

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
September 27, 2007

Present: Member Tom Sheehy, Chairperson
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 Cynthia Bryant
Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Sarah Olsen
Public Member
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Sheehy called the meeting to order at 9:38 a.m.

APPROVAL OF MINUTES

Item 1 July 26, 2007

The July 26, 2007 hearing minutes were adopted 4-0. Member Bryant, Member Glaab, and Chairperson Sheehy abstained.

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

Item 2 Staff Report (if necessary)

There were no appeals to consider.

PROPOSED CONSENT CALENDAR

ORDERS TO SET ASIDE ORDERS DENYING APPEAL OF EXECUTIVE DIRECTOR'S DECISIONS TO RETURN TEST CLAIMS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (C). (ACTION)

- Item 3 Order To Set Aside Order Denying Appeal Of Executive Director's Decision To Return Test Claim (Pursuant to Peremptory Writ of Mandate Issued by the Los Angeles County Superior Court, Case Nos. BS089769 and BS089785, and Affirmed in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898)
- Transit Trash Receptacles*, 03-TC-04
California Regional Water Quality Control Board
Executive Order Number 01-182 (December 13, 2001), Permit Number CAS004001, Part 4, Section F.5.c.3
County of Los Angeles, Claimant
- Item 4 Order To Set Aside Order Denying Appeal Of Executive Director's Decision To Return Test Claim (Pursuant to Peremptory Writ of Mandate Issued by the Los Angeles County Superior Court, Case Nos. BS089769 and BS089785, and Affirmed in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898)
- Inspection of Industrial/Commercial Facilities*, 03-TC-19
California Regional Water Quality Control Board Executive Order
Number 01-182 (December 13, 2001), Permit Number CAS004001, Part 4, Section C.2.a., b.
County of Los Angeles, Claimant
- Item 5 Order To Set Aside Order Denying Appeal Of Executive Director's Decision To Return Test Claim (Pursuant to Peremptory Writ of Mandate Issued by the Los Angeles County Superior Court, Case Nos. BS089769 and BS089785, and Affirmed in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898)
- Waste Discharge Requirements*, 03-TC-20
California Regional Water Quality Control Board Executive Order Number 01-182 (December 13, 2001), Permit Number CAS004001, Parts 4.B.4, 4.C.2.a, 4.C.2.b, 4.C.2.c, D, E, F, and G
Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palo Verdes, San Marino, and Westlake Village, Claimants
- Item 6 Order To Set Aside Order Denying Appeal Of Executive Director's Decision To Return Test Claim (Pursuant to Peremptory Writ of Mandate Issued by the Los Angeles County Superior Court, Case Nos. BS089769 and BS089785, and Affirmed in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898)
- Stormwater Pollution Control Requirements*, 03-TC-21
California Regional Water Quality Control Board Executive Order Number 01-182 (December 13, 2001), Permit Number CAS004001, Parts 1 & 2, Pages 16-18; Part 4C & E, Pages 27-34 and 42-45; and Part 4F(5) & (6), Pages 48-51
Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina, Claimants

HEARINGS AND DECISIONS ON CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551)
(ACTION)

DISMISSAL OF WITHDRAWN TEST CLAIM

- Item 19 *Domestic Violence Defendant Investigation*, 04-TC-04
Penal Code Section 273.75 as added or amended by Statutes 2001,
Chapter 572 (SB 66)
County of San Bernardino, Claimant

Member Glaab made a motion to adopt items 3, 4, 5, 6, and 19 on the consent calendar. With a second by Member Olsen, the items were unanimously adopted.

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

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing.

RECONSIDERATION OF PRIOR FINAL DECISIONS DIRECTED BY
STATUTES 2006, CHAPTER 78, SECTION 8 (AB 1805)

- Item 7 *Peace Officers & Firefighters' Cancer Presumption*, 06-RL-4081/4416-01
Labor Code Section 3212.1, as added by Statutes 1982, Chapter 1568
(AB 3011) and amended by Statutes 1989, Chapter 1171 (SB 89)

Camille Shelton, Chief Legal Counsel, presented this item. She noted that in 2006, the Legislature enacted a statute directing the Commission to reconsider the Statements of Decision and parameters and guidelines in *Peace Officers & Firefighters' Cancer Presumption* "no later than six months after a final court decision is issued in the case of *CSAC Excess Insurance Authority and the City of Newport Beach v. the Commission on State Mandates*." Ms. Shelton stated that the Statements of Decision and the *CSAC Excess Insurance Authority* case address the issue of whether Labor Code section 3212.1 constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6. She explained that the statute provides an evidentiary presumption of industrial causation to certain firefighters and peace officers in workers compensation cases for cancer-related injuries.

Ms. Shelton indicated that on December 20, 2006, the Second District Court of Appeal issued its decision finding that Labor Code section 3212.1 does not mandate a new program or higher level of service. Consistent with prior case law, the court held that simply because a statute that establishes an employee benefit program may increase the cost to the employer, the statute does not increase the level of service provided to the public within the meaning of article XIII B, section 6.

Staff recommended that the Commission adopt the staff analysis finding that the test claim statutes at issue in the prior decisions do not impose a reimbursable state-mandated program on local agencies, and thus, beginning July 1, 2008, reimbursement is not required for the activities and costs in the parameters and guidelines for these programs.

Parties were represented as follows: Susan Geanacou and Carla Castaneda, with the Department of Finance.

Ms. Castaneda stated no objections and Ms. Geanacou supported the staff analysis.

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

- Item 8 Proposed Statement of Decision
Peace Officers & Firefighters' Cancer Presumption, 06-RL-4081/4416-01
See Above

Camille Shelton, Chief Legal Counsel, presented this item. She noted that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision.

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

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

PARAMETERS AND GUIDELINES AMENDMENT AS DIRECTED BY
STATUTES 2006, CHAPTER 78, SECTION 8 (AB 1805)

- Item 20 *Peace Officers & Firefighters' Cancer Presumption*, 06-RL-4081/4416-01
Labor Code Section 3212.1, as added by Statutes 1982, Chapter 1568
(AB 3011) and amended by Statutes 1989, Chapter 1171 (SB 89)

Camille Shelton, Chief Legal Counsel, presented this item. She stated that the proposed amendments to the parameters and guidelines would end reimbursement for these programs beginning July 1, 2008. Staff recommended that the Commission adopt the proposed amendments to the parameters and guidelines.

Parties were represented as follows: Susan Geanacou and Carla Castaneda, with the Department of Finance.

Ms. Castaneda stated no objections and Ms. Geanacou supported the staff analysis.

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

HEARINGS AND DECISIONS ON CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551) (ACTION)

TEST CLAIMS

- Item 9 *Local Agency Formation Commissions*, 02-TC-23
Government Code Sections 56001, 56326.5, 56381, 56381.6, 56425, 56426.5,
and 56430
Statutes 1991, Chapter 439 (AB 748); Statutes 2000, Chapter 761
(AB 2838); Statutes 2002, Chapter 493 (AB 1948)
LAFCO Municipal Service Review Guidelines (Final Draft, October 3, 2002);
LAFCO Municipal Service Review Guidelines Appendices
(Final Draft, October 3, 2002), Governor's Office of Planning & Research
Sacramento Metropolitan Fire District, Claimant

Deborah Borzelleri, Senior Commission Counsel, presented this item. She stated that the test claim statutes address changes to the operation of and funding for local agency formation commissions, or LAFCOs, which are statutorily created local administrative bodies that make

determinations regarding formation and development of local agencies and local boundaries. She added that the test claim statutes modify representation on the Sacramento County LAFCO, mechanisms for funding LAFCO operations when independent special districts are represented on the LAFCO, and the process for LAFCOs to adopt and update the sphere of influence for each local agency within California counties.

Ms. Borzelleri stated that because the claimant is an independent special district, the findings of this test claim apply to independent special districts only, not to LAFCOs or any other local government agency. In addition, Ms. Borzelleri noted that only independent special districts that are subject to the tax-and-spend limitations of articles XIII A and B are eligible claimants.

Staff found that the test claim statutes impose a partially reimbursable state-mandated program for the activities specified in the staff analysis, and recommended that the Commission adopt the analysis to partially approve the test claim.

Parties were represented as follows: Juliana Gmur and Joe Chavez, on behalf of the Sacramento Metropolitan Fire District; Allan Burdick, on behalf of the California State Association of Counties; and Carla Castaneda and Susan Geanacou, with the Department of Finance.

Ms. Gmur discussed the applicability of the *City of San Jose* case. She noted that the court was looking for a shift of fiscal responsibility from the state to local agencies, but found a shift from one local agency to another local agency, and therefore, the test claim failed. She contended that the legislation in this case was different because the bill not only spread the costs of the LAFCO amongst many parties, but it also expanded the program. The program got bigger and it was apportioned; thus, the *City of San Jose* could not apply because the state shifted a financial responsibility by increasing the level of service. She argued that without the apportionment of the LAFCO costs, the county could have properly filed a test claim on this subject. The district should not be prohibited from similarly coming forward on the larger program because the county could have done so.

Member Worthley agreed with Ms. Gmur, noting that staff already concluded that there was an enhancement. He stated that there was no shifting of actual state dollars to this program, but the expansion of the program, in and of itself, should constitute a reimbursable mandate.

Ms. Borzelleri stated that because LAFCOs are not the claimant, staff was not able to make a finding about the allegation that LAFCOs have additional requirements. She clarified that Government Code sections 56381 and 56381.6 do not impose any activities; however, analyzing the *City of San Jose* case allows for the shift of cost in funding. Ms. Borzelleri explained that the *City of San Jose* is applicable because it talks about shifting funds from one local to another, in which case there is no prohibition under article XIII B, section 6. She indicated that the *Lucia Mar* case is not applicable.

Ms. Gmur maintained that the *City of San Jose* case does not apply because of the expansion of the program and because it is factually different. Therefore, the facts of the case, in which the costs have been shifted to a local through the expansion of the program by the Legislature, is more akin to *Lucia Mar*.

Mr. Burdick commented that a recently adopted rule of the Commission was being applied to this test claim, such that it was being narrowly applied only to independent special districts. He contended that the test claim was filed with the understanding that Sacramento Metropolitan Fire District would be representing all local agencies.

Ms. Borzelleri responded that due to the way the test claim was filed, the particular statutes involved, and the fact that special districts in many cases are totally funded by fees, staff had to carefully narrow its finding, especially because there were no statements in the record as to what the cities might claim.

Regarding Mr. Burdick's comments, Ms. Higashi clarified that an amendment to the test claim was filed the day before. She noted that Commission staff had not deemed it complete yet and that she severed it from this test claim so that the hearing could proceed on this matter. She stated that the issues were separate and the findings here were limited to independent special districts.

Mr. Chavez expressed the importance of the issue for the Sacramento Metropolitan Fire District. He submitted that the LAFCO requirements took up their time and resources, and impacted their day-to-day operations.

Ms. Geanacou asked a technical question regarding the test claim amendment, to which Ms. Higashi responded.

Member Worthley raised an issue concerning municipal service reviews. As chairman of the Tulare County LAFCO, he was concerned about the finding that the responsibility of the municipal service reviews falls on LAFCO as opposed to the special district. He maintained that without the assistance of the local commissions or local agencies, the reviews could not be done. He believed there to be a practical compulsion resulting from these reviews.

Member Bryant commented that special districts were already required to comply with LAFCOs' needs in terms of working on the municipal service reviews, and thus, the test claim statute does not add any new responsibilities.

Member Worthley noted that they were required to receive more information than before.

Ms. Borzelleri stated that the municipal service review is something new, but acknowledged that prior to the test claim, LAFCO could get information from districts and cities when necessary.

Member Worthley maintained that municipal service reviews constituted an enhanced service level.

Member Lujano made a motion to adopt the staff recommendation, which was seconded by Member Chivaro. The motion carried 4-3, with Member Worthley, Member Bryant, and Member Glaab voting "No."

Item 10 Proposed Statement of Decision
Local Agency Formation Commissions, 02-TC-23
See Above

Deborah Borzelleri, Senior Commission Counsel, presented this item. She noted that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. She added that staff would make minor changes in the final Statement of Decision to reflect the hearing testimony and vote count.

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

Item 11 *Reporting Improper Governmental Activities, 02-TC-24*
Education Code Sections 44110 - 44114, and 87160 – 87164;
Statutes 2000, Chapter 531 (AB 2472); Statutes 2001, Chapter 159
(SB 662); Statutes 2001, Chapter 416 (AB 647); Statutes 2002, Chapter 81
(AB 2034)
San Juan Unified School District and Santa Monica Community College
District, Claimants

Kenny Louie, Commission Counsel, presented this item. He stated that the test claim addresses the procedures available to protect K-12 and community college employees and applicants for employment from intentional acts of reprisal or coercion resulting from the employee's or applicant's disclosure of improper governmental services. The test claim statute also allows K-12 and community college employees or applicants that were subject to retaliatory acts to file a complaint with local law enforcement and bring a civil suit. He explained that where a "person" has engaged in retaliatory activities, that "person" is subject to disciplinary actions, civil and criminal liability, and punitive damages. As defined by the test claim statutes, "person" includes K-12 school districts and community college districts.

Mr. Louie also stated that community college district employees and applicants are provided the additional protection of being allowed to file a complaint with the State Personnel Board, which must then conduct a hearing or investigation into the complaints. The State Personnel Board is also given the authority to order appropriate relief upon a finding of misconduct.

Staff found that the plain language of the test claim statutes do not impose any state-mandated activities on K-12 school districts. Thus, K-12 school districts are not entitled to reimbursement for the activities in the test claim. However, staff found that the test claim statutes do impose reimbursable state-mandated activities on community college districts relating to the State Personnel Board hearings. Staff recommended that the Commission adopt the staff analysis to partially approve the test claim.

Parties were represented as follows: Keith Petersen, on behalf of the claimants; and Donna Ferebee and Jonathan Lee, with the Department of Finance.

Mr. Petersen stated that the legislation clearly created a multi-tiered, complex response process involving administrative procedures to respond to the complaint, and judicial relief. He noted that the staff recommendation hinged on the plain meaning of the statute; however, he argued that it does not effectuate the purpose of the statute, which is to provide an administrative and judicial relief for employees and potential employees alleging improper governmental activities. He added that the staff recommendation did not rely on any specific court cases and that it turns on the plain meaning of the statute – that there should be a process. Mr. Petersen contended that the process requires the participation of both parties. He added that the risk of civil, criminal, and monetary damages against employees of a district is a compelling reason for the parties to defend themselves.

Mr. Louie clarified that there were no cases regarding the test claim statutes. Regarding the participation of the school districts, he noted that while it may be the policy and practice of the districts to respond to a claim, the plain language of the statute does not mandate a response. Moreover, Mr. Louie maintained that an employee or applicant's right to file a claim, to file a lawsuit, and to receive a judgment for that lawsuit does not hinge on the participation of the school districts. He explained that the intent of the Legislature is to protect employees and applicants.

Mr. Petersen maintained that there is a duty to defend oneself and to participate in the process.

Ms. Shelton responded that *San Diego Unified School District*, a California Supreme Court case, stated that when a decision is left to the state, then it is a state mandate; however, when the decision is made by the local entity, it is not a state-mandated program. She added that the Legislature knows how to direct a response or an activity when it wants to, and it was not done in this case because there is no directive language in the statute to require a school district to participate in litigation.

Consistent with the staff recommendation, Ms. Ferebee stated that the test claim statutes do not legally compel K-12 school districts to engage in any state-mandated activities.

Member Worthley agreed with Mr. Petersen that there is a practical compulsion created by the statute.

Ms. Shelton indicated that the courts, with respect to interpreting mandates, have narrowly applied the practical compulsion standard to instances when the state or the federal government has imposed certain and severe penalties and other draconian consequences.

Member Lujano made a motion to adopt the staff recommendation, which was seconded by Member Chivaro. The motion carried 5-2, with Member Glaab and Member Worthley voting "No."

Item 12 Proposed Statement of Decision
Reporting Improper Governmental Activities, 02-TC-24
See Above

Kenny Louie, Commission Counsel, presented this item. He noted that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. He added that staff would make minor changes in the final Statement of Decision to reflect the hearing testimony and vote count.

Member Worthley requested clarification regarding the dates, which was provided by Ms. Shelton.

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

Item 13 *Presumption of Causation in Workers' Compensation Claims: Tuberculosis, Hepatitis and Other Blood-Borne Infectious Diseases, and Meningitis, 01-TC-20, 01-TC-23, 01-TC-24*
Labor Code Sections 3212.6, 3212.8, and 3212.9
Statutes 1995, Chapter 683 (SB 658); Statutes 1996, Chapter 802 (AB 521);
Statutes 2000, Chapter 883 (AB 2043); Statutes 2000, Chapter 490 (SB 32);
Statutes 2001, Chapter 833 (AB 196);
County of Tehama and California State Association of Counties-Excess
Insurance Authority (CSAC-EIA), Claimants

Kenny Louie, Commission Counsel, presented this item. He stated that the test claim statutes provide evidentiary presumptions to certain members of law enforcement and fire departments that develop or manifest tuberculosis, hepatitis or other blood-borne infectious diseases, or meningitis during the period of employment. In these situations, the diseases are presumed to have arisen out of and during the course of employment, shifting the burden of proof to the local agency employer if the employer decides to dispute the claim.

Staff found that the express language of the test claim statutes do not impose any state-mandated requirements on local agencies. Moreover, no court has found that the payment of benefits to local employees provides an increased level of governmental service to the public, a finding that is required to constitute a new program or higher level of service. Therefore, staff recommended that the Commission adopt the staff analysis to deny the test claims.

Parties were represented as follows: Juliana Gmur, on behalf of the County of Tehama and the California State Association of Counties – Excess Insurance Authority; and Carla Castaneda and Donna Ferebee, with the Department of Finance.

Ms. Gmur stated that the staff analysis accurately reflects the decision of the Second District Court of Appeal.

Ms. Castaneda concurred with the staff analysis.

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

- Item 14 Proposed Statement of Decision
Presumption of Causation in Workers' Compensation Claims: Tuberculosis, Hepatitis and Other Blood-Borne Infectious Diseases, and Meningitis,
01-TC-20, 01-TC-23, 01-TC-24
See Above

Kenny Louie, Commission Counsel, presented this item. He noted that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. He added that staff would make minor changes in the final Statement of Decision to reflect the hearing testimony and vote count.

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

- Item 15 *Hepatitis Presumption (K-14),* 02-TC-17
Labor Code Section 3212.8
Statutes 2000, Chapter 490 (SB 32); Statutes 2001, Chapter 833 (AB 196)
Santa Monica Community College District, Claimant

Kenny Louie, Commission Counsel, presented this item. He stated that the test claim addresses one of the same statutes pled in Item 13 and raises the same issues discussed in Item 13, as applicable to certain members of school district police departments. For the same reasons discussed in Item 13, staff found that the test claim statutes do not impose any state-mandated activities on K-12 school districts and community college districts. Staff recommended that the Commission adopt the staff analysis to deny the test claim.

Parties were represented as follows: Keith Petersen, on behalf of the test claimants; and Carla Castaneda and Donna Ferebee, with the Department of Finance.

Mr. Petersen stated that the staff analysis accurately reflected the litigation.

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

- Item 16 Proposed Statement of Decision
Hepatitis Presumption (K-14), 02-TC-17
See Above

Item 16 is the Statement of Decision for the *Hepatitis Presumption (K-14)* test claim.

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

- Item 17 *Crime Victims' Domestic Violence Incident Reports II*, 02-TC-18
Family Code Section 6228
Penal Code Sections 12028.5 and 13730
Statutes 1984, Chapter 901 (AB 3436); Statutes 2001, Chapter 483
(AB 469); Statutes 2002, Chapters 377 (SB 1265), 830 (AB 2695) and
833 (SB 1807)
County of Los Angeles, Claimant

Eric Feller, Senior Commission Counsel, presented this item. He stated that the test claim statutes add information regarding firearms or weapons to the domestic violence incident report form and require giving a copy of the incident report or the face sheet to a representative of the domestic violence victim, if the victim is deceased. In addition, the statutes require officers at the scene of a domestic violence incident involving a threat to human life or a physical assault to take temporary custody of firearms or weapons in plain sight or discovered pursuant to consensual or other lawful search and provide a procedure for return or disposal of the weapon.

Mr. Feller noted that the claimant agreed with the staff analysis, but the Department of Finance disagreed with two of staff's findings. First, the Department of Finance disagreed that Penal Code section 13730, subdivision (c)(3), is a mandate to include firearms and weapons information on the domestic violence incident report form, as required by the 2001 amendment to this section. However, staff found that the plain language of the 1993 amendment to Penal Code section 13730, subdivision (a), requires a written incident report for all domestic violence related calls and has not been suspended.

Secondly, the Department of Finance disagreed that filing an order of default under Penal Code section 12028.5, subdivision (f), is a mandate because it states, "A local agency may file one to dispose of the firearm." However, staff found that filing this default petition is a mandate because once the petition to determine if the firearm or other deadly weapon has been filed, the court has jurisdiction over the weapon and it cannot be disposed of until the court decides its fate.

Overall, staff found that the activities specified in the analysis that are based on Penal Code sections 12028.5 and 13730, subdivision (c), are reimbursable state mandates and recommended that the Commission adopt the staff analysis to partially approve the test claim.

Parties were represented as follows: Hasmik Yaghobyan and Suzie Ferrell, on behalf of the County of Los Angeles; and Carla Castaneda and Donna Ferebee, with the Department of Finance.

Ms. Yaghobyan and Ms. Castaneda concurred with the staff analysis.

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

Item 18 Proposed Statement of Decision
Crime Victims' Domestic Violence Incident Reports II, 02-TC-18
See Above

Eric Feller, Senior Commission Counsel, presented this item. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the Commission's decision to partially approve the test claim. Staff also recommended that the Commission allow minor changes to be made to include the hearing testimony and vote count before issuing the final Statement of Decision.

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

STAFF REPORTS

Item 21 Updates on Pending Mandate Reform Legislation
(AB 1222 and AB 1170)

Nancy Patton, Assistant Executive Director, presented this item. She reported that there were two pending bills that included mandate reform provisions:

- AB 1170 would require the Commission to complete test claims filed between 2009 and 2013 within three years. This bill was held on the Senate Appropriations Committee Suspense File. It is now a two-year bill.
- AB 1222 is carried by Assembly Member Laird and is the mandate reform proposal developed by staff of the Commission, Department of Finance, State Controller, Legislature, and local government representatives. This bill includes three components: 1) amends the definition of "reasonable reimbursement methodology (RRM)" by eliminating conditions that have made it impossible for the adoption of an RRM; 2) authorizes local governments and Department of Finance to negotiate an RRM for submittal to the Commission instead of proposed parameters and guidelines and statewide cost estimates; and 3) codifies a procedure for the Department of Finance, and local governments or statewide associations of local governments to request a legislatively determined mandate, a reimbursement methodology, and appropriation.

Ms. Patton stated that all parties agreed that these components would provide local agencies, school districts, and the state with the ability to expedite the mandate reimbursement process and to implement Proposition 1A. AB 1222 is supported by the Commission, Department of Finance, and several local agency representative organizations. It is now pending before the Governor.

Ms. Patton reported that if AB 1222 is signed, Commission staff will:

1. establish an advisory working group consisting of state and local representatives to plan for joint implementation, including developing regulations;
2. initiate the rulemaking process at the Commission's December 6 hearing so that adoption of the final regulations can be tentatively scheduled for the March 2008 hearing; and
3. together with the Department of Finance, conduct workshops and training to brief local agencies, school districts, legislative staff, and the Commission members on

implementation of AB 1222.

Allan Burdick, on behalf of the California State Association of Counties, commented on the outstanding contribution by the Commission staff and Department of Finance Mandates Unit on this matter. He noted that the California State Association of Counties and California League of Cities would be happy to participate.

Member Glaab expressed appreciation for the opportunity to participate in the process.

Ms. Higashi thanked the author, Assembly Member Laird, and coauthor, Assembly Member Silva.

Item 22 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Ms. Shelton reported that the Department of Finance case against the Commission with regard to the *Integrated Waste Management* program was set for hearing on January 25, 2008 before Judge Connolly in the Sacramento County Superior Court.

Item 23 Executive Director's Report (info/action)
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi reported that the Commission's budget was adopted intact. However, other provisions in the adopted budget bills require additional cuts to be made. Staff is in the process of building the 2008-09 budget.

Chairperson Sheehy clarified that those provisions applied to all general-funded entities within state government.

Ms. Higashi acknowledged Tom Dithridge, a representative of the Department of Finance, for his work on mandates over the years. Mr. Dithridge announced his retirement at the end of the year.

PUBLIC COMMENT

There was no public comment.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526 (action)

PERSONNEL

Report from Personnel Subcommittee and to confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

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, subdivision (e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
2. *County of San Bernardino v. Commission on State Mandates, et al.*, Los Angeles County Superior Court, Case No. BS106052; San Bernardino County Superior Court, Case No. SCVSS 138622 [*Standardized Emergency Management Systems (SEMs)*]

3. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller, Third District Court of Appeal, Case No. C055700; [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]*
4. *Department of Finance v. Commission on State Mandates, Sacramento County Superior Court, Case No. 07CS00079, CSM 06-L-02, [Peace Officer Procedural Bill of Rights]*
5. *Department of Finance and California Integrated Waste Management Board v. Commission on State Mandates, Santa Monica Community College District, and Lake Tahoe Community College District, Sacramento County Superior Court, Case No. 07CS00355, CSM 06-L-03 [Integrated Waste Management]*
6. *San Diego Unified School District v. Commission on State Mandates and California Department of Finance, San Diego County Superior Court, Case No. 37-2007-00064077-CU-PT-CTL, CSM 06-04 [Emergency Procedures: Earthquake Procedures and Disasters]*

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).)

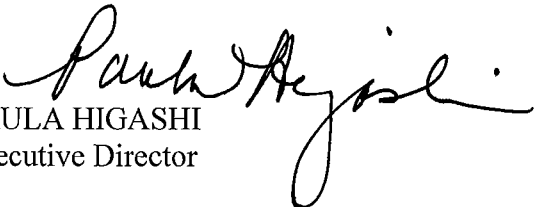
Hearing no further comments, Chairperson Sheehy adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the 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 Sheehy 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 with a motion by Member Olsen and second by Member Glaab, Chairperson Sheehy adjourned the meeting at 11:00 a.m.


PAULA HIGASHI
Executive Director