

# Minutes

## COMMISSION ON STATE MANDATES

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
May 25, 2012

Present: Member Pedro Reyes, 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 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 Reyes called the meeting to order at 9:30 a.m. He introduced and welcomed Oxnard City Council Member Carmen Ramirez as a new Commission Member. Chairperson Reyes also welcomed new Commission Executive Director Heather Halsey.

Executive Director Heather Halsey called the roll.

### **APPROVAL OF MINUTES**

Item 1          March 23, 2012

Member Olsen made a motion to adopt the minutes. With a second by Member Chivaro, the March 23, 2012 hearing minutes were adopted by a vote of 5-0, with member Ramirez and Chairperson Reyes abstaining.

### **CONSENT CALENDAR**

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)

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES  
AMENDMENTS

Item 7\* *Developer Fees, 02-TC-42*

Government Code Sections 65970, 65971, 65972, 65973, 65974, 65974.5, 65975, 65976, 65977, 65978, 65979, 65980, 65981  
Statutes 1977, Chapter 955; Statutes 1979, Chapter 282; Statutes 1980, Chapter 1354; Statutes 1981, Chapter 201; Statutes 1982, Chapter 923; Statutes 1983, Chapter 1254; Statutes 1984, Chapter 1062; Statutes 1985, Chapter 1498; Statutes 1986, Chapters 136 and 887; Statutes 1994, Chapter 1228

Clovis Unified School District, Claimant

Item 8\* *Local Agency Formation Commissions, 11-PGA-07 (02-TC-23)*

Government Code Section, 56425(i)(1) (formerly Subdivision (h)(1))  
Statutes 2000, Chapter 761

Department of Finance, Requestor

Item 9\* *In-Home Supportive Services II, 11-PGA-08*

Welfare and Institutions Code Sections 12301.3, 12301.4 and 12302.25  
Statutes 1999, Chapter 90 and Statutes 2000, Chapter 445

Department of Finance, Requestor

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

A. STATEWIDE COST ESTIMATE

Item 10\* *Mandate Reimbursement Process II, 05-TC-05*

Government Code Section 17553(b)(1)(C) through (G) and (b)(2)  
California Code of Regulations, Title 2, Sections 1183, Subdivision (d)  
(Register 2005, No. 36, Effective September 6, 2005)  
Statutes 2004, Chapter 890 (AB 2856)

City of Newport Beach, Claimant

Member Chivaro made a motion to adopt the consent calendar. With a second by Member Lujano, 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 Staff Report (if necessary)

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 *Juvenile Offender Treatment Program Court Proceedings, 04-TC-02*  
Welfare and Institutions Code Sections 779, 1731.8, 1719, and 1720  
Statutes 2003, Chapter 4  
County of Los Angeles, Claimant

This test claim addresses the duties of public defenders in the juvenile justice system as a result of a test claim statute that realigned the duties of the former Youthful Offender Parole Board (YOPB) and the California Youth Authority (CYA).

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt the proposed final staff analysis and statement of decision denying the test claim because the amendments to the statute either clarify existing law or transfer duties imposed on YOPB to CYA and therefore do not impose new requirements on counties.

Parties were represented as follows: Leonard Kaye, representing Los Angeles County; Lori A. Harris, Los Angeles County Deputy Public Defender ; and Susan Geanacou and Carla Shelton 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 Alex, the staff recommendation to adopt the statement of decision denying the test claim was adopted by a vote of 7-0.

- Item 4 *Public Contracts (K-14), 02-TC-35*  
Public Contract Code Sections 2000, 2001, 3300, 6610, 7104, 7107, 7109, 9203, 10299, 12109, 20100, 20101, 20102, 20103.5, 20103.6, 20103.8, 20104, 20104.2, 20104.4, 20104.6, 20104.50, 20107, 20110, 20111, 20111.5, 20116, 20650, 20651, 20651.5, 20657, 20659, and 22300  
Business and Professions Code Section 7028.15  
Statutes 1976, Chapter 921; Statutes 1977, Chapter 36; Statutes 1977, Chapter 631; Statutes 1980, Chapter 1255; Statutes 1981, Chapter 194; Statutes 1981, Chapter 470; Statutes 1982; Chapter 251; Statutes 1982, Chapter 465; Statutes 1982, Chapter 513; Statutes 1983, Chapter 256; Statutes 1984, Chapter 173; Statutes 1984, Chapter 728; Statutes 1984, Chapter 758; Statutes 1985, Chapter 1073; Statutes 1986, Chapter 886; Statutes 1986, Chapter 1060; Statutes 1987, Chapter 102; Statutes 1988, Chapter 538; Statutes 1988, Chapter 1408; Statutes 1989, Chapter 330; Statutes 1989, Chapter 863; Statutes 1989, Chapter 1163; Statutes 1990, Chapter 321; Statutes 1990, Chapter 694; Statutes 1990, Chapter 808; Statutes 1990, Chapter 1414; Statutes 1991, Chapter 785; Statutes 1991, Chapter 933; Statutes 1992, Chapter 294; Statutes 1992, Chapter 799; Statutes 1992, Chapter 1042; Statutes 1993, Chapter 1032; Statutes 1993, Chapter 1195; Statutes 1994, Chapter 726; Statutes 1995, Chapter 504; Statutes 1995, Chapter 897; Statutes 1997, Chapter 390; Statutes 1997, Chapter 722; Statutes 1998, Chapter 657; Statutes 1998, Chapter 857; Statutes 1999, Chapter 972; Statutes 2000, Chapter 126; Statutes 2000, Chapter 127; Statutes 2000, Chapter 159; Statutes 2000, Chapter 292; Statutes 2000, Chapter 776; and Statutes 2002, Chapter 455

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

This test claim addresses public contract requirements imposed on school districts and community college districts when contracting for goods, services, and public works projects.

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 public contract activities required when a district repairs and maintains school property, but deny the activities that are triggered by the discretionary decision to purchase good and services and undertake public works projects.

Parties were represented as follows: Art Palkowitz, Stutz Artiano Shinoff & Holtz, representing the claimants; and Susan Geanacou and Chris Ferguson 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 Lujano, 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 6-1, with Member Saylor voting no because, while he supported the staff recommendation pertaining to partial approval for public contract activities related to repair and maintenance, he disagreed with the part denying public contract activities related to new construction.

Item 5      *Local Agency Ethics (AB 1234), 07-TC-04*

Government Code Sections 25008, 36514.5, 53232, 53232.1, 53232.2, 53232.3, 53232.4, 53234, 53235, 53235.1, and 53235.2; Harbors and Navigation Code Sections 6060 and 7047; Health and Safety Code Sections 2030, 2851, 4733, 4733.5, 6489, 9031, 13857, 13866, and 32103; Military and Veterans Code Section 1197; Public Resources Code Sections 5536, 5536.5, 5784.15, and 9303; Public Utilities Code Sections 11908, 11908.1, 11908.2, 16002, and 22407; and Water Code Sections 20201, 21166, 30507, 30507.1, 34741, 40355, 50605, 55305, 56031, 60143, 70078, 71255, 74208, and 20201.5 as added or amended by Statutes 2005, Chapter 700

City of Newport Beach and Union Sanitary District, Co-Claimants

This test claim addresses policymaking, reporting, recordkeeping, ethics training and notice requirements imposed on local agencies if they provide any type of compensation, salary, or stipend to a member of a legislative body, or provide reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the staff analysis and proposed statement of decision to partially approve the test claim for general-law counties and those eligible special districts subject to the tax-and-spend provisions of articles XIII A and XIII B that are required by their enabling acts to provide reimbursement to the members of legislative bodies, to adopt a written policy relating to the reimbursement of expenses, provide expense report forms, provide information on ethics training courses, and to maintain training records.

Parties were represented as follows: David O'Hara, representing Union Sanitary District; Juliana Gmur, representing the City of Newport Beach; and Donna Ferebee 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 Lujano, the staff recommendation to adopt the staff analysis and proposed statement of decision partially approving the test claim was adopted by a vote of 7-0.

Item 6 *California English Language Development Test II*, 03-TC-06

Education Code Sections 48985, 52164, 52164.1, 52164.2, 52164.3, 52164.5, and 52164.6

Statutes 1977, Chapter 36; Statutes 1978, Chapter 848; Statutes 1980, Chapter 1339; Statutes 1981, Chapter 219; Statutes 1994, Chapter 922  
California Code of Regulations, Title 5, Sections 11300, 11301, 11302, 11303, 11304, 11305, 11306, 11307, 11308, 11309, 11310, 11316, 11510, 11511, 11511.5, 11512, 11512.5, 11513, 11513.5, 11514, 11516.5, 11517

Register 98, No. 30 (July 24, 1998) pages 75-76, Register 98, No. 33 (Aug. 14, 1998) page 75, Register 99, No. 1 (Jan. 1, 1999) pages 75-76, Register 01, No. 40 (Oct. 5, 2001) pages 77-78.2, Register 03, No. 2 (Jan. 8, 2003) pages 75-76.1

Register 03, No. 16 (April 18, 2003) pages 77-78.2

Castro Valley Unified School District, Claimant

This test claim addresses statutes and regulations governing the public instruction of limited English proficient (LEP) pupils in California. LEP pupils are those who do not speak English or pupils whose native language is not English and who are not currently able to perform ordinary classroom work in English.

Mr. Feller presented this item and recommended that the Commission adopt the test claim and statement of decision to deny the test claim because the bilingual education statute ceased to be operative in 1987, and the remaining activities are either required by, or are part and parcel of, federal law and Proposition 227.

Parties were represented as follows: Art Palkowitz, Stutz Artiano Shinoff & Holtz, representing the Castro Valley Unified School District; and Donna Ferebee, 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 Saylor, 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.

**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 11 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 12 Legislative Update

Assistant Executive Director Nancy Patton presented this item.

### Item 13 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Chief Legal Counsel Camille Shelton presented this item.

### Item 14 Executive Director's Report

Executive Director Heather Halsey presented this item.

## PUBLIC COMMENT

Mr. Allan Burdick congratulated the Commission on the outstanding selection of Ms. Heather Halsey as the Executive Director. He also addressed the Commission's backlog reduction plan and Commission staffing concerns.

## 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):

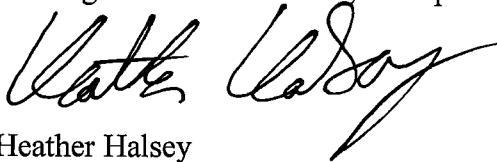
Hearing no further comments, Chairperson Reyes adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and 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 12:03 p.m., Chairperson Reyes 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 Reyes adjourned the meeting at 12:03 p.m.



Heather Halsey  
Executive Director