

**ITEM 1  
PROPOSED MINUTES**

**COMMISSION ON STATE MANDATES**

Department of Social Services Building  
744 P Street, First Floor, Auditorium  
Sacramento, California  
March 29, 2006

Present:       Member Anne Sheehan, Chairperson  
                  Representative of the Director of the Department of Finance  
                  Member Nicholas Smith, Vice Chairperson  
                  Representative of the State Controller  
                  Member Francisco Lujano  
                  Representative of the State Treasurer  
                  Member Sue Blake  
                  Representative of the Director of the Office of Planning and Research  
                  Member Paul Glaab  
                  City Council Member  
                  Member Sarah Olsen  
                  Public Member

Absent:        Member J. Steven Worthley  
                  County Supervisor

**CALL TO ORDER AND ROLL CALL**

Chairperson Sheehan called the meeting to order at 10:02 a.m.

**APPROVAL OF MINUTES**

Item 1        January 26, 2006

Upon motion by Member Smith and second by Member Olsen, the minutes were unanimously adopted.

**PROPOSED CONSENT CALENDAR**

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

AMEND PARAMETERS AND GUIDELINES BASED ON STATUTES 2004, CHAPTER 316, (AB 2851)

Item 10       *Sex Offenders: Disclosure by Law Enforcement Officers (Megan's Law)*,  
04-RL-9715-06 (97-TC-15)  
Penal Code Sections 290 and 290.4  
Statutes 1996, Chapters 908 (AB 1562) and 909 (SB 1378), Statutes 1997,  
Chapters 17 (SB 947), 80 (AB 213), 817 (AB 59), 818 (AB 1303),  
819 (SB 314), 820 (SB 882), 821 (AB 290) and 822 (SB 1078), Statutes 1998,  
Chapters 485 (AB 2803), 550 (AB 2799), 927 (AB 796), 928 (AB 1927),  
929 (AB 1745) and 930 (AB 1078)

Member Glaab moved for adoption of the proposed consent calendar, which consisted of item 10. With a second by Member Olsen, the proposed consent calendar was unanimously adopted.

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

Item 3      Staff Report (if necessary)

No appeals were filed.

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing of the test claim agenda items.

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

Item 4      *Fire Safety Inspections of Care Facilities*, 01-TC-16  
Health and Safety Code Sections 1531.2, 1569.149,  
1596.809, 13144.5, and 13235  
Statutes 1989, Chapter 993 (SB 1098)  
City of San Jose, Claimant

Deborah Borzelleri, Commission Counsel, presented this item. She stated that the test claim addresses amendments to the Health and Safety Code regarding fire safety inspections for certain community-care facilities. The purpose of the legislation was to ensure that these particular facilities receive timely and correct fire clearance information from the fire enforcing agency during the process of being licensed by the Department of Social Services.

Ms. Borzelleri noted that the Office of the State Fire Marshal establishes statewide regulations and procedures for these types of fire inspections; and where no local fire enforcing agency exists, the State Fire Marshal carries out the inspections themselves. She indicated that depending on the size of the facility, fees of \$50 or \$100 are allowed for pre-inspections. However, the claimant contended that these fees were insufficient to cover the cost of the inspections.

Ms. Borzelleri stated that the main issue in dispute is whether the test claim legislation constitutes a program under article XIII B, section 6 of the California Constitution because both the local fire enforcing agency and the State Fire Marshal carry out the requirements of the legislation. Staff found that the activities do, in fact, constitute a reimbursable state-mandated program as set forth under the *County of Los Angeles* case. Staff recommended that the Commission adopt the staff analysis, which partially approves the test claim. In addition, the fees allowed for pre-inspections should be identified as offsetting revenue in the parameters and guidelines.

Parties were represented as follows: Pamela Stone and David Schoonover, representing the City of San Jose; Gregory Lake, with the Sacramento Metropolitan Fire District; and Susan Geanacou, with the Department of Finance.

Ms. Stone believed that the staff analysis was correct. She apologized that supplemental information was not submitted in writing; instead it would be presented by way of testimony.

Mr. Schoonover, having over 25 years of experience in fire service, stated his credentials and provided background information about the San Jose Fire Department. He also explained specific challenges related to inspection of residential care and day care facilities because they fall under a couple of different building classifications in the building code.

Mr. Schoonover spoke to a number of issues. First, regarding the issue of cost recovery, he asserted that in calculating the minimum amount of hours necessary to perform the fire safety inspections required to help businesses get into business, the minimum cost is around \$469. Therefore, a fee of \$50 is insufficient to cover their cost. In addition, Mr. Schoonover's testimony supported reimbursement for training and travel costs. Finally, he contended that depending on the variables involved, there may be several pre-inspections before the final inspection.

Member Smith asked staff if the legislation indicated whether there could be multiple pre-inspections. Ms. Borzelleri responded that the legislation was not specific.

Member Smith also asked staff's opinion about travel for the pre-inspection. Ms. Borzelleri stated that travel was not mandated in the legislation but that it is usually addressed in the parameters and guidelines. Camille Shelton, Chief Legal Counsel, affirmed and added that the parameters and guidelines allow travel as a direct cost.

Also, Member Smith asked if claimants can claim for additional resources necessary to meet the 30-day deadline for final inspections. Ms. Shelton responded that agencies have always been required to perform the final inspections. She clarified that the legislation just put in a time deadline. She noted that in the past, the Commission has not approved changes in time in legislation as a new program or higher level of service. She maintained that the court's definition of a new program or higher level of service must be met.

In response to Member Smith's questions about facilities with six or less people, Ms. Borzelleri stated that they cannot be charged any fee.

Mr. Lake provided testimony addressing the complexity of conducting pre-inspections and the issues that his inspectors experience in the field. He asserted that the issues are so complex and the variables so diverse that conducting pre-inspections can take several hours to be done properly. Thus, the \$50 fee is insufficient to cover the cost of inspector time.

Chairperson Sheehan noted that staff recognizes \$50 will not cover the costs.

Ms. Geanacou supported staff's analysis, noting that reimbursement is limited to pre-inspection activities.

Member Smith agreed that the fees are not enough to cover the costs. Regarding the issue of the deadline, he was unsure if it could cause a burden requiring the need for overtime work. He asked Ms. Shelton if she would go over the issue with him at a later time. Ms. Shelton agreed.

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

Ms. Geanacou requested clarification as to which items on the agenda were postponed to the next hearing. Ms. Higashi clarified that only the *Charter Schools III* test claim was postponed.

Item 5 Proposed Statement of Decision  
*Fire Safety Inspections of Care Facilities*, 01-TC-16  
See Above

Deborah Borzelleri, Commission Counsel, presented this item. She recommended that the Commission adopt staff's proposed Statement of Decision.

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Glaab, the motion carried 5-0. Member Smith abstained.

Item 6     *Charter Schools III*, 99-TC-14  
Education Code Sections 41365, 47605, subdivisions (b),(c),(d), (j) and (l), 47604.3, 47607, subdivision (c), 47612.5, 47613 (former § 47613.7), and 47630-47664  
Statutes 1996, Chapter 786 (AB 3384), Statutes 1998, Chapter 34 (AB 544 ), Statutes 1998, Chapter 673 (AB 2417), Statutes 1999, Chapter 162 (SB 434), Statutes 1999, Chapter 736 (SB 267), Statutes 1999, Chapter 78 (AB 1115)  
California Department of Education Memo (May 22, 2000)  
Western Placer Unified School District and Fenton Avenue Charter School, Claimants

Item 6 was postponed to the April hearing.

Item 7     Proposed Statement of Decision  
*Charter Schools III*, 99-TC-14  
See Above

Item 7 was postponed to the April hearing.

**HEARING AND DECISION PURSUANT TO REMAND OF THE COURT (Gov. Code, § 17559, subd. (b).) (action)**

Item 8     *Standardized Emergency Management Systems (SEMS)*, 03-RC-4506-01 (CSM-4506)  
Government Code Section 8607  
Statutes 1992, Chapter 1069 (Sen. Bill No. 1841)  
California Code of Regulations, Title 19, Sections 2400-2450  
County of San Bernardino, Claimant  
On Remand from the Los Angeles County Superior Court

Camille Shelton, Chief Legal Counsel, presented this item. She stated that this case, which addresses a prior decision of the Commission on a test claim filed by the County of San Bernardino on the Standardized Emergency Management System, is on remand from the Los Angeles Superior Court.

Ms. Shelton noted that the Standardized Emergency Management System was enacted in 1992 to respond to and manage emergencies and disasters involving multiple jurisdictions and agencies. The test claim legislation set forth various requirements, including the requirement for all state agencies to use the Standardized Emergency Management System to coordinate multiple-jurisdiction or agency disaster response. However, she explained that local agencies are required to use the Standardized Emergency Management System in order to be eligible for funding of response-related personnel costs resulting from an emergency. Thus, if a local agency does not participate in the *Standardized Emergency Management System* program, the agency loses its right to apply for state funding to assist the local agency in paying for its response-related personnel costs, though it would still be eligible for repair, renovation, and other non-personnel costs.

Ms. Shelton explained that in 2002, the Los Angeles County Superior Court concluded that the test claim legislation constitutes a new program or higher level of service within the meaning of Article XIII B, section 6. However, the case was remanded to the Commission to determine whether the test claim legislation constitutes a reimbursable state-mandated program.

Staff found that the test claim legislation does not constitute a reimbursable state-mandated program within the meaning of Article XIII B, section 6 based on the Supreme Court's 2003 decision in *Kern High School District*.

Parties were represented as follows: Bonnie Ter Keurst and Kevin Norris, with the County of San Bernardino; David Zocchetti, with the Office of Emergency Services; and Susan Geanacou, with the Department of Finance.

Ms. Ter Keurst noted that Senate Bill 1841 was introduced in response to the East Bay Hills fire that occurred on October 20, 1991. She provided background about the *Standardized Emergency Management System* program and argued that the County of San Bernardino incurred costs in implementing the program related to planning, training, and reporting. She said the pointed issue was whether those costs are mandatory or voluntary.

The staff analysis, according to Ms. Ter Keurst, suggested that the language was clear that local agencies did not have a mandate. She quoted Government Code section 8607, the Legislative Counsel's digest, a memo regarding the *Standardized Emergency Management System* program, and comments submitted by the Office of Emergency Services, and argued that the intent of the legislation needed to be addressed as the language was not clear. She contended that if the county does not implement the program, it becomes ineligible for funding of response costs; therefore, it was mandatory.

Ms. Ter Keurst asserted that the arguments of the Commission staff and the Office of Emergency Services suggest a mandate for the state and not local governments. She noted, however, that comments by the Office of Emergency Services also hold that local government has the responsibility for providing public safety and welfare, and that the *Standardized Emergency Management System* program was developed to address the local issues.

Regarding the financial aspect of the claim, Ms. Ter Keurst contended that the grant monies from emergency management did not cover the costs of the program.

Mr. Norris, Deputy County Counsel for the County of San Bernardino, addressed the legal issues. He noted that before the case was remanded, the judge stated that she found the county's position more persuasive. Quoting the legal encyclopedia, *California Jurisprudence*, he stated that "where consequences are attached to failure to do a required act, the direction to do it will be held mandatory, not directory, as where a penalty is attached to failure to observe the provision." Mr. Norris argued that in this case, the consequences for a county's failure to use the Standardized Emergency Management System is no funding for response-related personnel costs. He asserted that under the plain language of the treatise quoted, the *Standardized Emergency Management System* program is mandatory.

Mr. Norris also contended that staff's reliance on the *City of Merced* and *Kern High School District* cases were misplaced. He requested that the Commission find that the *Standardized Emergency Management System* program is a state-mandated program on local governments.

Mr. Zocchetti stated that considering the commonness of disasters in California, he was surprised that disaster preparedness or emergency planning is not required at the local government level. He indicated that pretty much every local government in the state made discretionary decisions along the line for the good of their public welfare to participate in disaster preparedness.

Moreover, Mr. Zocchetti noted that all of the funding streams for disasters that come from the state and federal level are grant-based funding. He added that the grants have all been discretionary grants based upon certain eligibility requirements, either before the disaster occurs for preparedness, or after the disaster for recovery.

Mr. Zocchetti concurred with the staff recommendation that this was not a state-mandated program on local government. He noted that state government has to comply with the program, but local governments have an option and there are incentives available through the Disaster Assistance Act for compliance. However, he emphasized that the Disaster Assistance Act that is tied to the *Standardized Emergency Management System* program is in itself a discretionary grant program. He explained that the Disaster Assistance Act predates the *Standardized Emergency Management System* program. Thus, a local government can fully comply with the program but not meet the eligibility requirements for the Act, and therefore, not have access to those grant funds.

From a local government perspective, Mr. Zocchetti felt that compliance with the program was necessary for the good of public welfare. But from a financial standpoint, he did not think it was a requirement because in looking at how the Legislature set up the program in terms of compliance and the potentiality of losing disaster assistance funds, only a small sliver of the costs of recovery from a disaster was involved. Therefore, he contended that there was no coercion, no draconian measures, just an option for local governments.

Ms. Geanacou supported the staff analysis and urged the Commission's adoption. She pointed out that the Legislature chose very distinct words in addressing the *Standardized Emergency Management System* program application to state government versus local government. Also, she noted that when this matter was heard before the Los Angeles Superior Court in 2002, the *Kern High School District* case was not yet decided. She asserted that the *Kern High School District* case was squarely on point, clearly stating that required activities that attach to an underlying optional program are not themselves reimbursable.

Ms. Shelton commented that the *Kern High School District* case was directly on point and the Commission is bound to follow the case.

Member Smith felt that the loss of funding in this situation for not implementing the program was a penalty for not complying with the law. Thus, he made a motion to reject the staff recommendation and approve the test claim. The motion died for lack of a second.

Member Olsen asked for clarification in terms of response versus recovery and local government access to funds. Mr. Zocchetti responded, noting that personnel costs are a relatively small cost of the overall grant that might be provided under the Disaster Assistance Act, which is basically a comprehensive recovery grant program.

Member Olsen asked the County of San Bernardino about its personnel costs to which Ms. Ter Keurst responded.

Ms. Shelton summarized the *Kern High School District* case to explain what is required to find a mandate. First there has to be legal compulsion to comply. In this case, she stated that there was no strict legal compulsion for the counties to comply because of the difference in language used by the Legislature. She noted that staff used the rule of statutory construction. The second standard is practical compulsion with certain and severe penalties or other draconian measures. Ms. Shelton stated that in this case, there was no evidence in the record that response-related personnel costs are certain and severe or constitute draconian measures when compared to the other funding that they are eligible to receive for recovery and restoration in an emergency.

Therefore, based on the *Kern High School District* case, this was not a state-mandated program. She added that this was a question of law, not a question of equity.

Mr. Norris disagreed and argued that evidence was provided regarding the penalty that would be suffered if the county failed to comply with the program.

Ms. Shelton commented that the courts have found that the simple removal of funds from the Legislature does not rise to the level of a state mandate.

Member Glaab acknowledged the issues presented by the County of San Bernardino but felt the case was made. He made a motion to adopt the staff recommendation, which was seconded by Member Lujano.

Chairperson Sheehan felt that this case was difficult. She noted that the Legislature knows how to write a mandate if they want funding to go to local governments. She also noted that the Commission was bound by the case law directing the Commission.

The motion carried 5-1, with Member Smith voting “No.”

- Item 9 Proposed Statement of Decision  
*Standardized Emergency Management Systems (SEMS)*, 03-RC-4506-01  
(CSM-4506)  
See Above

Camille Shelton, Chief Legal Counsel, presented this item. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the staff analysis and decision on the reconsideration.

Member Glaab made a motion to adopt the proposed Statement of Decision, which was seconded by Member Olsen. The motion carried 5-1, with Member Smith voting “No.”

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

AMEND PARAMETERS AND GUIDELINES BASED ON STATUTES 2004, CHAPTER 895 (AB 2855), STATUTES 2003, CHAPTER 650 (SB 71), AND STATUTES 2005, CHAPTER 677 (SB 512) AND REQUESTS OF THE STATE CONTROLLER’S OFFICE

- Item 11 *Emergency Procedures, Earthquake Procedures, and Disasters and Comprehensive School Safety*, 04-PGA-24 (CSM-4241, 98-TC-01, 99-TC-10) Education Code Sections 35294.1, 35294.2, 35294.6, and 35294.8, 35295, 35296, 35297, 40041.5 and 40042, Statutes 1984, Chapter 1659 (AB 2786), Statutes 1997, Chapter 736 (SB 187), Statutes 1999, Chapter 996 (SB 408) State Controller’s Office, Requester

Nancy Patton, Assistant Executive Director, presented this item. She noted that in 1987, the Commission determined that the *Earthquake Emergency Procedure* system was a reimbursable state mandate and adopted parameters and guidelines for the program. In 2001, the Commission determined that the *Comprehensive School Safety Plans* program was a reimbursable mandate. In 2002, the Commission reconsidered its decision to clarify that the *Emergency Procedures* program refers only to earthquake safety procedures. In 2003, the parameters and guidelines for the *Comprehensive School Safety Plans* were adopted and consolidated with the parameters and guidelines for *Emergency Procedures*. In 2004, Assembly Bill 2855 amended the *Emergency Procedures* program to delete public schools from the state-mandated requirements and repealed

the requirements that schools allow public agencies to use its facilities during disasters. It now only applies to private schools. Assembly Bill 2855 also amended the *Comprehensive Schools Safety Plans* program to require a school safety plan to include emergency procedures for earthquake safety and use of school facilities during disasters.

Ms. Patton stated that the State Controller's Office requested that the consolidated parameters and guidelines be amended to conform to the amendments required by Assembly Bill 2855. Accordingly, staff concluded that effective January 1, 2005, the *Emergency Procedures, Earthquake Procedures, and Disasters* program is no longer reimbursable and the parameters and guidelines are no longer required. Staff agreed with the Controller's Office and recommended that the Commission do the following:

- Adopt staff's proposed amendments to the consolidated parameters and guidelines to limit reimbursement to December 31, 2004, for the reimbursable activities that were approved based on the Commission's decision on *Emergency Procedures*. This applies to reimbursement claims filed for costs incurred in fiscal year 2004-2005.
- Adopt staff's recommended amendments to the consolidated parameters and guidelines to delete all the references to, and all reimbursable activities and direct costs for the *Emergency Procedures* program. This applies to reimbursement claims filed for costs incurred in fiscal year 2005-2006.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Parties were represented as follows: Art Palkowitz, on behalf of the San Diego Unified School District; Robert Miyashiro, with the Education Mandated Cost Network; and Susan Geanacou, with the Department of Finance.

Mr. Palkowitz contended that the language in Assembly Bill 2855 intended to be a continuation of *Emergency Procedures* into the *Comprehensive Schools Safety Plans* program.

Mr. Miyashiro noted that the bill moved the provisions for *Emergency Procedures* from one provision of the Education Code to another. He disagreed with staff's conclusion that this was not a restatement of the law. He provided the Commission members with the Senate floor analysis on the bill before it was voted on by the Legislature. He argued that the bill deleted specific requirements and mandates making them no longer reimbursable. However, he contended that it did not do that for *Emergency Procedures*. Rather, the bill simply consolidated them into the *Comprehensive School Safety Plans*. He maintained that in no case did the Legislature expect that by recasting the provisions, it would disallow reimbursement to school districts for those activities.

Ms. Geanacou supported the staff analysis.

Ms. Shelton commented that under the original *Emergency Procedures* program, school districts were being reimbursed to implement that program. When the Commission adopted the parameters and guidelines for *Comprehensive School Safety Plans*, the Commission found that implementation is not reimbursable. Also, she noted that *Emergency Procedures* was a mandate on school districts, whereas *Comprehensive School Safety Plans* was a mandate on the school site. Because they are different programs, Ms. Shelton stated that a new test claim filing on the change of law would be required. She added that the staff analysis shows that the *Emergency Procedures* program did not continue in its same form as Mr. Miyashiro was arguing.



Mr. Miyashiro responded that the reimbursable costs related to the *Emergency Procedures* program prior to Assembly Bill 2855 were anticipated to continue based on the Senate floor analysis on the bill.

Member Olsen asked for clarification whether the issue was technical, a matter of submitting a new test claim. Mr. Palkowitz asserted that it was a problem because the period of time to file the test claim may have already passed. Accordingly, Mr. Palkowitz stated that there was no recourse for districts throughout the state.

Member Smith asked about the Legislative Counsel's opinion. Ms. Shelton responded that the opinions were not binding on the interpretation of the statute.

Mr. Palkowitz contended that unless there was contrary intent, the presumption is that there is a continuation.

Ms. Shelton responded that under *Comprehensive School Safety Plans*, the Legislature directed school districts to prepare a comprehensive school safety plan. She explained that the plain language of the statute did not require them to implement any of the safety procedures that they developed.

Ms. Higashi reviewed the differences between the two programs. She clarified that the *Comprehensive School Safety Plans* program affected school sites, whereas *Emergency Procedures* affected school district governing boards. She noted that *Emergency Procedures* had a provision requiring school districts to make their facilities available during disasters and that language no longer remains in the amendments but was replaced with language that says there shall be a policy allowing for the use of those facilities in the plan. She added that the development procedures for *Comprehensive School Safety Plans* are different because approval at the school site level is required. And, there are also grants available for new schools and separate implementation grants available.

Mr. Palkowitz asked where there was contrary intent.

Chairperson Sheehan observed that the Legislature would have added additional language if it was intended that reimbursement continue.

Mr. Miyashiro argued that the Legislature was very clear in those mandates where they intended repeal. He felt that in this case, it was expected to continue.

Ms. Higashi stated that the Commission statute for receiving test claims is found in Government Code section 17551. After stating the provision, she said that it was possible that the increased costs could be incurred later than 12 months.

Mr. Palkowitz responded that the possibility that increased costs would be incurred was remote. Member Blake requested clarification regarding Mr. Palkowitz's statement. As an example, Mr. Palkowitz stated that if the district incurred costs of one million dollars to carry out the activities under *Emergency Procedures*, and these activities are moved within the *Comprehensive School Safety Plans* program, the cost would be the same. Therefore, he asserted that the district would not be able to file a test claim because they did not incur increased costs.

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

## **SPECIAL REPORT (info/action)**

### Item 12 *CSUS Center for Collaborative Policy Report: Preliminary Assessment of Feasibility of Using Collaborative Policymaking Process for Mandate Reform*

Cathy Cruz, Program Analyst, presented this item. She stated that the Center for Collaborative Policy conducted an assessment to scope out issues that should be addressed in mandate reform discussions, opportunities for agreement on reforms, and the potential for using a collaborative process to develop recommendations for consideration by the Legislature and Governor. The Center interviewed over 40 persons that participate in the mandates process, and issued a draft report, which staff made available on its website on March 17.

Ms. Cruz noted that the interviewees provided numerous ideas for reforming the mandate determination and reimbursement process. Generally, the Center found that there was a clear willingness among potential stakeholders to consider the suggestions and perspectives of all other stakeholders.

Ms. Cruz indicated that the Center found a few areas where there was no consensus among the interviewees; however, the Center did find that there were several issues where there was general agreement among the interviewees, including, among other things, that the information available to the Legislature for their deliberation on proposed new mandates could be improved significantly, that the mandate determination and reimbursement process should take place in a shorter period of time, and that there are several practices that delay the determination of test claims.

In addition, Ms. Cruz reported that the interviewees identified four factors that were critical to their participation in a collaborative process. Thus, the Center concluded that using a collaborative process to consider recommendations for reform of the state mandates process is feasible if the following critical factors are adequately addressed:

1. The process should enjoy the support of the Legislature and participants should be assured that the Legislature would carefully consider any recommendations offered resulting from the process.
2. The Department of Finance should be engaged directly in the collaborative process.
3. The process should have the benefit of neutral facilitation to guide the deliberations and negotiations.
4. The process should have adequate time and resources available to support the deliberations. In particular, many interviewees believed that the period between now and the time to introduce related legislation in early 2007 is most opportune.

Should the Commission and the Legislature agree to use a collaborative process to pursue mandate reform, Ms. Cruz reported that the Center suggested the following:

1. In order for the Legislature to have time to consider the recommendations in the next legislative year, the date for the report should be no later than March 1, 2007.
2. The process should 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.
3. The collaboration should take as a starting point for discussion the ideas of the Department of Finance, and then expanded to look at additional ideas.

4. The focus should be entirely on the mandates process itself and not on the substantive content of any particular mandate.
5. The collaborative process should start with convening and organization, and proceed through joint fact finding, negotiations, and implementation.

Overall, staff found that the Center's draft report supported the use of a collaborative process to pursue mandate reform. Ms. Cruz noted that using a collaborative process will give parties a better chance to communicate and understand all sides of an issue.

Moreover, Ms. Cruz reported that staff organized a meeting the day before to allow interested parties to provide feedback regarding the draft report's findings and recommendations. Representatives from the Legislature, Department of Finance, State Controller's Office, Department of Education, school districts, and cities and counties attended the meeting. Generally, the participants who spoke out supported use of a collaborative process to discuss mandate reform. She said that the Center would revise the draft report to incorporate all the additional information received during these meetings and a final report would be issued in time for the Commission's April hearing.

Ms. Cruz outlined the Commission's options:

1. Adopt staff's findings and conclusions. Specifically:
  - Using a collaborative process is feasible.
  - 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.
  - 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.
  - The process should be completed by February 2007, to ensure adequate time for legislative hearings and for a bill to proceed through the Legislature during the 2007 legislative session.
2. Partially adopt staff's findings and conclusions. This means the Commission agrees that a collaborative process is feasible, but does not necessarily agree with staff's other conclusions.
3. Reject staff's findings and conclusions. This means the Commission does not agree to proceed with a collaborative process, and will pursue other methods for completing mandate reform.

Staff recommended that the Commission adopt Option 1. If the Commission adopts this option, staff will work with the Department of Finance and the Legislature to obtain funding for the process; select and contract with a neutral facilitator to guide and manage the collaborative process; work with Department of Finance, the Legislature, and other stakeholders to encourage their participation; and report to the Commission at each hearing on the progress of the collaborative process.

Staff also recommended that the Center's final report be amended to clarify that the Legislature's and LAO's ideas for reform will be fully considered, that legislative and LAO 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 consideration.

Ms. Cruz informed the Commission that regardless of what action it takes, staff will report to the Legislature, including the Senate Budget and Fiscal Review Committee and Assembly Budget

Committee, of any actions taken to implement the Center's report.

Finally, Ms. Cruz introduced David Booher with the Center of Collaborative Policy. Mr. Booher is one of the co-authors of the draft assessment report.

Parties were represented as follows: David Booher, with the Center for Collaborative Policy; Allan Burdick, on behalf of the California State Association of Counties, SB 90 Service; Leonard Kaye, with the County of Los Angeles; and Glen Everroad, with the City of Newport Beach and co-chair of the SB 90 Advisory Committee.

Chairperson Sheehan asked Mr. Booher if the Center was still conducting interviews and if additional comments would be integrated into the report. Mr. Booher replied that the Center was still conducting new interviews and second interviews for clarification purposes. He also stated that new comments would be integrated into the report to clarify things like the Legislature's participation, but the basic underlying recommendations would not change.

Member Smith thanked staff and the Center for their work. He indicated that the Controller was very excited about the process and urged the Commission's support.

Chairperson Sheehan felt that it may be better for the process to be completed in January or February 2007. She agreed that to start, both local agencies and the education community should discuss all the issues and divide at a certain point in time when necessary. Chairperson Sheehan believed great progress was being made; she thanked staff and the Center and appreciated the support of the Legislature, especially Mr. Laird and his staff, who really encouraged the Commission to move forward.

Mr. Burdick thanked the Commission for moving forward with the process. He stated that if the Commission proceeded with the collaborative process, the California State Association of Counties had designated Steve Keil to be their primary contact and to organize the county effort. He noted that the Commission had the full support of the California State Association of Counties and the League of California Cities.

Mr. Kaye supported the effort and emphasized that the process should include a diversity of people actually involved in the day-to-day activity of SB 90 reimbursement.

Mr. Everroad concurred with Mr. Kaye's comments and noted that time should be spent to conduct the process properly. He submitted that all parties need to be included in the process and all suggestions taken. He appreciated the Commission's efforts in this regard.

Member Blake was glad to see the process continuing. She commented that because it was election year, there will be a huge shift in the Legislature; thus, the process should start sooner than later.

Member Glaab noted that he attended the informal meeting of interested parties the day before and thanked all the participants, noting that their feedback was well-received. He commented that the process should take all the appropriate time, but also be flexible. He strongly supported the process and commended the work of staff and the Center.

In response to Chairperson Sheehan's comment, Ms. Higashi clarified that staff modified its original recommendation about the completion date of the process. Ms. Cruz reported the staff recommendation that the process be completed by February 2007.

Member Smith made a motion to adopt Option 1 as staff recommended. With a second by Member Olsen, the motion carried unanimously.

## STAFF REPORTS

- Item 13 Chief Legal Counsel's Report (info)  
Recent Decisions, Litigation Calendar

No report was made.

- Item 14 Executive Director's Report (info/action)  
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi reported the following:

- *Budget.* The Senate subcommittee approved language directing reconsideration of two prior test claim decisions and held open the Commission's budget until the May revision. The budget committees are both interested in the Commission's action on the collaborative process and staff will work with the fiscal committee and Department of Finance staff and do what is necessary to obtain funding for mandate reform.
- *Legislation.* Language was submitted to Legislative Counsel for AB 2652, the sponsored bill to reform the incorrect reduction claim process. Staff has not seen the language yet, but will be working with all the stakeholders involved in that process.
- *Workload.* A list of pending matters that have been scheduled through the rest of the year was distributed to give claimants and their representatives an idea of how staff will proceed with the test claims currently in the Commission's caseload.

## PUBLIC COMMENT

There was no public comment.

## ADJOURNMENT

Hearing no further business, Member Sheehan adjourned the meeting at 11:53 a.m.

PAULA HIGASHI  
Executive Director