

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
May 24, 2013

Present: Member Richard Gillihan, Chairperson
Representative of the Director of the Department of Finance
Member Ronald Placet, 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 Gillihan called the meeting to order at 10:00 a.m.

Executive Director Heather Halsey called the roll.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

Chairperson Gillihan 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 5* *Mandate Reimbursement Process I and II*, 12-PGA-03 (CSM 4204, 4485, and 05-TC-05)
- Statutes 1975, Chapter 486 (AB 1375); Statutes 1984, Chapter 1459 (SB 2337); Statutes 1995, Chapter 303 (Budget Act of 1995) et al.
- Government Code Section 17553(b)(1)(C) through (G) and (b)(2); Statutes 2004, Chapter 890 (AB 2856)
- California Code of Regulations, Title 2, Section 1183(d)

(Register 2005, No. 36, Effective September 6, 2005)

TO ADD:

Statutes 2011, Chapter 33 (Budget Act of 2011); Statutes 2012, Chapter 21 (Budget Act of 2012)

As Directed by the Legislature

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

JOINT REQUEST TO EXTEND TERM OF REASONABLE REIMBURSEMENT METHODOLOGY (GOV. CODE § 17557.2(f) and (g))

Item 8* *Firearm Hearings for Discharged Inpatients, 07-RRM-01 (99-TC-11)*

Welfare and Institutions Code Section 8103(f) and (g)

Statutes 1999, Chapter 578 (AB 1587)

County of Los Angeles and Department of Finance, Joint Requestors

Member Olsen made a motion to adopt the consent calendar. With a second by Member Placet, 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.

A. 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.

B. TEST CLAIMS

Item 3 *High School Exit Examination II, 08-TC-02*

Education Code Sections 37254, 52378, 52379, 52380

Statutes 2007, Chapter 526 (AB 347) and Statutes 2007, Chapter 730 (SB 132)

California Code of Regulations, Title 5, Section 1204.5 Register 2004, No. 21, eff. May 19, 2004; Register 2005, No. 33, eff. Aug. 16, 2005; Register 2006, No. 11, eff. Mar. 16, 2006; and Register 2007, No. 51, eff. Dec. 20, 1997

San Jose Unified School District, Claimant

This test claim addresses activities related to the California High School Exit Examination (CAHSEE), and related counseling programs to assist pupils in passing the CAHSEE.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission deny the test claim because the activities are performed as a condition of receiving funds therefore the statutes do not legally compel school districts to perform the activities, nor is there evidence that the statutes practically compel districts to perform the activities.

Parties were represented as follows: Arthur 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 Alex made a motion to adopt the staff recommendation. With a second by Member Saylor, the staff recommendation to deny the test claim was adopted by a vote of 7-0.

Item 4 *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

This test pertains to school district activities related to a new pertussis (whooping cough) immunization requirement for adolescent students.

Senior Commission Counsel Tyler Asmundson presented this item and recommended that the Commission deny the test claim because: (1) the code sections pled do not mandate school districts to engage in any activity or task; (2) although the activities identified by the claimant are addressed in emergency regulations, those regulations were not identified or specifically pled in the test claim as required by Government Code sections 17521, 17551, and 17553; and (3) the claimant's subsequent requests to amend the test claim to add the regulations were not timely filed.

Parties were represented as follows: Arthur Palkowitz of the law offices of Stutz Artiano Shinoff & Holtz, representing the claimants; Bonita Mallory and Rob Roach, Twin Rivers Unified School District; and Susan Geanacou, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Alex made a motion to remand the test claim to staff to evaluate options for a potential mandate, either in connection with the statutes pled or the possibility of including the regulations that were not pled. With a second by Member Saylor, the motion to remand the test claim for further analysis was adopted by a vote of 7-0.

C. REQUEST FOR RECONSIDERATION OF STATEMENT OF DECISION
AND PARAMETERS AND GUIDELINES

Item 7 *California Public Records Act*, 02-TC-10 and 02-TC-51
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapter 463 (AB 1040); Statutes 2000, Chapter 982
(AB 2799); and Statutes 2001, Chapter 355 (AB 1014)
Request for Reconsideration of Statement of Decision and Parameters
and Guidelines Adopted April 19, 2013
California Special Districts Association, Requester

This is a request for reconsideration of the Commission's statement of decision and parameters and guidelines, adopted April 19, 2013, for the *California Public Records Act* program filed by the California Special Districts Association (CSDA). CSDA contends that the decision and parameters and guidelines contain an error of law with respect to the description of eligible claimants. The decision authorized reimbursement for cities, counties, and school districts but did not address the issue of special districts.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission grant the request for a reconsideration and direct staff to schedule a second hearing on the merits of the request.

Parties were represented as follows: Dorothy Holzem, California Special Districts Association, representing Requester; and Randy Ward, representing the Department of Finance.

There was no discussion and Member Olsen made a motion to adopt the staff recommendation. With a second by Member Rivera, the staff recommendation to grant the request for reconsideration and to direct staff to schedule a second hearing on the merits of the request was adopted by a vote of 6-0. Member Saylor was not present.

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 9 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 10 Legislative Update (info)

Assistant Executive Director Jason Hone presented this item.

- Item 11 Chief Legal Counsel: Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 12 Executive Director: Workload, Budget (tentative) and Tentative Agenda Items for Next Meeting (info)

Executive Director Heather Halsey presented this item.

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):

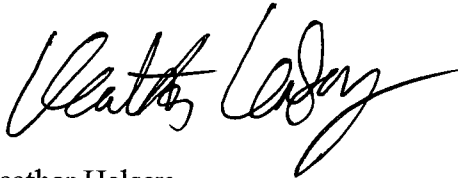
The Commission adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice 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 11:22 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 11:23 a.m.



Heather Halsey
Executive Director