

ITEM 15
STAFF REPORT
MANDATE REFORM PROJECT UPDATE

Background

On March 17, 2006, the Center for Collaborative Policy issued its draft assessment report, which assesses issues that should be addressed in reforms, opportunities for agreement on reforms, and the potential for using a collaborative process to develop recommendations for consideration by the Legislature and Governor. At the March 29, 2006 hearing, the Commission adopted staff's findings and conclusions regarding the draft report and the mandate reform project. Specifically:

1. Using a collaborative process is feasible.
2. Final recommendations should be completed and submitted to the Legislature by February 2007 to ensure adequate time for legislative hearings and for a bill to proceed through the Legislature during the 2007 legislative session.
3. The process should address both education and local agency mandates as it relates to mandate determinations. Funding mandates for local agencies and school districts should be deliberated separately.
4. Process issues like the focus of the deliberations or the use of any agency's ideas as a beginning point should be decided by the stakeholders.

On April 14, 2006, the Center for Collaborative Policy issued the final assessment report, *Reforming the Mandate Reimbursement Process*.¹ It includes the staff recommendation to clarify that the Legislature's ideas for reform will be fully considered, that the Legislature and its staff are encouraged to participate in the collaborative meetings, and that the final report will be formally submitted to the Legislature for their review and approval. It also clarifies the Legislative Analyst's role in the process and includes an appendix consisting of all the recommendations, supplemental material, and comments provided by interested parties to the Center for Collaborative Policy.

Next Steps

Commission staff is now in the process of doing the following:

- Initiating an Interagency Agreement with the Center for Collaborative Policy so that a neutral facilitator may guide and manage the collaborative process.
- Working with the Department of Finance and the Legislature to obtain the funding necessary to support the process.
- Adding a link on the Commission's web site for mandate reform where interested parties may obtain newsletters and project updates, and sign-up for the electronic mailing list.
- Working with Department of Finance, the Legislature, and other stakeholders to encourage their participation.

¹ The report is inside the back cover of Volume II of the binders.

ASSESSMENT REPORT
REFORMING THE MANDATE REIMBURSEMENT PROCESS

Prepared for the
COMMISSION ON STATE MANDATES

by

David E. Booher
John Folk-Williams
Center for Collaborative Policy
California State University, Sacramento
www.csus.edu/ccp/

April 2006

This report is the work product of the authors and represents the exclusive judgment of the Center for Collaborative Policy.

EXECUTIVE SUMMARY

The mandate reimbursement process, which is essentially the same process that was established twenty years ago, does not timely inform policymakers of the state's liability for mandated costs, nor does it timely reimburse local governments and school districts for the costs they incur. The Commission on State Mandates seeks to streamline and reform the existing process for determining and reimbursing mandates.

Thus, at the request of the Commission on State Mandates, the Center for Collaborative Policy, a unit of the College of Social Studies and Interdisciplinary Studies at California State University Sacramento, carried out an assessment of the feasibility of using a collaborative process to develop recommendations for reform of California's state mandate reimbursement process. The assessment, which was carried out using the best practices for the field, included interviewing a sample of representatives of agencies and organizations most concerned with the state mandate reimbursement process. The data from these interviews was compiled and analyzed by the Center. Based upon this analysis suggestions were prepared for consideration by the Commission and other interested parties.

The Center concludes that a collaborative process to consider recommendations for reform of the state mandates process is feasible if certain process factors are addressed. First, interviewees indicated that such a process should enjoy the support of the Legislature and assurances to participants of such a process that the Legislature would carefully consider any recommendations offered as a result of the process. Second, the interviewees indicated that the Department of Finance should be engaged directly in such a process. Third, the interviewees indicated that such a process should have the benefit of neutral facilitation to guide the deliberations and negotiations. Finally, the interviewees indicated that such a process should have adequate time and resources available to adequately support the deliberations. In particular, many interviewees believed that the period from now till the time to introduce related legislation in early 2007 was most

opportune. In fact, there seemed to be a sense that this might be the only opening for such an effort for some time to come.

There were many valuable suggestions made regarding the issue areas that it would be desirable for a collaborative process to address, and many proposals for reforms offered. Several of these proposals were strongly held by their respective proponents. However, there was a clear willingness among potential stakeholders to consider the suggestions and perspectives of all other stakeholders. In summary, the assessment indicates that the key stakeholders would agree to participate in a collaborative process if certain factors are adequately addressed by that process and that there are issues that could potentially be the subject of productive negotiations.

We conclude by suggesting that the Commission on State Mandates recommend that the Legislature call for a report of consensus recommendations from the Commission in time for consideration by the Legislature during 2007 and provide funds to support a collaborative process to develop those recommendations. If the Legislature agrees with this request, we suggest that the Commission convene a collaborative process made up of stakeholders in mandate reform. We offer suggestions for the purpose of the collaborative process and illustrative goals for outcomes which we believe may be accomplished. Finally, we offer the suggestion that the collaborative process should start with convening and organization and proceed through joint fact finding, negotiations and implementation. Staff from the Legislature, the Legislative Analysts Office, the State Controller's Office and the Commission should participate to provide technical input. The Legislature should monitor the process.

TABLE OF CONTENTS

	Page
I. INTRODUCTION	7
II. ASSESSMENT METHODOLOGY	9
III. RESULTS OF ANALYSIS	12
A. The Issues Landscape of the Mandates Process	
B. Areas of Agreement	
C. Major Issue Areas	
D. Proposals for Change	
E. Conditions for Effective Collaboration	
IV. CONCLUSION AND SUGGESTIONS	33
A. Conditions for a Collaborative Process	
B. Goals	
C. Additional Issues to Consider	
D. Convening and Organizing a Collaborative Process	
V. ATTACHMENTS	43

I. INTRODUCTION

The Commission on State Mandates (CSM) convened a workshop on reforming the mandate reimbursement process through its Legislative Subcommittee on December 8, 2005. That workshop followed several years of discussions about various reforms that had been sparked particularly by the release of the 2002 Bureau of State Audits report *School Bus Safety II*, which estimated an annual cost of one mandate at 48 times the level originally estimated by the Legislature. The high cost of many mandates, the fact that such costs had not been anticipated at the time of legislative adoption, the long period of time taken to process test claims under the state system, the backlog of test claims and the size of unpaid debt to local agencies¹ and school districts, variously estimated at between 1 and 2 billion dollars, all created many causes of dissatisfaction and ideas for change. Legislative hearings headed by Assembly Member John Laird in 2003-04 provided an important forum for discussions and resulted in many bills to address specific mandates but not an overall reform statute. By the time of the 2005 workshop, there seemed to be a growing feeling that some forum needed to be created to work on ideas in a systematic way.

Many of the major stakeholders attended the workshop, including CSM Members and staff, and representatives of specific counties, cities and school districts, as well as the SB-90 Service consultants, the California State Association of Counties, the League of California Cities, the Legislative Analyst's Office, the Assembly Budget Committee and the State Controller's Office. A staff summary of the workshop discussion expressed the following conclusions:

1. The mandate process and reimbursement process must take less time.
2. Discussion should be had with the entire Commission regarding whether or not Commission staff should commence meetings to discuss large-scale mandate reform.

¹ Throughout this study we will use the terms "local agency" and "local government" as defined in the Government Code relating to the Commission on State Mandates (see GC 17518). "Local agency" refers to cities, counties and special districts while "local governments" is the broader term embracing school districts as well.

3. Staff with Department of Finance, the State Controller's Office, the Legislature, the Commission, and cities, counties, and school districts must be present at these meetings and authorized to make decisions for them to be successful.
4. There must be give and take in negotiating a new process. Participants should be willing to compromise.
5. Revisions to the existing process may be necessary in some cases. For example, while discussions are ongoing regarding large-scale reform, we still have 103 incorrect reduction claims on file that we need to address. However, there was no agreement on what type of changes should be made to the IRC process.

After hearing the report of the workshop, Commission Chair Anne Sheehan proposed exploring the use of an independent facilitator as a possible way to assist key stakeholders as they consider ideas for potential reform of the mandates process. The Commission then authorized staff to prepare a proposal for using a facilitator for mandate reform discussions.

CSM staff invited the Center for Collaborative Policy (CCP), a state agency that is a unit of California State University, Sacramento, to discuss the possible use of a collaborative process. CCP has been assessing and implementing collaborative processes on behalf of public agencies in California for over ten years, in furtherance of its public service role. CCP also supports academic programs and research projects as a unit of California State University Sacramento. CCP's mission is to build the capacity of government agencies, stakeholders and the public to use collaborative methods to improve public policy outcomes. An important step in meeting that mission is to assess each policy context carefully to ensure that collaborative methods are appropriate and to explore possible process design options for that particular set of circumstances. The Commission staff and CCP concluded that such an assessment was warranted regarding the state mandates process and negotiated an interagency agreement to complete an assessment and report to the Commission at its March 29, 2006 meeting regarding CCP's findings and recommendations.

II. ASSESSMENT METHODOLOGY

The Center for Collaborative Policy adheres to best practices for the field in the preparation of collaborative process assessment reports. A collaborative process for public policy issues uses consensus-driven dialogue, assisted by a professional facilitator or mediator, to reach a decision or formulate a policy, recommendation, plan or agreement involving all affected stakeholders as well as those necessary for the agreement's implementation. What sets such a process apart from many others is its typical emphasis on participants' taking the time to explain what lies behind the positions they take, to listen to the needs and interests of other stakeholders and to seek solutions that meet as many of those interests as possible. Participating means more than claiming as much as you can for your side; it means considering what the needs are for all concerned. The reason for this is simple. The situations requiring collaborative solutions are precisely those that cannot be solved by one side alone. They require agreement among the affected parties in order to secure implementation of an agreement benefiting all parties, because solutions cannot be achieved in any other way.

The conditions for initiating and sustaining a collaborative process include such elements as:

1. **Incentives.** The status quo is sufficiently costly to all stakeholders that they share an incentive to want to change it.
2. **Willingness to Negotiate.** The key stakeholders are all willing and able to participate in the process and make a good faith effort to reach agreement.
3. **Authority to Negotiate.** Stakeholders can represent to each other the degree of negotiating authority they bring to the table and be completely transparent about the circumstances under which they must seek approval from higher level officials, boards or constituencies.
4. **Mutual Understanding.** The stakeholders recognize the legitimacy of one another's goals and needs and are willing to consider innovative proposals to meet those needs.
5. **Possibilities for Joint Gains.** Opportunities exist for simultaneously meeting the needs of the stakeholders through joint support for new approaches.
6. **Central Process.** The collaborative has the potential to be the central process for dealing with the issue and will not be overshadowed by other events or processes that might displace it.

7. **Involvement of Decision Makers.** The agencies needed to implement an agreement are part of the process and willing to guide it through whatever administrative or legislative steps that might be necessary.
8. **Availability of Resources.** Adequate resources are available to see the process through to its conclusion.
9. **Political Limits.** The political atmosphere for the stakeholders is such that they would be rewarded rather than punished for reaching voluntary agreement about the issues at hand, and/or it would be more advantageous to have some control over the terms of agreement rather than being forced into action by a court, or other process beyond their control.

The assessment methodology is largely directed to determining the presence or absence of these conditions rather than attempting to reach a conclusion about potential success of an outcome or the possible outlines of a substantive agreement. In addition, the assessment seeks to identify the key issues that might enjoy the best prospects for successful collaboration, key stakeholders that might be engaged, and suggestions for organizing a collaborative process that appear to be most likely to be productive.

This assessment consisted of three steps. First CCP worked with the staff of the Commission to identify organizations to be interviewed, to review written materials about previous efforts regarding mandate reform, to review written material about current mandate reimbursement claims processing, and to review written materials about previous proposals for mandate reform. We then worked with the Commission staff to prepare an interview protocol. Anne Sheehan, Commission Chair, sent a letter to the identified organizations seeking their participation in the interview. We received 100 percent cooperation as a result of this letter.

More than 48 individuals representing 30 organizations, departments and offices were interviewed, some in small groups, some by telephone. We recognized that many more organizations have an interest in mandate reform than resources and time permitted us to interview. Therefore we attempted to identify a cross section of interviewees that would fairly represent the wide range of perspectives. In addition, we asked each person interviewed about their views on other stakeholders important to reaching agreement. If other stakeholders were suggested that we believed might bring an additional perspective,

we added them to the list. Additional potential stakeholders were included as a result. Further, the Commission staff organized a public meeting of interested parties for March 28, 2006, to give us an opportunity to hear suggestions for this report and to identify any additional perspectives that may have been missed by the prior interviews. Attachment 1 lists the organizations and agencies interviewed.

We reviewed numerous written documents regarding the existing mandate determination and reimbursement process, legal decisions, previous efforts to achieve reforms, and previous recommendations for reforms. Attachment 2 outlines the existing mandates process we used in preparing the assessment.

In the second step of the assessment we scheduled and carried out interviews in February and early March, using the protocol in Attachment 3 as a guide to the interview. We modified the protocol as appropriate for the specific individuals and to adapt to the directions of their respective comments. In keeping with best practice for the field, we assured every interviewee that we would maintain the confidentiality of their responses. No one other than the report's authors have access to the content of the interviews. In addition, we met with the staff of the Commission to seek clarifications of several points regarding the mandates process and their perspectives regarding this process.

In step three we compiled and analyzed the data provided from the interviews. Using this data we developed our perspectives regarding the issues most likely to be amenable to a collaborative process, compared our analysis with the conditions for a collaborative process, and formulated suggestions for an effective collaboration.

Finally, based upon this analysis we drafted a written report and reviewed it with the Commission staff to obtain their suggestions and clarifications. A subsequent draft report was made accessible at the Commission's web site, and, following the March 28th meeting of interested parties to obtain additional input, we then presented the draft report to the Commission at its meeting on March 29, 2006. Final revisions were made to the report following the Commission meeting based upon a review of all the additional

information we received during these meetings and from communications we received as a result of these meetings.

We are grateful for the assistance of all the interviewees, the Commission staff, and to everyone who offered us comments regarding the assessment. However, this report is the work product of the authors and represents the exclusive judgment of the Center for Collaborative Policy.

III. RESULTS OF THE ANALYSIS.

A. The Issues Landscape of the Mandates Process.

The first task in analysis was to discern the broad groupings of issue areas of greatest concern to the stakeholders and to organize the responses. The format immediately suggested by the flow of almost every conversation related to the stages of the mandates process itself. The ideas for change also fell into two further broad categories as to whether they represented adaptations of the current system or fundamentally new approaches. Lastly, of course, we could organize responses by general interest group. Given the complexity of the mandate reimbursement process, the volume of identified issues and diversity of responses, we decided to produce a greatly simplified matrix or issues map.

The issues map appears as Attachment 4 to this report.

B. Basic Areas of Agreement.

Our research found a high level of agreement among those we talked with about several key goals in seeking reform of the state mandates process.

First, there was wide support for the constitutional principle that if the state requires a local government to carry out a function, the state should pay for those new costs. Further, most believed there was nothing inherently adversarial in following that principle, though many felt that the complex process for filing claims seemed to accentuate the tensions between state and local interests.

Second, there was general agreement that the process and/or information available to the Legislature for their deliberation on proposed new mandates could be improved significantly. Although there was some support for requiring the Legislature to include the appropriation for a new mandate in the legislation enacting that mandate, there was also sufficient enough opposition to this concept to suggest this is not a fruitful area for a collaborative process at this time.

Third, just about everyone believed the mandate determination and reimbursement process could and should take place in a much shorter period of time. There were a wide range of ideas about how this could be accomplished. We conclude that this is potentially one of the more productive areas of consideration in a collaborative process.

Fourth, most of those we interviewed thought the timing was right to consider major changes to the process and that minor changes to the existing process, though worthwhile, would hold much less promise of significant savings in time and resources. There seemed to be a sense that if reforms could not be formulated in time for consideration by the Legislature and Governor next year, the prospects probably would disappear for some time to come. Many interviewees from both state agencies and local governments pointed to the key role of Assembly Member Laird in championing reforms during this period.

On the negative side, there was also a lot of agreement that the level of mistrust and suspicion between state and local interests had gotten steadily worse over the years. No one blamed the mandates process uniquely for that problem, but all felt it contributed to it.

Many also believed that continuing the process in its present form without change could result in the sort of crisis that led to the creation of the Commission in the 1980s, a potential for even more costly litigation, and a continuing increase of liability for state government. There was general agreement that continuing the process would increase processing costs for both state agencies and local governments, and there was a general sense that reducing the inefficiencies of the adversarial process would free up more tax dollars for public service provision.

C. Major Issue Areas.

1. The Time, Complexity and Cost of the Process.

The principal issue of the length of time consumed in the process of hearing and resolving the various stages of a test claim had many explanations, depending on one's point of view, but all shared the same conclusion: it simply should not take this long. Some speaking from a state perspective, for example, might point to local advocates as trying to create mandates where none existed, and some, speaking from a local perspective, might complain about being forced to prove that what is clearly a mandate really is a mandate. Each blames the other for extending the process, but at the same time blames the process as unnecessarily putting them into these positions to argue against each other in legalistic terms and prove everything from the ground up.

Some commented that the complexity had spawned a "cottage industry" that was likely to defend the status quo. On the other hand local entities defended their consultants as critical in getting satisfactory outcomes. The consultants we interviewed argued in favor of making the present system faster, less complex, and less costly. "I'd still be an attorney even if there were no test claims to prove," said one. There were assertions from state agencies and local governments about the role of the consultants in increasing the costs and complexity of the process, one side blaming the consultants, the other side blaming

the convoluted process itself and/or the inferred intentions of the state to use the complexity of the process to reduce pressure on the state budget.

Some of the local entities have become so frustrated with the system that they have come to think of it as designed to delay payments virtually forever. Many in the state attribute the delays to locals and also say that if local entities weren't pushing the envelope on the costs they claim the process would not take so long.

There were several examples of practices that were perceived to add to the complexity and delay. For example, such issues as legislative reconsideration of mandates and the addition of new Commission responsibilities, such as the SB 1033 process, are perceived to dominate Commission time, delaying the determination of test claims. Processes for smaller test claims are perceived to take an inordinate amount of time, also delaying attention for more complex test claims. Likewise, many locals attributed much of the delay to the perceived lengthy time that the Department of Finance took for their reviews.

These comments and many like them point to rising levels of frustration on both sides and seem to indicate that the longer the present system continues the more prevalent the blaming and finger-pointing will become as a method of explaining what is happening. If a collaborative process is convened, one of the first tasks will need to be to create an opportunity for the stakeholders to better understand each other's points of view on these issues. We concluded that there is an opportunity for a collaborative process to negotiate changes to practices that may be delaying the process and adding to its complexity.

2. Lateness in Funding and the Growing State Liability.

The Legislative Analyst's Report on the Governor's 2006-2007 Budget reports "a backlog" of at least \$1.1 billion in unpaid non-education mandate claims and \$1.2 billion in unpaid education mandate claims but indicates that these totals are uncertain and subject to further tallying by the State Controller's Office.

In the view of many local governments and their representatives, payment of the mandates represented by this liability is the highest priority. The funds represent reimbursement for services already rendered at the direction of the state. In the view of the local entities, especially cities and counties, this delay becomes another sensitive revenue problem alongside other revenue issues of recent years that have arisen in the context of various state budget crises and reduced spending discretion of local government. On the other hand, for many at the state level the critical priority is to get control of the mandates process to prevent further increases in this deficit and the liability it represents for the state. From this perspective, once the system is reformed as it relates to future mandates, the opportunities to address the existing debt will be enhanced. In our view both issues would require consideration in a collaborative process, but there is the possibility of linking reforms for prospective reforms to measures that speed up resolution and payment of prior year reimbursement claims.

3. The Legislative Process of Creating the Mandates.

There was a wide spread view among all types of stakeholders that review of bills with mandates by the Legislature was a significant element of the dysfunction of the current system. They all said something like this comment of one interviewee: “Surely a way could be found to make it clearer up front what the costs of these things would be, even before the bill gets signed.”

Many suggested bringing back the type of fiscal analysis they recalled once had been done by the Department of Finance and the Legislative Analyst’s Office. This included an estimate of mandate costs based on interviews with selected local governments or sample surveys. Some suggested ensuring that Committee hearings included testimony by local entities and the appropriate state agencies regarding the expected procedures and costs of the proposed mandate. Some suggested examining a range of additional options for addressing a public policy problem, such as turning the idea into a grant program if the cost is too high or starting with pilot projects to establish costs and then creating a

cost template based on that experience. Others suggested some version of a unit cost or cost matrix approach.

The concept was to simplify the later mandate determination and reimbursement process by making it much clearer up front which mandates existed in the legislation and to establish their cost guidelines. The Commission process would then be a secondary tool for the relatively few programs that posed special issues or exceptions to established rules.

We concluded that this is an issue that would warrant consideration by stakeholders in a collaborative approach. Since proposals in this area of reform especially relate to the procedures of the Legislature, it would be particularly important to include legislative leaders in discussions of options for change.

4. Establishing the Costs of Mandates.

The responses included numerous ideas about alternative ways to establish the costs of mandates in place of the current system of Parameters and Guidelines (P's and G's) as well as specific suggestions for improving the P's & G's system. The Department of Finance has put forward a Budget Change Proposal for the 2006-07 Budget that would create a Mandates unit. Among other duties envisioned for that unit, its staff would develop cost estimating methodologies to identify local activities for inclusion or exclusion and thus serve as fiscal limits for mandates that could be written into enabling legislation or proposed regulations, well in advance of the mandate determination and reimbursement process. Another Finance proposal discussed further below envisions a negotiated cost determination in the context of a shortened Commission process. A proposal of the Education Mandates Cost Network of two years ago proposed combining the Commission steps of determination of a mandate and the cost structure, instead of having a separate P's and G's process. That process envisions adding a fiscal staff to the CSM to prepare a rigorous analysis using, where appropriate, a unit rate model. Another concept from local government is the idea of submitting estimated costs for mandate

implementation within a year of enactment. At the close of some established time frame, there could be a settle-up process to accommodate differences between actual allowable expenses and the amount already paid out. This is a sample of ideas among stakeholders on different ways to shorten the process of calculating the estimated costs for reimbursement of mandates. As with many other issues, we found a widespread willingness to consider new approaches.

5. The Audits.

The audit process carried out by the State Controller's Office was frequently commented on, especially by representatives of local agencies and school districts. The gulf in perception between state agencies and local governments was never wider than in the descriptions of the purpose, process, and impact of audits of mandate reimbursement claims.

To the state agencies most deeply involved in the process of paying the reimbursement claims, the audits appear as a normal and reasonable tool for testing the accuracy of the Parameters and Guidelines process and ensuring that there are effective controls and accountability for this unique form of state expenditure. They point to the fact that audits are especially necessary since mandates are the only state program where costs are determined under locally proposed Parameters and Guidelines (though contested before and finally approved by the Commission). The fact that many audits have proposed steep reduction rates is an indicator to some state agencies that the envelope of acceptable expenditures is being pushed. State agencies argue that there is nothing unusual in the types of documentation required, that these standards are provided by the Controller's Office along with the Parameters and Guidelines, and that the Controller's Office is willing to discuss alternative forms of documentation with local entities. The concern is that the incentive in the current system is for local entities to inflate reimbursement claims, making audits all the more important.

From the local perspective, however, all this looks completely different. Some of them point to the fact that recent budget estimates to the Legislature of projected payments owed on mandates are now incorporating significant reductions to reflect the impact of audits. From this perspective, that is not a reflection of reality but a target for auditors to hit, thus motivating them to find reductions. Auditors in the field, it is reported, vary widely in the standards they use, seemingly following no fixed guidelines, and are often inflexible. Some auditors are excellent, but some insist, it is reported, on rigid compliance with detailed documentation requirements that are impossible for a school district or county to produce, even though the local entity believes it has ample evidence to show that the mandated service was provided. There are many more specific audit issues that have been raised, but the general picture painted from this perspective is of a process that ignores substantive accomplishment and focuses narrowly on detail of documentation that often cannot be produced many years after the original service was provided. Moreover local entities feel they are in a “catch 22” as it relates to audits. According to them, claims take two or more years to process. Without a decision and Parameters and Guidelines, locals don’t know what documentation the state will require for audits and hence what records to keep. When the auditors determine they did not keep the correct records the claim is then dismissed.

There is a significant gap between state agencies and local governments in their respective perceptions of the audit of reimbursement claims. Although we did not attempt to validate any of the assertions made regarding the audit procedures, we concluded that this is a ripe issue for a collaborative process where improved communications alone may result in changes that could be beneficial to both state agencies and local governments.

6. The Structure of the Mandate Determination Process.

There were many comments about the structure of the mandate determination process, including the composition of the Commission on State Mandates. There was a pervasive sense on the part of local governments that the structure of the mandate determination process is biased toward the state and that the Commission is aggressive in challenging

local entities rather than acting as a balanced adjudicatory body. Many expressed the perception that they, as local government representatives, are not accorded the respect they deserve as representatives of citizens. Many argued that state agencies with substantive responsibilities in the policy area of specific mandates did not actively participate in deliberations regarding test claims related to that policy area. They saw the staff of the Commission as trying to fill both the oversight role of these state agencies and the role of a staff to an adjudicatory body. As a result they feel they have no alternative but to hire consultants and attorneys to be sure their test claims receive the attention they deserve. They also perceive a built-in conflict in the composition of the Commission as dominated by state officials. Their reasoning is that state officials have an interest in conserving state resources, and so they cannot be impartial in the determination of test claims. In sum, local governments see the structure as one more manifestation of a process that works primarily to delay and deny them funding for providing services pursuant to state mandates.

At the state level we found two opposing perspectives. Some think the Commission and the staff do the best they can to be fair and impartial as required by the law. Others believe the Commission often leans too far to accommodate local government test claims. They believe this happens because sometimes Constitutional Officers on the Commission are anxious to cultivate electoral support, and at other times state analysts can be overwhelmed by expert consultants and attorneys employed by local governments.

Many we spoke with, however, saw members of the Commission as genuinely attempting to listen closely to each side in the cases before them. The Commission staff was praised by some as being capable in carrying out their work, however sharply some might disagree with the way they defined their roles. We were told by local government representatives that it is the structure of the process, not the competence of the Commission or staff, that is the issue. Some believe that the process with the existing structure would benefit if the staff had more programmatic expertise or if additional staff with fiscal expertise joined the legally oriented unit.

In summary, we could not find a consensus about the importance of changing the composition of the Commission, much less about what the change would entail. We did find that if other concerns related to the complexity, timeliness, and adversarial nature of the process could be addressed, concerns about the structure might be less important. To the extent most test claims are managed in a timely and collegial manner, the Commission's determination of fewer more complex test claims may be more manageable. In addition, it is possible a collaborative process could surface up proposals for the change of the structure that might more clearly delineate roles among state agencies that present critical assessments of test claims and the role of the Commission staff to support an adjudicatory function of the Commission.

7. Review of Specific Mandates.

Many of the interviewees brought up review of existing specific mandates. In the past there have been many proposals regarding suspending, deferring, and eliminating specific mandates. We did not have the time or resources to interview the beneficiaries of the various mandates. In addition it is clear from past reform efforts that suspending or eliminating many of these mandates is very controversial. Therefore consideration of this issue in a collaborative process would require representatives to speak for the beneficiaries of each of the mandates considered. We found general agreement among those we met with that reforms to the process are more important at this time than consideration of specific mandates. We concluded that taking up this issue would detract from deliberation regarding fundamental reforms and that the complexity of addressing both fundamental reforms and review of specific mandates would likely render a collaborative process infeasible. This issue is probably most appropriate for the legislative process.

D. Ideas for Major Changes to the Process.

As part of our analysis we reviewed ideas which have been put forth recently about changes to the mandates process. We wanted to consider whether in these ideas there are potential threads that indicate how a potential collaborative process might approach the deliberation regarding changes. In particular we wanted to try to gauge whether the range of ideas offered the potential for stakeholders to productively discuss each others' ideas. Many groups have come forward with ideas and proposals for changing the mandates process in recent years to respond to the level of frustration and distrust that we encountered from stakeholders during the interviews. In addition we heard many ideas from our interviews. These range from highly specific modifications of present practices to sweeping proposals for altogether new approaches to dealing with the creation of mandates as well as the resolution of test claims.

Space does not allow presenting all these ideas here. However we have attempted to summarize four sets of ideas for significant change in the mandates process that we believe originate from four major perspectives: local agencies, school districts, the Legislative Analyst's Office and the Department of Finance. We believe these ideas do indicate an adequate level of potential convergence to infer that there is much room for stakeholders to discuss and refine their respective ideas. (Appendix 5 contains a compilation of all the written proposals and ideas that were provided to us by interviewees.)

1. Local Agencies' Ideas for Change (2006).

- There should be a mandate cost review committee composed of appropriate state and local representatives who can review bills and provide information about what proposed mandates entail while the measures are still in the legislative process.
- If adequate work is done at the time of bill passage regarding the existence and cost of each mandate, there should be a neutral body that local agencies can

appear before to claim reimbursement for a new mandate without going through the test claim process. The Commission could be the arbiter for additional test claims that were not evident in legislation or that arose because of executive action.

- Within one year of enactment (or less) local agencies should be able to submit estimates for their costs to implement a mandate. Then at the close of the year or some other established time frame, there could be a “settle-up” process to accommodate the differences between actual allowable expenses and the amount already paid out. There should be allowances for cost differences between agencies for the same services.
- Expediting the process would provide better oversight for the Legislature and Administration, as they would realize the costs attached to legislation earlier. It would also reduce friction between local governments and the State.

2. School Districts Ideas for Change (June 2004)

This summary is drawn from an Education Mandate Cost Network proposal presented to the Assembly Special Committee on State Mandates on June 17, 2004. The proposal was created two years ago in response to then-existing conditions and is summarized here in digest form only for illustrative purposes. It is not intended to represent the current thinking of the Education Mandate Cost Network.

Recast the membership of the Commission on State Mandates to better reflect the parties of interest that come before the commission (i.e. add members that would represent cities, counties, school districts, community college districts, and special districts). A more balanced membership [than the present one dominated by representatives of state agencies] will ensure that all perspectives are weighed equally before decisions are rendered.

Require the Commission on State Mandates to establish terms for reimbursement upon finding of a state mandate. The Commission should adopt the terms, conditions and rate

of reimbursement upon adoption of a Statement of Decision that a reimbursable mandate exists. Every effort should be made to link the finding of a mandate with an accurate measure of its costs. We would recommend that a new unit be added to CSM staff to provide objective fiscal analyses.

Utilize uniform “unit rates” for reimbursement of mandated services and activities. Instead of using the current system based on “Parameters and Guidelines,” the CSM should instead, where appropriate, reimburse school districts and other local agencies at a uniform rate based on the output or specific service unit required in the mandate. This would eliminate the wide variation in reimbursement claims and non-uniform service or program levels across the local jurisdictions. Unit rate funding will also promote the efficient delivery of services, as school districts strive to meet the requirements of the new law within the resources provided.

Upon the conclusion of a review of state mandates by a newly established joint legislative committee, transfer funding from an annual appropriation to the State Mandate Apportionment System. Use of this existing system to fund current mandates will expedite the funding process and eliminate the need for local entities to file detailed cost claims. This system, working in conjunction with a unit cost reimbursement methodology, will provide greater certainty to local entities that their costs will be funded and more refined statewide cost estimates for Legislators who must set priorities for General Fund expenditures.

Provide budget appropriation for the year immediately following the finding of a reimbursable mandate. By acknowledging that school districts incur costs as soon as they begin to provide new services, the state will minimize the budgetary encroachment that would otherwise occur if state reimbursement is delayed.

Refocus the audit process on the provision of the service, not the documentation of the costs incurred in providing the service.

3. Legislative Analyst's Office Ideas (January 2006).

In its *Analysis of the 2006-07 Budget Bill*, the Legislative Analyst's Office (LAO) sets forth a proposal for streamlining and simplifying the financing of K-12 education mandates. It would replace the current system of reimbursing all 39 K-12 mandates through the individual reimbursement claims process with an Education Mandates Block Grant Program. The block grants would establish a set per pupil amount to cover costs of the mandates, but because the Constitution requires reimbursement of actual costs each district would have the alternative of accepting the block grant or going through the existing reimbursement procedure.

The LAO offers this recommendation in its belief that mandates are simply no way to manage a state program. Under the mandates process, it says, the state loses control of the cost of the program, the distribution of funds and the priorities of spending. Under a categorical program, the state would determine the areas of greatest need, select the recipients and decide what the allowable costs would be. The current mandate determination process takes more than five years to approve a new mandate, and during that time local districts must incur costs to fulfill the mandate while they can only guess which of these costs might ultimately prove to be reimbursable. Small districts, the LAO points out, often fail to apply for reimbursement for most mandates since they lack the staff and resources to meet the requirements of the process. The LAO also points to the friction caused between the state and local districts by the auditing process that we have discussed above.

The LAO proposal, if fully implemented, would result in a \$24-27 per pupil mandate reimbursement and would prevent districts from having to invest resources in determining the cost of each mandate. By accepting the block grant, a district would waive its right to seek a reimbursement claim for individual mandates but would also no longer be concerned about audits. It would be subject to periodic review to ensure that the mandated activities were being carried out. If the district elected to continue filing reimbursement claims, it would still be subject to audits.

While this proposal goes to the latter part of the process rather than the front end, as most of our interviewees did, it has similar goals of reducing time, complexity and cost and giving both the state agencies and local governments more predictability and control over funds.

4. Department of Finance Ideas (March 2006).

- Go back to the origins of SB 90 as modified by Proposition 1A and the basic principle of doing the right thing: “If you make us do it, you have to pay us, and if you don’t pay us, we don’t do it.” At least as it relates to non-education mandates, Proposition 1A requires either reimbursement of the costs or suspension of the mandate.
- Speed in determining mandate costs is more important than perfect accuracy. If local governments prevail in showing that the real cost is \$20 million, for example, instead of \$1 million, then the state has to choose between funding at the higher level, and suspending.
- Because of the differences between education and non-education mandates, this new approach should be worked out first for non-education mandates only and then the approach worked out for the education system adapting from the approach for non-education mandates.
- The initial determination of the existence of a new mandate could still be done by the Commission on State Mandates but in a less legalistic manner and at a faster pace. The initial determination should be made within the year after the enactment of the mandate, and the amount for reimbursement included in the budget for the subsequent year. If the Legislature does not fund the mandate than the mandate would be automatically suspended under Proposition 1A. Alternatively the Legislature could consider changing the law.
- The biggest problem with the current system in this context is that it requires a local entity to file a test claim before costs are determined. This leads to the potential that the state would build up a substantial debt before the question of

suspension is even raised. It also guarantees that the process will be adversarial and legalistic, which is a major cause of workload and backlog.

- To establish the initial determination, there could be a negotiated method used to establish costs quickly instead of the current process of Parameters and Guidelines under the CSM. As soon as the new mandate is established, a negotiating committee can be established consisting of representatives from Finance and local governments to establish a rough estimate that would include recognition of regional differences in costs. There would need to be a speedy method of resolution in case of disputes between the state and locals. CSAC and the League of Cities and other local government representatives could have standing committees to advise on negotiated mandate cost estimates.
- We would need a new law to establish that the cost of a mandate is the cost negotiated between the Department of Finance and local representatives, and then endorsed by the Commission on State Mandates.
- There would also need to be an option available to any local government that objected to the negotiated cost rate.
- The use of unit cost rates could be important for speedy determination thru the negotiation process. After a year of experience, you could revisit and correct the formula on the basis of real-world data. If the cost got to be too high, once again 1A might kick in and lead to suspension if the Legislature balked. Or the local governments could continue to enforce the mandate with less money, but the state would owe the balance.
- The Legislature should monitor any collaborative process to develop recommendations for mandate reforms. For example, Assemblyman Laird could help kick it off and then send staff to monitor the process.

5. Implications for a Collaborative Process

There is clearly a wide variance among these and other ideas. We conclude from our review of them, however, that there is room for stakeholders to use many of the concepts as starting points to begin deliberation about how to formulate consensus recommendations to the Legislature for reforming the mandates process. In section IV we offer suggestions for convening and organizing a collaborative process.

E. The Conditions for Effective Collaboration.

The data gathered in this assessment allow us to evaluate the conditions our research disclosed against the needed conditions for collaboration set out earlier in this report. On balance, it is our opinion that these conditions have been met to a degree that lays the groundwork for a collaborative process, but there are at least two conditions that must be answered by future events, those relating to the availability of resources and to the support of the Legislature for a collaborative process.

1. Incentives. The status quo is sufficiently costly to all stakeholders that they share an incentive to want to change it.

Most of the issues discussion has demonstrated a high level of frustration on the part of all stakeholders with the cost, delays and huge accumulated debt developed under the current system. The incentives seem strong for most of the parties. The local agencies and school districts are under a lot of financial strain and want to be paid promptly when they are required to provide new or higher levels of service under state mandates. When they are not paid promptly, they must provide the service and take resources away from some other activity to do so since their overall ability to raise revenue is restricted. The current system also requires them to incur high costs for consultants and attorneys to file cases, sometimes to go to court. The state agencies involved most directly in the process (Finance and State Controller) are responsible for protecting the state's budget and fiscal integrity and are trying to find ways to make the process more efficient and less costly.

The mandates work load adds to existing responsibility, and they want to get control over that burden as well as the costs and time-consuming nature of the process. The Governor and Legislature are faced with a multi-billion dollar debt that has to be paid off in a 15 year period under Proposition 1A, at least in so far as non-education and non-workers rights mandates are concerned, and it is in their interest to get rid of that debt and see that it does not return.

There are also potential disincentives from the state perspective. Delay in paying for mandates may be helpful in securing passage of bills. Delay in paying off reimbursement claims may be helpful for the state's budget since this represents a relatively low-interest loan. (Interest is not paid at all until the CSM finds that a mandate exists, and then the interest rate is the "pooling" rate, usually below a commercial rate.) However, all of the state agency representatives we interviewed were insistent that reform of the mandates process is a high priority.

Many of our interviewees believe there is a further institutional disincentive in the inertia of the way the Legislature operates. There is little political constituency behind reforming the existing mandates process, and every member of the Legislature has higher priorities. There is unanimous agreement that the Legislature must indicate its support for a collaborative process in order for it to be productive. We did find indications of this support in the Legislature, but these indications will need to be more explicit to attract stakeholder commitment to a collaborative process.

2. Willingness to Negotiate. The key stakeholders are all willing and able to participate in the process and make a good faith effort to reach agreement.

Those we interviewed all indicated their desire to participate but made clear from the outset that a new process could not succeed without the active involvement of the Department of Finance and the support of the Legislature. The Department of Finance was explicit that it would actively engage in a collaborative process if it addresses their ideas for change. In addition key stakeholders insisted the process must be guided by a neutral facilitator with knowledge of the mandate process.

3. Authority to Negotiate. Stakeholders can represent to each other the degree of negotiating authority they bring to the table and be completely transparent about the circumstances under which they must seek approval from higher level officials, boards or constituencies.

The stakeholders in this situation are all highly experienced and sophisticated negotiators and, for the most part, have been dealing with each other for years. There will be full disclosure up front about negotiating authority, and everyone we have interviewed is alert to the necessity of this step.

4. Mutual Understanding. The stakeholders recognize the legitimacy of one another's goals and needs and are willing to consider innovative proposals to meet those needs.

This is the collaborative step, and we found few stakeholders with practical experience of this type of process. What we did find in abundance were the prerequisites for collaboration. Many of the staff and advocates had worked for different interests over long careers in this field, had taken many different chairs around the same table and therefore fully understood the interests of groups they might now be opposing in a particular case. Many of them are also skilled coalition builders who negotiate and find allies appropriate to each issue. State appointed officials and state legislators, in some cases, once represented local school districts, counties or city government. A representative of school districts once sat on the Commission on State Mandates. There are many with a depth and range of experience that enables them to understand perfectly the needs and goals of every agency represented around the table. Since the incentives have already been prompting them to think about potential changes of similar types, collaborating on developing these proposals could be a significant next step.

Many of those interviewed did have experience with the use of independent facilitators, and several believed that the process should be guided by someone with no vested interest in the outcome. One spoke of the need for a technically competent facilitator, well-enough grounded in the issues to skillfully guide discussions. Another thought an independent voice would be needed to keep the stakeholders from repeating the same old positions to each other. Some, though, were skeptical that an independent facilitator using

the collaborative paradigm would be as effective as a study process convened by the Legislature and overseen by the entities the Legislature is more accustomed to, such as the LAO or a combination of groups, including the Commission.

5. Possibilities for Joint Gains. Opportunities exist for simultaneously meeting the needs of the stakeholders through joint support for new approaches.

Quite apart from the willingness to collaborate, we look for objective opportunities to link proposal elements in ways that meet the differing needs of stakeholders in a single package that all can support. In this case, what we find is not a broad mix of disparate elements that can be linked in a complex agreement but rather a narrow focus on a single process with a coincidence of interests in saving time, money, workload and making service delivery as efficient as possible.

6. Central Process. The collaborative has the potential to be the central process for dealing with the issue and will not be overshadowed by other events or processes that might displace it.

Although a number of lawsuits are pending and more may be filed, a potential collaborative process convened by the Commission with all the major stakeholders would be a key forum for building widely supported new proposals. Currently, neither the Legislature nor the Governor has initiated any other process that might supersede this one.

7. Involvement of Decision Makers. The agencies needed to implement an agreement are part of the process and willing to guide it through whatever administrative or legislative steps that might be necessary.

As noted above, the Department of Finance and the Legislature are major decision makers. In addition, the State Controller's Office is a major decision maker regarding audits. Finally, the Commission on State Mandates is a key decision maker. Both the Department of Finance and the Controller's office have indicated their willingness to participate in a collaborative process as has the Commission. In the past the Legislature has indicated an interest in reforms to the mandates process as evidenced, for example, by the active leadership of Assembly Member John Laird, Chair of the Budget Committee and former Chair of the Assembly Select Committee on State Mandates. It is reported

that Assembly member Laird is supportive of a collaborative process. Everyone we talked with indicated his leadership is critical for favorable consideration by the Legislature of any recommendations that are formulated by a collaborative process.

8. Availability of Resources. Adequate resources are available to see the process through to its conclusion.

The Commission on State Mandates staff has indicated that it currently lacks the resources to support an independently facilitated collaborative process. A key indicator for stakeholders of support of the Legislature for a collaborative process would be appropriation of funds for this with language calling for the recommendation of the process to be reported to the Legislature by a date certain.

9. Political Incentives. The political atmosphere for the stakeholders is such that they would be rewarded rather than punished for reaching voluntary agreement about the issues at hand, and/or it would be more advantageous to have some control.

We found no evidence in our research that the political atmosphere is such that the stakeholders or agencies likely to be involved perceived that reaching a voluntary agreement would be disadvantageous. On the contrary, this issue represents such a source of frustration and conflict for all parties involved that there are likely significant political rewards to everyone if fundamental reforms can be achieved.

On balance, then, it is our conclusion that conditions are conducive to going to the next step for a collaborative process of presenting to the Commission on State Mandates and the stakeholders themselves specific suggestions on how a process might get underway. The critical caveat to this conclusion is that before a collaborative process is convened there must be adequate indication to stakeholders that the Legislature supports such a process and will carefully consider any recommendations it produces. In the next section we offer these suggestions.

IV. CONCLUSION AND SUGGESTIONS

A. Conditions for a Collaborative Process.

We conclude from our research that the conditions are favorable for a collaborative process to address reform of the state mandates process if two additional issues are addressed. First sufficient resources must be made available to support such a process. Second, the Legislature must indicate its support for such a process and its willingness to carefully consider the recommendations of the process. These issues could be addressed if the Legislature appropriates funds for a collaborative process, indicates the purpose for the process, and specifies a date certain to report consensus recommendations back to the Legislature. We suggest that the purpose is to propose recommendations for fundamental reform of the state mandates process. In order for the Legislature to have time to consider the recommendations in the next Legislative year, we suggest that the date for the report be no later than February 1, 2007.

B. Goals.

While there may be a number of potential goals for mandate reform to be sought from a collaborative process, we conclude from the assessment that the following seven goals may be a good place to start. They are intended to recognize the level of frustration with the current system and the commitment that is required to launch an effective effort at change, by illustrating potential accomplishments of reform.

1. *The process should be significantly streamlined and the time for determining test claims and processing reimbursement claims significantly reduced to a fixed period with a system of incentives and penalties.*

2. *A new system should be designed for prospective mandate determinations.*
3. *The existing process should be revised to reduce the time required to process existing test claims, and should result in the payment of the state's existing mandate liability as soon as feasible. Then the existing process for determining the cost of claims should be phased out and/or integrated with the new system.*
4. *Better and timelier information should be made available to decision makers about the potential costs of mandates before the mandates are enacted.*
5. *The new system should better integrate the need of state auditors for documentation with the need of local governments to reduce the cost of documentation by relying on more use of their normal data collection systems. The audit process for existing reimbursement claims should be standardized to reduce misunderstanding between the state agencies and local governments and to create a shared sense among both the state agencies and local governments that the auditing process is fair and reasonable.*
6. *The process should not be a source of frustration and mistrust between state agencies and local governments.*
7. *The process should reduce the cost of processing claims for both the state agencies and local governments.*

These suggested goals are offered in order to facilitate discussion among interested parties about the potential feasible outcomes of a collaborative process and not to limit the deliberations of stakeholders. If a collaborative process is convened, the stakeholders should identify and agree on their own goals for the process.

C. Additional Issues to Consider.

We suggest that the interested parties consider the potential focus for a collaborative process before convening the process. In particular our research surfaced differences regarding whether a collaborative process should first focus on local agency mandate reform before taking up education mandate reform. Several parties had strong beliefs about which approach to take. On one hand, including education mandate reform is likely to make the process more complicated because many of the issues are different for education reform and local agency reform, and stakeholders from each area would have to take the time to become informed about the other's issues. In addition the Department of Finance is a proponent of focusing first on local agency reform, and all stakeholders agree the Department must participate if a collaborative process is convened. On the other hand, representatives of education strongly believe they deserve attention as much as local agencies do, and education mandate claims represent approximately half of the total cost of mandates. It is possible education interests would oppose recommendations from the collaborative process if their concerns are not addressed by these recommendations, and this could be a significant problem for legislative consideration of the recommendations.

We suggest that the process address both education and local agency mandates. Although this may make the process more complex, two subcommittees could be organized to focus on the respective areas and the recommendations brought back to the full group. There is a risk in taking mandate reform serially that the result would be two different processes existing side by side, at least for an interim period, which may be more complex and costly for the state to administer.

Finally, the focus of the interviews and of this assessment is entirely on the mandates process itself and not on the substantive content of any particular mandate. We believe that the reform discussions can and should be conducted without reference to the particular merits of individual mandates. These are policy questions that may be more appropriate for the Governor and Legislature to consider. Similarly, it is not necessary or

advisable to bring into the discussions about reforming the mandates process itself the state agencies with expertise in substantive mandate areas (with the possible exception of the Department of Education since the funding of local education requires such a unique state role) or the constituency groups that have championed particular mandates in the legislative process. To do so would require an altogether different type of process from the one under discussion here.

D. Convening and Organizing a Collaborative Process.

Completion of this assessment was the first step in a collaborative process to develop recommendations for fundamental reform of the state mandates system. The second step is convening and organizing the process.

We suggest that the Commission on State Mandates seek the assistance of the Legislature as co-convenor and sponsor of the collaborative process. It could do this by requesting special funding to convene a facilitated process involving major state and local interests for the purpose of making recommendations to the Legislature concerning fundamental reform of the state mandates system, by a date certain that allows sufficient time in 2007 for the Legislature to deliberate on the recommendations and enact them into law. We also suggest that the Legislature monitor the collaborative process and provide input as appropriate.

We suggest that Commission staff be assigned the task of selecting a neutral facilitator to guide and manage the collaborative process. The Commission and facilitator should work with interested parties to identify stakeholders for the process. Stakeholders should include the Department of Finance, the Legislative Analyst's Office, the State Controller's Office, Department of Education, several representatives of local agencies to reasonably reflect the diversity of interests within that sector, and representatives to reflect the diversity of the educational sector. Stakeholders from local agencies and from education should guide the selection of their representatives and provide for whatever assistance they may require from their respective constituencies. The Commission on

State Mandates plays a special role as convener of the process, facilitating its creation and overseeing its administration. The Commission and its staff also have a direct interest in the content of proposed reforms. Often when an agency convenes a collaborative process, it must decide on enacting the resulting recommendations and does not participate as a stakeholder. In this case the issue under consideration is a process to be improved, rather than a policy to be enacted. It is possible that the deliberations will be enhanced if a representative of the Commission participates as a stakeholder. Commission staff will certainly need to participate as a technical resource to the stakeholders.

The Legislature is a co-convener and sponsor of the process and a key institution in implementing its recommendations. Assembly Member Laird and perhaps others will assist in launching the process, and it is expected that staff members of the Legislature will attend to monitor developments closely. As noted below, the group itself should also organize regular briefings for the Legislature, and other legislative staff should participate as technical advisers.

Once stakeholders are identified and representatives selected they should work with the facilitator to agree on ground rules. The ground rules should include provisions to ensure that: all are heard and respected; stakeholders will attempt to address the interests of others as well as their own interests; information will be freely shared among stakeholders; and norms of civility will prevail. The ground rules should also include clarity regarding the rules by which decisions will be made by the group and the protocols that all stakeholders will use to keep their constituents, boards or agencies informed about the process. The stakeholders should also work with the neutral facilitator to agree on the design and organization of the process. We suggest that it may be useful to include in this organization at least two subcommittees, one to focus on reforms for education mandates and one to focus on reform for local agency mandates. We also suggest that it may be useful to include in the organization a subcommittee delegated to work with the neutral facilitator on administrative matters of the process.

This organizational step in the collaborative process should also provide for whatever technical information needs the group may require. As noted above Commission staff, Legislative staff, LAO staff, and State Controller staff can provide important information. If there are any data of disputed accuracy, a way needs to be structured to work within the limits of the data that is available and agreed upon. If that is not possible, then a form of data mediation among technical experts should be attempted to sort out the issues that divide the experts to see if a consensus can be reached on technical issues sufficient to give the process the information it needs to work with.

Since the end product of the process is a series of recommendations for the Legislature, a cross-section of stakeholder leadership should be selected as a communications subcommittee to maintain regular contact with key legislative members and staff to provide regular briefings in a transparent manner with participation by all the major interests. Although legislative staff are expected to attend the meetings, the stakeholders themselves should also provide their own briefings as a group at milestone points during the process.

One last organizational element would be to establish a rule about contact with the media, especially in light of the fact that in recent years, the mandates issue has generated press coverage that has had some polarizing effects, in the view of some interviewees.

The third step in the collaborative process is joint fact finding as the substantive meetings get underway. During this phase the stakeholders should inform one another about their interests that need to be met with reforms. Stakeholders should also develop a shared understanding about the facts as they relate to the mandates process and the functioning of that process. At this point, the group's technical resource staff will be of critical importance. All information should be accessible and fully shared among stakeholders. Finally, based on a shared understanding of facts, the group should refine the goals and issues that negotiations should address in the next step.

The fourth step in a collaborative process is deliberation and negotiation, the principal activity taking up most of the time of the process. This step should start with a review of the underlying interests of all stakeholders as the basis for creating options for mutual gains. It is difficult to create such options unless there is full understanding among them of each other's interests for reform. We suggest that the group create criteria to be used to evaluate options for mutual gain.

At this point, the process can proceed in a couple of directions. The group can work either with a single text or straw proposal, like the ideas offered by the Department of Finance, or it can immediately try to generate multiple options for consideration. In either case, progress is made by comparing proposals to the criteria in order to measure their ability to meet the interests of the stakeholders. The group keeps negotiating refinements to get to the point of maximum agreement through considering potential for trade-offs, linkages of proposals, contingencies among proposals, and packaging of several proposals to help reach agreement on specific reform. As draft proposals are reviewed stakeholders should consult regularly with their constituencies and then obtain their ratification for the final recommendations.

The deliberation and negotiation step should include agreements about how to implement the recommendations, how to monitor progress in implementation and in changing circumstances that may affect implementation, and how regular consultation about changed circumstances will occur. The implementation agreements should include any assurances among stakeholders about their respective responsibilities as it relates to implementation. In this regard, for example, the agreement should specify responsibilities for informing the Legislature about the recommendations and advocating for their enactment.

Implementation is the final step. In this step the stakeholders work cooperatively to take action to see the recommendations carried out. They regularly consult with each other about the status of implementation. When changed circumstances arise, they work together to address the new conditions, including returning to negotiation in the event

new conditions require revisiting the original recommendations. If questions arise about whether assurances are being met, they consult with each other about the questions and seek to work out differences.

These steps in convening and organizing a collaborative process are consistent with best practices in the field. However, each context is unique and stakeholders should take the lead in jointly deciding on how they will proceed. In the end the success of collaborative processes depends upon both following good practices for fact finding, negotiation, and implementation and assuring that the stakeholders themselves are in control of those steps.

LIST OF ATTACHMENTS

- | | |
|---------------------|---|
| Attachment 1 | List of Organizations Represented in Interviews |
| Attachment 2 | Outline of Mandate Reimbursement Process
(Prepared by Staff of Commission on
State Mandates) |
| Attachment 3 | CCP Protocol of Interview Questions |
| Attachment 4 | Map of Issues Relating to Mandates Process |
| Attachment 5 | Proposals/Ideas for Reform Provided by
Interviewees |

Attachment 1 – List of Organizations and Agencies Interviewed

Commission on State Mandates

Present and Former Members (2)

Legislature

Office of Speaker of the Assembly
Office of Senate President pro Tempore
Assembly Budget Committee Chair
Assembly Republican Fiscal Staff
Assembly Budget Committee Majority Staff
Senate Republican Fiscal Staff
Senate Local Government Committee
Legislative Analyst's Office

Department of Finance

Office of the Director
Education Systems Unit
Corrections, General Government Unit

State Controller's Office

Division of Accounting & Reporting
Division of Audits

California Department of Education

Fiscal and Administrative Services Division

Governor's Office

Office of the Secretary of Education
Office of Legislative Secretary

Local Government

California State Association of Counties
League of California Cities
SB 90 Service (MAXIMUS)
Alameda County Sacramento County
El Dorado County Santa Clara County
Los Angeles County San Bernardino County
Newport Beach
Regional Council of Rural Counties Los Angeles Unified School District
Urban Counties Caucus San Jose Unified School District
Education Mandated Cost Network School Innovations and Advocacy
SixTen and Associates California Teachers Association
Anaheim City School District Public Resource Management Group
California Federation of Teachers

Attachment 2 – Outline of State Mandate Claims Process (Prepared by Staff of the Commission on State Mandates)

MANDATE REIMBURSEMENT PROCESS

I. CREATION OF THE MANDATE

A. LEGISLATIVE PROCESS

1. Legislative Counsel Digest. (Gov. Code, §§ 17575, 17578, 17579.)
(Notice of possible state mandated costs)
2. Appropriations Committees.
 - a. Department of Finance (DOF) Fiscal Analysis on first fiscal year costs. (Gov. Code, §§ 17576, 17577.)
3. Floor Reports include fiscal impact analysis.
4. Governor signs or vetoes.

B. EXECUTIVE ORDERS – REGULATIONS, ETC.

1. Definition of executive order is very broad. (Gov. Code, § 17516.)
2. Executive Branch Agencies have rulemaking authority.
3. Office of Administrative Law.
 - a. Finding of costs to local governments.
4. DOF reviews regulatory package and approves STD 399, state/local fiscal impact of adopted regulations.

II. TEST CLAIM PROCESS

A. STATUTORY PROVISIONS

1. One-year statute of limitations for filing test claim. (Gov. Code, § 17551.)
2. Test claim must exceed \$1,000 increased costs mandated by the state. (Gov. Code, § 17564 subd. (a).)
3. Commission on State Mandates (CSM) determines test claim (Gov. Code § 17551) [adopts statewide cost estimate in 12-18 months from filing date].
4. Successful test claimant proposes Parameters and Guidelines (Ps&Gs) – for reimbursement. (§ 17557); alternatively, CSM staff may prepare Ps&Gs, based on alternative process. (Cal. Code Regs, tit. 2, § 1183.12.)
5. CSM adopts Ps&Gs and may amend on request of party. (Gov. Code, § 17557.)
6. In adopting Ps&Gs, the commission may adopt a reasonable reimbursement methodology. “Reasonable reimbursement methodology” (RRM) is a

formula for reimbursing local agency and school district costs to implement the mandate that meet the following conditions:

- The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost efficient manner.
- For 50 percent or more of eligible claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.
- Whenever possible, a RRM shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when claimants are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a RRM may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding ten years.

State agencies, including, but not limited to the Department of Finance and the State Controller's Office, claimants, and interested parties may propose RRM's. (Gov. Code, §§ 17557 and 17518.5.)

7. State Controller (SCO) issues claiming instructions. (Gov. Code, § 17558, subd. (b).)
8. Local governments file reimbursement claims with SCO. Reimbursement claim must exceed \$1,000/fiscal year. (Gov. Code, § 17564, subd. (a).)
9. SCO may begin auditing reimbursement claims. (Gov. Code, §17558.5.)
10. CSM adopts statewide cost estimate. (Gov. Code, §17553, subd. (a)(2).)
11. CSM reports statewide cost estimates for approved mandates to Legislature (Gov. Code, §§ 17600, 17612, subd. (a).)
12. CSM reports annually to the Legislature on the number of claims it denied during the preceding calendar year, and the basis on which the particular claims were denied. (Gov. Code, § 17601.)
13. LAO reviews CSM reports and recommends to the Legislature whether to repeal, modify, suspend, or fund new mandates. (Gov. Code, § 17562, subd. (c).)
14. Legislature enacts annual Budget Act (appropriates or suspends mandated programs). introduces and enacts annual claims bill. (Art. XIII B, § 6, Gov. Code, §§ 17581 and 17581.5.)
15. SCO pays claims when funds appropriated.
16. Three-year SOL for local government to appeal SCO reduction to CSM, if claim reduced. (Cal.Code. Regs, tit. 2, § 1185.)
17. Three-year SOL to challenge CSM decisions in court.

III. ONGOING FUNDING AND MANAGEMENT OF MANDATED COSTS

A. LEGISLATURE'S AUTHORITY

1. Repeal, modify, or fund the mandate (Legislative Analyst Reports to Legislature on new statewide cost estimates and unfunded mandates,. (Gov. Code, §§ 17562, subds. (c), (d), (e)(2),17570.)
2. Fund the mandate: pay prior year costs and appropriate funds for annual costs. (Art. XIII B, § 6 and Gov. Code, § 17612.)
 - Local Agency (art. XIII B, § 6, subd.(b) – Proposition 1A) Beginning July 1, 2005, pay full amount or immediately suspend program for that fiscal year. This requirement does not apply to education mandates or mandates concerning employee rights or benefits.
3. Suspend the mandate in Budget Act. – local agencies; school districts. (Gov. Code, § 17581, 17581.5.)
4. Direct CSM to reconsider mandate or amend Ps&Gs. (Gov. Code, § 17612, budget trailer bills.)
5. Assembly and Senate Committees on Local Government may hold a joint hearing each year on specified topics. (Gov. Code § 17562, subd. (f).)

B. LOCAL GOVERNMENTS' AUTHORITY

1. Submit proposals to Legislature recommending the elimination or modification of a state-mandated local program (§ 17562, subd. (e)(1)).
2. File new test claims on new programs or higher levels of service. (Gov. Code, § 17514.)
3. File incorrect reduction claims challenging SCO reductions. (3-year statute of limitations from date of remittance advice). (Gov. Code, § 17551.)
4. Request amendment of parameters and guidelines based on program modifications, to clarify after audits. (Gov. Code, § 17557, subd. (d).)
5. Request CSM review of claiming instructions. (Gov. Code, §17571.)
6. Challenge decisions of CSM, SCO, DOF. (Gov. Code, § 17559, 17612.)

C. STATE CONTROLLER DUTIES AND AUTHORITY

1. Audit reimbursement claims and reduce payments (Gov. Code, § 17558.5.).
2. Propose amendments to parameters and guidelines based on program modifications, audits, etc. (Gov. Code, § 17557, subd. (d).)
3. File AB 3000 report by Jan. 1 each year. (Gov. Code, § 17562, subd. (b).)

4. Reimburse local governments for all costs mandated by the state and interest. (Gov. Code, § 17561, 17561.5, 17561.6); if necessary, reimburse local governments for prorated claims (Gov. Code, § 17567).
5. File deficiency report each year (Gov. Code, § 17567).
6. File comments on all pending test claims, parameters and guidelines, and statewide cost estimates, and draft staff analyses prepared by CSM staff.
7. Challenge decisions of CSM, DOF (Gov. Code, §§ 17559, 17612.)

D. DEPARTMENT OF FINANCE DUTIES AND AUTHORITY

1. Prepare fiscal committee analyses and EBRs on legislation.
2. Approve STD 399 for rulemaking.
3. File comments on all pending test claims, parameters and guidelines, and statewide cost estimates, and draft staff analyses prepared by CSM staff.
4. Propose amendments to parameters and guidelines. (Gov. Code, §17557, subd. (d).)
5. File report to Legislature on cost savings. (Gov. Code, § 17562, subd. (e)(3).)
6. Prepare Governor's Budget – propose appropriations for mandate reimbursement in January and May Revision.
7. Challenge decisions of CSM, SCO. (Gov. Code, § 17559.)

Attachment 3 – Interview Questions

Assessment of Mandate Reform

Protocol for Interview of Stakeholders

February 2006

I. Introduction

As you know, there has been much discussion about *mandate reform* but so far little consensus. The mandate reimbursement process, which is essentially the same process that was established twenty years ago, does not timely inform policymakers of the state's liability for mandated costs, nor does it timely reimburse local governments and school districts for the costs they incur. The Commission on State Mandates is seeking to streamline and reform the existing process for determining and reimbursing mandates. The Center for Collaborative Policy is carrying out an assessment on behalf of the Commission to determine the issues that should be addressed in reforms, the opportunities for agreement on reforms, and the potential usefulness of a collaborative process to develop recommendations for reforms. The purpose of this interview is to obtain your views on the mandate process, the issues that should be addressed by reforms, other stakeholders who should be included, and the usefulness of a collaborative process to develop recommendations. We will keep your replies confidential. No one will see them except Center professionals who are working on this assessment. They will only be reported as part of an aggregate of responses, with no attribution to any specific individual.

II. About the interviewee and context

1. What is your role within your organization as it relates to the state's mandate process?
2. What is the current focus of your organization regarding the state's mandate process?
3. What are the key issues for your organization as it relates to the existing state mandate process?

III. About goals, issues, and interests

4. What are the goals your organization would like to see achieved as part of mandate reform?
5. How would your organization benefit from achieving each of these goals?
6. What are the central issues that must be addressed in order for each of these goals to be effectively achieved in mandate reforms?

7. What issues are of greater and lesser importance?
8. Are any of the issues related to mandate reform linked together so that they should be discussed together?

III. About other stakeholders

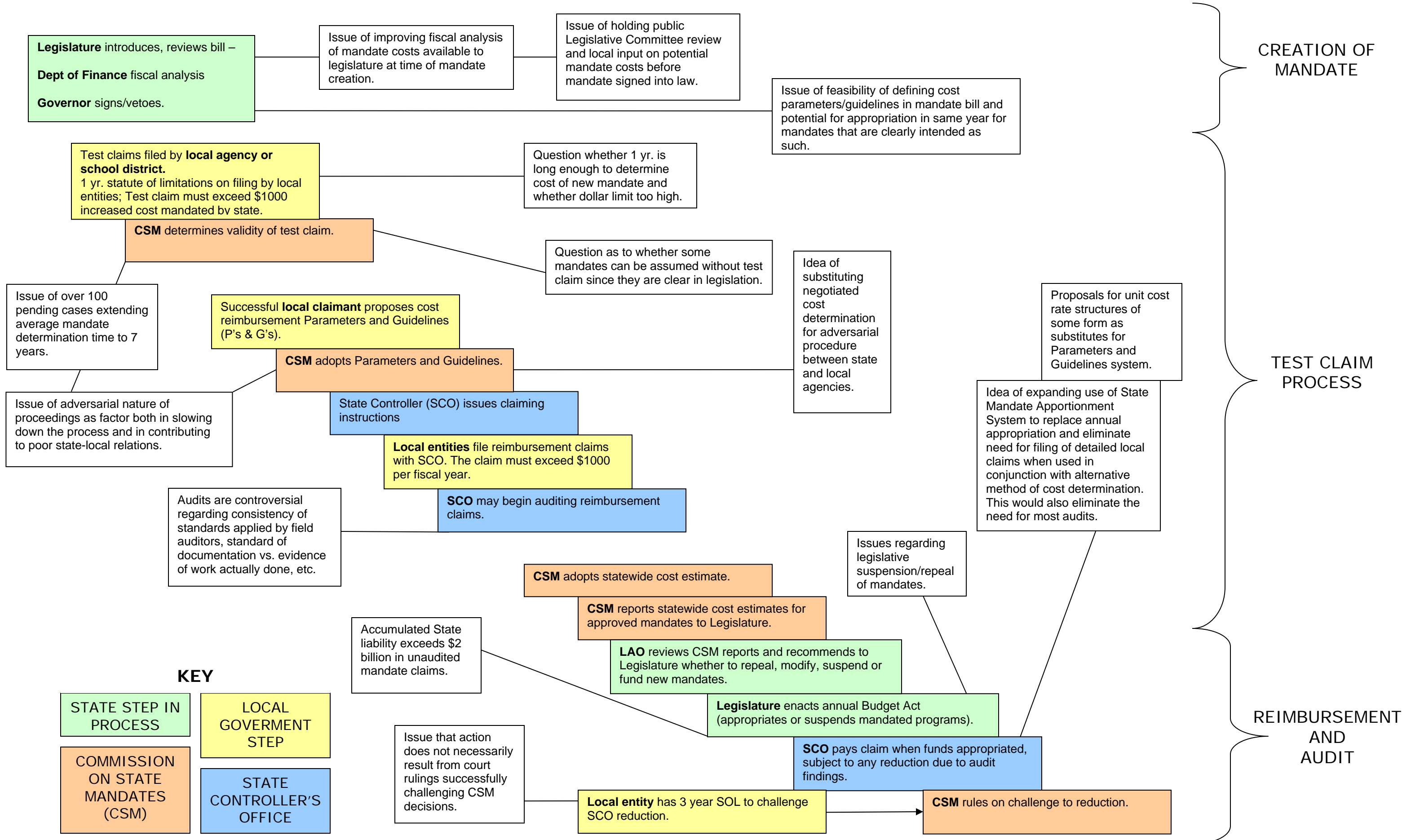
9. Who are the other major stakeholders who should be involved in a process to develop recommendations for mandate reform?
10. Which of these stakeholders should directly participate in a decision making process, along with other stakeholders, to decide on recommendations and help implement decisions, and which need to be consulted and kept informed but not necessarily decision making participants?
11. Can you tell me the key areas where you agree and/or disagree on mandate reform issues with any of these stakeholders?
12. Do you have any suggestions for how stakeholders not participating directly in a decision making process to formulate recommendations should be involved?

IV. About the process

13. Would a collaborative process to develop recommendations for mandate reform be worthwhile? Why or why not?
14. If a collaborative process were convened to develop recommendations, would your organization be willing to participate?
15. Are there any conditions related to such a collaborative process itself that would be important to address in order for you to participate?
16. What are the types of information that should be available for the participants in a collaborative process to do their work?
17. Are you aware of any other activities related to mandate reform, such as legislation or litigation, which might affect a collaborative process?
18. If a collaborative process developed reform recommendations that your organization agrees with, would you be willing to help implement those reforms?

V. Conclusion

19. Is there anything else we should be aware of in completing this assessment?



ISSUES MAP FOR MANDATE REIMBURSEMENT PROCESS

Attachment 5:
Proposals/Ideas for Reform
Provided by Interviewees

**Presentation To The
Assembly Special Committee On State Mandates
April 26, 2004**

**Robert Miyashiro, School Services of California representing the
Education Mandates Cost Network**

The current process to determine, carryout, and fund state mandated local programs has thwarted the will of the Legislature in the provision of services statewide, frustrated local agencies that are charged with delivering these services and impaired the delivery of those services to state residents deemed necessary by their elected representatives. No participant in the mandates process defends the status quo, and yet there has been little success in reforming this complex and costly governmental function. The Education Mandated Cost Network (EMCN) appreciates this opportunity to share its views of the mandates process and to offer recommendations for reform.

Deficiencies in the Current Mandates Process

Delays in the Determination of a Mandate and the Provision of Reimbursement. The current process suffers from long delays between the enactment of a law requiring the provision of a new service and the state's provision of reimbursement to school districts for delivering the required service. This is due to long delays in the mandates process itself – the filing of claims, the hearing process of the Commission on State Mandates (COSM), the development of parameters and guidelines to establish the rules for obtaining state reimbursements, the legislative process to enact a claims bill and the allocation of funds by the State Controller's Office (SCO). This process can take over five years.

Inadequate Resources to Execute New State Laws. Because of the long delays in receiving state reimbursements for new mandated services, school districts often are required to redirect resources from current programs in order to provide these services. This redirection, or encroachment, impairs school district operations and undermines districts' ability to control their budgets. The failure of school districts to provide mandated services or the erosion of current programs to fund the mandate can leave parents and students frustrated and disappointed. In more extreme cases, districts could be vulnerable to lawsuits for these shortcomings.

Under the current reimbursement process, the COSM, through its adopted "Parameters and Guidelines" (or Ps & Gs), will recognize only certain locally incurred costs. These costs are uniquely defined for each mandate. As a result, school districts will be denied reimbursement for cost not falling within the Ps & Gs, even though they will have incurred these costs. This process shortchanges school districts and forces them to carry out the mandate in a manner that ensures they are fully reimbursed. The Ps & Gs, therefore, can discourage the efficient delivery of the mandated service.

Unknown Fiscal Consequences to the State and School Districts. Because of the sometimes wide variation in modes of service delivery, the costs to local agencies in meeting the requirements of a new law can vary as well. This variation makes it difficult for state agencies, as well as local agencies, to determine the costs of complying with a new law. This uncertainty

makes budgeting at both the state and the local levels more difficult, placing in jeopardy other programs that must compete for General Fund support.

Wide Variation in Levels of Reimbursement Fosters Mistrust. Because school districts and other local agencies are given wide latitude in carrying out the mandate, their costs can vary significantly. This variation can have clearly defensible causes, based on the mode of service delivery. Nevertheless, the variation itself has led to skepticism that the reimbursement claims do not properly reflect locally incurred costs.

Lack of Timely Information on Audit Requirements. Of particular concern to school districts is the lack of information on the audit standards that will be applied to their claim for reimbursement. School districts are too often required provide a level of documentation to support their claim which far exceeds their normal cost accounting standards. Moreover, these requirements are often promulgated years after the costs have been incurred. Documentation deficiencies then have led to audit exceptions and reductions in reimbursements, even though the school districts will have incurred all of the costs claimed.

Mandate Reforms for Consideration

The EMCN suggests several goals that we believe any mandates reform proposal should strive to achieve. We recognize that the state may have other or even competing goals; however, we believe that a balanced approach will yield an improved mandates process that will serve the interests of all parties.

We also offer several suggestions to reform the mandates process that we believe will significantly advance the electorate's intent when they adopted the constitutional amendment requiring the state to reimburse local agencies for their costs in carrying out new laws adopted by the State Legislature.

Goals for Mandate Reform: (1) Timely Determination of a State Mandate, (2) Timely and Adequate Reimbursement to School Districts for Provision of Mandated Service, (3) Clear Audit Requirements

Process Recommendations:

Require the Commission on State Mandates to Establish Terms for Reimbursement Upon Finding of a State Mandate. Under the current process, the COSM is charged with determining whether a state law imposes a reimbursable mandate, based on the requirements of the State Constitution, court decisions, and relevant state statutes. The composition of the commission's staff reflects the largely legal nature of these proceedings, and numerous experts that testify before the commission offer their legal expertise in an attempt to influence the commission's decisions.

The process, however, pays far less attention to the fiscal consequences of a finding of a reimbursable mandate. In order to provide more precise estimates of the cost of a state mandate and reassure school districts and other local agencies that they will receive sufficient funds to carryout the mandate, the COSM should adopt the terms, conditions, and rate of reimbursement upon their adoption of a Statement of Decision that a reimbursable mandate

exists. Every effort should be made to link the finding of a mandate with an accurate measure of its costs.

Utilize Uniform “Unit Rates” for Reimbursement of Mandated Services and Activities.

Under the current practice, the COSM adopts “Parameters and Guidelines” after a reimbursable mandate has been found. These “Ps & Gs” define what activities and items can be claimed for reimbursement. They focus on the input process of meeting the mandate requirement and reimburse the factors that go into that process.

Where appropriate, the COSM should instead reimburse school districts and other local agencies at a uniform rate based on the output or specific service unit required in the mandate. This would eliminate the wide variation in reimbursement claims and non-uniform service or program levels across the local jurisdictions. A unit rate of reimbursement would also allow for a more accurate measure of the statewide cost of a given mandate and provide local agencies more certainty in the level of state funding that will be provided to carry out the mandate.

Unit rate funding will also promote the efficient delivery of services, as school districts strive to meet the requirements of the new law within the resources provided.

Provide Budget Appropriation for the Year Immediately Following the Finding of a Reimbursable Mandate. A budget appropriation to fund the reimbursable mandate should be made in the year following the finding of the mandate. By acknowledging that school districts incur costs as soon as they begin to provide the new services, the state will minimize the budgetary encroachment that would otherwise occur if state reimbursement is delayed.

Refocus the Audit Process on the Provision of the Service, Not the Documentation of the Costs Incurred In Providing the Service. Under the current process, the State Controller’s Office audits records of school districts that support their claims for reimbursement of state mandates. Too often these audits focus on the documentation of costs incurred in fulfilling the mandate. Little attention is paid to the timeliness, quality and level of service provided. In order to improve the relationship between the state and the local agencies, these audits should focus on whether the mandate has been met, rather than the expenditures incurred in meeting the mandate. With this change in focus, state policy makers could receive valuable information from the SCO on whether to amend the mandate to reflect local developments.

Mandate Reform Alternatives Education Mandated Cost Network

June 17, 2004

The Assembly Special Committee on State Mandates is nearing the conclusion of its year-long investigation of the complex process of how the state determines and funds state mandates. At this juncture Assembly member Laird, the committee chair, has requested that reform proposals be submitted to the committee for consideration.

The vehicle to carry the mandate reforms has been identified as AB 2856 (Laird), which is currently assigned to the Senate Local Government Committee. No hearing date has yet been set. The bill, as amended May 10, 2004, clarifies that the Commission on State Mandates shall not find a reimbursable state mandate if an appropriation is provided that offsets the cost of providing the required service. The bill, however, does not yet contain any mandate reforms.

Attached are two proposals for mandate reform in 2004-05. The first is a comprehensive package which tackles numerous aspects of the mandate process, from the enactment of a bill that could impose a state mandated local program to the receipt of state funding to reimburse locals' costs in providing the mandated service. The other option is a more limited list of reforms that address the legislative process overseeing mandates. The two options are provided in recognition of the limited time remaining for legislative consideration of broad reform initiatives.

Option 1: Comprehensive Mandate Reform

As has been discussed throughout the Assembly committee's year-long inquiry, California's process of determining and reimbursing state mandates is in desperate need of reform. The Education Mandated Cost Network (EMCN) recognizes the Constitutional requirement that local agencies be reimbursed from the state for costs they incur in carrying out duties imposed upon them by the state; the Legislature's role in enacting state laws and appropriating funds to support both state and local programs; local agencies' duty to follow laws enacted by the Legislature; and the Commission on State Mandates' (COSM) role in determining whether a new law contains a reimbursable state mandate and establishing rules for local agencies to follow to receive state reimbursement. The reforms that follow are sensitive to tensions that flow from these intersecting responsibilities.

Recast the membership of the Commission on State Mandates to better reflect the parties of interest that come before the commission (i.e., add members that would represent cities, counties, school districts, community college districts, and special districts). The current membership of the COSM is dominated by representatives of state agencies—the Department of Finance, the State Controller, the State Treasurer and the Director of the Office of Planning and Research. Commissioners representing these agencies will tend to view the consequences of their decisions from the perspective of the state, that is the governmental entity imposing the new duty and ultimately paying for the service, rather than the local agencies charged with providing the service and in turn seeking reimbursement from the state. A more balanced membership of the commission will ensure that all perspectives are weighed equally before decisions are rendered.

Require the Commission on State Mandates to establish terms for reimbursement upon finding of a state mandate. Under the current process, the COSM is charged with determining whether a state law imposes a reimbursable mandate, based on the requirements of the State Constitution, court decisions, and relevant state statutes. The composition of the commission's staff reflects the largely legal nature of these proceedings, and numerous experts that testify before the commission offer their legal expertise in an attempt to influence the commission's decisions.

The process, however, pays far less attention to the fiscal consequences of a finding of a reimbursable mandate. In order to provide more precise estimates of the cost of a state mandate and reassure school districts and other local agencies that they will receive sufficient funds to carryout the mandate, the COSM should adopt the terms, conditions, and rate of reimbursement upon their adoption of a Statement of Decision that a reimbursable mandate exists. Every effort should be made to link the finding of a mandate with an accurate measure of its costs.

These additional duties will require an augmentation of the staff of the commission. We would recommend that a new fiscal unit be added to the COSM to provide objective fiscal analyses of new mandates. This unit should be staffed with a manager and two or three analysts who have a

background in budget and financial analysis. The addition of such a unit would complement the legal analysis currently provided to the commission.

Utilize uniform “unit rates” for reimbursement of mandated services and activities. Under the current practice, the COSM adopts “Parameters and Guidelines” after a reimbursable mandate has been found. These “Ps &Gs” define what activities and items can be claimed for reimbursement. They focus on the input process of meeting the mandate requirement and reimburse the factors that go into that process.

Where appropriate, the COSM should instead reimburse school districts and other local agencies at a uniform rate based on the output or specific service unit required in the mandate. This would eliminate the wide variation in reimbursement claims and non-uniform service or program levels across the local jurisdictions. A unit rate of reimbursement would also allow for a more accurate measure of the statewide cost of a given mandate and provide local agencies more certainty in the level of state funding that will be provided to carry out the mandate.

We would suggest that a workload/cost matrix be developed by the commission staff that would translate the number of hours that a given mandate would take to implement into a unit rate reimbursement applied to an agreed-upon workload measure. This matrix would take into consideration the types of skills and the average compensation paid to staff that would be responsible for carrying out the mandate. It would also establish various workload measures, such as ADA, square feet, certificated staff, etc, to which the unit rates would apply, depending upon the specific mandate. The development of this matrix, while requiring considerable work and refinement, would systematize the process of determining unit rates for future mandates.

Unit rate funding will also promote the efficient delivery of services, as school districts strive to meet the requirements of the new law within the resources provided.

Upon the conclusion of a review of state mandates by a newly established joint legislative committee, transfer funding from an annual appropriation to the State Mandate Apportionment System. Use of this existing system to fund current mandates will expedite the funding process and eliminate the need for local agencies to file detailed cost claims. This system, working in conjunction with a unit cost reimbursement methodology, will provide greater certainty to local agencies that their costs will be funded and more refined statewide cost estimates for Legislators who must set priorities for General Fund expenditures.

Provide budget appropriation for the year immediately following the finding of a reimbursable mandate. A budget appropriation to fund the reimbursable mandate should be made in the year following the finding of the mandate. By acknowledging that school districts incur costs as soon as they begin to provide the new services, the state will minimize the budgetary encroachment that would otherwise occur if state reimbursement is delayed.

Refocus the audit process on the provision of the service, not the documentation of the costs incurred in providing the service. Under the current process, the State Controller's Office audits records of school districts that support their claims for reimbursement of state mandates. Too often these audits focus on the documentation of costs incurred in fulfilling the mandate. Little attention is paid to the timeliness, quality and level of service provided. In order to improve the relationship between the state and the local agencies, these audits should focus on whether the mandate has been met, rather than the expenditures incurred in meeting the mandate. With this change in focus, state policy makers could receive valuable information from the SCO on whether to amend the mandate to reflect local developments.

Option 2: Modest Mandate Reforms for 2004-05 Session

These proposed reforms of the mandates process recognize the limited opportunities for legislative review of a comprehensive reform initiative, given the late date in the 2004-05 session. These reforms would not fundamentally change the current process, and EMCN would hope that further reforms are considered and adopted in the 2005-06 session.

Establish a standing joint committee of the Legislature to meet at least every third year to review and sustain or repeal current statutes found to contain a reimbursable state mandated local program. The efforts of the Assembly Special Committee on State Mandates has been praised by numerous interested parties, including the EMCN. This committee has accomplished numerous goals, whether intended or unintended, that will ultimately yield an improved mandates process. Among the significant accomplishments of this committee are the following: (1) educated the members of the committee of the complex mandates process, (2) evaluated the public policy value of mandated programs whose objectives may have already been achieved or are being addressed in other state programs, (3) weighed the costs of funding mandated programs against other newly emerging budget priorities, and (4) provided a public forum for debate of individual mandates. We believe that these benefits should be continued in future years and that the establishment of a standing joint committee of the Legislature would ensure that the efforts of this Assembly Special Committee are not lost to future Legislatures.

Repeal statutes that impose a state mandated local program if funding for reimbursement is not provided. The EMCN supports the recommendation of the Legislative Analyst to repeal mandates that are not funded in either legislation or the Budget Act. The LAO recommends that if the Legislature does not fund a mandate, the State Controller shall notify affected local agencies that the mandate is invalid and Legislative Counsel shall draft legislation for the chair of the local government policy committees to codify the repeal of the mandate.

Specify Legislative intent that funding for the deferred education mandates will be appropriated by a specified fiscal year. The EMCN notes that the Administration and local governments have come to an agreement that funding for outstanding local government mandates will be paid over a five-year period, commencing in 2005-06. While recognizing that a mandate reform bill may not be the appropriate measure to specify a date when the deferred education mandates will be paid, given the fiscal implication of such a statutory requirement, the EMCN, nevertheless, believes that it is important to recognize the legitimate mandate claims of school districts and community college districts. A statement of legislative intent would provide some reassurance that the deferred mandate payments will be made.

The COSM staff should initiate the development of a workload cost matrix and methodology to be presented to the commission for consideration and ultimate statutory enactment. We would suggest that a workload/cost matrix be developed by the commission staff that would translate the number of hours that a given mandate would take to implement into a unit rate reimbursement applied to an agreed-upon workload measure. This matrix would take into

consideration the types of skills and the average compensation paid to staff that would be responsible for carrying out the mandate. It would also establish various workload measures, such as ADA, square feet, certificated staff, etc, to which the unit rates would apply, depending upon the specific mandate. The development of this matrix, while requiring considerable work and refinement, would systematize the process of determining unit rates for future mandates.

While statutory enactment of this methodology may not be possible in the current session, educating the members of the commission and the public would set the stage for its ultimate adoption.

STATE MANDATE REIMBURSEMENT REFORM IDEAS

Prepared by SixTen and Associates

As of January 12, 2006

STATE MANDATE REIMBURSEMENT REFORM IDEAS

Prepared by SixTen and Associates

January 12, 2006

ELIGIBLE CLAIMANTS

Charter Schools 17519

Charter schools are already recognized as schools and school districts by state law. Section 17519 should be clarified to state that charter districts are school districts for purposes of mandate reimbursement standing (test claims, incorrect reduction claims and annual claims) but that charter schools not in a charter district have no standing independent of their chartering district.

COMMISSION PROCESS

Quasi-judicial process 17500 17527 17533 17554

GC 17500 states that the Commission is a quasi-judicial body established to reduce lawsuits. It has not always been successful in that pursuit. Recommend that the Commission be dissolved and its responsibilities transferred to the Office of Administrative Hearings/OAL where quasi judicial hearings are conducted. In the alternative, remove the exemption currently held by the Commission from the Administrative Procedure Act which will then require the Commission and the parties to comply with administrative law standards.

Public Members 17525 17532

The public members are essential to an informed adjudication of local agency claims. Modify the quorum requirements to require two of the three public members to be present.

Public Meetings 17526

Require monthly Commission hearings. There is at least a six-year backlog of work.

COMMISSION CLAIMS

SOL for filing a test claim 17551 (b)

STATE MANDATE REIMBURSEMENT REFORM IDEAS

Prepared by SixTen and Associates

As of January 12, 2006

2004 reduced the SOL for filing a test claim to 12 months or within 12 months of “incurring increased costs” whichever is later. This is vague and punitive. Only the test claimant is burdened by a one-year filing period. There was no manifest benefit to the state to reduce the filing period from three-years to one year. The result was to curtail the ability of local agencies to deliberate and pursue a comprehensive program. Further, since the 2002 legislation cut-off all possible test claims on statutes extant prior to 2002, the current Commission workload will eventually subside to probably less than ten new test claim filings per year.

Regarding the vague “incurring increased costs.” There is no practical need for this option. Test claims can be filed on estimated future costs.

This section should be amended to allow three years to file a test claim from the effective date of the source law.

SOL for Incorrect reduction claims 17551 17553 (d)

There is no statutory SOL for incorrect reductions. Three years is recommended. The three years should be measured from “any adjustment of an annual reimbursement claim which affects the claimant’s entitlement to full payment of the amount claimed.”

Test claim content and procedure 17553

Timely hearing by the Commission: establish a fiscal disincentive for the delay in hearing a test claim, which is now upwards of six years. Make interest on unpaid annual claims payable beginning 18 months after the test claims is filed.

Timely participation by the parties: any delay by the test claimant should commensurately reduce the number of months for which the state has to pay interest. Delay by the state agencies should increase the number of months for which the state has to pay interest. If that were in effect now, the Department of Finance would have pushed the interest date back to the date of filing for many test claims. This would eliminate extensions for “good cause.”

Activities vs. Costs: The statute appears to use the terms “activities” and “costs” without regard to their meaning. Activities are functions to implement the mandate which must be reimbursed and the costs are the cost of those functions.

Actual increased costs: With a one-year SOL for filing a test claim, it is unlikely that “actual” costs can be determined. However, the “activities” will be known.

Statewide cost estimate: Requiring the test claimant, especially within 12 months, to

STATE MANDATE REIMBURSEMENT REFORM IDEAS

Prepared by SixTen and Associates

As of January 12, 2006

obtain and report a statewide cost estimate as a component of the test claim is both prejudicial and punitive. The cost of a mandate is not relevant to the scope of activities to be approved for reimbursement. Cost considerations are prejudicial to deciding the merit of the test claim. The requirement for the test claimant to perform a statewide cost estimate is punitive since the Commission staff was unable to do so previously with any degree of precision. It also has a chilling effect on local agencies attempting to file a test claim within one year. The code section should be amended to return to requiring the test claimant to assert a minimal jurisdictional amount, and the recommended amount is \$200 per fiscal year to allow small local agencies access to the process.

Incorrect reduction claim content and procedure 17558.6

There is no statutory law on this. Incorrects have the same standing as test claims and should have similar requirements in statute. In 1998, section 17558.6 was added to require some action on this strange situation, without any apparent statutory result.

Legislative Reconsideration procedure none

This should be a quasi-judicial process of equal standing and rigor as the test claim process. The code should so provide for this process in detail.

Commission Reconsideration procedure 17559

There is no compelling state reason to limit to 30 days the period in which the Commission may reconsider its decision. The purpose of the reconsideration is to correct errors in findings of law and fact. The hearing transcript may not even be available in thirty days.

While it may be assumed that the due process procedures prior to the test claim decision allows for a complete analysis of relevant issues, the reconsideration allows a fail-safe. This fail-safe is particularly important when it appears from the conduct of the hearing that the commissioners have made conclusions of fact or law contrary to the law or not supported by the record.

Since it takes six years to adjudicate a test claim, why the rush to terminate the process envisioned by 17500? A longer period, perhaps 120 days, is needed. This would not interrupt the parameters and guidelines process following the test claim decision, which now takes more than a year.

REIMBURSABLE MANDATE ACTIVITIES

Federal Mandates 17513

STATE MANDATE REIMBURSEMENT REFORM IDEAS

Prepared by SixTen and Associates

As of January 12, 2006

Correct the most recent amendment. Federal laws enacted after the state mandate are not legally relevant to state mandates enacted before the federal law. Instead, the Legislature should repeal the state mandate if it is satisfied with the federal mandate as a source of compulsion on local agencies.

Cost savings authorized by the state 17517.5

Added in 2004, this section is not self-implementing and provides no relief to the state or claimant. Until about ten years ago, there were regulations which required the state agency to file an "anti-test" claim to have the Commission hear and decide on these situations. Repeal this section as useless. In the alternative, amend it to make it clear that the prior mandate had to have its own specific state funding source, and not just funded from general appropriations.

Exceptions to costs mandated by the state 17556

The Article 13B, section 6, exceptions to reimbursement are:

- “(1) Legislative mandates requested by the local agency affected;
- (2) Legislation defining a new crime or changing an existing definition of a crime; or
- (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

Subdivision (a) Requested mandates: No change, it appears to reasonably implement the constitutional exception.

Subdivision (b) Court Decisions: No change proposed.

Subdivision (c) Federal Law: There should be no retroactive effect of federal mandates on the scope of state mandates. A federal mandate passed after a state mandate obviously did not compel the state mandate. If the federal government later removes their mandate, the state mandate would remain. Further, the legislature can repeal any state mandate which they believe is redundant of the federal mandate. Retroactive effect is probably unconstitutional and in effect a pro-rata repeal of state law without judicial action.

Subdivision (d) (e) Fee authority and Offsetting savings: There is no constitutional exception for these subdivisions. Whether legislative fee authority is "sufficient to pay for the mandated costs" or legislated offsetting savings result in "no net cost to local agencies" is not a matter

STATE MANDATE REIMBURSEMENT REFORM IDEAS

Prepared by SixTen and Associates

As of January 12, 2006

which the Legislature can declare as a matter of law (boilerplate disclaimers) and the Commission does not generally have the data to reach such a conclusion. No one knows the “actual” costs until the claims are filed, or the amount of attributable funding. Repeal these subdivisions. Instead, add language to simply state that fee authority and other dedicated funding is a reduction of amounts claimable.

Subdivision (f) Ballot Measures: This is the SARC and Open Meetings Act killer. Legislation enacted after a Proposition is per se not within the scope of the language placed before the people. The post-facto effect is probably unconstitutional.

Subdivision (g) New Crimes: No change, it appears to reasonably implement the constitutional exception.

PARAMETERS AND GUIDELINES

Reasonable reimbursement methodology 17518.5 17557

A good idea. As a practical matter, impossible. There are no data bases for actual cost before the annual claim data is available that are acceptable to all the parties.

The revenue neutral requirement for 50% of the districts is punitive.

Amend to simply grant the Commission authority to establish reasonable reimbursement methodologies and hope the parties can resolve their differences without statutory constraints.

Technical Note: Move 17557 subdivision (c) regarding the filing date of a test claim to 17551.

ANNUAL REIMBURSEMENT CLAIMS

Minimum Claim Amount 17564

Until recently, the minimum amount for a claim was \$200. It is now \$1,000. The issue of materiality and being able to provide reimbursement to small local agencies is a difficult one. Small local agencies with claims smaller than \$1,000 can file in a county-combined claim. However, the combined claim process is not universally available and an administrative nightmare for the counties and Controller. It is recommended that the minimum filing amount be returned to \$200 so that small local agencies have better access to reimbursement.

STATE MANDATE REIMBURSEMENT REFORM IDEAS

Prepared by SixTen and Associates

As of January 12, 2006

Annual Filing Date 17560 17561

The current filing date for “ongoing” annual claims is January 15 each year. About fifteen years ago, it was October 31. Then it was changed to November 30. It has been January 15 for about ten years. Perhaps the perception was that as more programs were approved, more claims were required, and more time was needed.

My personal experience as the employee responsible for annual claim preparation for a large school district for seven years, and from ten years of preparing claims for many other districts, is that the January 15 due date is no practical benefit to anyone except mandate consulting companies. Typically, claimant personnel are not available the last two weeks of December due to holiday recesses or vacations, and no work gets done on collecting documentation. As a practical matter, because of other workload commitments, most claimants will work up to a deadline, no matter the date, so the due date won't significantly impact their behavior.

It is recommended to move the annual filing date to December 15. 17561 already provides for an additional one-year late-filing period, so claimants are not harmed by the loss of 30 days. This proposal may also benefit the Controller's operations.

Penalty for Late Filing 17561 17568

There is currently a technical discrepancy between the 10% penalty for late annual “ongoing” claims and late “initial” claims which should be corrected to be consistent.

Statute of Limitations for Audit 17558.5

This code section has been amended frequently to extend the state's authority to audit without regard to the claimant's ability to provide supporting documentation. The situation now is that the statute, because it relies upon appropriation and payment to trigger the tolling, and because test claims take at least six years to adjudicate, requires claimants to retain documents for eight, ten, and even fifteen years. In fact, claimants do not know at the time they file the claim when the SOL will toll because it relies upon subsequent independent action of the Legislature as to appropriations and independent action by the Controller, which is also the audit authority, as to the date of payment.

While the SOL cannot do anything about the time it takes to adjudicate a test claim, the SOL should comply with case law as to the purpose of statutes of limitation and be consistent with other SOL for state agencies as to document retention periods. Appropriations and claim payments bear no legal relevance to the content and integrity of the annual reimbursement claim. The SOL should be tied to the date the claim was filed so that claimants have a known and fixed documentation retention period, which is the purpose of statutes of limitation for audit. It is unlikely that anyone can find in state

STATE MANDATE REIMBURSEMENT REFORM IDEAS

Prepared by SixTen and Associates

As of January 12, 2006

law a SOL of fifteen years for other entitlement processes such as this. Three, four, and five years, from the date of filing, is typical. There is no compelling state need for a “floating” SOL for mandate reimbursement.

Note that the law (subdivision b) was amended in 2004 to clarify the Controller’s authority to audit “prior to the reimbursement fo the claim” which makes it apparent that payment is not relevant to the content and integrity of the claim. What is apparent is that the current the SOL is for the staffing convenience of the Controller, which probably would be of no consequence to a court.

Audit Authority 17561

Currently, the statutory guideline for mandate audits is contained in 17561. It states that the Controller may audit to verify costs and reduce excessive or unreasonable claims. There are no procedural guidelines. The Legislature should require the Controller to establish an audit manual which is adopted pursuant to the Administrative Procedure Act. The Controller has audit manuals for other programs within in its jurisdiction. Mandate reimbursement has been around for about thirty years and the Controller currently receives 50, 000 to 60,000 claims per year. What possible compelling reason exists for the state not to develop and publish mandate accounting standards for billions of dollars in claims? Imagine if the Franchise Tax Board did that.

Claiming Instructions 17564 (b)

A 2004 amendment to 17564, subdivision (b), appears to grant the Controller’s claiming instructions the power of law. This is contrary to 17558. Further, the Controller’s claiming instructions are not adopted as regulations pursuant to the Administrative Procedures Act, so 17564 (b) may grant the instructions the force of law without the need to comply with due process. The 2004 amendment may also conflict with Commission duty of independent review of the claiming instructions pursuant to 17571.

SMAS Entitlement Claims 17524 17615

The code allows for a State Mandates Apportionment System which makes automatic payment of claims based on three years of cost history for those programs which qualify by virtue of variable costs and other criteria. I believe only two school district mandates are in this system. One of the two, Immunization Records, should have been superseded by a later mandate, Hepatitis B.

This system should be eliminated. The recent “reasonable reimbursement methodology” provision for parameters and guidelines is more than adequate and will be more accurate.

Legislative suspension 17581

STATE MANDATE REIMBURSEMENT REFORM IDEAS

Prepared by SixTen and Associates

As of January 12, 2006

This section provides that the Legislature can suspend mandates by failing to fund the mandate in any particular budget act. This is a particularly cynical process. Sometimes state budgets are signed more than a month into the budget year. Further, the state budget process, the "Gang of Five," is hardly a process open to the public. So, as a result of late budgets and lack of notice, local agencies have to budget to implement mandates which essentially may be suspended post-facto.

Should the Legislature wish to continue the practice of suspending mandates due to funding considerations, the suspension should not be effective until the subsequent fiscal year.

DRAFT

February 22, 2006

Reforming the State Mandate Reimbursement Process

Streamline or Reform the Existing Process

Or

Create a New Model

The Center for Collaborative Public Policy (California State University Sacramento) has been asked by the Commission on State Mandate to facilitate the streamlining or reform the state mandate reimbursement process. The final outcome could include either a reform of the existing commission model or it could include the creation an entirely new process. Most, if not all changes will require statutory or constitutional amendments. The following is a compilation of comments and suggestions from local agency representatives address problems with the existing system and ideas for process reform. Although this document does not contain a proposal for an entirely new process, given all the problems with the existing process, any new model that meets the locals goals and objectives would be welcomed.

This document first discusses the overall goals and objectives for evaluating changes to the existing process or creating a new model and then comments on each aspect of the process. The topics include:

- Overall Goals and Objectives
- Problems With the Current Process
- Legislative Process
- Commission Issues
- Test Claim Process
- Statement of Decision Process
- Parameter and Guideline Process
- Statewide Cost Estimate Process
- Litigation
- Reimbursement Claim Preparation
- Incorrect Claim Process
- State Controller Audits
- Miscellaneous Recommendations

This draft and is being distributed to a variety of local officials for their review and comment.

1. Overall Goals & Objectives

- Fair, impartial and equitable process(s) and decision maker(s)
- Presume mandate provisions are reimbursable
- Provide for a decision in a reasonable period of time
- Minimize both state and local staff time
- Provide full reimbursement of unfunded costs
- Provide automatic reimbursement if process is delayed by state
- Provide for full protection afforded in the Constitution

2. Legislative Process – problems and suggestions

- There is a need for greater fiscal analysis by legislative staff, the LAO, Department of Finance and others before legislation is passed.
- Require bills with state mandates be subject to two-thirds vote
- Delay operative date until funding is provided
- Require the suspension of mandates to go through full legislative process
- Sunset all bills containing unfunded state mandates

3. Current Commission Model

- Unbalanced in favor of the state
- Commission staff are often the only ones presenting any arguments recommending the denial of a test claims (doesn't county Finance's automatic no mandate response).
- Allows for undue influence by the legislature
- Does not meet any of the above goals and objectives
- No alternates for local or public members
- Members given too much information to consider (agenda package)
- Delays the right of locals to proceed to court
- Does not allow for/utilize other dispute resolutions alternatives for resolving issues such as incorrect reduction claims
- Statutory time limits are not met

4. Test Claim Process

- To complex and burdensome on test claimant
- Takes far too much time
- Too much emphasis on one agency's situation (most cases).
- Statute of limitations for considering statutes or regulations is far too limited.
- Very difficult to do without an attorney.

5. Statement of Decision

- Overly limits the parameter and guideline process

6. Parameter & Guideline Process

- Too limiting on local government
- Needs to have more practitioners involved with their development
- Often too restrictive to fit local circumstances
- Should allow for simple update when new directly related mandates are enacted
- Does not allow for early start up or implementation costs
- Often unreasonably limits items such as training to one time reimbursement

7. Statewide Cost Estimate

- Need to get money appropriated much sooner
- Few disagreements on the final staff recommendations

8. Litigation

- Limit Commission legal counsel's participation in litigation
- Need for more accurate interpretation and use of court decisions by Commission staff; typically miss use cases to prevent reimbursement

9. Reimbursement Claim Preparation

- Documentation - contemporaneous time requirements are often unreasonable

10. Desk Review Process

- No current problems with this process.

11. State Controller Audits

- Audits have been inconsistent, some excellent and some outrageous
- Controller audit staff can be arbitrary or unreasonable
- Conduct by the audit staff does not always follow usual code of conduct
- Frequent denial of local documentation is unreasonable
- Local agencies should receive reimbursement for costs that they can prove were provided (proof of end product vs. a record similar to a time sheet).
- Should allow for locals to obtain credit for unclaimed items between fiscal years included in an audit
- Large agencies are unfairly targeted
- Auditors often lack program knowledge
- Controller and locals need to agree what constitutes an acceptable time study

12. Incorrect Reduction Claims

- No time limit for the Commission to consider
- Commission staff not trained to adjudicate cost accounting issues
- State Controller's legal staff tend to be overly restrictive

13. Miscellaneous Recommendations

- Limit the number of years a program can be suspended without repeal
- Repeal provisions requiring taxing authority; allow for JPA's
- Reduce the \$1000 claim limit
- Continuously appropriate and use the mandate fund
- Delay effective or operative date of legislation until full funding is provided
- Impose interest payment after a reasonable period of time after a test claim has been filed
- Repeal all optional mandates where local agencies do not need the authority to carry out the program or service
- Allow local agencies to go directly to court
- Extend term of local and public member until they are replaced
- Provide sanctions for not meeting deadlines

Final Comments For The Good of the Order

Years ago former State Controller Ken Corey commenting on the mandate reimbursement process once told county officials, "if the state had intended to provide reimbursement of unfunded state mandates, it would not have designed the process like this" as he held up a flow chart of the process. Things have only gotten a lot worse. The sad fact is that local officials participated in the design of the process, but the way it is carried out today is not the way anyone envisioned it at that time.

February 28, 2006

San Bernardino County, Reimbursable Projects Section
Request to Respond to Correspondence from the Urban Counties Caucus
Subject: Center for Collaborative Policy Study of SB90 Process

The SB90 Mandate process has been going through a number of changes that have resulted in:

- A huge backlog at the Commission level,
- Non-participation by local agencies for various reasons which include complexity and time consideration of the filing process, drain on resources, and lack of funding and,
- Legislative interest in reviewing the mandate process.

The Commission on State Mandates has contracted with the Center of Collaborative Policy (Center), in the first phase, to assess the feasibility of using a collaborative process for mandate process reform. If it is determined that this process can be successful, the Center will move forward with the subsequent stages: Organization, Education, Negotiation, and Implementation.

In responding to the request from the Urban Counties Caucus, I would like to address their key points in reverse order:

- Potential for a Collaborative Process
While I am a relative newcomer to the process (October 2002) compared to several of my counterparts in other agencies, my observation of and communication with San Bernardino County participants involved in the reimbursement process, is that a simplified, less cumbersome process would be welcomed. As the County representative to the CSAC-LLC Advisory Committee and the person responsible for our County Test Claims, I would suggest that the changes in the continually evolving process because of, as examples, legislation, reconsiderations, court cases and Commission rulings, have not served to make the process any easier but have resulted in more complexity, rules and time delays. I would support a fresh look at dealing with the claim and reimbursement processes. In fact, as was stated by an attendee in the Commission's Legislative Subcommittee meeting held December 8, 2005, we would do well to 'blow it up' and start anew. Currently, I believe that there is Commission support as evidenced by their direction to Commission staff to begin this process, and then become actively involved in garnering support from their respective offices. There is legislative interest. In '03 and '04, a special legislative subcommittee was formed to review the State Mandate process. It is also my understanding that there are two possible spot bills as placeholders for mandate reform issues.
- Opportunities for Agreement
 - o Simplify both the test claim and reimbursement processes
 - o Reduce the time frame between mandate legislation being passed and funding availability to local agencies
 - o Identification and fiscal analysis of mandate legislation as part of the legislative process
 - o Research opportunities for reasonable reimbursement methodology, unit cost structures and a broader State Mandate Apportionment System (SMAS) program

- o Focus on the Constitutional intent of the process
- Issues that Should be Addressed in Mandate Reform
 - o The reason for the process: There is something inherently wrong when legislation is approved into law with supporting verbiage that indicates it is subject to the SB90 mandate process and it has been reviewed by State Departments who identify cost issues, only to have responsibility fall to the local agencies to implement the law, identify and submit the test claim, including all related legislation, legal decisions and statewide costs, and subsequently wait as long as ten years to have their claim heard and decided upon. Then, in the aftermath, it continues to fall to the local agencies to prove and support their costs, file for reimbursement, wait for funding in state budget crisis, and be subject to audit and claim reductions based on differing interpretations of the parameters and guidelines. Suggestions would include
 - Greater fiscal analysis by legislative staff, the Legislative Analyst's Office, the Department of Finance to identify reimbursable mandates and address funding to local agencies prior to legislative enactment, or
 - Impartial Commission to review legislation and identify reimbursable mandates.
 - Shorten the determination process or delay legislative implementation until funding is available.
 - o The methodology: The Constitution establishes the right for local counties to be reimbursed for mandated costs. Yet, there is a very legalistic approach that has evolved in order for that reimbursement to occur. In order to submit a claim, all related legislation must be identified and included in the claim; any applicable legal decisions must be addressed, appropriately notated and included; and the local filing agency must include a Statewide cost estimate. Then when submitted, the Commission staff, which is made up primarily of attorneys, produce a staff analysis. Their analysis focuses on prior court decisions, the strict construction of the wording of the test claim law or code and the arguments as presented by the claimant. After a test claim is approved, the process for Parameters and Guidelines followed by a Statement of Decision ensues. It falls to the local agency to create the Parameters and Guidelines, followed by the Commission's legal staff drafting a Statement of Decision identifying the reimbursable activities. Suggestions would include
 - Reverse the focus of the claim process. Have the Commission staff create the Parameters and Guidelines and allow the local agencies to argue in opposition. Use an impartial body to resolve any disputes.
 - Utilize Commission staff, rather than having the primary role of analysis, to resolve any issues between the local agency and other interested parties who would respond in rebuttal to the test claim as submitted.
 - Move the focus of the process to the reasonable or actual impact of the mandate on local agencies rather than legal construction. The current mentality is a

'we-versus-them.' It needs to move to a 'good-of-the-order' mindset.

- o Drain on State and Local Agency resources: The Commission Staff has made references on more than one occasion that due to budget issues, they do not have the staff to handle the amount of work they have. In March, I will be appearing at the Commission meeting for a claim that was submitted in 1995. It was denied in 2000. In February 2002, the Los Angeles County Superior Court issued a judgment and order granting a petition for writ of mandate. The County filed opening comments in June 2004. The draft staff analysis denying the claim was issued January 2006. We submitted a rebuttal in February of this year. We have another claim that was submitted in July 2001. It is set for hearing March 29 as well. The local agency costs to accumulate the data, prepare the test claim and rebuttals, distribute the information and appear before the Commission are large. An SB90 claim, the Mandate Reimbursement Claim, was approved and did allow for some relief of the costs of this process. However, this mandate has currently been suspended and the staff has recently issued a draft staff analysis on the reconsideration denying that a mandate exists. Suggestions would include

- Reimbursement by the State for the test claim process and/or an equitable distribution of the costs among the benefiting parties. At present, a disproportionate share of the local agency claims have been initiated by four local agencies.
- Simplified test claim and reimbursement claim process.
- Provide alternative processes for considering test claims.
- Provide full legislative fiscal committee review for all legislation containing potential state mandated costs.
- Look at payment methodologies that do not require the mammoth amounts of paperwork, logs, time studies and detail that are currently required for reimbursement. Consider unit cost or an expanded SMAS program.

- Views on the Mandate Process

While the original organization of this process might have been well intentioned, it has evolved to a process that has been described as futile, frustrating, and broken. My position is that we support this attempt to bring about change in the SB90 Mandate Claim process.

Respectfully submitted,
Bonnie Ter Keurst
County of San Bernardino
Reimbursable Projects Manager

**URBAN
COUNTIES
CAUCUS**

Chair
Supervisor John

Executive Director
Casey Sparks Kaneko

1100 "K" Street, Suite 101/Sacramento, CA 95814/ (916)327-7531 FAX (916)491-4182/urbans@ix.netcom.com

A. Existing system

- 1) The process is too long and cumbersome. It is also very adversarial by its nature. The state creates mandates by requiring local governments to perform certain functions or provide certain services but the system created for local agencies to seek the constitutionally required reimbursement is set up to minimize or deny reimbursement for those tasks.
- 2) Counties universally seem to have issues with the State Controller's Office (SCO) audits. There is a serious lack of consistency and the auditors have too much discretion. There should be more universal auditing standards. Some counties complain that SCO will disallow the full amount of claim if they do not like the documentation substantiating the claimed amount.
- 3) The Parameters and Guidelines should provide more clarity regarding what costs are allowable and what are not. This would help to address the auditing issue.
- 4) Some of the larger mandates, like AD 3632, could be converted to separate programs and claimable directly to the state agency with program oversight.
- 5) There is a critical need for consistent, long term funding for all SB 90 programs.
- 6) Counties should have more input in the determination of what is a mandate.
- 7) The state should indicate which mandates counties are being reimbursed for when they finally do send a reimbursement check.

B. Ideas for Change

- 1) Both the legislature and local government should know more about what a mandate entails before it is enacted. There should be a mandate cost review committee composed of appropriate state and local representatives who can review bills and provide this information while the measure are in the legislative process.
- 2) Why does the COSM process require a claim to trigger review of a mandate? It should know from the work done in (a) above where most mandates exist. Once the Legislature has approved legislation including a mandate, there should be a more neutral body that local agencies can appear before to claim reimbursement

- for that mandate. A body like the COSM could be the arbiter for additional claims that were not evident in the legislation or that arose because of executive action, etc.
- 3) Within one year of enactment (or less) local agencies should be able to submit estimates for their costs to implement a mandate. Then at the close of the year of some other established time frame, there could be a “settle-up” process to accommodate the differences between actual allowable expenses and the amount already paid out. There should be allowances for cost differences between agencies for the same services.
 - 4) Expediting the process would provide better oversight for the legislature and administration, as they would realize the costs attached the legislation earlier. It would also reduce friction between local government and the State.

California State Association of Counties

Steve Keil
Director of Legislative Services

1100 K Street
Suite 101
Sacramento, California 95814

Goals:

- Increase Legislative Control and Responsibility
- Cut process time in half

Increased Legislative Control and Responsibility:

- All local agency cost bills receive fiscal committee analysis
- Sunset all mandate bills
- Annual Joint Local Government Committee Hearings on status of state mandate payments and outstanding claims

Reduction in time:

- Start with LAO proposals
- Hearing Officer option
- Adequate Staffing for COSM, DOF, Controller
 - Encourage career stag assignments
- State interest penalties beginning 2 years after effective date of mandate
- Independent management audit of SC 90 process
- Require implementing COSM action upon final court decisions within one year of decision (plus any delay resulting from plaintiff action)
- COSM review of P&G after 3 years of operation
- When a mandate is amended, permit amendment of original P&G (rather than requiring filing of a new claim)
- Audit process

DATE: April 10, 2006

TO: David E. Booher, Center for Collaborative Policy
California State University, Sacramento

FROM: Steve Keil, California State Association of Counties
Dan Carrigg, League of California Cities
Goeff Neill, California Special Districts Association
Casey Kaneko, Urban County Caucus
Staci Heaton, Regional Council of Rural Counties
Rod Dole, Sonoma County
Dan Wall, Los Angeles County
Allan Burdick, League/CSAC SB 90 Service

RE: Local Government Response to “Reforming The Mandate Reimbursement Process”

Dear David:

On behalf of a coalition of local government agencies, including the California State Association of Counties (CSAC), the League of California Cities (League), the California Special Districts Association (CSDA), the Urban County Caucus (UCC), the Regional Council of Rural Counties (RCRC), the CSAC/League SB 90 Service, and individual public agencies including Sonoma County and Los Angeles County, we thank you for your excellent report titled “Reforming the Mandate Reimbursement Process”. We hope to work with the collaborative process you will lead from a coordinated local agency approach.

Using your report as a starting point, we are developing a local agency set of proposals to assist the collaborative process. We hope to have that list in time to introduce at your first scheduled meeting. To meet your April 10, 2006 deadline for initial comments, however, we offer the following principles for reform of the mandate reimbursement process, which will help guide us in development of our action-item proposals:

Proposed Guiding Principles For Mandate Reform:

1. Increase oversight by the Legislature over state mandates with improved cost information during legislative deliberations.
2. The Center for Collaborative Policy’s report highlights the difficulties with the current mandates process and supports our contention that the existing structures and process need to be replaced by a more efficient, expedient, and equitable methodology and organization that serves both the state and local governments.
3. The evidentiary standard used in resolving SB 90 disputes should be changed from a “substantial evidence” standard to a reduced or more reasonable standard.

We additionally request that you make efforts to formally notify every possible local agency and school claimant regarding the consensus approach taken by the Commission in order to maximize input from interested parties.

If you have any questions or comments, please do not hesitate to contact Steve Keil at 327-7500 ext. 521, Dan Carrigg at 658-8222, Geoff Neill at 442-7887, Casey Kaneko at 327-7531, Staci Heaton at 447-4806, Rod Dole at (707) 565-3285, Dan Wall at 441-7888 and Allan Burdick at 485-8102.