

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447
Sacramento, California
September 25, 2009

Present: Member Tom Sheehy, Chairperson
Representative of the Director of the Department of Finance
Member Dave O'Toole, Vice Chairperson
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Cynthia Bryant
Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member J. Steven Worthley
County Supervisor

Absent: Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Sheehy called the meeting to order at 9:32 a.m. Executive Director Paula Higashi called the roll and stated that Member Glaab was absent due to family illness.

APPROVAL OF MINUTES

Item 1 July 31, 2009

The July 31, 2009 hearing minutes were adopted by a vote of 5-0. Member Olsen abstained.

PROPOSED CONSENT CALENDAR

PROPOSED ORDERS TO SET ASIDE STATEMENTS OF DECISION ON RECONSIDERATION AND ORDERS TO SET ASIDE, AND PROPOSED ORDERS TO REINSTATE ORIGINAL STATEMENTS OF DECISION AND PARAMETERS AND GUIDELINES PURSUANT TO *CALIFORNIA SCHOOL BOARDS ASSOCIATION V. STATE OF CALIFORNIA* (2009) 171 CAL.APP.4TH 1183

Item 5* *Open Meetings Act and Brown Act Reform*, CSM 4257, 4469, 04-PGA-33
Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7 As Amended By Statutes 1986, Chapter 641 (AB 2674), and Statutes 1993, Chapters 1136 (AB 1426), 1137 (SB 36), and 1138 (SB 1140)
School Accountability Report Cards, 04-RL-9721-11, 05-RL-9721-03 (97-TC-21)
Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3; Statutes 1989, Chapter 1463 (SB 280), Statutes 1992, Chapter 759 (AB 1248), Statutes 1993, Chapter 1031 (AB 198); Statutes 1994, Chapter 824 (AB 1691) and Statutes 1997, Chapters 912 (AB 572) and 918 (AB 568)

Mandate Reimbursement Process, 05-RL-4204-02 (CSM 4204 & 4485)
Statutes 1975, Chapter 486 (AB 1375); Statutes 1984, Chapter 1459
(SB 2337)

Mandate Reimbursement Process II, 05-TC-05
Statutes 2004, Chapter 890 (AB 2856); Government Code Sections
17553, 17557, and 17564; California Code of Regulations, Title 2,
Sections 1183 and 1183.13 (Register 2005, No. 36, eff. 9/6/2005)

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

A. PROPOSED PARAMETERS AND GUIDELINES

Item 6* *Local Agency Formation Commissions*, 02-TC-23
Government Code Sections 56425, Subdivision (i)(1)
(formerly Subdivision (h)(1))
Statutes 2000, Chapter 761 (AB 2838)
Sacramento Metropolitan Fire District, Claimant

B. PROPOSED STATEWIDE COST ESTIMATES

Item 7* *California Fire Incident Reporting System (CFIRS)*,
CSM-4419/00-TC-02
The New California Fire Incident Reporting System
Manual – Version 1.0/July 1990
San Ramon Valley Fire Protection District and City of Newport Beach,
Claimants

Item 8* *Reporting Improper Governmental Activities*, 02-TC-24
Education Code Section 87164
Statutes 2001, Chapter 416 (AB 647)
Statutes 2002, Chapter 81 (AB 2034)
Santa Monica Community College District, Claimant

Member Bryant made a motion to adopt items 5, 6, 7 and 8 on the consent calendar. With a second by Member O'Toole, the consent calendar was adopted by a vote of 5-0. 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.

**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.

TEST CLAIMS

- Item 3 *Comprehensive School Safety Plans II (Amendment)*, 07-TC-11
(02-TC-33)
Education Code Section 32282, Subdivision (a)(2)(B)
Statutes 2004, Chapter 895 (AB 2855)
Bakersfield City School District, Sweetwater Union High School District,
and San Diego Unified School District, Co-Claimants

Camille Shelton, Chief Legal Counsel presented this item. Ms. Shelton stated that this test claim addresses the amendments to Education Code Section 32282, which specify that the previously required disaster procedures included in the comprehensive school safety plan shall also include establishing an earthquake emergency procedure system in every public school building having an occupant capacity of 50 or more pupils or more than one classroom, and establishing a procedure to allow a public agency, including the American Red Cross, to use school buildings, grounds, and equipment for mass care and welfare shelters during disasters.

Staff finds that the test claim statute constitutes a reimbursable state-mandated program on K-12 school districts for the increased costs of performing the one-time activities listed in the executive summary.

Staff further finds that implementation of the comprehensive school safety plan, including the drop procedure practice, training on the earthquake emergency procedures system, and the procedure to allow the use of school facilities for mass care and welfare shelters is not mandated by the state and, therefore, not reimbursable.

Finally, staff recommends that any grant funds received by a school district or funds received through an appropriation for this program by the Legislature, including funds from the school safety block grant, shall be identified as offsetting revenue in the parameters and guidelines.

Ms. Shelton stated that the Department of Finance filed a late comment, updating the money appropriated in the school safety block grant for this program. Although this money is intended to cover the cost of the comprehensive school safety plan's program as a whole, there is no evidence in the record that all school districts in the state received money in an amount sufficient to pay for the mandated program as required by Government Code section 17556, subdivision (e).

Parties were represented as follows: Art Palkowitz representing San Diego Unified School District and Susan Geanacou representing the Department of Finance.

Mr. Palkowitz stated that Commission staff referred to the activities of setting up an emergency system as one-time activities. Statute states that a drop procedure will also be in place, and that this practice shall be held at least once every quarter in an elementary school and at least once a semester in secondary schools.

The claimant believes that this practice is not a one-time activity as is setting up the system. The language in the statute is directing schools to perform that task, either quarterly or by semester, depending on the configuration of the school.

Mr. Palkowitz stated that staff interpreted that the system is mandated, but the implementation of the system is not. Staff used language that does not specifically say "implementation" in the code. Staff mentioned to keep in mind the nature and obvious purpose of the statute when looking at statutes.

Mr. Palkowitz continued that it is also evident when looking at another part of the system regarding certificated staff (teachers) and classified staff (non-teachers) being properly trained. In schools, these individuals change all the time. Therefore, to view that as a one-time activity would also mean that the individuals are not properly trained to implement the system.

As a result, the claimants believe that it is the intent of the Legislature for schools to not only develop a system, but also to implement it.

Susan Geanacou, Department of Finance stated that Finance continues to oppose the staff analysis. Finance asserts that more than sufficient funding has been appropriated in recent fiscal years to completely fund these new *Comprehensive School Safety Plan* mandated activities that are claimed. Specific appropriation amounts are in the late filing dated September 9, 2009.

Ms. Geanacou corrected an error in the late filing. The fourth line on page 2 reads, "We believe that the funds provided in the annual Budget Act for this particular grant are *insufficient* to cover the assertion." It should read "*sufficient*."

Chairperson Sheehy asked if Finance has been able to demonstrate to Commission staff that the actual funding and appropriations that have been made are sufficient to cover the costs.

Ms. Geanacou stated that Finance believes that the amounts cited in the letter from the Budget Act appropriations are more than sufficient to cover the statewide costs for this particular claimed mandate as suggested by the claimants. They asserted a \$10 million estimated cost. The appropriations in recent years have been multiple times that figure.

Ms. Shelton clarified that the Budget Act language that appropriates the money says, "*The funds appropriated in this item shall be considered offsetting revenues within the meaning of subdivision (e) of section 17556 of the Government Code for any reimbursable mandated cost claimed for comprehensive school safety plans.*"

The Commission received two prior test claims on the *Comprehensive School Safety Plan* program. The whole program is much broader than the three activities listed. So this money goes for the whole program and not just for the one-time activities listed.

Ms. Shelton stated that while there is money clearly intended to fund the cost of the program, there is no evidence in the record that the money, which goes for the whole program, would also pay for these particular activities.

The budget language continues that, "Local agencies accepting funding for this item..." The use of the word "accepting" implies that not all school districts have received the money.

Chairperson Sheehy asked Ms. Geanacou if Finance takes issue with Ms. Shelton's testimony.

Ms. Geanacou stated that Finance has not been able to conclude that these amounts appropriated in these fiscal years more than cover all three mandates.

Member Bryant asked what the legal standard is for 17556, subdivision (e).

Ms. Shelton stated that the standard is set out in Government Code section 17556 (e), which requires that there is a showing that the amount appropriated is sufficient to cover the cost of the whole program. If this were the only test claim on *Comprehensive School Safety Plans*, then clearly \$80 million was a large amount of money and it was intended to cover the cost. If the estimated costs that are identified by the test claimant are under that amount, then there is evidence in the record to show that there are no costs mandated here.

Ms. Shelton continued that if the Commission adopts the staff analysis and approves the test claim, claimants will still have to show a thousand dollars worth of costs when they file the reimbursement claim with the State Controller's Office. They are then subject to audit.

Member Bryant asked if they would have to prove that the other two mandates, the previously approved ones plus this new one, are getting insufficient reimbursement.

Ms. Shelton confirmed and stated that if the Commission adopts the analysis, staff could also do more homework when adopting parameters and guidelines by getting a list from the Department of Education to see how much money has been appropriated to each school district in the state, and have those identified for the record.

Member Worthley pointed out that this claim relies upon annual appropriation of money. If there is insufficient money, the claim would work. If there is adequate funding, there would not be a claim. There is no guarantee, however, that the schools would be receiving adequate funding.

Ms. Shelton stated that the activities recommended for approval are one-time activities, but the program activities that have been approved in the past are ongoing. These are yearly appropriations and nobody knows what is going to happen in the future.

Member Worthley struggled with the argument that the fair reading of the statute does not account for implementation of the program.

Ms. Shelton stated that staff is relying upon the plain language of the statute which requires schools to develop a system. Staff used that language when they determined that implementation was not reimbursable.

Chairperson Sheehy noted that any money that is actually appropriated will offset the costs of any mandate that was found.

Mr. Palkowitz clarified that the statute requirements being heard were contained in a previous statute that was repealed. While those statutes were in effect, schools were making claims based on those activities. This gave schools a basis to estimate the costs for the new statute.

With a motion by Member Bryant to adopt the staff recommendation, and a second by Member O'Toole, the staff recommendation to approve the test claim was adopted by a vote of 5-1, with Member Worthley voting no.

Item 4 Proposed Statement of Decision: *Comprehensive School Safety Plans II (Amendment)*, 07-TC-11 (02-TC-33)

[Item 3 above.]

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Bryant, the Statement of Decision was adopted by a vote of 6-0.

STAFF REPORTS

Item 10 Legislative Update (info)

Nancy Patton, Assistant Executive Director, stated that there are no bills before the Governor that pertain to the mandates process.

Item 11 Chief Legal Counsel's Report (info)

Ms. Shelton stated that the Court has set a hearing date for the *Behavioral Intervention* program. The bill that was trying to appropriate money for the settlement agreement has died so it is anticipated the case will go forward.

Also, there is another case of interest where the Commission is not a party. In the *Clovis v. State Controller's Office* lawsuit, briefs have been filed with the Court of Appeal. A hearing date has not been set.

Item 12 Executive Director's Report (info)

Ms. Higashi reported on the pending Commission caseload and noted that the Commission's report to the Department of Finance on the pending workload is posted on the Commission's Web site.

Ms. Higashi commented on the tentative agenda items for the next few hearings.

- October 30, 2009 will have a number of parameters and guidelines amendments.
- Thursday, December 3, 2009. The parameters and guidelines for *Expulsions II* and *Suspensions II* are being added to a long list of parameters and guidelines amendments.

Ms. Higashi stated that the Commission left open the issue of the 2010 calendar. Based on the last meeting, there did not seem to be any discussion about the January, March, May, tentative June, tentative October or tentative and possible December dates. But there was discussion about whether the Commission should schedule a July meeting or an August meeting. A final decision was deferred.

Much discussion followed about the choice of dates. Both Commission members, stakeholders and members of the public weighed in about preferred dates for the summer hearing. Many points were presented about the pros and cons of holding a hearing in July or August. Members discussed scheduling vacations, personal family matters and conflicting work and school schedules.

Ms. Higashi also noted that the difficulty of having back-to-back meetings is the production of the agenda items. The due date for putting out the binders for the current meeting is the same due date for issuing drafts for the next meeting.

Chairperson Sheehy suggested that both dates be left as tentative and this matter be discussed and decided at the January 2010 hearing.

Ms. Higashi suggested that the schedule be posted on the Commission's web site with the July meeting listed as tentative.

PUBLIC COMMENT

There was no public comment.

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, subdivision (e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *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; Sacramento County Superior Court, Case No. 06CS01335 [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]
3. *California School Boards Association, Education Legal Alliance, and Sweetwater Union High School Dist. v. State of California, Commission on State Mandates, and John Chiang, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 07CS01399, [School Accountability Report Cards, SARC]

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).)

B. RESPONSE TO CONFIDENTIAL FINAL DRAFT AUDIT REPORT FROM BUREAU OF STATE AUDITS (2009-501) (Gov. Code, § 11126.2, subd. (a))

C. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a)(1).

- Personnel Subcommittee Report

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 published in the notice and agenda and to confer and receive advice from legal counsel regarding potential litigation.

The Commission will also confer on the Commission's response to the confidential final draft audit report in the Bureau of State Audits pursuant to Government Code section 11126.2, subdivision (a).

Finally, the Commission will confer on personnel matters, and report from the personnel subcommittee pursuant to Government Code section 11126, subdivision (a).

REPORT FROM CLOSED EXECUTIVE SESSION

At 10:59 a.m., Chairperson Sheehy reconvened in open session, and 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 public notice and agenda, and also potential litigation, as well as to confer on the Commission's response to the confidential draft audit report from the Bureau of State Audits, pursuant to Government Code section 11126.2, subdivision (a). And also to confer on personnel matters listed on the published notice and agenda pursuant to Government Code section 11126, subdivision (a).

ADJOURNMENT

Hearing no further business, Chairperson Sheehy adjourned the meeting at 11:00 am.


PAULA HIGASHI
Executive Director