

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
December 6, 2013

Present: Member Eraina Ortega, Chairperson
Representative of the Director of the Department of Finance
Member Richard Chivaro, Vice Chairperson
Representative of the State Controller
Member Andre Rivera
Representative of the State Treasurer
Member Ken Alex
Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member Carmen Ramirez
City Council Member
Member Don Saylor
County Supervisor

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.

CALL TO ORDER AND ROLL CALL

Chairperson Ortega called the meeting to order at 10:00 a.m.

Executive Director Heather Halsey called the roll.

Chairperson Ortega acknowledged the passing of Mr. Albert Beltrami who was a public member of the Commission from April 1996 through July 2001.

Member Ramirez acknowledged the passing of Mr. Nelson Mandela of South Africa.

APPROVAL OF MINUTES

Item 1 September 27, 2013

Member Chivaro made a motion to adopt the minutes. With a second by Member Alex, the September 27, 2013 hearing minutes were adopted by a vote of 7-0.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

The Chairperson asked if there was any public comment. There was no response.

CONSENT CALENDAR

If there are no objections to any of the following action items designated by an asterisk (), the Executive Director will include each one on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557,
and 17559) (action)

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES
AMENDMENTS

Item 9* *Immunization Records - Pertussis*, 11-TC-02
Health and Safety Code Sections 120325 and 120335
Statutes 2010, Chapter 434 (AB 354)
Twin Rivers Unified School District, Claimant

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

STATEWIDE COST ESTIMATE

Item 11* *Uniform Complaint Procedures (K-12)*, 03-TC-02
Education Code Sections 250, 251, 262.3
Statutes 1982, Chapter 1117; Statutes 1988, Chapter 1514;
Statutes 1998, Chapter 914
California Code of Regulations, Title 5, Sections 4611, 4621, 4622, 4631,
and 4632
Register 92, Number 3; Register 93, Number 51
Solana Beach School District, Claimant

ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5

Item 12* General Cleanup Provisions
California Code of Regulations, Title 2, Division 2, Chapter 2.5,
Articles 1, 2, 3, 4.5, 5, 6, 6.5, 7, 8, 8.5, and 10
Sections 1181 through 1189.61 and 1190 through 1190.05

Executive Director Heather Halsey announced that after the agenda for this hearing was released, the parties agreed to place Item 9 on the Consent Calendar. Chairperson Ortega asked if there was any objection to adding Item 9 to the Consent Calendar. No objection was made. Member Olsen made a motion to adopt the consent calendar. With a second by Member Saylor, the consent calendar was adopted by a vote of 7-0.

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

Executive Director Heather Halsey swore in parties and witnesses participating in the hearing.

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

Item 2 Appeal of Executive Director Decisions

There were no appeals to consider.

TEST CLAIMS

- Item 3 *Standardized Testing and Reporting (STAR) II and III*,
05-TC-02, 05-TC-03, and 08-TC-06
- Education Code Sections 60601, 60602, 60603, 60604, 60605, 60605.6,
60606, 60607, 60611, 60615, 60630, 60640, 60641, 60642.5
- Statutes 1995, Chapter 975; Statutes 1997, Chapter 828; Statutes 1999,
Chapter 735; Statutes 2000, Chapter 576; Statutes 2001, Chapter 20; Statutes
2001, Chapter 722; Statutes 2002, Chapter 1168; Statutes 2003, Chapter 773;
Statutes 2004, Chapter 183; Statutes 2004, Chapter 233; Statutes 2005,
Chapter 676; Statutes 2007, Chapter 174; Statutes 2007, Chapter 730;
Statutes, 2008, Chapter 473, Statutes 2008, Chapter 757
- California Code of Regulations, Title 5, Sections 850, 851, 852, 853, 855,
857, 858, 859, 861, 862, 863, 864.5, 865, 866, 867, 867.5, and 868
- Register 2005, No. 34 (Sept. 21, 2005), Register 2006, No. 45 (Dec. 8,
2006)¹
- San Diego Unified School District, Grant Joint Union High School District
Twin Rivers Unified School District, Claimants

These test claims seek reimbursement for administration of the Standardized Testing and Reporting program, as required by the test claim statutes and regulations.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt the proposed statement of decision to deny the test claim.

Parties were represented as follows: Art Palkowitz, representing the claimant; Jillian Kisse and Kathy Lynch, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Ramirez made a motion to continue the item to a future meeting in order to allow the claimant time to gather additional evidence in support of claimed costs above amounts appropriated by the state for the program. The motion was seconded by Member Saylor. Following additional discussion among the Commission members, staff, and parties, the motion failed by a vote of 2-5, with Member Ramirez and Member Saylor voting yes. Member Chivaro made a motion to adopt the staff recommendation to deny the test claim. With a second by Member Olsen, the motion to adopt the staff recommendation to deny the test claim was adopted by a vote of 7-0.

- Item 4 *Medi-Cal Eligibility of Juvenile Offenders*, 08-TC-04
- Welfare and Institutions Code section 14029.5
- Statutes 2006, Chapter 657
- County of Alameda, Claimant

This test claim seeks reimbursement for counties to help juveniles whose Medi-Cal coverage is terminated as a result of incarceration in a juvenile detention facility for 30 days or more, to obtain Medi-Cal or other health coverage immediately upon release from custody.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt the proposed statement of decision to partially approve the test claim.

¹ Test Claim 08-TC-06 refers to regulations effective February 2007, but there were no test claim regulations effective on that date.

Parties were represented as follows: Nicole Wordelman, representing the claimant; Eduardo Cavazos, representing the Department of Health Care Services; Lee Scott, Michael Byrne, and Kathy Lynch representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Chivaro, the motion to adopt the staff recommendation to partially approve the test claim was adopted by a vote of 7-0.

REQUEST FOR MANDATE REDETERMINATION

Item 5 *Sexually Violent Predators (CSM-4509)*, 12-MR-01

Welfare and Institutions Code Sections 6601 through 6605, and 6608
Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763
(AB 888); Statutes 1996, Chapter 4 (AB 1496)

As Alleged to be Modified by: Proposition 83,
General Election, November 7, 2006

California Department of Finance, Requestor

In a previous hearing, the Commission found that the state's liability had been modified based on a subsequent change in law, and that a new test claim decision was required to reflect the state's modified liability under the test claim statute. In this hearing, the only issue before the Commission was the period of reimbursement applicable to the redetermination request and the adoption of the proposed new test claim decision; including the analysis of the new issue identified at the September 27, 2013 hearing raised by the County of Los Angeles which it was alleged might affect the period of reimbursement for this mandate redetermination.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the staff analysis and proposed statement of decision, ending reimbursement for most of the test claim activities as of July 1, 2011 and direct staff to prepare a new expedited parameters and guidelines to reflect the state's modified liability under the new test claim decision.

Parties and interested parties were represented as follows: Hasmik Yaghobyan on behalf of County of Los Angeles; Craig Osaki, on behalf of the Los Angeles County Public Defender's Office; Michael Byrne, representing Requestor, the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Saylor made a motion to adopt the staff recommendation. With a second by Member Chivaro, the motion to adopt the staff recommendation to adopt the new test claim decision and direct staff to prepare a new expedited parameters and guidelines to reflect the state's modified liability was adopted by a vote of 6-1 with Member Ramirez voting no.

Item 6 *Local Recreational Areas: Background Screenings (01-TC-11)*, 12-MR-02

Public Resources Code Section 5164

Statutes 2001, Chapter 777

As Alleged to be Modified by: Statutes 2010, Chapter 719 (SB 856)

California Department of Finance, Requestor

This redetermination request alleges that the state's liability under Public Resource Code section 5164 has been modified by a subsequent amendment to that section, to now provide local agencies with fee authority sufficient to cover the costs of the mandated activities.

Commission Counsel Matt Jones presented this item and recommended that the Commission find that the Department of Finance has made an adequate showing that the state's liability has been modified, and direct staff to schedule a second hearing on the request.

Parties and interested parties were represented as follows: Michael Byrne and Kathy Lynch, representing Requester, the Department of Finance.

Department of Finance indicated concurrence with the staff recommendation and there was no discussion. Member Olsen made a motion to adopt the staff recommendation. With a second by Member Chivaro, the motion to adopt the staff recommendation, finding that the Department of Finance has made an adequate showing that the State's liability has been modified and directing staff to schedule a second hearing on the request, was adopted by a vote of 7-0.

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

Item 7 *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22

Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 1166.9)

Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916; and executive orders California Code of Regulations, title 11, section 903 (Register 98, Number 29), and "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)

County of Los Angeles, Claimant

These parameters and guidelines address reimbursable activities under the Child Abuse and Neglect Reporting Act found in the Penal Code commencing at section 11164.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed statement of decision and parameters and guidelines.

Parties were represented as follows: Ed Jewik, representing the claimant; Michael Byrne and Kathy Lynch, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to adopt the staff recommendation adopting the proposed statement of decision and parameters and guidelines was adopted by a vote of 7-0.

Item 8 *Peace Officers Procedural Bill of Rights II*, 03-TC-18

Government Code Sections 3304, 3306.5, 3309 and 3312

Statutes 1976, Chapter 465; Statutes 1998, Chapter 786; Statutes 2000, Chapter 209; and Statutes 2002, Chapter 170

City of Newport Beach, Claimant

These parameters and guidelines address amendments to activities associated with the Peace Officers Procedural Bill of Rights Act relating to notices required to be provided to an officer, access to officer personnel files, and the notice requirements to search an officer's locker.

Assistant Executive Director Jason Hone presented this item and recommended that the Commission adopt the proposed statement of decision and parameters and guidelines.

Parties were represented as follows: Allan Burdick, representing the claimant; Michael Byrne and Kathy Lynch, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Alex, the motion to adopt the staff recommendation adopting the proposed statement of decision and parameters and guidelines was adopted by a vote of 7-0.

INCORRECT REDUCTION CLAIMS

Item 10 *Health Fee Elimination*, 05-4206-I-04 and 05-4206-I-08

Education Code Section 76355

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.);
Statutes 1987, Chapter 1118

Fiscal Years 1999-2000, 2000-2001, 2001-2002 and 2002-2003

San Mateo Community College District and San Bernardino Community College, Claimants

This consolidated incorrect reduction claim addresses costs reduced by the State Controller's Office on reimbursement claims filed under the Health Fee Elimination program.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the statement of decision and request that the State Controller's Office reinstate costs claimed as specified and reexamine its findings and reductions as provided.

Parties were represented as follows: Keith Petersen, representing the claimants; Michael Byrne, representing the Department of Finance; Shawn Silva and Jim Spano, representing the State Controller's Office.

The witnesses for the State Controller's Office narrowed their testimony to three disputed issues: 1) the application of the health fee rule to San Bernardino's reimbursement claims; 2) hepatitis immunizations disallowed in San Bernardino's reimbursement claims; and 3) the disallowed salaries and benefits of two employees in San Mateo's reimbursement claims.

Following discussion among the Commission members, staff, and parties, Member Saylor made the first in a series of three motions corresponding to the three disputed issues as presented in the State Controller's Office testimony:

1. Member Saylor made a motion to modify the staff recommendation on the offsetting revenue reductions made in San Bernardino's claims, by striking the "arbitrary and capricious" language from the findings and adopting the recommendation to remand the issue back to the Controller. With a second from Member Alex, the motion was adopted by a vote of 7-0.
2. Member Saylor made a motion to approve the staff recommendation to reinstate costs for hepatitis immunizations. With a second from Member Alex, the motion was adopted 7-0.
3. Member Alex made a motion to reject staff's recommendation to reinstate the costs of salaries and benefits for two employees of San Mateo that were reduced by the

Controller, and instead find that the reductions made by the Controller were entitled to deference, and were supported by some evidence and, thus, were not arbitrary and capricious. With a second from Member Chivaro, the motion was adopted by a vote of 6-1 with Member Saylor voting no.

Member Olsen made a motion to adopt the staff recommendation on the remaining issues identified in the statement of decision. With a second from Member Chivaro, the motion was adopted by a vote of 7-0.

Following additional discussion among the Commission members, staff, and parties, Chair Ortega directed Commission staff to modify the statement of decision, consistent with the Commission's findings made in the three motions above, and schedule it for adoption at the January 24, 2014, where the sole issue for determination will be whether the modified statement of decision reflects the decision made by the Commission at the December 6, 2013 hearing.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)

- Item 13 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer
Note: This item will only be taken up if an application is filed.

No applications were filed.

STAFF REPORTS

- Item 14 Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

- Item 15 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 16 Executive Director: Workload and Tentative Agenda Items for Next Meeting (info/action)

Executive Director Heather Halsey presented this item.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (action).

PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126(e)(1):

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al. (petition and cross-petition), Third District Court of Appeal, Case No. C070357 (Sacramento County Superior Court Case No. 34-2010-80000604) [Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09*

California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]

2. *California School Board Association (CSBA) v. State of California et al.*, Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
3. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al* (petition and cross-petition).
Second District Court of Appeal, Case No. B237153 (Los Angeles County Superior Court, Case No. BS130730)
[*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a)(1):


The Commission adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

REPORT FROM CLOSED EXECUTIVE SESSION

At 11:58 a.m., Chairperson Ortega reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1) and that no action was taken.

ADJOURNMENT

Hearing no further business, Chairperson Ortega adjourned the meeting at 11:59 a.m.



Heather Halsey
Executive Director