

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
October 4, 2006

Present: Member Vincent Brown, Chairperson
Representative of the Director of the Department of Finance
Member Amy Hair, Vice Chairperson
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Sean Walsh
Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Paul Glaab
City Council Member

Absent: Member Sarah Olsen
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Brown called the meeting to order at 1:30 p.m.

APPROVAL OF MINUTES

Item 1 July 28, 2006

Upon motion by Member Walsh and second by Member Worthley, the minutes were unanimously adopted.

PROPOSED CONSENT CALENDAR

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS

Item 11 *Peace Officers Procedural Bill of Rights, 05-PGA-07*
Request to Amend Parameters and Guidelines
Government Code Sections 3300 through 3310
Statutes of 1976, Chapter 465 (AB 301); Statutes of 1978, Chapters 775 (AB 2916), 1173 (AB 2443), 1174 (AB 2696), and 1178 (SB 1726); Statutes of 1979, Chapter 405 (AB 1807); Statutes of 1980, Chapter 1367 (AB 2977); Statutes of 1982, Chapter 994 (AB 2397); Statutes of 1983, Chapter 964 (AB 1216); Statutes of 1989, Chapter 1165 (SB 353); and Statutes of 1990, Chapter 675 (AB 389)
Department of Finance, Requestor

- Item 11A *Removal of Chemicals*, 03-PGA-04
Request to Amend Parameters and Guidelines
Education Code Section 49411
Statutes 1984, Chapter 1107 (AB 3820)
As Amended by Statutes 1994, Chapter 840 (AB 3562)
Department of Finance, Requestor

PROPOSED STATEWIDE COST ESTIMATES

- Item 12 *Crime Victim's Domestic Violence Incident Reports*, 99-TC-08
County of Los Angeles, Claimant
Family Code Section 6228
Statutes 1999, Chapter 1022 (AB 403)
Los Angeles County, Claimant
- Item 13 *Peace Officer Personnel Records: Unfounded Complaints Against Peace Officers and Discovery of Peace Officer Personnel Records*,
00-TC-24 and 00-TC-25
Statutes 1978, Chapter 630 (SB 1436), et al.
Cities of Hayward San Mateo, Claimants

Member Walsh moved for adoption of items 11, 11A, 12, and 13 on the consent calendar. With a second by Member Hair, the items were unanimously adopted.

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

- Item 3 Staff Report (if necessary)

No appeals were filed.

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)

Ms. Higashi swore in the parties and witnesses participating in the hearing of the remaining items.

REQUEST FOR RECONSIDERATION OF PRIOR FINAL DECISION PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1188.4

- Item 4 *Binding Arbitration*, 01-TC-07
Code of Civil Procedure, Sections 1281.1, 1299, 1299.2, 1299.3, 1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9
Statutes 2000, Chapter 906 (SB 402)
City of Palos Verdes Estates, Claimant
Chair, Commission on State Mandates, Requestor

Deborah Borzelleri, Senior Commission Counsel, presented this item. She noted that the Commission Chairperson requested the reconsideration of the Commission's Statement of Decision adopted on July 28, 2006, regarding the *Binding Arbitration* test claim. Ms. Borzelleri explained that reconsideration of a prior final decision is a two-step process. The first step is procedural, in which the Commission decides whether or not to grant the request. If granted, the

second step is a substantive review of the merits of the prior decision, which would be scheduled for the December hearing in this case.

Ms. Borzelleri stated that the test claim statute deals with labor relations between local agencies and their law enforcement officers and firefighters. The legislation requires that when an impasse in labor negotiations has been reached, parties would be subject to binding arbitration if the employee organization so requests. She indicated that the statute was declared unconstitutional in 2003, so the period in question is between 2001 and 2003.

Ms. Borzelleri noted that at the July 28, 2006 hearing, the Commission found that the test claim statute does not constitute a new program or higher level of service. At this hearing, however, the claimant significantly modified the test claim by withdrawing its request for reimbursement for costs to litigate and costs for increased employee compensation that could result from the binding arbitration process.

Ms. Borzelleri stated that the issue before the Commission is whether it should grant the request for reconsideration and outlined the Commission's options:

1. approve the request, finding that the reconsideration is appropriate to determine whether the prior final decision is contrary to law;
2. deny the request, finding that the requestor has not raised issues that merit reconsideration; or
3. take no action, which has the legal effect of denying the request.

Staff recommended that the Commission approve the request, which requires five affirmative votes.

Parties were represented as follows: Juliana Gmur and James Hendrickson, for the City of Palos Verdes Estates; Allan Burdick, on behalf of the California State Association of Counties SB 90 Service; and Susan Geanacou, with the Department of Finance.

Ms. Gmur supported the staff analysis.

Regarding the withdrawn items, Mr. Burdick commented that they were not able to identify any situations where the binding arbitration process actually went to the point of an arbitrator awarding fees. He noted that if somebody were to incur costs, they may return to the Commission.

Ms. Geanacou supported the request for reconsideration.

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

TEST CLAIMS

- Item 5 *Fifteen-Day Close of Voter Registration*, 01-TC-15
Elections Code Sections 2035, 2102, 2107, 2119, 2154,
2155, 2187, 9094, 13300, 13303 and 13306
Statutes 2000, Chapter 899 (AB 1094)
County of Orange, Claimant

Katherine Tokarski, Commission Counsel, presented this item. She stated that prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials until the 29th day before an election. After that date, voter registration was closed until the conclusion of the upcoming election. She explained that Statutes 2000, chapter 899 amended the

Elections Code, allowing new registrations or changes to voter registration through the 15th day prior to an election.

Ms. Tokarski indicated that the claimant sought mandate reimbursement for costs incurred to register voters from the 28th through the 15th day before elections such as for implementation planning meetings, revising training programs, holding an informational media campaign, responding to additional inquiries about the new law, and providing additional personnel to accommodate the increased workload.

Staff found that most of the statutory amendments by Statutes 2000, chapter 899 do not mandate a new program or higher level of service on elections officials within the meaning of article XIII B, section 6. Ms. Tokarski stated that processing and accepting voter registration affidavits and changes of address are not newly required under the Elections Code because elections officials were required to perform these activities long before the enactment of Statutes 2000, chapter 899. Moreover, staff found that the amendment to Elections Code section 13303, subdivision (c), added information to a preexisting polling place notice, which does provide a higher level of service to the public within an existing program.

Ms. Tokarski noted that following release of the final staff analysis, staff received late filings from the claimant and the County of Sacramento. Staff issued a supplemental analysis, which was included in the members' binders. Staff recommended that the Commission adopt the analysis to partially approve the test claim.

Parties were represented as follows: Juliana Gmur and Neal Kelley, on behalf of the County of Orange; Deborah Seiler, on behalf of the County of Solano; Allan Burdick, on behalf of the California State Association of Counties SB 90 Service; and Susan Geanacou and Carla Castaneda, with the Department of Finance.

Ms. Gmur argued that in this case, the question was neither who receives the service nor what is the service, but rather, when is the service provided. She acknowledged that the election officials are providing a higher level of service based on a very small change in the law; however, she asserted that such a small change is definitely a higher level of service in an area as calendar-driven and timeline-dependent as the elections area.

Ms. Seiler stated that she is the assistant registrar of voters in the County of Solano, and serves as co-chair of the California Association of Clerks and Election Officials legislative committee. She indicated that she was a former assistant to the Secretary of State for elections and political reform, as well as the chief consultant to the Assembly Elections and Reapportionment Committee. Ms. Seiler contended that the change in the close of registration day had a profound effect on her office in the following ways:

- Developing alternate methods for delivering rosters of voters to the polling places; due to the later close of registration, rosters of voters were not compiled in time to get them out to the precinct inspectors at the training class. Thus, alternate methods of delivery were developed, such as personal delivery or roving inspectors.
- Using provisional ballots because of tremendous difficulty in getting names entered in files and rosters when registration levels increased, such as in November 2004; due to the later close of registration, some counties failed to get voters' names on the rosters, resulting in voters having to vote on provisional ballots at the polling place.
- Bringing on extra help and additional staff to process absentee ballots; due to the later close of registration, existing staff could no longer be used to process absentee ballots

because they were still engaged in voter registration activities. Thus, a new set of people, managers, and supervisors had to be brought in.

- Making sure that absentee voters are not duplicate voters; because the absentee voting period now starts before the close of registration, it is necessary to track absentee voters to ensure that those who register at a later point in time are not duplicate voters.

Mr. Kelley outlined the things that have been done in Orange County since the implementation of the later close of registration:

- notified every voter who registers from the 28th day to the 15th day before the election that their registration was complete and where they can obtain a sample ballot,
- hired additional staff to process registration forms,
- printed enough sample ballots for those individuals that may register between the 28th day to the 15th day before the election, and
- incurred a substantial amount of overtime for all the reasons pointed out by Ms. Seiler.

Ms. Castaneda concurred with the staff analysis, stating that all the activities were still the same with the exception of amending the polling place notice.

Ms. Geanacou commented that the manner of the county's adjustment to performing their preexisting pre-election duties is not mandated by the test claim statutes.

Member Worthley stated that he checked with his county's registrar and they had a similar story regarding the need for overtime help. He maintained that the additional costs incurred by the counties were a result of providing an enhanced service that is mandated by the state. He acknowledged that it was not a new program, but argued that when the state mandates something in a fashion that causes an increase in costs to provide an enhanced service, the state should be responsible for paying for the costs incurred.

Chairperson Brown asked if there was any documentation that the number of registrations increased on a trend-line basis due to the change in time frames. Mr. Kelley responded that he did not have any data to provide from Orange County, but noted that registration numbers were decreasing slightly.

Chairperson Brown stated that, from his standpoint, if there is inadequate documentation that the actual registrations have increased, he found it difficult to find that the workload is not the same and has not increased, notwithstanding the shift in time periods.

Ms. Seiler commented that what was being pointed out was the method of the workload. Due to the completely different cycle and additional staff, counties have incurred increased costs.

Camille Shelton, Chief Legal Counsel, noted that the *Long Beach Unified School District v. State of California* was a higher level of service case regarding racial desegregation, where there was existing federal law and the state required additional requirements. The court said this was a higher level of service.

Ms. Shelton explained that in order to find a higher level of service, there has to be a finding that the state is mandating new requirements on the local agencies and school districts. In this case, the Legislature only changed the number 29 to 15; no mandated activities were changed.

Ms. Shelton stated that the activities that are performed by the counties are activities they have decided were necessary to perform in order to comply with the legislation. She acknowledged

that there were increased costs; however, she maintained that the activities were not expressly mandated by the state, which is required for a finding of reimbursement.

Member Worthley asserted that time is money and that the legislation affected the sequencing of events. The result was a need for additional people because those who morphed into other responsibilities in the elections office have to continue the responsibility of processing registrations instead of moving on to a different level of responsibility. He maintained that this was an additional cost because of an enhanced service. He asked what the purpose of changing the law would be if it was not considered an enhanced service.

Mr. Burdick commented that providing people more time to register is a mandated public policy. He contended that elections departments are not the highest-funded departments in a county government; rather, they are General Fund departments that are lucky to get every dime they can to maintain the level of service necessary to comply with requirements.

Mr. Burdick noted that no one was present from the Secretary of State's Office to participate in the discussion. He added that the next step in the process was developing the parameters and guidelines and that the scope of the mandate should be discussed at that point.

Ms. Shelton clarified that a test claim finding is a question of law and that the standard was not whether it is reasonably necessary for counties to perform the activities. Rather, the standard of law is whether or not the state has mandated counties to perform those activities. Here, she stated that there was no evidence in the law that the state has mandated any additional activities, other than changing the dates in the statutes.

Moreover, Ms. Shelton explained that the activities being discussed could not necessarily be discussed during the parameters and guidelines phase because the Commission needed to make a finding on the statute, and the proposed Statement of Decision makes a finding that the activities raised by the counties are not mandated by the state. She noted that the Commission has discretion during the parameters and guidelines phase to determine activities that are reasonably necessary to comply with the mandated activity. Here, the only mandated activity in the proposed decision is the activity to amend the polling place notice, and thus, any additional activities included in the parameters and guidelines must relate to amending this notice.

Ms. Gmur asserted that there was a mandated activity. Though the service itself was the same, she argued that the change of date mandates when the service is to be done.

Member Walsh made a motion to adopt the staff recommendation, which was seconded by Member Hair. The motion carried 5-1, with Member Worthley voting "No."

Item 6 Proposed Statement of Decision
Fifteen-Day Close of Voter Registration, 01-TC-15
See Above

Katherine Tokarski, Commission Counsel, presented this item. She stated that the sole issue before the Commission is whether the proposed Statement of Decision accurately reflects the Commission's decision on the *Fifteen-Day Close of Voter Registration* test claim.

Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the staff analysis and recommendation. Ms. Tokarski noted that minor changes, including those that reflect the late filings, hearing testimony, and vote count, will be included when issuing the final Statement of Decision.

Member Walsh made a motion to adopt the proposed Statement of Decision, which was seconded by Member Glaab. The motion carried 5-1, with Member Worthley voting "No."

Item 7 *Voter Identification Procedures*, 03-TC-23
Elections Code Section 14310
Statutes 2000, Chapter 260 (SB 414)
San Bernardino County, Claimant

Katherine Tokarski, Commission Counsel, presented this item. She noted that the test claim addresses an amendment to Elections Code section 14310 regarding counting provisional ballots, which is a regular ballot that has been sealed in a special envelope, signed by the voter, and deposited in the ballot box. Provisional ballots can be required for several reasons to prevent fraud, such as when poll workers cannot immediately verify an individual's name on the official roster or if a voter requests an absentee ballot but instead goes to a polling place without the absentee ballot.

Ms. Tokarski explained that Statutes 2000, chapter 260 amended the Elections Code to add a requirement that elections officials compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. Staff found that performing signature comparison for all provisional ballots cast is a reimbursable state-mandated program. However, in a situation where a local government calls a special election that could otherwise have been legally consolidated with the next local or statewide election, the downstream costs for checking signatures on provisional ballots would not be reimbursable.

Staff recommended that the Commission adopt the staff analysis to partially approve the test claim.

Parties were represented as follows: Bonnie Ter Keurst, representing the County of San Bernardino; and Susan Geanacou and Carla Castaneda, with the Department of Finance.

Ms. Ter Keurst supported the staff analysis.

Ms. Castaneda concurred with the staff analysis.

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

Item 8 Proposed Statement of Decision
Voter Identification Procedures, 03-TC-23
See Above

Katherine Tokarski, Commission Counsel, presented this item. She stated that the sole issue before the Commission is whether the proposed Statement of Decision accurately reflects the Commission's decision on the *Voter Identification Procedures* test claim.

Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the staff analysis and recommendation. Ms. Tokarski noted that minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

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

Item 9 *Mandate Reimbursement Process II (AB 2856)*, 05-TC-05
Government Code Section 17553, 17557, and 17564
Statutes 2004, Chapter 890 (AB 2856);
California Code of Regulations, Title 2, Sections 1183 and 1183.13
City of Newport Beach, Claimant

Eric Feller, Senior Commission Counsel, presented this item. He stated that the test claim statutes made various changes to the test claim filing requirements and put the requirements in statute, and the test claim regulations concern the reasonable reimbursement methodology.

Staff found that the test claim statutes do not constitute a reimbursable state mandate because of the prohibition in Government Code section 17556, subdivision (f), which states that the Commission shall not find costs mandated by the state if, after a hearing, the Commission finds that "the statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election." Mr. Feller explained that in this case, the statutes are necessary to implement reasonably within the scope of Proposition 4, enacted in 1979, which added article XIII B, section 6 to the Constitution.

Mr. Feller noted the claimant's comments that the staff recommendation violates legislative intent and that staff's application of Government Code section 17556 interferes with constitutionally-guaranteed rights. Regarding the first point, Mr. Feller stated that the supplemental analysis cites statutes to show that the legislative intent was considered in accordance with the recommendation to deny this test claim. As to the second point, Mr. Feller explained that the state Constitution bars an agency, such as the Commission, from declaring a statute unenforceable or unconstitutional, or refusing to enforce a statute on that basis.

Staff recommended that the Commission adopt the staff analysis, which denies the test claim.

Parties were represented as follows: Juliana Gmur and Glen Everroad, on behalf of the City of Newport Beach; and Susan Geanacou and Carla Castaneda, with the Department of Finance.

Ms. Gmur submitted on the written pleadings.

Ms. Castaneda concurred with the staff analysis that no additional requirements were made.

Member Walsh made a motion to adopt the staff recommendation, which was seconded by Member Worthley. The motion carried 4-1, with Member Glaab voting "No." Member Hair abstained.

Item 10 Proposed Statement of Decision
Mandate Reimbursement Process II (AB 2856), 05-TC-05
See Above

Eric Feller, Senior Commission Counsel, presented this item. He stated that unless there were objections, staff recommended that the Commission adopt the proposed Statement of Decision for the *Mandate Reimbursement Process II* test claim, which accurately reflects the Commission's decision. Staff also recommended that the Commission allow minor changes to be made, such as those to include the supplemental analysis, hearing testimony, and vote count in the final Statement of Decision.

Member Walsh made a motion to adopt the proposed Statement of Decision, which was seconded by Member Worthley. The motion carried 4-1, with Member Glaab voting "No." Member Hair abstained.

STAFF REPORTS

Item 14 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Ms. Shelton had nothing new to report.

Item 15 Executive Director's Report (info/action)
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi reported the following:

- *Workload.* The workload report was submitted to the Director of the Department of Finance.
- *Legislation.* Assembly 2652 was signed by the Governor.
- *Next Hearing.* The December hearing has been moved to December 4 in the afternoon.

PUBLIC COMMENT

There was no public comment.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

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. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]
2. *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*]
3. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Second District Court of Appeal, Case Number B188169, on appeal from Los Angeles Superior Court Case No. BS092146, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*], consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, Los Angeles Superior Court

Case No. BS095456, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]

4. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]
5. *County of San Bernardino v. Commission on State Mandates, et al.*, San Bernardino County Superior Court, Case No. SCVSS 138622 [*Standardized Emergency Management Systems (SEMs)*]

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 Brown 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 Brown 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 Walsh and second by Member Worthley, Chairperson Brown adjourned the meeting at 2:31 p.m.


PAULA HIGASHI
Executive Director