

# Minutes

## COMMISSION ON STATE MANDATES

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
September 28, 2012

Present: Member Richard Gillihan, Chairperson  
Representative of the Director of the Department of Finance  
Member Francisco Lujano, Vice Chairperson  
Representative of the State Treasurer  
Member Richard Chivaro  
Representative of the State Controller  
Member Scott Morgan  
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. Items designated by a dagger (†) were originally scheduled for the July 26, 2012 hearing.*

### **CALL TO ORDER AND ROLL CALL**

Chairperson Gillihan called the meeting to order at 9:29 a.m. Chairperson Gillihan also introduced and welcomed new Commission Assistant Executive Director Jason Hone and new Commission Counsel Matt Jones.

Executive Director Heather Halsey called the roll.

### **APPROVAL OF MINUTES**

Item 1†      May 25, 2012

Member Chivaro made a motion to adopt the minutes. With a second by Member Olsen, the May 25, 2012 hearing minutes were adopted by a vote of 5-0, with member Morgan and Chairperson Gillihan abstaining.

### **CONSENT CALENDAR**

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

*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.*

B. PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

- Item 7\*† *Discrimination Complaint Procedures*, 02-TC-46 (and a portion of 02-TC-25 and 02-TC-31)
- Education Code Sections 66010.2, 66010.7, and 87102 as added or amended by Statutes 1988, Chapter 973 and Statutes 1991, Chapter 1198 California Code of Regulations, Title 5, Sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034 Register 92, Number 17; Register 96, Number 23; and Register 2002, Number 35
- (Consolidated With)
- Government Code Section 11135 as added or amended by Statutes 1992, Chapter 913; Statutes 1994, Chapter 146; Statutes 2001, Chapter 708; Statutes 2002, Chapter 1102
- California Code of Regulations, Title 5, Sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, 59340, and 59342 as added or amended by Register 81, Number 16; Register 92, Number 17; Register 96, Number 23; Register 2001, Number 6; Register 2002, Number 13; and Register 2002, Number 35
- Santa Monica Community College District, Los Rios Community College District, and West Kern Community College District, Co-Claimants
- Item 8\*† *Local Agency Ethics (AB 1234)*, 07-TC-04
- Government Code Sections 53232.2(b), 53232.3(a), (b), 53235(a), and 53235.2(a) as added by Statutes 2005, Chapter 700
- City of Newport Beach, Claimant
- Item 9\*† *Charter Schools IV*, 03-TC-03
- Education Code Sections 1628, 42100(a), 47605, 47605.6 as added or amended by Statutes 2002, Chapter 1058
- San Diego Unified School District, Claimant
- Item 11\*† *Handicapped and Disabled Students*, 11-PGA-06
- Government Code Sections 7570-7588 as added or amended by Statutes 1984, Chapter 1747 (AB 3632) ; Statutes 1985, Chapter 1274 (AB 882) ; Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726)
- California Code of Regulations, Title 2, Sections 60000-60610 as added or amended by (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26], final regulations effective August 9, 1999 [Register 99, No. 33])
- Department of Finance, Requestor

- Item 12\* *Interdistrict Attendance Permits*, 10-PGA-01  
 Education Code Sections 44601, 44601.5, and 48204 (f) renumbered to 48204 (b)  
 Statutes 1986, Chapter 172; Statutes 1986, Chapter 742; Statutes 1989, Chapter 853; Statutes 1990, Chapter 10; Statutes 1992, Chapter 120; Statutes 1994, Chapter 1262; Statutes 1997, Chapter 299; Statutes 1997, Chapter 417; Statutes 2003, Chapter 529  
 State Controller's Office, Requestor

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

**A. STATEWIDE COST ESTIMATE**

- Item 13\*† *Modified Primary Election*, 01-TC-13  
 Elections Code Sections 2151 and 13102(b) as added or amended by Statutes 2000, Chapter 898 (SB 28)  
 County of San Bernardino, Claimant
- Item 14\*† *Domestic Violence Background Checks*, 01-TC-29  
 Penal Code Section 273.75(a) and (c) as added or amended by Statutes 2001, Chapter 713 (AB 1129)  
 County of Alameda, Claimant
- Item 15\*† *Identity Theft*, 03-TC-08  
 Penal Code Section 530.6(a) as added or amended by Statutes 2000, Chapter 956  
 City of Newport Beach, Claimant
- Item 16\* *Permanent Absent Voters II*, 03-TC-11  
 Elections Code Sections 3201 and 3203(b)(2)  
 Statutes 2001, Chapter 922; Statutes 2002, Chapter 664; Statutes 2003, Chapter 347  
 County of Sacramento, Claimant

Member Olsen made a motion to adopt the consent calendar. With a second by Member Chivaro, the consent calendar was adopted by a vote of 7-0.

**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.

**HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND GUIDELINES, AND INCORRECT REDUCTION CLAIMS 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.

A. TEST CLAIMS

Item 3† *Reserve Peace Officer Training, 03-TC-15*

Penal Code Sections 830.6 and 832.6 as added or amended by Statutes 1977, Chapter 987; Statutes 1979, Chapter 987; Statutes 1980, Chapters 1301 and 1340; Statutes 1982, Chapter 79; Statutes 1983, Chapter 446; Statutes 1984, Chapter 761; Statutes 1986, Chapter 160; Statutes 1988, Chapter 1482; Statutes 1989, Chapters 594 and 1165; Statutes 1990, Chapter 1695; Statutes 1991, Chapter 509; Statutes 1993, Chapters 169 and 718; Statutes 1994, Chapters 117 and 676; Statutes 1993-94 Extra Session, Chapter 26; Statutes 1995, Chapter 54; Statutes 1996, Chapter 1142; Statutes 1997, Chapter 127; Statutes 1998, Chapter 190; Statutes 1999, Chapter 111; Statutes 2000, Chapter 287; and Statutes 2001, Chapter 473

Post Administrative Manual, Section B (January 2003 Version)

City of Kingsburg, Claimant

This test claim addresses the basic and continuing professional training requirements for reserve peace officers appointed by local law enforcement agencies of cities, counties, special districts, and school districts.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the proposed final staff analysis and statement of decision denying the test claim because the test claim statutes and the POST administrative manual do not impose any mandated duties on local government.

Parties were represented as follows: Juliana Gmur, representing City of Kingsburg; Susan Geanacou and Randall Ward representing the Department of Finance.

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

Item 4 *Uniform Complaint Procedures (K-12), 03-TC-02*

Education Code Sections 200, 220, 231.5, 250, 251, 253, 260, 261, 262.3, and 262.4

Government Code Sections 11135, 11136, 11137, 11138, and 11139  
Statutes 1977, Chapter 972; Statutes 1982, Chapter 1117;  
Statutes 1988, Chapters 1514; Statutes 1990, Chapter 1372; Statutes 1992, Chapter 417; Statutes 1992, Chapter 906; Statutes 1992, Chapter 913; Statutes 1993, Chapter 1123; Statutes 1994, Chapter 146; Statutes 1998, Chapter 914; Statutes 1999, Chapter 587; Statutes 1999, Chapter 591; Statutes 2001, Chapter 708; Statutes 2002, Chapter 300; and Statutes 2002, Chapter 1102

California Code of Regulations, Title 5, Sections 4600, 4610, 4611, 4620, 4621, 4622, 4630, 4631, 4632, 4640, 4650, 4651, 4652, 4660, 4661, 4662, 4663, 4664, 4665, and 4670

Register 92, Number 3; Register 92; Number 18; and Register 93, Number 51

Solana Beach School District, Claimant

This test claim addresses activities associated with the procedures involved for filing, investigating, and resolving complaints arising in a school district. These procedures are used to process two types of complaints: (1) complaints that allege violations of federal or state law governing specific educational programs; and (2) complaints that allege discrimination in violation of state and federal antidiscrimination laws. This test claim also addresses the notice requirements regarding the prohibition against discrimination and the available civil remedies for discrimination complaints.

Commission Counsel Kenny Louie presented this item and recommended that the Commission adopt the staff analysis and the proposed statement of decision to partially approve the test claim for the activities that exceed federal law, and apply only to specified educational programs that districts are required to provide.

Parties were represented as follows: Art Palkowitz of the law offices of Stutz Artiano Shinoff & Holtz, representing the claimants; and Susan Geanacou 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 staff recommendation to adopt the staff analysis and the proposed statement of decision partially approving the test claim was adopted by a vote of 7-0.

Item 5      *Pupil Health: Oral Health Assessment, 07-TC-03*

Education Code Section 49452.8  
Statutes 2006, Chapter 413 (AB 1433)

San Diego Unified School District, Claimant

This test claim addresses reimbursement for costs incurred by school districts and county offices of education resulting from a 2006 test claim statute that added section 49452.8 to the Education Code to address the oral health assessment of first-year public school children.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the staff analysis and proposed statement of decision to deny the test claim because the requirements of the test claim statutes are specifically funded by an ongoing budget appropriation.

Parties were represented as follows: Art Palkowitz of the law offices of Stutz Artiano Shinoff & Holtz, representing the claimant; and Laura Carney and Donna Ferebee, representing 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 staff recommendation to adopt the staff analysis and proposed statement of decision denying the test claim was adopted by a vote of 7-0.

Item 6      *Instructional Materials Funding Requirements, 03-TC-07*

Education Code Sections 60000, 60002, 60045, 60048, 60119, 60200, 60242, 60242.5, 60248, 60252, 60421, 60422, 60423, 60424, 60501, 60510.5, 60521  
Statutes 1976, Chapter 817, Statutes 1977, Chapter 36, Statutes 1979, Chapter 282, Statutes 1982, Chapter 1503, Statutes 1983, Chapter 498, Statutes 1985, Chapter 1440, Statutes 1985, Chapter 1470, Statutes 1985, Chapter 1546, Statutes 1985, Chapter 1597, Statutes 1986, Chapter 211, Statutes 1987, Chapter 1452, Statutes 1989, Chapter 1181, Statutes 1991, Chapter 353, Statutes 1991, Chapter 529, Statutes 1991, Chapter 1028,

Statutes 1993, Chapter 56, Statutes 1994, Chapter 927, Statutes 1995, Chapter 325, Statutes 1995, Chapter 413, Statutes 1995, Chapter 534, Statutes 1995, Chapter 764, Statutes 1996, Chapter 124, Statutes 1997, Chapter 251, Statutes 1999, Chapter 276, Statutes 1999, Chapter 646, Statutes 2000, Chapter 461, Statutes 2002, Chapter 802, Statutes 2003, Chapter 4

California Code of Regulations, Title 5, Sections 9505, 9530, 9531, 9532 and 9535

Register 77, No. 39 (Sept. 23, 1977), Register 83, No 25 (June 17, 1983), Register 95, No. 3, (Dec. 30, 1994), Register 97, No. 31 (July 31, 1997), Register 2003, No. 3 (Jan. 16, 2003)

*Standards for Evaluating Instructional Materials for Social Content* (2000 ed.)

Castro Valley Unified School District, Claimant

This test claim addresses reimbursement for activities performed by K-12 school districts to review, select, order, and dispose of textbooks and instructional materials, as well as activities related to the categorical funding programs for purchasing these materials.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt the test claim and statement of decision to deny the test claim because the statutes, regulations, and executive order do not mandate a new program or higher level of service on school districts.

Parties were represented as follows: Christian Osmena and Donna Ferebee, representing the Department of Finance. Claimant did not make an appearance at the hearing.

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

## B. PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

### Item 10 *Public Contracts (K-14)*, 02-TC-35

Public Contract Code Sections 3300, 7104, 20103.5, 20104, 20104.2, 20104.50, and 22300

Statutes 1985, Chapter 1073; Statutes 1988, Chapter 1408; Statutes 1989, Chapter 330; Statutes 1990, Chapter 1414; Statutes 1992, Chapter. 799; and Statutes 1994, Chapter 726.

Business and Professions Code Section 7028.15  
Statutes 1990, Chapter 321

California Code of Regulations, Title 5, Sections 59504, 59505, 59506, and 59509

Register 1994, Number 6

Clovis Unified School District and Santa Monica Community College District, Co-Claimants

This item addresses the requirements imposed on school districts and community college districts when they contract for goods, services, and public works projects. These requirements include: (1) the requirement to specify the classification of a contractor's license in the bid proposal; (2) required contract clauses for public works involving digging trenches or other excavations; (3) the requirement to verify a bidder's license status; and (4) community college district's engaging in activities to promote minority, women, and disabled business enterprise participation in public contracts.

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

Parties were represented as follows: Ian Johnson and Donna Ferebee, representing the Department of Finance. Claimant did not make an appearance at the hearing.

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

**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 17 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 18 Legislative Update

Program Analyst Kerry Ortman presented this item.

- Item 19 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Chief Legal Counsel Camille Shelton presented this item.

- Item 20 Executive Director's Report

Executive Director Heather Halsey presented this item.

The hearing calendar for 2013 was discussed. Member Saylor moved for hearings on odd months and for the March hearing to be scheduled for April 19, 2013, due to scheduling conflicts. Member Olsen seconded. The 2013 hearing calendar was adopted by a vote of 7-0.

**PUBLIC COMMENT**

Member Olsen presented a resolution to Ms. Nancy Patton that gave an overview of Ms. Patton's 35-year career with the state, honored her upon her retirement, and thanked her for her dedicated service to the state.

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

**A. PENDING LITIGATION**

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

1. *State of California, Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]
2. *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*]
3. *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]
4. *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*]

## B. PERSONNEL

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

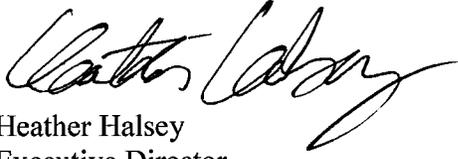
The Commission adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice 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 10:21 a.m., Chairperson Gillihan 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).

**ADJOURNMENT**

Hearing no further business, Chairperson Gillihan adjourned the meeting at 10:22 a.m.

A handwritten signature in black ink, appearing to read "Heather Halsey". The signature is fluid and cursive, with the first name being more prominent than the last.

Heather Halsey  
Executive Director