katherine Tokarski, Commission Counsel, presented this item. She noted that this item was originally four test claims filed individually by a city, county, and a community college district on legislation addressing the discovery of peace officer personnel records and citizen complaints on peace officers. At the July hearing, the Commission adopted the staff analysis for the issues specific to city and county claimants by a 5 – 1 vote. The issues specific to community college districts were postponed to this hearing for testimony and vote.

Ms. Tokarski explained staff's finding that pursuant to state law, the essential function of school districts is to provide public education. Therefore, the statutory duties that follow from the discretionary activities of providing their own police department do not impose a reimbursable state mandate. Staff recommended that the Commission find that school districts are not eligible claimants for the alleged test claim statutes.

Parties were represented as follows: Keith Petersen, representing the Santa Monica Community College District; and Susan Geanacou, for the Department of Finance.

Mr. Petersen asserted that the threshold issue was what was going to be reimbursed: either the specific employees performing the mandate or the mandate itself. He stated that there was no dispute that the activity to be reimbursed was new; however, the dispute was whether schools, including community colleges, were going to be reimbursed for their costs associated with the mandate. The Commission staff found such costs to be discretionary.

Mr. Petersen noted that the Commission had never before excluded any class of employee from reimbursement, whereas in this case, staff was recommending the exclusion of peace officers. He noted, as an exception to the general rule, the Commission found 12 years ago that the cost of classroom teachers performing mandates during regular classroom hours was not reimbursable since the school day was not extended. He argued that the decision was to not reimburse that portion of the mandate occurring during the regular school day. Therefore, the focus in this case should be whether the activity is reimbursable, not whether the person performing the activity is reimbursable.

In addition, Mr. Petersen maintained that staff's conclusion, which is that operating police departments is not an essential governmental function of providing public education, contradicts the definition in the *County of Los Angeles* and *Carmel Valley* cases. He argued that mandate case law does not limit school district reimbursement to education items, but rather, school districts provide public service like any other local agency. Mr. Petersen contended that while all school districts do not employ peace officers, hence the term discretionary, this fact does not exclude them from reimbursement. He stated that staff did not reference any law here or in the analysis specific to cities and counties that makes peace officers compulsory, and thus, there was no showing that peace officers were compulsory for cities and counties.

Further, Mr. Petersen argued that staff's reliance on the *Kern* case [*Department of Finance v. Commission on State Mandates* (2003)] was not an adequate basis to support its recommendation to exclude peace officers from reimbursement because the case was based on a funding issue, not a compulsion issue. He argued the test claim here does not involve a funding issue and there is no requirement that peace officers be compelled.

Ms. Geanacou supported the staff analysis. She noted that the *Kern* case was relevant because the decision did turn on the fact that the district's participation in eight of the nine underlying programs was discretionary. Here, participation in the underlying program of creating a police department at a school district and community college was also discretionary.

Regarding Mr. Petersen's statement that staff did not discuss whether cities and counties have a law enforcement responsibility, Ms. Tokarski pointed out the distinction made in the staff analysis, in which it was stated that school districts are not functioning within their educational governmental capacity when operating police departments. In contrast, article XI, sections 1 and 5 of the California Constitution provides for the formation of cities and counties, whose primary function is to provide law enforcement for the state's residents.

Ms. Tokarski maintained that in this case, the underlying program was a discretionary activity of forming police departments and employing peace officers. While it is good public policy, it was not required, and therefore, it is not reimbursable for the activities alleged in the test claim.

Member Rosenberg stated that Mr. Petersen made a compelling argument. He asked staff to

address his point, by analogy, that the function and not who was performing the function should be assessed in determining whether or not there was a mandate.

Assuming a situation where a vice-principal, a discretionary position, is responsible for undertaking a new program, Ms. Tokarski submitted that if school districts must comply with particular discipline procedures and vice-principals are responsible for performing those activities, then the activities are reasonable and it does not matter who performs the activities. The activities in this case only come about because the districts are employing peace officers, which they do not need to do.

Member Rosenberg requested Mr. Petersen to comment. Mr. Petersen asserted that staff's position contradicted what the Commission had always done, such as in the *Pupil Counseling and Pupil Classroom Visits* program. That mandate required school site personnel to respond to requests from parents to visit the classroom and to discuss discipline issues, and the Commission decided in that case that there was no distinction about who provided the services, just that the services were provided. He added that the Commission had previously recognized that school districts and community colleges did other things apart from public education, and thus, he contended that the staff's position in this case had no basis in fact or law. Instead, this was a policy preference.

Mr. Petersen further stated that court cases made no distinction between the public safety function of schools and cities and counties. Penal Code section 830.31 stated that peace officers included community college police and school police. He reiterated that discretion was not the issue. It was whether or not the activities are implemented.

Chairperson Mateo requested clarification as to the relevance of the discussion related to the employees who performed the activities because the issue was the activity itself. Paul Starkey, Chief Legal Counsel, clarified that the policy decision is set out in the Constitution, which vests traditional police functions in the local agencies, compared with the specific Education Code sections stating that the police function can be carried out through the school districts at their discretion. This issue of discretion was upheld in the recent *Kern* case decision, which he believed gave clear direction that if a local agency can elect to make a policy decision, they do so at their own discretion. He commented that while the Education Code allows it, it is not required. Mr. Petersen disagreed.

Member Barnes felt staff's analysis was on point. He stated his belief that the law was intended to apply to a class of employees, which in this case would be all people categorized as police officers.

Ms. Tokarski clarified that the activities were being imposed on the employer of the peace officer rather than that class of employee. She explained that school districts did not have to employ peace officers.

Mr. Petersen objected to staff's position. He commented that the basic definitions in place for the last 20 years have directed the Commission to decide to reimburse the activity, not the person doing it. He stated that the *Kern* case was not relevant here because it said nothing about compulsion, and the decision was based on a funding issue, which was not the case here. Further, he maintained that there was no new issue because it was decided 12 years ago that, with the exclusion of duties occurring in the classroom, the employee doing the work would be reimbursed, regardless of who performed the activity.

Member Williams made a motion to adopt the staff analysis, which was seconded by Member Barnes.

Member Rosenberg commented that Mr. Petersen made a very good policy argument; however, the law was sorted out in the Constitution, which imposed a mandatory duty on the cities and counties to provide law enforcement, but not on school districts.

Member Barnes requested clarification whether the Commission was voting on school districts, K through 14. Ms. Tokarski confirmed.

The motion made by Member Williams carried unanimously.

PROPOSED STATEMENTS OF DECISION – TEST CLAIM

- Item 8 *Peace Officer Personnel Records: Unfounded Complaints and Discovery*,
00-TC-24, 00-TC-25, 02-TC-07, 02-TC-08
City of Hayward, Santa Monica Community College District, and County of
San Mateo, Claimants (See code sections and statutes in Item 4)

Katherine Tokarski, Commission Counsel, presented this item. She stated that this proposed Statement of Decision includes the material approved at the July hearing, as well as the vote taken in the previous item.

Parties were represented as follows: Keith Petersen, representing the Santa Monica Community College District; and Allan Burdick, for the City of Hayward and the County of San Mateo.

Chairperson Mateo and Member Rosenberg requested clarification as to the process taking place. Ms. Higashi explained that normally, proposed Statements of Decision would be on the consent calendar. However, since the claims were heard separately, it allowed Mr. Petersen to comment. She clarified that the Commission's task was to simply determine whether the proposed Statement of Decision reflected the Commission's decision.

Mr. Petersen stated that the proposed Statement of Decision accurately reflected the Commission's decision, but he still disagreed with the decision.

Mr. Burdick did not disagree with the proposed decision. However, he commented that there had been recent discussions about what Statements of Decision reflected. He noted that the discussion of a number of items during the hearing were not necessarily included in the decision. Therefore, he stated there should be discussion about what the Statement of Decision is intended to do.

Member Rosenberg asked a question regarding voting on a decision. Ms. Higashi clarified that members' votes are reflected in the decision. She added that because of the switch to bimonthly hearings, the proposed Statement of Decision was on the same agenda as the test claim to keep items moving.

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

RECONSIDERATION OF STATEMENT OF DECISION

Item 5 *Crime Victims' Domestic Violence Incident Reports, 99-TC-08*
County of Los Angeles, Claimant
Penal Code Section 13730 and Family Code Section 6228
Statutes 1984, Chapter 1609 (SB 1472)
Statutes 1995, Chapter 965 (SB 132)
Statutes 1999, Chapter 1022 (AB 403)

Camille Shelton, Senior Commission Counsel, presented this item for reconsideration on the Commission's Statement of Decision issued in May 2003. She noted that the issue was limited to whether storage of the report and face sheet, pursuant to Family Code section 6228, subdivision (e), constitutes a new program or higher level of service for five years, as the Commission found, or for three years. The staff analysis on reconsideration indicates that existing Government Code statutes, which were not considered in the Statement of Decision, require local agencies to keep all documents required by law for two years.

Ms. Shelton stated the claimant's argument that the Government Code statutes were irrelevant since there was no law prior to Family Code section 6228 that required local agencies to store domestic violence incident reports in a readily accessible manner. Staff disagreed with the claimant. Ms. Shelton maintained that the plain language of Family Code section 6228, subdivision (e), does not address the manner of storage. Rather, it establishes the length of time the documents must be kept by the local agency. Therefore, existing Government Code sections 26202 and 34090, which established the timing for the retention of all records required by law, are relevant and apply to the test claim statute.

In addition, Ms. Shelton explained that the Commission had discretion to address the manner of storage when establishing the reasonable means of complying with the mandate in the parameters and guidelines. As stated in the staff analysis, staff recommended that the Commission find that the Statement of Decision contains an error of law because Family Code section 6228, subdivision (e), mandates a new program or higher level of service for storing the domestic violence incident report and face sheets for three years instead of five. Staff further recommended that the Commission amend the Statement of Decision to reflect the analysis of the Government Code sections, and to change the five-year finding to three years.

Ms. Shelton stated that under the Commission's regulations, a supermajority of five affirmative votes was required to change a prior final decision.

Parties were represented as follows: Leonard Kaye, representing the County of Los Angeles; and Sarah Mangum and Susan Geanacou, for the Department of Finance.

Mr. Kaye asserted that the issue was whether retention of documents was the same as storage of documents. He argued that the Commission must continue to adhere to the specific terminology found in the statute and that prior law makes no reference to the storage of domestic violence records. Therefore, he recommended that the Commission adopt a slightly modified version of staff's proposed language, as follows: "Storing domestic violence incident reports and face sheets, including retaining such documents for only three years."

Staff did not object to the recommended change because the law requires local agencies to keep the documents in a manner that they are not destroyed. Thus, the change still preserves the Commission's discretion to determine the manner of storage in the parameters and guidelines.

Ms. Geanacou requested clarification as to the material difference of the claimant's proposal to staff's proposal. Mr. Kaye clarified that the claimant's proposal provides more guidance in that all the activities required under storage costs could be presented, including record retention.

Chairperson Mateo asked if the recommended change in any way abridges the Commission's limited reconsideration of this matter. Ms. Shelton said no.

Member Williams asked if the phrase "only three years" was restricting. Mr. Kaye stated that the word "only" could be deleted.

Member Rosenberg requested clarification as to the distinction between the words retention and storage. Mr. Kaye explained that the statute requires that documents be made readily available; otherwise there were penalties. Thus, he contended that retention of documents was a necessary but not sufficient condition for performing the storage requirements under the test claim legislation. He added that storage may require transforming documents into a certain software or optically readable form, which has nothing to do with the duration of how long documents are kept. On the other hand, retention can mean failing to destroy. He maintained that his baseline distinction was the fact that irrespective of whether one activity was subsumed by another, the statutory language was different. Thus, he was trying to be liberal in terms of the language since prior law used the term retention, whereas current law uses the term storage. He added that the extent to which it should be more or less was a parameters and guidelines issue.

Member Rosenberg asked staff which term was the more appropriate word to use: retention or storage. Ms. Shelton stated that legally, local agencies were required to both store and retain documents. She reiterated that the manner of storage can be addressed in the parameters and guidelines.

Chairperson Mateo expressed hesitancy regarding the claimant's proposed change because it could retread a prior Commission decision.

Mr. Starkey noted that the original request used the term "store," which was used in the Statement of Decision. However he maintained that at this point in time, the focus was on the period of time that documents must be kept, not the possible interpretations of the word "storage."

Member Van Houten agreed with Mr. Starkey. However, he indicated that the claimant's testimony made him uncomfortable because it sounded like there was a higher level of custody associated with the claimant's proposed change.

Mr. Kaye reiterated that he was merely trying to clarify the language. He asserted that the statute requires the documents be made readily available, and thus, retention of documents was not synonymous with storage requirements.

Chairperson Mateo commented that the change had the potential for redefining the previous decision beyond what was really before the Commission here.

Member Barnes agreed that the manner of storage issue would be better dealt with during development of the parameters and guidelines. His concern was whether the Statement of Decision should reflect the total five years that documents must be kept.

Ms. Shelton explained that the Statement of Decision must find what exactly is the new program or higher level of service. Leaving five years in the decision would allow claimants to be reimbursed for five years instead of the three years. However, she noted that the Commission

may clarify the language to indicate that storage costs are reimbursable for three years following the initial two years. Member Barnes agreed.

Mr. Kaye believed that the clarification was not supported by any matter litigated before the Commission.

Ms. Shelton restated staff's recommendations, noting that the proposed Statement of Decision addressed Member Barnes' concern. She maintained that because prior law required the documents to be kept for two years, that is the initial period. The following three years was the higher level of service. Mr. Kaye argued that this was not found in writing.

Member Barnes stated his point of view that the three-year requirement was on top of the two years. Therefore, he made a motion to find an error of law and to adopt staff's recommendation as revised: "Storing domestic violence incident reports and face sheets for three years following the two-year period required under prior law."

Member Rosenberg seconded the motion, but withdrew it after the motion was clarified. He stated that he was not prepared to support the added language because he did not know whether the new requirements of the mandate actually imposed greater requirements of storage or retention over the prior law requirements for the first two years.

Member Van Houten seconded Member Barnes' motion. The motion failed 4 – 2, with Member Rosenberg and Member Williams voting "No."¹

Member Rosenberg made a motion to find that the Statement of Decision contained an error of law. With a second by Member Williams, the motion carried unanimously.

Member Rosenberg made a motion that was seconded by Member Lazar to adopt staff's proposed Statement of Decision with no revisions.

Member Barnes requested clarification on the motion, which Member Rosenberg provided. Member Barnes again raised the issue of possibly reflecting the total five years that documents must be kept.

Mr. Starkey explained that the original decision reflected a new program or higher level of service for five years. Staff overlooked a prior law requirement that the documents be stored for two years. Therefore, the intent of the reconsideration was to correct that error of law, which the Commission had just found.

Ms. Shelton maintained that when ruling on a Statement of Decision, the courts have instructed the Commission not to apply equity standards or define what is necessary to comply with the mandate. The Commission should only look at the plain language of the statute, in this instance, regarding the time element, not the manner of storage. She reiterated that the manner of storage can be addressed in the parameters and guidelines phase.

Member Rosenberg restated his motion to adopt staff's proposed Statement of Decision with no revisions. The motion carried unanimously.

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

¹ Section 1188.4, subdivision (g)(2), of the Commission's regulations requires five affirmative votes to change a prior final decision.

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 13 *Administrative License Suspension*, 98-TC-16
City of Newport Beach, Claimant
Vehicle Code Sections 13202, 13202.3, 13352, 13353, 13353.1, 13353.2, 13353.3, 13353.4, 13353.6, 13354, 13551, 13557, 13558, 13559, 14100, 14905, 14907, 23136, 23137, 23138, 23139, 23140, 23157, 23158.2, 23158.5
As Added or Amended by Statutes 1989, Chapter 1460 (SB 1623)
Statutes 1990, Chapter 431 (SB 1150)
Statutes 1992, Chapter 1281 (AB 3580)
Statutes 1993, Chapters 899 and 1244 (SB 126)
Statutes 1994, Chapter 938 (SB 1295), and
Statutes 1997, Chapter 5 (AB 74)

Item 13 was postponed by the claimant.

- Item 16 *Charter Schools II*, 99-TC-03
Los Angeles County Office of Education and
San Diego Unified School District, Claimants
Education Code Sections 47605, Subdivisions (j)(1) and (k)(3),
47605.5, 47607, and 47614
Statutes 1998, Chapters 34 and 673 (AB 544 and AB 2417)

PROPOSED AMENDMENTS TO CONSOLIDATE PARAMETERS AND GUIDELINES

- Item 17 Consolidation of *Charter Schools I*, CSM-4437
Education Code Section 47605, Subdivision (b), and former
Subdivisions (j)(1), (j)(2), and (j)(3)
Education Code Section 47607, Subdivisions (a) and (b)
Statutes 1992, Chapter 781 (SB 1448)
and
Charter Schools II, 99-TC-03
Los Angeles County Office of Education and
San Diego Unified School District, Claimants
(See code sections and statutes for Item 16)

Cathy Cruz, Program Analyst, presented items 16 and 17. She explained that item 16 included a provision that required claimants to re-file reimbursement claims for the original *Charter Schools* program for fiscal years 1998-1999 through 2002-2003. This provision was included because of changes in the law that: 1) established a fee authority that school districts or county offices of education must use to offset any claimed reimbursement for the costs of charter school supervisory oversight under the existing *Charter Schools* program, and 2) replaced the activity related to the petition appeals process in the existing *Charter Schools* program.

However, staff finds that direction to re-file reimbursement claims reside with the State Controller's Office. Government Code section 17558, subdivision (a), requires the Commission to submit adopted parameters and guidelines to the Controller, who shall pay and audit the

reimbursement claims. Subdivision (b) of this section requires the Controller to issue claiming instructions after receiving the parameters and guidelines to assist local agencies and school districts in claiming costs.

Ms. Cruz noted that an errata sheet was before the Commission, which proposes that the effective date of the reimbursement period for item 17, the proposed consolidation of the parameters and guidelines, be changed from fiscal year 2003-2004 to January 1, 1999, the effective date of the *Charter Schools II* test claim legislation. With this modification, she stated that item 16 was no longer necessary, and therefore, staff withdrew item 16 for consideration and vote. Staff recommended that the Commission only adopt item 17, the proposed consolidated parameters and guidelines, but with the reimbursement period beginning January 1, 1999, and that staff be authorized to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Parties were represented as follows: Art Palkowitz, representing the San Diego Unified School District; and Shawn Silva, with the State Controller's Office.

Mr. Silva requested that the item be continued to the next hearing to allow the Controller's Office the opportunity to research the issue of re-filing claims.

Mr. Palkowitz commented that procedurally, there was a code section or regulation that states that school districts cannot go back after one year to amend claims. In addition, he stated that school districts do not maintain records for an indefinite period of time. Regarding the request to continue, he argued that this claim was filed in 1998 and these issues should have been addressed earlier. Therefore, he felt it was inappropriate to grant the continuance.

Member Barnes indicated that he did not favor postponements. However, the issues arising from the changes made by staff raise questions that need to be looked into. He stated that the Controller's Office had no problem with the matters being consolidated, and no problem with staff withdrawing item 16. He just felt that they needed time to make sure that the Controller will have the ability to deal with possible erroneous claims.

Member Rosenberg and Chairperson Mateo did not object to the request for continuance.

Member Barnes made a motion to grant the continuance. With a second by Member Williams, the motion carried unanimously.

Member Barnes clarified that his motion concerned only item 17, and that he had no interest in item 16 coming before the Commission at the next hearing.

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, DIVISION 2, CHAPTER 2.5.

Item 18 Adoption of Proposed Amendments to Sections 1181.1, 1183.01, 1183.3,
and Proposed New Section 1189.11.

Shirley Opie, Assistant Executive Director, presented this item. She noted that the purpose of the rulemaking was to incorporate the current methodology for developing statewide cost estimates into the Commission's regulations and to include changes to the conflict of interest code that require designated filers to complete ethics training.

Member Rosenberg requested confirmation that a member of the Commission who has completed ethics training pursuant to another position has met the requirement. Ms. Opie confirmed.

Member Barnes commented that he had no problem with the ethics training and orientation requirement. However, he believed that the Commission should wait for the Bureau of State Audits report to be released, later on that day in draft form, before incorporating procedures for developing statewide cost estimates. He expected that the report would contain specific recommendations for how to compute and develop the estimates.

Ms. Opie stated that the change in the regulations came out of the last report from the Bureau of State Audits on the *School Bus Safety* audit. That report recommended that the Commission incorporate the methodology for adopting statewide cost estimates. Her understanding from preliminary discussions with the Bureau was that their issues were more about the points and times rather than the calculation of estimates. She did not feel that their recommendations would have any material effect on the current proposal.

Ms. Higashi stated her concern that the Commission already filed the final report for the *School Bus Safety II* audit, which indicated that this rulemaking was in progress to incorporate the Bureau of State Audits' proposed changes.

Member Barnes stated that the reason for the delay is to deal with additional recommendations. He reiterated his expectation of the report.

Chairperson Mateo asked if there was any harm in moving forward now with the ethics portion and preparing another package for the Bureau's recommendations. Ms. Higashi said no because the recommendations were not yet known.

Allan Burdick, on behalf of the California State Association of Counties, agreed with Member Barnes. He added that he would like to see the proposed methodology as an alternative, but not the sole method for determining how statewide cost estimates are adopted.

Ms. Opie responded that the regulation, as written, preserved that flexibility.

Mr. Burdick noted that it was not always in the best interest of the state to move forward quicker. He asserted that if the intent was to complete the process within the prescribed statutory scheme, other alternatives should be explored.

Member Barnes recommended that the Commission proceed with the ethics portion of the proposed regulations and postpone consideration of the statewide cost estimate portion until the next meeting. Member Rosenberg agreed. Ms. Opie reminded the Commission that such an action would require staff to re-notice the regulations because it was a substantial change.

Therefore, Member Barnes moved to continue the entire matter. With a second by Member Rosenberg, the motion carried unanimously.

STAFF REPORTS

Item 19 Chief Legal Counsel's Report
Recent Decisions, Litigation Calendar

Mr. Starkey reported the following:

- *New Filings.* There were no new filings other than the *Animal Adoption* case, which was referenced in the report.

- *Recent Decisions.* The decision in the *County of Los Angeles* case was now final. Since it was a published decision, he stated that the case would be referenced in future Commission recommendations, as appropriate, as guidance from the court.
- *Litigation Calendar.* Two matters have been heard. First, the *Eastview Optional Attendance Area* case, which was in the Sacramento Superior Court, was heard in September and was decided in favor of upholding the Commission's decision. Second, the decision in the *County of San Diego MIA* case overturned the Commission's decision. There will be further reporting back to the Commission regarding next steps.

Item 20 Executive Director's Report
 Budget, Workload, Legislation

Ms. Higashi noted the following:

- *Workload.* There is a record number of 121 test claims on file with the Commission. Among them are 14 claims that could be consolidated for purposes of substantive analysis since the same statutes or code sections are pled.
- *Budget.* This year's Budget Act appropriated \$1.3 million for the Commission's operating expenses. This appropriation is subject to control section 4.10, which authorizes the Director of Finance to make additional budget reductions. The Commission's budget was subsequently reduced by \$195,300. A request to modify the adjustment was approved, but this was still confidential information since it has not yet been disclosed.

Regarding the 2004-2005 budget, a budget letter was issued directing state agencies to submit a permanent 20 percent reduction plan to the Department of Finance. This reduction plan was to be based on the amount in the final 2003-2004 Budget Act before any control section reductions were taken. In addition, it applies to each agency, and the Commission, not being under a super agency, was expected to take the full 20 percent. A request to be excluded from this base was denied. Therefore, staff continues to work on determining whether any statutory or constitutional changes should be proposed that are necessary to support the budget proposal.

Member Rosenberg commented that a 20 percent reduction was significant for such a small agency. There was further discussion regarding the Department of Finance's budget letter. Chairperson Mateo stated that this was still all part of the planning process.

- *Assembly Special Committee on State Mandates.* At the end of the session, it was believed that the committee would sponsor legislation. Four bills have been drafted to carry out and implement the committee's recommendations. The committee plans to reconvene in January.

Some of the issues raised have already been discussed at the staff level, including:

- The Commission's jurisdiction to reconsider prior decisions to respond to changes in the law and new court decisions;
- Rethinking procedures related to parameters and guidelines and statewide cost estimates;
- Establishing a cost recovery or fee authority for the Commission;

- Examining the State Mandates Claims Fund; and
- Reports to the Legislature.
- *Future Hearing Agendas.* The November agenda was still tentative.

Member Rosenberg noted that the scheduled November hearing was the same week as the County Supervisors meeting. He asked if it could possibly be changed. Chairperson Mateo did not object. Ms. Higashi stated that she would check with each member to find out which dates were available.

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. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
2. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-17 [*Domestic Violence*]
3. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-18 [*SEMS*]
4. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*]
5. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]
6. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number B163801, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 02-L-04 [*Property Tax Administration*]
7. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number C044162, in the Appellate Court of the State of California, Third Appellate District. CSM Case No. 02-L-05 [*Physical Performance Tests*]
8. *Palos Verdes Peninsula Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS00897, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-06. [*Eastview Optional Attendance Area*]

9. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01069 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-01. [*Animal Adoption*]

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.

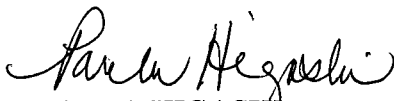
Hearing no further comments, Chairperson Mateo adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the 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 Mateo 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 Williams and second by Member Rosenberg, Chairperson Mateo adjourned the meeting at 12:38 p.m.


PAULA HIGASHI
Executive Director

