

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:

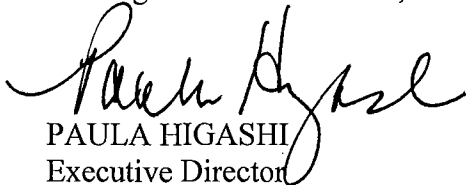
- *Budget.* The Senate subcommittee approved language directing reconsideration of two prior test claim decisions and held open the Commission's budget until the May revision. The budget committees are both interested in the Commission's action on the collaborative process and staff will work with the 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

RECEIVED

APR 10 2006

**COMMISSION ON
STATE MANDATES**

--oOo--

PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 10:02 a.m.

DATE: Wednesday, March 29, 2006

**PLACE: Department of Social Services
744 P Street, First Floor Auditorium
Sacramento, California**

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

ORIGINAL

Reported by: Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomat Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.
Certified Shorthand Reporters
8414 Yermo Way ♦ Sacramento, CA 95828
Telephone (916) 682-9482 ♦ Fax (916) 688-0723
FeldhausDepo@aol.com

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN
(Commission Chair)
Representative for MICHAEL GENEST
Director
Department of Finance

SUE BLAKE
Representative for SEAN WALSH
Director
State Office of Planning and Research

PAUL GLAAB
City Council Member
City of Laguna Niguel

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

SARAH OLSEN
Public Member

NICHOLAS SMITH
Representative for STEVE WESTLY
State Controller

--oOo--

A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

CAMILLE SHELTON
Chief Legal Counsel

DEBORAH BORZELLERI
Senior Commission Counsel

CATHY CRUZ
Program Analyst

NANCY PATTON
Assistant Executive Director

--o0o--

PUBLIC TESTIMONY

Appearing re Item 4:

For City of San Jose:

Pamela A. Stone
Maximus
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95814

David Schoonover
Deputy Chief/Fire Marshal
San Jose Fire Department
Bureau of Fire Prevention
200 E. Santa Clara Street
San Jose, California 95113-1905

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing re Item 4: *continued*

For City of San Jose: *continued*

Gregory D. Lake
Supervising Inspector
Sacramento Metropolitan Fire District
Fire Prevention Bureau
3012 Gold Canal Drive
Rancho Cordova, California 95670-6116

For Department of Finance:

Susan S. Geanacou
Senior Staff Attorney
Department of Finance
915 L Street
Sacramento, California 95814

Appearing re Item 8:

For the County of San Bernardino:

Bonnie Ter Keurst
Manager
Reimbursable Projects
County of San Bernardino
222 W. Hospitality Lane, Fourth Floor
San Bernardino, California 92415-0018

Kevin L. Norris
Deputy County Counsel
County of San Bernardino
385 North Arrowhead Avenue, Fourth Floor
San Bernardino, California 92415-0140

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing re Item 8: *continued*

For State of California Office of Emergency Services:

David Zocchetti
General Counsel
Office of Emergency Services

For Department of Finance:

Susan S. Geanacou
Senior Staff Attorney
Department of Finance
915 L Street
Sacramento, California 95814

Appearing re Item 11:

For San Diego Unified School District:

Art Palkowitz
Manager, Office of Resource Development
San Diego City Schools Finance Division
4100 Normal Street, Room 3209
San Diego, California 92103-2682

For Education Cost Mandated Network:

Robert Miyashiro

For Department of Finance:

Susan S. Geanacou
Senior Staff Attorney
Department of Finance
915 L Street
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing re Item 12:

David E. Booher
Consultant
Center for Collaborative Policy
1303 J Street, Suite 250
Sacramento, California 95814

For CSAC and League of Cities:

Allan Burdick
Director
California State Association of Counties
SB 90 Service
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841

For County of Los Angeles:

Leonard Kaye
Certified Public Accountant
Office of Auditor-Controller
County of Los Angeles
500 West Temple Street, Suite 603
Los Angeles, California 90012

For City of Newport Beach

Glen Everroad
Revenue Manager
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92658-8915

--oOo--

ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>18</u>	<u>18</u>	<u>Change 'pointed' to 'appointed'</u>
<u>19</u>	<u>4</u>	<u>Change 'recovering' to 'recovery'</u>
<u>25</u>	<u>17</u>	<u>Change 'schooner' to 'schoonover'</u>
<u>51</u>	<u>11</u>	<u>Change 'tacts' to 'tracks'</u>
<u>57</u>	<u>8</u>	<u>Change 'claims' to 'claimants'</u>
<u>60</u>	<u>5</u>	<u>Change 'can't' to 'can'</u>
<u>87</u>	<u>21</u>	<u>Change 'Chair Sheehen' to</u> <u>Ms. Higashi</u>
<u>88</u>	<u>3</u>	<u>change 'students' to 'opportunities'</u>
<u>88</u>	<u>16</u>	<u>Change 'years' to 'areas'</u>
<u>88</u>	<u>19</u>	<u>Change 'in' to 'and'</u>
<u>88</u>	<u>19</u>	<u>Change 'and' to in</u>
<u>92</u>	<u>24</u>	<u>Take out the letter 'a'</u>
<u>93</u>	<u>23</u>	<u>Change the word 'their' to 'the'</u>
<u>94</u>	<u>2</u>	<u>Change 'have' to are</u>
<u>94</u>	<u>2</u>	<u>Take at the word 'us'</u>
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--oOo--

Commission on State Mandates - March 29, 2006

1 BE IT REMEMBERED that on Wednesday, March 29,
2 2006, commencing at the hour of 10:02 a.m., thereof, at
3 the Department of Social Services, 744 P Street, First
4 Floor Auditorium, Sacramento, California, before me,
5 DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the following
6 proceedings were held:

7 --oOo--

8 CHAIR SHEEHAN: I would like to call to order
9 the March 29th meeting of the Commission on State
10 Mandates, the hour of ten o'clock having arrived.

11 Paula, can you please call the roll?

12 MS. HIGASHI: Certainly.

13 I'd like to just announce that Member Worthley
14 will not be here today because he is out of the country.
15 And as you probably know, Jan Boel has left the Office of
16 Planning and Research. And today, we have Sue Blake
17 representing OPR.

18 CHAIR SHEEHAN: Welcome.

19 MEMBER BLAKE: Thank you.

20 MS. HIGASHI: And now I will call the roll.

21 Ms. Blake?

22 MEMBER BLAKE: Here.

23 MS. HIGASHI: Mr. Glaab?

24 MEMBER GLAAB: Here.

25 MS. HIGASHI: Mr. Lujano?

Commission on State Mandates - March 29, 2006

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16 Planning and Research. And today, we have Sue Blake
17 representing OPR.

18 CHAIR SHEEHAN: Welcome.

19 MEMBER BLAKE: Thank you.

20 MS. HIGASHI: And now I will call the roll.

21 Ms. Blake?

22 MEMBER BLAKE: Here.

23 MS. HIGASHI: Mr. Glaab?

24 MEMBER GLAAB: Here.

25 MS. HIGASHI: Mr. Lujano?

Commission on State Mandates - March 29, 2006

1 MEMBER LUJANO: Here.

2 MS. HIGASHI: Ms. Olsen?

3 MEMBER OLSEN: Here.

4 MS. HIGASHI: Mr. Smith?

5 MEMBER SMITH: Here.

6 MS. HIGASHI: And Ms. Sheehan?

7 MEMBER SHEEHAN: Here.

8 CHAIR SHEEHAN: We have a quorum.

9 The first item of business are approval
10 of minutes from the 26th meeting.

11 MEMBER GLAAB: I move approval.

12 CHAIR SHEEHAN: Any changes or any edits that
13 any of the members have?

14 *(No audible response)*

15 CHAIR SHEEHAN: If not, we have a motion --

16 MEMBER OLSEN: Second.

17 CHAIR SHEEHAN: -- and a second.

18 All those in favor, say "aye."

19 *(Chorus of "ayes" was heard.)*

20 CHAIR SHEEHAN: Any opposed?

21 *(No audible response)*

22 CHAIR SHEEHAN: The minutes are approved.

23 All right. The consent calendar, Paula?

24 MS. HIGASHI: Today we have one item on the
25 consent calendar, and that is Item 10.

1 CHAIR SHEEHAN: All right.

2 MS. HIGASHI: Proposed Parameters and Guidelines
3 Amendment for *Sex Offenders: Disclosure by Law*
4 *Enforcement Officers*, better known as Megan's Law.

5 CHAIR SHEEHAN: Okay, that's the only item.
6 Are there any changes to the consent calendar?

7 (No audible response)

8 CHAIR SHEEHAN: All right, if not, we'll
9 entertain a motion.

10 MEMBER GLAAB: So moved.

11 MEMBER OLSEN: Second.

12 CHAIR SHEEHAN: We have a motion and a second.

13 All those in favor, say "aye."

14 (A chorus of "ayes" was heard.)

15 CHAIR SHEEHAN: Any opposed?

16 (No audible response)

17 CHAIR SHEEHAN: Then it's approved.

18 MS. HIGASHI: I'd also like to note that Items 6
19 and 7, the test claim on *Charter Schools*, are being
20 postponed today at the request of the claimant's
21 representative, who is unable to be here.

22 CHAIR SHEEHAN: Okay, yes. I think most people
23 were -- oh, the item on the -- the test claim on *Charter*
24 *Schools* has been postponed until the next meeting because
25 one of the individuals who needed -- the claimant, I

1 guess?

2 MS. HIGASHI: Yes, the claimant's
3 representative.

4 CHAIR SHEEHAN: -- could not attend today. So
5 that will be put off, hopefully, until our next meeting,
6 when it will be scheduled.

7 So for anybody who is here for that --

8 MS. HIGASHI: There are no appeals to consider
9 under Item 3.

10 CHAIR SHEEHAN: Okay, so moving on.

11 MS. HIGASHI: This brings us to the test claim
12 portion of our hearing today.

13 Will all of the parties and witnesses who plan
14 to testify on any of the test claims that are pending on
15 today's agenda stand?

16 *(Parties and witnesses were sworn.)*

17 MS. HIGASHI: Commission Counsel Deborah
18 Borzelleri will present the first test claim, which is
19 Item 4.

20 MS. BORZELLERI: This test claim deals -- can
21 everyone hear me?

22 This test claim deals with amendments to the
23 Health and Safety Code regarding fire safety inspections
24 for certain community-care facilities.

25 The purpose of this legislation was to ensure

1 that these particular facilities receive timely and
2 correct fire clearance information from the fire
3 enforcing agency during the process of being licensed by
4 the Department of Social Services.

5 The office of the State Fire Marshal establishes
6 statewide regulations and procedures for these types of
7 fire inspections; and where no local fire enforcing
8 agency exists, the State Fire Marshal actually carries
9 out the inspections themselves.

10 Fees of \$50 or \$100 are allowed for
11 pre-inspections of these facilities, depending on the
12 size of the facility.

13 The claimant has stated that these fees are
14 insufficient to cover the cost of the inspections.

15 The main issue in dispute is whether the test
16 claim legislation constitutes a program under
17 Article XIII B, section 6, of the California Constitution
18 because both the local fire enforcing agency and the
19 State Fire Marshal carry out the requirements of the
20 legislation.

21 Staff finds that the activities do, in fact,
22 constitute a reimbursable state-mandated program as set
23 forth under the County of Los Angeles case and recommends
24 the Commission adopt the staff analysis.

25 The fees allowed for the pre-inspections that

Commission on State Mandates - March 29, 2006

1 I mentioned earlier will be identified as offsetting
2 revenue to any costs claimed in the parameters and
3 guidelines.

4 That's all I have. If the parties want to come
5 forward.

6 CHAIR SHEEHAN: Yes, if the parties could come
7 forward on this item, and just identify yourself for the
8 record. Great.

9 MS. STONE: Great. Good morning, Commission
10 members. Pamela Stone on behalf of the claimant, City of
11 San Jose.

12 By a preliminary opening, we do believe that the
13 Commission analysis is correct.

14 We apologize for not being able to file
15 supplemental information which will be presented to you
16 this morning by way of testimony. However, during the
17 pendency of this matter before your Commission, four
18 members who had been responsible for this, with the City
19 of San Jose Fire Department, have all retired.

20 So, unfortunately, given the time constraints,
21 we were unable to submit this in writing. So today we
22 have Dave Schoonover, who is a fire marshal with the City
23 of San Jose, and also Greg Lake who is the Sacramento
24 Metropolitan Fire District supervising inspector.

25 I'll turn it over to them, and I'm available for

Commission on State Mandates - March 29, 2006

1 any questions.

2 MR. SCHOONOVER: Good morning.

3 CHAIR SHEEHAN: Good morning.

4 MR. SCHOONOVER: Thank you for taking the time
5 to hear us today.

6 I would like to take a moment to introduce
7 myself. I'm Deputy Fire Chief Dave Schoonover with the
8 San Jose Fire Department. I serve the City as a fire
9 marshal. I have 25 and a half years in the fire service.
10 I served as the director of training for seven years.
11 This will come in a little bit later. I've been a
12 certified master fire instructor for the state for
13 22 years. And in 2003, was recognized as the California
14 Fire Instructor of the Year.

15 I've been the fire marshal for the City for
16 18 months. I'm a member of the National Fire Protection
17 Association, the International Fire Marshals Association,
18 and have been pointed to the State Fire Marshals Core
19 Committee, building fire code amendment and adoption
20 process.

21 The Fire Prevention Bureau provides a wide
22 variety of fire prevention life-safety services,
23 including fire inspections and plan checks. California,
24 I believe, is the leader in the fire safety field in
25 terms of customer service, which means that we take the

1 time to educate the folks rather than just saying, "Go
2 look at the code and figure it out yourself."

3 The San Jose Fire Department is required by
4 council policy to be 100 percent cost recovering in the
5 Fire Prevention Bureau. In order to do, that we follow
6 a business model in which we have to consider all of the
7 costs of the business, just as if you were running a
8 business where you were worried about the postage and the
9 mileage and the welfare claims and everything else. So
10 when we look at the fees for a reasonable cost of
11 providing a service, that includes a wide range of
12 overhead costs.

13 Within the business model, we are also cognizant
14 of things like the issues that people have with
15 overregulation, competitive business climate, and
16 increased need for care facilities in the state of
17 California, due to the demographics of the state.

18 Residential care and day care facilities fall
19 under a couple of different building classifications in
20 the building code, R-2 and R-3. The challenges with
21 these types of facilities, there's a few specific
22 challenges.

23 Number one is that the R-2 classification that
24 we're dealing with here is a State Fire Marshal
25 classification. It's in the Building Code only for the

1 State Fire Marshal. So when we go to a care facility and
2 say, "Here are requirements in the law," and they go to
3 the building department to get a building permit or an
4 electrical permit, the building officials often turn them
5 away and say, "You don't need this because it's not in
6 the law." So we have to work through that process.

7 The second challenge really relates to the
8 operators of these facilities. While we find that they
9 are very empathetic as caregivers, there is a level of
10 unsophistication in terms businesses, business operation,
11 licensing, permitting, code understanding, and things
12 like that. And very often in Santa Clara County we have
13 language barriers. Santa Clara County was identified in
14 the 2000 census as the highest county in the country with
15 having the most number of primary languages spoken in the
16 home. There are 74 different languages spoken in
17 Santa Clara County as primary language.

18 And the multiple classifications that I've
19 talked about earlier, within that R-2 classification,
20 which are care facilities, there are eight separate
21 categories, and every one of them requires a different
22 level of code interpretation and facility requirement.

23 Relative to the claims that we're making, the
24 first one I would speak to is the issue of cost recovery.
25 When we calculate the minimum amount of hours necessary

1 to perform the fire safety inspections required to help
2 these businesses get into business, the minimum costs we
3 would look at would be around \$469. When you compare
4 that to the \$50 that we are allowed to charge, every time
5 I send somebody out on an inspection, we're coming up
6 \$400 short. And it makes it very difficult for a cost
7 recovery bureau.

8 There's also the section of the code that says
9 for six or less, you can't charge anything. Those
10 facilities deserve the same level of service -- in fact,
11 demand the same level of service; but, again, in terms of
12 cost recovery, that creates a bigger problem for us.

13 The second issue that we run into is the
14 question about training; and this is why I talked about
15 my background in training. Captain Lake is going to
16 speak to you in a little bit about a program that they
17 had put together. It's a package to train fire
18 inspectors in how to inspect and keep safe these
19 residential care facilities. The packet is 172 pages
20 long. That's to deal with all the differences between
21 the facilities.

22 When I look at that as the master instructor,
23 I say, just to go through this is a 16-hour training
24 program, the first time up.

25 We just completed a fire inspector academy,

1 because we promoted a number of new fire inspectors. We
2 spent an entire eight-hour day just on these facilities.
3 But those individuals will not be qualified to perform
4 inspections on their own until they've spent about two
5 months doing ride-alongs with experienced inspectors,
6 so they can understand the differences between the
7 facilities.

8 Another question that we deal with is travel.
9 The City of San Jose is 200 square miles. If you have to
10 travel from one end of town to another, it's going to
11 take you an hour. And while in our normal fire
12 inspection process we consider a 15-minute travel time
13 for each permit, that's based on the fact that we group
14 our permit inspections geographically. So a fire
15 inspector would spend a day within a three or four block
16 area and tagging on the 15 minutes to go place to place.
17 When the 850 forms come in from the Department of Social
18 Services for inspections, they might be at one end of
19 town and then the other end of town. And it's usually,
20 "I need the inspection today." So we're sending people
21 on a lot of travel time.

22 The final question that I would like to address
23 relative to claims is the issue of pre-inspection versus
24 final inspection. Depending on the sophistication and
25 the background of the individual who is opening the

1 business, it may take more or less time to go through the
2 pre-inspection, the first pre-inspection. We calculate
3 an average of an hour and a half, although my staff tells
4 me that depending on the size of the facility, language
5 barriers, their ability to understand law or legal
6 language, it could be anywhere from one hour to four
7 hours just for the pre-inspection.

8 Now, after they've done the pre-inspection,
9 we've informed them of the things that they have to do.
10 In many instances, they have to get an architect,
11 contractor, submit plans, get building permits, do some
12 reconstruction, electrical wiring, those kinds of things.

13 When they have finished all of that, we come out
14 and do a final inspection. But if they haven't done all
15 of those things correctly, we cannot consider that as a
16 final inspection because we have to tell them what they
17 have to correct and then we have to come back again.

18 So the number of -- how you would determine from
19 the initial pre-inspection to the final inspection how
20 many trips a fire inspector might have to take out to the
21 residence, we would consider that all of those might be
22 considered to be pre-inspections.

23 That's my testimony this morning. I'd be happy
24 to answer any questions.

25 CHAIR SHEEHAN: Thank you.

Commission on State Mandates - March 29, 2006

1 Any questions from the Commission members?

2 Nick?

3 MEMBER SMITH: On that point, I'd like to ask
4 staff, does the legislation indicate that they had in
5 mind one pre-inspection, or can there be multiple
6 pre-inspections?

7 MS. BORZELLERI: To the best of my knowledge, I
8 don't think the legislation is specific about that. It
9 appears to contemplate one. I think in reality, you may
10 end up with more.

11 MEMBER SMITH: By definition, "pre-inspection"
12 means anything before --

13 MS. BORZELLERI: The final clearance, yes.

14 MEMBER SMITH: -- the final?

15 Okay, and then for the travel for the
16 pre-inspection, what is staff's opinion on that? I don't
17 see that on the list of things.

18 MS. BORZELLERI: It's not mandated in the
19 legislation.

20 If Camille wants to add to this, I think travel
21 is usually addressed in parameters and guidelines, as
22 there may be a standard that does allow for that or not.

23 MS. SHELTON: A couple of things. Travel is not
24 specifically mandated by the plain language of the
25 statute. But in the Commission's parameters and

1 guidelines, in the boilerplate, it does allow travel as
2 an indirect cost. And that's certainly something that
3 the Commission can discuss for parameters and guidelines.

4 MEMBER SMITH: Okay, and for the parameters and
5 guidelines, to the 30-day deadline, will there be a
6 process where the claimant can file -- or can prove that
7 they had to hire additional resources or have additional
8 time in order to meet the 30-day deadline? My
9 understanding now, I understand they have to do a final
10 inspection but there's no deadline; right?

11 MR. SCHOONOVER: If I could speak to that a for
12 a second.

13 The requirement is that we conduct, I believe, a
14 final inspection within 30 days from the time they
15 request the final inspection.

16 MEMBER SMITH: Right.

17 MR. SCHOONER: And with 30 days, I can utilize
18 my resources and plan some time out.

19 The problem that we run into is typically when
20 they're done, we get a call on Friday that says, "I have
21 completed all the work. I have children or adults coming
22 to the facility on Monday morning. I need someone out
23 here today."

24 And that creates a problem for us because then
25 we've got to rearrange staff, utilize overtime, redirect

1 resources from other inspections.

2 MS. SHELTON: The way this is analyzed is the
3 courts have defined a new program or higher level of
4 services, and then the state is requiring the local
5 agencies to perform a new activity. They've always been
6 required to perform the final inspections. And the
7 legislation just put in a time deadline.

8 And in the past, the Commission has not approved
9 your changes in time in legislation as a new program or
10 higher level of service.

11 MEMBER SMITH: But if they prove that they had
12 to hire additional staff or work overtime to meet -- I
13 mean, if one month they get, you know, a thousand
14 requests and they have to meet a 30-day deadline, is
15 there a way they can claim reimbursement for those --

16 MS. SHELTON: It still has to meet the court's
17 definition of a new program or higher level of service,
18 and the staff finds that it does not.

19 MEMBER SMITH: Okay, then the final question, I
20 guess -- I think the fire marshal brought up that there's
21 a contradicting code section for facilities with six or
22 less -- a capacity for six or less people.

23 So what's our opinion on that? Or do we have an
24 opinion?

25 MS. BORZELLERI: We do, actually, on page 14 of

1 the final staff analysis. We have taken that into
2 account.

3 We have opined that the facilities that have six
4 or less, they cannot be charged any fee.

5 MEMBER SMITH: Okay.

6 MS. BORZELLERI: Because you have a statute that
7 precludes the other one.

8 MEMBER SMITH: Thank you.

9 CHAIR SHEEHAN: Any other questions?

10 *(No audible response)*

11 CHAIR SHEEHAN: Okay, thank you.

12 MR. LAKE: Good morning. My name is Gregory
13 Lake. I'm a supervising inspector with Metro Fire here
14 in Sacramento. And I have been an inspector for 18
15 years, a supervisor for ten years; and I've been working
16 with care facility pre-inspections since 1991.

17 And the request was for me to basically address
18 the complexity of doing pre-inspections and the issues
19 that my inspectors run into in the field.

20 And the way our process works is that a client
21 will call and say, "I need a pre-inspection on a house
22 that I'm trying to consider using for a facility, and
23 we'd like you to come out and tell us what we need to
24 do." And that's a very typical question. Easy to
25 contemplate that coming.

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1 What we have to do then is to find out what kind
2 of a facility they would like to open.

3 And most of the time, they'll say, "Well, we're
4 just thinking about getting into the business. We'd like
5 to have ambulatory people, but it looks like there's a
6 lot more money available for income if we have
7 non-ambulatory, but I'm not sure if we want to go to that
8 much work. So if you could just tell us what we need to
9 do for an ambulatory facility, then we'll look at that."

10 And so my direction to my inspectors is to go
11 ahead and schedule the inspection. We ask them to come
12 in, and, where it's applicable, to pay their fee, and we
13 schedule the inspection.

14 And based on the phone conversation that takes
15 place prior to going out, we find out that they want to
16 have an ambulatory facility.

17 So up until recently, our inspectors had to go
18 through the code and refreshing themselves by looking at
19 each individual separation in the code for what would
20 apply to that type of a facility under the State Fire
21 Marshal's code of requirements. When we get out in the
22 field, each house being so different has -- there's
23 nothing, really, that's common for every house except for
24 there are exit doors in a lot of cases, stairways and
25 things like that. So the inspector, based on their

1 experience, will go through the house and tell them what
2 they feel they need to do.

3 We're also required by code to give them
4 something in writing that they can refer to. So our
5 inspectors come back to the office. And from memory, and
6 from a basic overview of their home, telling them what
7 they need to do, we give them a letter.

8 In the letter, we have to specify what the code
9 requirements are so that we don't run into a language
10 barrier issue, where our interpretation isn't what the
11 code says. So it takes several hours to compile a letter
12 for each individual home.

13 What the chief referred to was the care facility
14 guide that the Building Standards Committee of the
15 California Fire Prevention Officers under the Cal Chiefs
16 Association has put together as a guideline for care
17 facilities. And as the chief mentioned, it's 175 pages
18 long. I've been working with the committee, including
19 staff and the State Fire Marshal's office -- Joe Garcia,
20 specifically -- for a year and a half. And we held our
21 first class on this at our fire prevention conference
22 here in Buellton a week ago. And I identified about
23 15 different changes that have to be made to this in
24 order to make it compatible for an inspector to pick up
25 and use easily. And that was to the final draft.

1 So my point is that the issues are so complex
2 and the variables so diverse, that for us to do a
3 pre-inspection and give them everything that they need
4 within a short period of time is almost impossible.
5 We're talking several hours. I won't even address the
6 travel time.

7 But the communication with the individuals, even
8 those that speak good English, are very difficult to
9 comprehend in view of their needs, wants, and desires.
10 And then when we get out there to do the inspection, they
11 say, "Well, that's not too much. What do I need to do
12 for a non-ambulatory facility?" So we start all over
13 again, and it just takes a lot of time.

14 So, anyway, we've been fairly successful, and
15 we've never turned anybody down. We recognize the 30-day
16 time limit for the final inspection, unless it's
17 requested.

18 The biggest issue that I have, up until about a
19 year ago, I used to go to the licensing introductions for
20 those folks interested in becoming care facility
21 operators. And I gave a presentation on what they should
22 expect from the fire department, and it helped a lot.

23 I ran out of time to do that, and I haven't been
24 doing it now for several months. But licensing has
25 certainly appreciated shortening the time frame for the

1 approval of those facilities.

2 So it's needless to say, \$50 doesn't even come
3 close to covering our time. But we haven't turned
4 anybody down.

5 CHAIR SHEEHAN: Thanks.

6 MR. LAKE: Are there any questions?

7 CHAIR SHEEHAN: I think the staff recognizes
8 that \$50 would not cover that cost, and why they
9 recommended or suggested that the inspection would need
10 to be covered by the claim.

11 Any questions from any of the Commission
12 members?

13 *(No audible response)*

14 CHAIR SHEEHAN: No?

15 MR. LAKE: Okay, thank you.

16 CHAIR SHEEHAN: Anyone else?

17 Ms. Geanacou?

18 MS. GEANACOU: Good morning. Susan Geanacou
19 from the Department of Finance.

20 The Department of Finance supports the draft
21 staff analysis, with particular note on the fact that
22 reimbursement is limited to pre-inspection activities.
23 And as consistent with the testimony preceding me, it
24 appears reasonable for the parameters and guidelines
25 phase, if the Commission should adopt the analysis today,

1 that phase should address what is reasonable or not for
2 reimbursement, in light of some of the factual
3 differences in situations with different facilities and
4 so forth.

5 CHAIR SHEEHAN: Great. Thanks.

6 Any questions for the Department of Finance
7 representative?

8 *(No audible response)*

9 CHAIR SHEEHAN: No?

10 All right, did staff want to include anything?

11 MS. BORZELLERI: No.

12 CHAIR SHEEHAN: If there are no further
13 questions from the members, is there a motion?

14 MEMBER SMITH: Madam Chair, if I may. I think
15 we all agree here that \$50 to \$100 is not enough to cover
16 the fees for what you do; and I, for one, will be
17 interested to see the parameters and guidelines phase,
18 the process for multiple pre-inspections, if needed, to
19 travel.

20 And I'd also like to see, Camille, I know we've
21 opined on that issue with the deadline; but if it is
22 written down, I would like to see it. If not, maybe you
23 could meet with me and go through it. Because I'm not
24 sure if there's a deadline on an inspection and they get
25 multiple a month, it could cause a burden and they may

1 need overtime. I'd like to see the opinion, in other
2 words, if that's possible. But later. We don't need to
3 do it today.

4 MS. SHELTON: Okay, it is part of the Statement
5 of Decision. So when you're adopting the Statement of
6 Decision, the Decision --

7 MEMBER SMITH: Right, I'm prepared to abstain on
8 that one.

9 But having said that, I'd like to move that we
10 adopt the staff recommendations.

11 MEMBER OLSEN: Second.

12 CHAIR SHEEHAN: We have a motion and a second to
13 adopt the staff recommendation.

14 All right, so all those in favor of the staff
15 recommendation, say "aye."

16 *(A chorus of "ayes" was heard.)*

17 CHAIR SHEEHAN: Any opposed?

18 *(No audible response)*

19 CHAIR SHEEHAN: Any abstentions?

20 *(No audible response)*

21 CHAIR SHEEHAN: All right, that is adopted.

22 Okay.

23 MS. GEANACOU: May I ask a question?

24 CHAIR SHEEHAN: Absolutely.

25 MS. GEANACOU: When you started this morning on

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1 the agenda, perhaps I did not hear a point raised. But
2 it appears from the pink sheet of paper here that Items 8
3 and 9 were stricken from the agenda?

4 MS. HIGASHI: That was an error.

5 CHAIR SHEEHAN: That was an error.

6 MS. GEANACOU: That was an error? But not the
7 SEMS material?

8 CHAIR SHEEHAN: I think only *Charter*; right?

9 MS. HIGASHI: Just *Charter Schools*.

10 MS. GEANACOU: I just wanted to clarify. Thank
11 you.

12 CHAIR SHEEHAN: That would have made our meeting
13 really go fast.

14 MS. HIGASHI: This brings us to Item 5.

15 Ms. Borzelleri?

16 MS. BORZELLERI: Item 5 is the Statement of
17 Decision. And we just recommend that the Commission
18 adopt that as shown.

19 CHAIR SHEEHAN: The Statement of Decision on the
20 previous item.

21 Any questions for staff on that?

22 MS. BORZELLERI: Yes, I just wanted to clarify
23 for fire inspections.

24 CHAIR SHEEHAN: Do we have a motion?

25 MEMBER OLSEN: Yes.

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1 MEMBER GLAAB: Second.

2 CHAIR SHEEHAN: We have a motion and a second.

3 All those in favor, say "Aye."

4 (*A chorus of "ayes" was heard.*)

5 CHAIR SHEEHAN: Any opposed?

6 (*No audible response*)

7 CHAIR SHEEHAN: Any abstentions?

8 MEMBER SMITH: Aye.

9 CHAIR SHEEHAN: Let the record reflect that the
10 Controller's Office abstained on that most recent vote.

11 Okay, the next item -- let's see.

12 MS. HIGASHI: So 6 and 7 --

13 CHAIR SHEEHAN: Are off.

14 MS. HIGASHI: -- are postponed.

15 And this brings us to Item 8. Chief Counsel
16 Camille Shelton will present this item.

17 CHAIR SHEEHAN: Thanks.

18 Ms. Shelton?

19 MS. SHELTON: This case is on remand from the
20 Los Angeles Superior Court and addresses a prior decision
21 of the Commission on a test claim filed by the County of
22 San Bernardino on the *Standardized Emergency Management*
23 *System*, commonly known as SEMS.

24 SEMS was enacted in 1992 and is a complex
25 emergency response system created to respond to and

1 manage emergencies and disasters involving multiple
2 jurisdictions and agencies.

3 The test claim statute and regulations set
4 forth a number of requirements, including the requirement
5 for all state agencies to use SEMS to coordinate
6 multiple-jurisdiction or -agency disaster response.

7 On the other hand, local agencies are required
8 to use SEMS in order to be eligible for funding of
9 response-related personnel costs resulting from an
10 emergency.

11 If a local agency does not participate in the
12 SEMS program, the agency loses its right to apply for
13 state funding to assist the local agency in paying for
14 its response-related personnel costs.

15 Agencies would still be eligible for repair,
16 renovation and other non-personnel costs resulting from
17 the emergency.

18 In 2002 the Los Angeles County Superior Court
19 concluded that the test claim legislation constitutes a
20 new program or higher level of service within the meaning
21 of Article XIII B, section 6.

22 The Court, however, remanded this case to the
23 Commission to determine whether the test-claim
24 legislation constitutes a reimbursable state-mandated
25 program.

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1 As more fully described in the analysis, staff
2 finds that the test claim legislation does not constitute
3 a reimbursable state-mandated program within the meaning
4 of Article XIII B, section 6, based on the Supreme
5 Court's 2003 decision in Kern High School District.

6 Will the parties and representatives please
7 state your name for the record?

8 MS. TER KEURST: Hi. I'm Bonnie Ter Keurst, and
9 I represent the County of San Bernardino.

10 MR. NORRIS: Good morning. I'm Kevin Norris,
11 and I'm also with the County of San Bernardino.

12 MR. ZOCCHETTI: David Zocchetti, General Counsel
13 for the State Office of Emergency Services.

14 MS. GEANACOU: Susan Geanacou with the
15 Department of Finance.

16 CHAIR SHEEHAN: Go ahead.

17 MS. TER KEURST: I'm going first.

18 Good morning. On October 20, 1991, the Oakland
19 Hills firestorms, often referred to as the East Bay Hills
20 fire, occurred.

21 In response to and as a result of the
22 devastation of that fire incident, Senate Bill 1841 was
23 introduced.

24 In section 1 of the Legislative Counsel's
25 digest, it reads, "The bill requires the Office of

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1 Emergency Services, in coordination with specified
2 agencies, to establish by regulation, by December 1,
3 1993, a standardized emergency management system."

4 It would require all state agencies and all
5 local agencies receiving disaster funds to use the system
6 by December 1, 1996.

7 At the bottom of that paragraph, it reads, "The
8 bill would require the Office of Emergency Services to
9 establish, by December 1, 1996, emergency response and
10 recovery."

11 The County of San Bernardino submitted a test
12 claim on this bill in December of 1995. Over the next
13 seven years, the test claim process continued with
14 hearings, comments, a reconsideration; and it culminated
15 in the Los Angeles court decision in February 2002, as
16 Camille mentioned, that SEMS constitutes a new program or
17 a higher level of service within the meaning of section 6
18 of Article XIII B of the California Constitution.

19 However, because the Commission did not reach a
20 decision on whether SEMS constitutes a reimbursable
21 state-mandated program, the issue was remanded to the
22 Commission.

23 San Bernardino County filed opening comments
24 June 30, 2004, pursuant to a Commission staff directive.
25 The County's position is that we have incurred costs in

1 implementing SEMS in planning, in training and reporting.
2 The pointed issue, though, is whether those costs are
3 mandatory or voluntary.

4 In the staff analysis, the staff writes: The
5 test claim statute, Government Code 8607, subdivision
6 (d), requires that all state agencies use SEMS to
7 coordinate multiple-jurisdiction and multiple-agency
8 emergency and disaster operation. By December 1, 1996,
9 all state agencies shall use SEMS. Government Code
10 section 8607, subdivision (e), on the other hand, states
11 that each local agency, in order to be eligible for any
12 funding of response-related personnel costs under
13 disaster assistance programs, shall use the Standardized
14 Emergency Management System, SEMS.

15 Section 2401 of the OES regulations contains
16 similar language:

17 "If an agency participates in SEMS, the agency
18 is required to perform a number of activities to
19 coordinate the emergency response between multiple
20 agencies, including preparation of an after-action report
21 and training."

22 That one line, "in order to be eligible for any
23 funding of response-related costs," is what this whole
24 case hinges on.

25 The staff analysis also reads:

1 "The California Supreme Court determined that in
2 statutory construction cases, our fundamental task is to
3 ascertain the intent of what the lawmakers sow, as to
4 effectuate the purpose of this statute. We begin by
5 examining the statutory language giving the words their
6 usual and ordinary meaning.

7 "If the terms of the statute are unambiguous, we
8 presume the lawmakers meant what they said and the plain
9 meaning of the language governs."

10 That was all part of the staff analysis.

11 Staff analysis would seem to suggest that the
12 language is very clear. Therefore, local agencies do not
13 have a mandate.

14 I would argue that the intent of the legislation
15 needs to be addressed; that the language isn't as clear.

16 Government Code 8607(a) reads, "By December 1,
17 1993, the Office of Emergency Services, in coordination
18 with all interested state agencies, with designated
19 response roles in the state emergency plan, and
20 interested local emergency management agencies, shall
21 jointly establish by regulation a standardized emergency
22 management system for use by all emergency response
23 agencies.

24 The Legislative Counsel's digest reads, "This
25 bill would require the Office of Emergency Services, in

1 coordination with specified agencies, to establish by
2 regulation, by December 1, 1993, a standardized emergency
3 management system. It would require all state agencies
4 and all local agencies receiving state disaster
5 assistance funds to use the system by December 1, 1996."

6 In the legislation, there seems to be nuances
7 about how this is all presented. Note, it doesn't say as
8 a condition of receiving state disaster assistance funds;
9 it just says, "All local agencies receiving state funds."

10 I would also point to a memo dated October 28,
11 1992, which is way back at the beginning of all of this,
12 that was addressed to emergency service coordinators, law
13 enforcement executives, and fire service executives from
14 the Governor's Office of Emergency Services. It
15 addresses the SEMS system deadline of December 1, 1993.
16 The four key components of the framework, the
17 after-action report.

18 And then it says, "By December 1, 1996, all the
19 state agencies shall use this system. Also, by the same
20 date, all agencies must utilize this system, or they will
21 be ineligible for funding for response costs under
22 disaster assistance programs."

23 The word "ineligible" is defined as not
24 qualified or not permitted. That is a very different
25 meaning from the word "incentive," which is defined as

1 something that has a tendency to move people to action.

2 In a comment letter to the Commission on
3 September 9, 2004, general counsel for Governor's Office
4 of Emergency Services wrote: "Equally clear is
5 section 8607(e), that unlike subsection (d) does not
6 require the use of SEMS for local agencies but, rather,
7 provides an incentive for participation."

8 We disagree with this statement. An "incentive"
9 implies a directory provision, one that leaves an option
10 with the department to which it is addressed to obey or
11 not as it may seem fit. As defined, statutes are either
12 directory or mandatory. And if mandatory, they
13 prescribe, in addition to requiring the doing of the
14 things specified, the result that will follow if they are
15 not done.

16 In this test claim legislation, if we do not
17 implement SEMS, the county is ineligible for funding of
18 response costs. They are mandatory. General counsel, in
19 quoting the Government Code, states Government Code
20 section 8607(d) makes it clear that all state agencies
21 shall use the standardized emergency management system.
22 He goes on to say in a later paragraph that, given the
23 local nature of each of the SEMS elements, there is no
24 argument that the state is trying to shift a state-level
25 program responsibility to local government. By practice

1 and by statute, local governments have primary
2 responsibility for providing emergency services and
3 bearing the associated costs.

4 If, in fact, elements of SEMS are directed at
5 the local government level, it would follow that the
6 legislative intent was directed at local agencies, as
7 well as the state.

8 The introduction of SEMS legislation as put
9 forth by arguments of the Commission staff and general
10 counsel was a mandate for the state, not local
11 governments. Yet, as stated in the comment letter above,
12 OES holds that it is local government that has the
13 responsibility for providing public safety and welfare;
14 and SEMS was developed to address the local issues.

15 I would like to briefly comment also on the
16 financial aspect of the claim. It is mentioned both in
17 the staff analysis, and it's also in the comments by the
18 general counsel. They mention \$600 for costs for a
19 couple of incidents that happened back in 1992, and also
20 a \$282,000 for emergency management programs.

21 I would like to bring those numbers a little bit
22 more up to date. Yes, we do get some grant monies from
23 emergency management. In 2005, the amount was \$242,000.
24 That works out to about 6 and a half cents per person in
25 our county.

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1 We are grateful for that support. However, it
2 does not in any way cover our costs for this program.

3 In regards to disaster costs, for the Grand Prix
4 Old Fire of October of '03, which encompassed a
5 December 25 flooding incident and two floodings again in
6 February of '04, our emergency-related personnel costs
7 were 1.8 million. And that didn't include the fire
8 personnel.

9 Also of note, we had two storms in January of
10 2005 and February of 2005. We also had in October four
11 storms which were not declared. I say this only to note
12 that the costs of noncompliance are very real for our
13 county.

14 Finally, as closing remarks in the staff
15 analysis, the staff quotes the California Code of
16 Regulations, Title 19, section 2409(c), in response to
17 our comment that the County is the central player at the
18 operational level of SEMS. It reads, "The operational
19 area authority and responsibility under SEMS shall not be
20 affected by non-participation of any local governments
21 within the operational area."

22 I would add to that section (a), "Operational
23 area level" means an intermediate level of the state
24 emergency services organization, consisting of a county,
25 and all political subdivisions within the county area.

1 Each county geographic area is designated as an
2 operational area. An operational area is used by the
3 county and the political subdivisions comprising the
4 operational area for the coordination of emergency
5 activities, and to serve as a link in the system of
6 communications and coordination between the state's
7 emergency operation centers and the operation centers of
8 the political subdivisions comprising the operational
9 area.

10 Section (b), all local governments within the
11 county geographic area shall be organized into a single
12 operational area by December 1, 1995; and the county
13 board of supervisors shall be responsible for its
14 establishment.

15 And section (d), the County government shall
16 serve as the lead agency of the operational area, unless
17 another member agency of the operational area assumes
18 that responsibility by written agreement with the county
19 government.

20 And at this time, I would like to introduce
21 Kevin Norris to speak to the legal issues.

22 MR. NORRIS: Thank you.

23 My name is Kevin Norris. I'm a deputy county
24 counsel for the County of San Bernardino. I would just
25 like to touch briefly on some of the legal issues that

1 are here before the Commission.

2 As was stated in Ms. Shelton's summary, this
3 case has been before the Commission before, then it went
4 to the Superior Court of Los Angeles, at which time the
5 Superior Court remanded it back to the Commission.

6 Now, the Superior Court of Los Angeles was
7 presented with the same issues that are now before the
8 Commission. The parties fully briefed the issue and
9 presented it to the Court for decision. The Superior
10 Court judge chose not to reach the issue, since the
11 Commission had not yet reached that issue.

12 But the judge, before she sent the case back
13 here, did state that she finds the county's position on
14 the issue more persuasive. Now, the county, we think
15 that the Superior Court's view on these issues should be
16 given great weight in this proceeding.

17 In the County's comment letter, dated June 30,
18 2004, we set forth on page 5 authority for why SEMS is
19 mandatory and, therefore, constitutes a state mandate.

20 Now, I won't repeat all of the authority that
21 was set forth in that letter, but there is one legal
22 encyclopedia that was quoted in that document. And that
23 is called "California Jurisprudence." And that
24 encyclopedia states at Volume 55, Cal Jur 3d, starting at
25 page 545 -- and this is a quote -- "where consequences

1 are attached to failure to do a required act, the
2 direction to do it will be held mandatory, not directory,
3 as where a penalty is attached to failure to observe the
4 provision."

5 Now, in the SEMS case, there are consequences
6 for failure to use SEMS, such as no reimbursement for
7 response-related personnel costs.

8 Under the plain language of the treatise I have
9 just quoted, SEMS is, therefore, mandatory.

10 The Commission staff has concluded that SEMS is
11 voluntary based largely on two cases. The first case is
12 from 1984, the City of Merced v. the State of California.
13 In that case, the City brought an action claiming that a
14 reimbursable state mandate was created by a new law that
15 requires payment for loss of goodwill in eminent domain
16 proceedings. The Court focused on the concept that a
17 city or county is not required to exercise its powers of
18 eminent domain. Since it's a voluntary action by the
19 city or county, the Court held that there is no state
20 mandate.

21 Now, that situation is very different than what
22 the counties are faced with in SEMS. Whether or not a
23 local government uses eminent domain is based on many
24 policy considerations, and the government may decide not
25 to use that power. But if a hillside is burning or if

1 buildings are falling down due to an earthquake, a city
2 or county has no choice but to respond to that disaster.
3 SEMS thus covers a situation where there is simply no
4 voluntary choice. So the City of Merced case should not
5 be used to support a finding that SEMS is voluntary and
6 not a state mandate.

7 The other case that was given great weight by
8 the Commission staff is a 2003 California Supreme Court
9 case of Department of Finance v. Commission on State
10 Mandates. This is also known as the "Kern High School
11 case." Now, in that case, the Court ruled that new
12 notice and agenda posting requirements for certain
13 educational programs do not constitute state mandate
14 programs because participation in the educational
15 programs is voluntary.

16 Once again, SEMS is a very different situation
17 because participation in SEMS is necessary to recoup
18 personnel costs.

19 And on this very point, I would like to quote
20 from the comment letter of State OES, which is dated
21 September 9, 2004, where the State OES, citing Government
22 Code section 8618, stated that "Local governments have
23 primary responsibility for providing emergency services."
24 That responsibility means it is not voluntary.

25 For all of these reasons, the County requests

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1 that the Commission find that SEMS is a state mandate
2 program.

3 Now, the County personnel, Bonnie, and I, would
4 welcome any comments or questions that the Commission
5 members have.

6 CHAIR SHEEHAN: Great.

7 Any questions from Commission members for the
8 County representatives at this time?

9 *(No audible response)*

10 MR. NORRIS: Thank you.

11 CHAIR SHEEHAN: Thanks.

12 Do you want to come forward and identify
13 yourself?

14 MR. ZOCCHETTI: Yes. Again, David Zocchetti,
15 general counsel for the Office of State Emergency
16 Services.

17 If you'll indulge me for a moment, claimants
18 have already rolled back the clock back to 1991. And I
19 thought maybe to give some context to this Commission
20 about the claim you're considering right now, let me roll
21 the clock back a little farther.

22 I have been in this business 26 years. And one
23 of the things that's always surprised me, considering the
24 commonality or the commonness of disasters in
25 California -- the floods, fires, and earthquakes -- is

1 the fact that disaster preparedness for those calamities
2 is not required at the local government level: There's
3 no requirement for emergency planning. There's no
4 requirement for emergency preparedness.

5 The fact that every county in this state, and
6 pretty much every local government in this state, is
7 involved in disaster preparedness is they have made
8 discretionary decisions along the line for the good of
9 their public welfare, to participate in disaster
10 preparedness.

11 They chose, often back in the 1950s, to have
12 disaster counselors. That triggered the requirement for
13 emergency planning. They all signed on to the master
14 mutual aid agreement, which allows for sharing of
15 resources for disaster jurisdictions. But these are
16 discretionary decisions made along the way for the
17 welfare of their citizens and their communities.

18 So this whole program of disaster preparedness
19 was based upon discretionary decisions along the way by
20 local government.

21 Also, if you looked at the funding mechanisms
22 for disasters in the state, all of the funding streams
23 for disasters that come from the state and federal level
24 are grant-based funding. They are funding for programs
25 to prepare for disasters, they are programs to fund and

1 grants to fund recovery after disaster, to restore public
2 facilities, to pay for personnel costs.

3 So, again, the grants have all been
4 discretionary grants based upon certain eligibility
5 requirements, either before the disaster occurs for
6 preparedness, or after the disaster for recovery.

7 On the specific issue of the SEMS mandates
8 claims, we, of course, concur with the recommendation
9 of the staff that this is not a state mandate on local
10 government. And to be real clear, the plain language of
11 the law really takes two different tacts.

12 With state government, it's a "shall comply with
13 SEMS." There is no equivocation on that requirement.
14 There is no incentives. There is no penalty. Thou shalt
15 comply.

16 At the local government level, it's a different
17 story with SEMS. Much like the other programs I've
18 described, it's discretionary over the years for disaster
19 preparedness. Likewise, with SEMS, it's an option for
20 local government; and there are incentives available
21 through the Disaster Assistance Act for compliance.

22 But let me be real clear on this: The Disaster
23 Assistance Act that is tried for SEMS for compliance
24 purposes is in itself a discretionary grant program.
25 Even if a local government fully complied with SEMS,

1 there are a number of other requirements for access to
2 the grant funding under the Disaster Assistance Act that
3 are not tied to SEMS.

4 The Disaster Assistance Act predates SEMS.
5 Most, if not all, of the eligibility requirements for
6 that Disaster Assistance Act predates SEMS. So you can
7 have a circumstance where a local government can fully
8 comply with SEMS but has not met the eligibility
9 requirements for the Disaster Assistance Act. So it does
10 still not have access to those grant funds to recover
11 from the disaster.

12 And let me talk a little bit about the issue of
13 whether this is a necessity to comply with SEMS. I think
14 from a local government perspective, as we have heard the
15 claimant's testimony, for the good of public welfare,
16 they probably need to comply with SEMS. But from a
17 financial standpoint, that is not a requirement.

18 When you look at how the Legislature set up the
19 program in terms of compliance and the potentiality of
20 losing disaster assistance funds after a disaster -- not
21 having access to that particular grant -- we're only
22 talking about a small sliver of the costs of recovery
23 from a disaster.

24 Just to give you a perspective, when the
25 disaster occurs in California, a number of things must

1 occur prior to having access to a Disaster Assistance Act
2 funds for recovery.

3 The local government must declare a state -- or
4 a local state of emergency for that disaster situation,
5 must meet those criteria. It must reply to the state,
6 and ask the state to request a disaster, have the
7 Governor proclaim a state of emergency. Both those
8 things have to fall in line.

9 In addition, in most cases, it requires the
10 Governor to go to the President and request a federal
11 declaration of emergency. Again, all those things must
12 fall in line.

13 And then every individual project for recovering
14 after a disaster, to have eligibility for the disaster
15 assistance grants must meet both state and federal
16 eligibility requirements before they even come into
17 consideration as a potential funding mechanism to recover
18 from grants.

19 And the way the Legislature set up this program
20 is, is the federal government is required to pay
21 75 percent of the recovery costs, if all those other
22 criteria are met. That leaves 25 percent remaining. Of
23 that 25 percent remaining, the state can, at its
24 discretion, if the funding is appropriated, pay for
25 75 percent of that 25 percent remaining.

1 So what we're really talking there for local
2 government is an 18 percent cost share of disaster
3 recovery costs.

4 But even that entire 18 percent is not in
5 jeopardy as a result of not complying with SEMS. It's
6 only the personnel response costs, which generally comes
7 down to the overtime costs or people to replace people on
8 overtime shifts. So a very small sliver of the overall
9 costs to recover from a disaster situation.

10 So it is not coercive, it is not draconian. It
11 is an option of the local government, obviously an
12 important option to protect their citizens.

13 So if you have any questions, I'd be happy to
14 answer those.

15 CHAIR SHEEHAN: Questions?

16 MEMBER OLSEN: Can I reserve the right to ask
17 questions? They're still formulating.

18 CHAIR SHEEHAN: Yes. Okay, don't go far.

19 Susan, did you want to --

20 MS. GEANACOU: Susan Geanacou, Department of
21 Finance.

22 First of all, I'd like to say that the
23 Department of Finance supports the draft staff analysis,
24 and urges your adoption of it this morning.

25 I'd also like to emphasize two key points that

1 are pointed out in the analysis. One is that the
2 Legislature chose very distinct words in addressing the
3 SEMS program application to state government versus local
4 government. As it applies to state governments, they
5 chose mandatory words of "shall," in contrast as SEMS may
6 apply to local governments, they chose very distinct,
7 different words, making its application optional.

8 And it's a rule of statutory construction that
9 in so using very distinct, different language, the
10 Legislature clearly meant that the program should be
11 administered differently regarding its optional or
12 required nature at the two levels.

13 The second point I would like to make is that
14 when this matter was heard before the Los Angeles
15 Superior Court and decided in 2002, finding a new program
16 or higher level of service regarding SEMS, the Kern High
17 School District case was not yet decided, had not yet
18 been briefed in full or argued. And that point should be
19 noted.

20 That Kern High School District case, which is
21 squarely on point with the SEMS situation here, was
22 decided in 2003; and it clearly states that required
23 activities that attach to an underlying optional program
24 are not themselves reimbursable.

25 And that's a very close fit to the way the SEMS

1 program and its statutes are structured here. And
2 accordingly, again, we encourage your adoption of the
3 draft staff analysis.

4 And I'd be glad to address any questions you may
5 have.

6 CHAIR SHEEHAN: Great. Thanks.

7 Camille, did you want to address anything that
8 was said?

9 MS. SHELTON: Not unless the members have
10 specific questions for me. Everything is in the
11 analysis. I can certainly summarize the law for you.

12 We did rely on the Kern High School District
13 case. It is a case directly on point; and the Commission
14 is bound to follow that case on this one.

15 CHAIR SHEEHAN: Okay.

16 Mr. Smith?

17 MEMBER SMITH: Thank you, Madam Chair.

18 And this item, I think there's a difference
19 between an incentive to comply with the law and a penalty
20 for not complying with the law. I think the loss of
21 funding in this situation for not implementing SEMS is a
22 penalty for not complying with the law.

23 And I'd actually like to move that we accept
24 this test claim.

25 CHAIR SHEEHAN: We have a motion to accept the

1 test claim.

2 MS. SHELTON: Can I clarify that motion is based
3 on the arguments that the claimants have presented?

4 MEMBER SMITH: Yes.

5 MEMBER GLAAB: Madam Chair, the motion before us
6 once again for clarification is?

7 CHAIR SHEEHAN: It would be to accept the test
8 claim and the arguments of claims and not the staff
9 recommendation, if I understand correctly?

10 MEMBER SMITH: That's correct.

11 CHAIR SHEEHAN: The motion dies for lack of a
12 second.

13 Questions, Ms. Olsen?

14 MEMBER OLSEN: I am troubled by this one. But
15 I think part of it has to do with the sort of vocabulary
16 that I don't know, so I'm going to ask some questions
17 that are going to be probably very simplistic, and I
18 apologize. I'm not even sure who I'm asking it to. So,
19 you know, jump in.

20 CHAIR SHEEHAN: You'll get different answers.

21 MEMBER OLSEN: That's right.

22 So, first, is there a difference here with
23 respect to SEMS in terms of response versus recovery, and
24 local governments being able to access funds?

25 And this question -- let me give you a little

1 background to the question. The question is coming
2 because when I am getting my news on an emergency
3 response, you know, it's visual because I've got the TV
4 on, "Oh, my goodness, there's an emergency." So I'm
5 seeing lots of personnel out there.

6 So, to me, it looks like at least the initial
7 response is heavily personnel-related. And since at
8 least the OES argument that we were presented in our
9 packet suggests that part of your analysis was that
10 personnel is a small sliver of this, I am just not
11 getting it.

12 MR. ZOCCHETTI: Maybe I can clarify that.

13 SEMS is a response system. It's related to
14 response. The Disaster Assistance Act that is tied to
15 SEMS is basically a comprehensive recovery grant program.
16 It pays for pretty much all aspects -- or potentially
17 pays for all aspects of recovery from a disaster.

18 One aspect would be the extraordinary staff
19 costs, and not the day-to-day staff costs of a
20 firefighter or a law enforcement officer or a paramedic,
21 but the extraordinary costs, for example, of the
22 overtime, travel costs as relating specifically to the
23 disaster.

24 But, really, the bigger financial aspect of the
25 Disaster Assistance Act would be for actually the

1 rebuilding of public facilities and infrastructure. Even
2 though --

3 MEMBER OLSEN: Yes, but that's not SEMS. That
4 is --

5 MR. ZOCCHETTI: That's correct. But SEMS is
6 tied to that more comprehensive Disaster Assistance Act,
7 which pays for both the personnel costs, those up-front
8 costs that you mentioned during the response phase, but
9 also the generally larger costs for public facility
10 restoration, public facility replacement, road damage
11 repair, debris removal -- a number of other costs well
12 beyond the personnel costs.

13 So, generally, the personnel cost is a
14 relatively small cost of the overall grant that might be
15 provided under the Disaster Assistance Act.

16 MEMBER OLSEN: And when we are talking about,
17 depending on what your perspective is, the carrot or the
18 stick, that's been offered to local governments to come
19 into compliance with SEMS, we're talking about the
20 response period and not the recovery period that SEMS
21 has -- SEMS has to do with response; correct?

22 MR. ZOCCHETTI: That is correct.

23 MEMBER OLSEN: And the response tends to be --
24 and I think I may need the county to weigh in here --
25 does that tend to be more heavily weighted towards

1 personnel or less heavily weighted towards personnel than
2 overall recovery?

3 MS. TER KEURST: In the operational area for the
4 County of San Bernardino I am the financial officer, so I
5 can't address this question.

6 When you talk about SEMS, SEMS is an
7 organizational structure. So for each level that you
8 have, you have five pieces within that. There's
9 planning, there's logistics. It is all, as he said,
10 weighted toward response.

11 We get a call, and as the financial part of that
12 piece, I have to be down there. That's part of the
13 requirement.

14 But I'm down there -- we're all down there at
15 that point to deal with the response of the issue. We're
16 trying to put the fire out and work through what has to
17 happen.

18 There are state people, and they have all the
19 same elements. Then there are local people, and they
20 have all the same elements.

21 The recovery is, in and of itself, comes after
22 the fact. And I can tell you that from my perspective,
23 my department is handling the recovery piece of it. We
24 are still handling the recovery piece of it from the
25 October '03 fires.

1 But when you are talking about response, what
2 your observation is, is very correct. If you go out on
3 TV, they're going to show you the firefighters. That's
4 very true. But response can also be your flood control
5 people, in a flood situation. If a road washes out, in
6 the case of the Grand Prix Old Fire, we had roads go. So
7 that meant my transportation people were out there. I
8 had Sheriff's people out there because we couldn't have
9 people go up the mountains. So all those people are
10 response people.

11 Now, part of the grant process says that your
12 normal, everyday costs are not included. And we don't
13 make that -- we don't argue that at all. If their job is
14 to be a sheriff, then they're a sheriff. When they
15 become a sheriff for 24 hours a day, we pay them
16 overtime. That money becomes money that has been
17 designated by this claim that we're presenting today.

18 So in answer to your question, yes, the first
19 things that happened is all response.

20 There are permanent costs. When I gave you
21 the 1.8 million figure, that did not include my people
22 that are out there two years later, repairing culverts --
23 or whatever they're called by the flood control
24 department -- and roads and landslides. That stuff is
25 all considered permanent work. That would not filter

1 into the response costs that they're talking about.

2 Does that help?

3 MEMBER OLSEN: Yes, it does.

4 MS. TER KEURST: Thank you.

5 CHAIR SHEEHAN: Go ahead.

6 MS. SHELTON: Let me just summarize the Kern
7 case and let you know what is required to find a mandate.

8 Kern is a Supreme Court case, and it requires
9 two findings for a mandate. You can satisfy either
10 standard, and you can find a mandate either way.

11 The first one is that you have to be legally
12 compelled by the language of the statute to comply.

13 In this case, as we've analyzed in the staff
14 analysis, based on the plain language of the statute,
15 there's no strict legal compulsion for the counties to
16 comply because of the difference in language that the
17 Legislature used when directing the state to comply and
18 only directing the counties to comply when they want to
19 receive response-related personnel costs.

20 The rules of statutory construction say that
21 when the Legislature uses different language with the
22 same type of program, they intended the result to be
23 different. So we followed that rule of statutory
24 construction.

25 In addition, there's also a rule that says that

1 a body, such as the court or the Commission, can give
2 significant weight to the opinions of a state agency
3 that's required to implement the program.

4 Here in the record, there are several bulletins
5 by the Office of Emergency Services. In every bulletin
6 and guideline that says that the participation by
7 counties is voluntary, it is not mandatory.

8 So we have found that under the Court's first
9 standard there is no strict legal compulsion.

10 The second standard that the court laid out
11 says, "Well, you can still find a mandate, if they're
12 practically compelled to comply with the program. But in
13 order for there to be practical compulsion, you need
14 certain and severe penalties or other draconian
15 measures." And their example was the double taxation,
16 like in the City of Sacramento case.

17 Here, there's no evidence in the record that
18 response-related personnel costs are certain and severe
19 or constitute draconian measures when compared to the
20 other funding that they're eligible to receive for
21 recovery and restoration in an emergency.

22 So following the Kern case, we have recommended
23 that the Commission not find this to be a reimbursable
24 state-mandated program.

25 The other thing that is important, too, with all

1 the case law, this is a question of law, it's not a
2 question of equity. You need to have several elements
3 satisfied before you can find reimbursement.

4 The Court has already found a new program or
5 higher level of service, and that element is final and
6 can't be further discussed here.

7 And certainly if a county complies, there's
8 going to be increased costs. I mean, there are
9 activities that are different. They have to prepare an
10 after-action report, training is required, they have to
11 self-certify that they've complied with the SEMS program.
12 So, certainly, there are going to be some added costs
13 just to comply with the program. But you also have to
14 find a state-mandated program. And here, based on the
15 Kern case, we don't find one.

16 CHAIR SHEEHAN: Briefly?

17 MR. NORRIS: Thank you.

18 I would just like to state briefly, as to the
19 Kern High School District case, that case did recognize
20 that a penalty could be sufficient to create an
21 involuntary situation. And I would submit that we have
22 provided evidence as to the amount of personnel costs
23 that we have paid in certain circumstances.

24 I believe Ms. Ter Keurst testified that in one
25 disaster there were approximately \$600,000 of personnel

1 costs that we suffered. And, therefore, we have
2 presented evidence that there is a penalty that would be
3 suffered if we fail to comply with SEMs. And, therefore,
4 under the Kern High School case, this SEMs case should
5 constitute a state mandate.

6 Thank you.

7 CHAIR SHEEHAN: Camille?

8 MS. SHELTON: Can I respond?

9 CHAIR SHEEHAN: Yes.

10 MS. SHELTON: You know, this is a case where you
11 can look at it as the Legislature establishing new
12 conditions for receipt of funds that they received under
13 prior law, or you can look at it as a removal of funds if
14 they decide not to participate.

15 The courts for mandated cases, including a 2003
16 County of Los Angeles case that went before the Second
17 District Court of Appeal, found that the simple removal
18 of funds from the Legislature does not rise to the level
19 of a state mandate. That's a legislative policy
20 decision, and it does not rise to a mandated program.

21 CHAIR SHEEHAN: Thanks.

22 Any further questions on this?

23 *(No audible response)*

24 CHAIR SHEEHAN: If not, the chair will entertain
25 another motion.

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1 MEMBER GLAAB: Madam Chair and Members, I move
2 the item. I think staff has done a very good job in
3 laying out the case. Certainly we're sensitive to the
4 County of San Bernardino's issues. But I think the case
5 has been made, and I would like to move the item.

6 CHAIR SHEEHAN: Do we have a second?

7 Is there a second on this one?

8 MEMBER LUJANO: I'll second.

9 CHAIR SHEEHAN: Okay, we have a motion and a
10 second to adopt the staff recommendation.

11 Before I call for the vote, what I would say to
12 the claimant, this is a very difficult case. I think as
13 you can tell with the members up here struggling with
14 this one, it's not an easy one. The difficulty that I
15 have is the Kern case, as well as the statutory
16 construction, the Legislature knows how to write a
17 mandate if they want the funding to go to the locals.
18 That was the most difficult thing for me. And with all
19 the discussion with disasters, and certainly with the
20 recent disasters, it's a very emotional case for all of
21 us. But we are bound by the case law that directs the
22 Commission, and that the Commission is bound by, as well
23 as the statutes that the Legislature passes on this. So
24 it is a difficult one. But at least this member feels
25 compelled to be bound by the cases that we have.

1 So we have a motion to adopt the staff
2 recommendation.

3 All those in favor, say "aye."

4 *(A chorus of "ayes" was heard.)*

5 CHAIR SHEEHAN: Those opposed?

6 MEMBER SMITH: No.

7 CHAIR SHEEHAN: The Controller's office.

8 Any abstentions?

9 *(No audible response)*

10 CHAIR SHEEHAN: So the staff recommendation is
11 adopted.

12 MS. HIGASHI: The next item is the Proposed
13 Statement of Decision.

14 MS. SHELTON: This is the decision on the SEMS
15 case; and the only issue is whether it accurately
16 reflects the Commission's decision and adoption of the
17 motion.

18 CHAIR SHEEHAN: So any discussion?

19 *(No audible response)*

20 CHAIR SHEEHAN: If not, we'll entertain a
21 motion.

22 MEMBER GLAAB: So moved.

23 CHAIR SHEEHAN: We have a motion.

24 Do we have a second?

25 MEMBER OLSEN: Second.

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1 CHAIR SHEEHAN: A motion and a second.

2 All those in favor, say "aye."

3 *(A chorus of "ayes" was heard.)*

4 CHAIR SHEEHAN: Any opposed?

5 MEMBER SMITH: No -- yes, I mean no.

6 CHAIR SHEEHAN: The Controller's Office is also
7 on record as opposing them. The motion carries.

8 Okay, so we are on to Item --

9 MS. HIGASHI: We've already passed Item 10 so
10 this brings us to Item 11.

11 CHAIR SHEEHAN: 11? Okay.

12 MS. HIGASHI: Assistant Executive Director Nancy
13 Patton will introduce this item.

14 MEMBER PATTON: Good morning.

15 In 1987, the Commission determined that the
16 earthquake emergency procedure system was a reimbursable
17 mandate, and adopted parameters and guidelines for the
18 program.

19 In 2001, the Commission determined that the
20 Comprehensive School Safety Plan program was a
21 reimbursable mandate.

22 In 2002, the Commission reconsidered this
23 decision to clarify that the Emergency Procedures program
24 refers only to earthquake safety procedures.

25 In 2003, the parameters and guidelines for the

1 Comprehensive School Safety Plans were adopted and then
2 consolidated with the parameters and guidelines for
3 emergency procedures.

4 In 2004, AB 2855 amended the Emergency
5 Procedures program to delete public schools from the
6 state-mandated requirements for governing boards to
7 establish earthquake emergency procedure systems and
8 repealed the requirement that schools allow public
9 agencies to use school facilities during disasters.

10 These sections now only apply to private
11 schools.

12 AB 2855 also amended the Comprehensive School
13 Safety Plan program to require a school safety plan to
14 include emergency procedures for earthquake safety and
15 use of school facilities during disasters.

16 In 2005, the State Controller's Office requested
17 that the consolidated parameters and guidelines be
18 amended to conform to the AB 2855 amendments.

19 Staff concludes that effective January 1, 2005,
20 based on the amendments made by AB 2855, the *Emergency*
21 *Procedures, Earthquake Procedures, and Disasters* program
22 is no longer reimbursable and the parameters and
23 guidelines are no longer required.

24 Staff agrees with the State Controller's Office
25 request and recommends that the Commission:

1 Adopt staff proposed amendments to the
2 consolidated parameters and guidelines to limit
3 reimbursement to December 31, 2004, for the reimbursable
4 activities that were approved based on the Commission's
5 decision on *Emergency Procedures*. This amendment would
6 apply to reimbursement claims filed for costs incurred in
7 fiscal year 2004-05.

8 Adopt staff's recommended amendments to the
9 consolidated parameters and guidelines to delete all the
10 references to, and all reimbursable activities and direct
11 costs for the *Emergency Procedures* program. This
12 amendment would apply to reimbursement claims filed for
13 costs incurred beginning in fiscal year 2005-06.

14 Authorize staff to make any non-substantive
15 technical corrections to the parameters and guidelines
16 following the hearing.

17 Will the parties and witnesses please come
18 forward and state their names for the record?

19 MR. PALKOWITZ: Good morning. Art Palkowitz on
20 behalf of San Diego City schools.

21 CHAIR SHEEHAN: You can go ahead and then the
22 others will identify themselves.

23 MR. PALKOWITZ: Okay, thank you.

24 We were interested in addressing one part of
25 this decision, trying to summarize this because it took

1 me a while to understand it myself. You had the statutes
2 that were referred to, *Emergency Procedures*. And these
3 statutes have been around, I believe, since 1987. And in
4 these statutes you had what I call the four P's. They
5 gave reimbursement for: procedures, plans, protective
6 measures, and also a program, which we refer to training.
7 So in this bill that came out about in '04, it changed
8 the language and said, "Now those procedures only apply
9 to private school, not public school." And
10 appropriately, that is no longer a state mandate.

11 And we have over here another mandate that was
12 related and combined when this Commission dealt with the
13 parameters and guidelines, referred to as, "Comprehensive
14 School Safety Plan."

15 Now, in that Comprehensive School Safety Plan,
16 when the Legislature changed and took those four P's out
17 of *Emergency Procedures*, they put it in the comprehensive
18 School Safety Plan.

19 Now, it's our contention that that language is a
20 continuation for *Emergency Procedures* into the
21 Comprehensive School Safety Plan, and has the same effect
22 as if it was in that *Emergency Procedures*.

23 There's a Government Code section, 9604, that
24 the staff points out in their analysis, that a
25 restatement of original procedure or a continuation can

1 be part of that new statute. And there is precedent by
2 this Commission, or your predecessors, that that is the
3 same force and effect, and a new test claim is not
4 necessary. I mean, if we look at the forest here, we
5 have the Legislature saying, "We know it's a concern out
6 there to have earthquake preparedness. And it's not if,
7 but when. And we now want to have a requirement that
8 private schools also be prepared and have these four
9 P's."

10 There is no contrary language that says, "We are
11 no longer worried about public schools having these four
12 P's. And only if there is contrary language should we
13 then decide this is not a continuation. And, therefore,
14 it would not apply and we would need a new test claim."

15 So it is our contention that based on the
16 language that is virtually exactly the same -- the only
17 difference in the language is they've changed "pupils"
18 and "students." I guess 1997 they might have been
19 "pupils" and now they're "students," or vice versa -- I'm
20 not sure there -- but I'm sure the Legislature gave that
21 a lot of thought.

22 But it's really important that when we look at
23 the whole forest, we see that we now have more
24 requirements on private schools, and public schools are
25 equally important, and we want them to do these

1 procedures. And in the past, we reimbursed for these
2 procedures. And we took this language and simultaneously
3 brought it over there. And that should be a
4 continuation, and under 9604, under the Government Code,
5 there really is no need to file a test claim now and go
6 through that process.

7 So based on that, we feel that when these
8 parameters and guidelines are changed, those reimbursable
9 activities should still be reimbursable now under a
10 section that really applies to public schools.

11 CHAIR SHEEHAN: Okay, anything else?

12 MR. PALKOWITZ: That's it. Thank you.

13 CHAIR SHEEHAN: Any questions from Commission
14 members?

15 *(No audible response)*

16 CHAIR SHEEHAN: All right, thanks.

17 Don't go far.

18 MR. PALKOWITZ: Okay.

19 MR. MIYASHIRO: Thank you, Madam Chair and
20 members of the Commission. I'm Robert Miyashiro with the
21 Education Mandated Cost Network.

22 I think the issue that I'd like to focus on is
23 what I consider to be a difference of professional
24 opinion between the Commission staff and the staff
25 analysis provided to the Legislature when this was

1 considered for a vote and actually adopted.

2 There is no question that AB 2855 moved the
3 provisions for earthquake and emergency procedures from
4 one provision of the Education Code to another. It
5 brought that in to the provisions related to
6 Comprehensive School Safety Plans.

7 Your staff concludes that in doing that, the
8 Legislature did not restate the law; and, therefore,
9 because there is not a restatement, there is no longer
10 eligibility for reimbursement of that claim. Because we
11 currently reimburse the activities related to earthquake
12 and emergency procedures. Your staff concludes that
13 movement of those provisions from one section to the
other was not a re*~~p996X~~restatement.

16 this bill before it was voted on by the Legislature.
17 This analysis characterizes what this bill does before
18 the final vote is taken.

19 I would like to draw your attention to page 205
20 of that handout, where the first provision says that,
21 "This bill recasts existing earthquake emergency
22 procedure systems requirements for public schools" --
23 I'll get my glasses on -- "by consolidating them with the
24 requirement for Comprehensive School Safety Plan."

25 You move to the third bullet, it says again, "It

1 recasts by consolidating with the required Comprehensive
2 School Safety Plan, the existing requirement that the
3 governing board of each school district and county
4 Superintendent of Schools that each county establish an
5 earthquake emergency procedure system in every public
6 school building under its jurisdiction having an
7 occupancy capacity of 50 pupils or more than one
8 classroom."

9 There are certainly more provisions of that
10 bill.

11 I would like to further direct your attention to
12 page 4 of that analysis, at the very bottom. I've
13 highlighted two sentences here. It says, "This bill
14 amends specific education mandates to make them
15 permissive and no longer reimbursable. In addition, it
16 consolidates several safety provisions."

17 Those distinctions are clear. AB 2855 did, in
18 fact, delete specific requirements and mandates and make
19 them no longer reimbursable.

20 It did not do that for *Emergency Procedures* and
21 *Earthquake Procedures*. It simply consolidated them into
22 the Comprehensive School Safety Plan.

23 In no case did the Legislature expect that their
24 act would disallow school district's reimbursement for
25 those activities.

1 This language is clear, prior to the vote taken
2 by the Senate, that the intent of the Legislature was to
3 recast these provisions.

4 The term "recast" or "restate," I think, are
5 interchangeable. They certainly did not repeal those
6 provisions. The action that your staff suggests you take
7 essentially repeals those provisions for purposes of
8 reimbursement. There is clearly no intent to deny
9 reimbursement for this mandate when the Legislature
10 adopted AB 2855.

11 CHAIR SHEEHAN: Questions for Mr. Miyashiro?

12 *(No audible response)*

13 CHAIR SHEEHAN: Not at this time. Thanks.

14 Susan? And then Nancy, I'll have you respond to
15 some of the issues.

16 MS. GEANACOU: Good morning, again. Susan
17 Geanacou, Department of Finance.

18 The department supports the draft staff analysis
19 this morning.

20 We are under the impression the matter would be
21 on the consent calendar; and we're not aware that it was
22 not going to be. So I do not have a budget staff person
23 here to speak to the nuances of the language. So I'd be
24 glad to address questions, field questions, hopefully be
25 able to address them. But basically, we support the

1 staff analysis.

2 CHAIR SHEEHAN: Thanks.

3 Okay, I don't know if staff wants to address
4 some of the issues.

5 Camille, do you want to address them?

6 MS. SHELTON: Sure. This is actually -- it's a
7 pretty difficult case, and it was hard to interpret, and
8 certainly you can make arguments on both sides.

9 But when you look at the original *Emergency*
10 *Procedures* program, like Mr. Miyashiro said, they were
11 getting reimbursed to implement that program.

12 With the statute, changing that and moving
13 *Emergency Procedures* within the Comprehensive School
14 Safety Plans, when the Commission adopted the parameters
15 and guidelines on Comprehensive School Safety Plans, the
16 Commission specifically found that implementation was not
17 reimbursable. So they're different programs.

18 *Earthquake Procedure* also is a mandate on the
19 school district, whereas Comprehensive School Safety is a
20 mandate on the school site. They're very different
21 programs. And so it would require another test claim to
22 be filed on the change of the law.

23 CHAIR SHEEHAN: For the Comprehensive School
24 Safety Plan, correct.

25 MS. SHELTON: Can I just make one quick point?

1 CHAIR SHEEHAN: Yes.

2 MS. SHELTON: The Government Code section that
3 is cited in the staff analysis, which is 9604, it does
4 require a continuation of the program. And our analysis
5 shows that the program for *Emergency Procedures* has not
6 continued in that same form.

7 CHAIR SHEEHAN: Yes?

8 MR. MIYASHIRO: I'd like to address
9 Ms. Shelton's point, that Comprehensive School Safety
10 Plan implementation is not reimbursable. That is the
11 finding of the Commission that it's not reimbursable.
12 The Legislature did not make a statement about whether
13 that activity was compulsory or not.

14 So just to make clear the distinction, when the
15 Legislature moved the provisions for *Emergency Earthquake*
16 *Procedures* into Comprehensive School Safety Plan, they
17 were not passing judgment on whether or not the activity
18 itself was reimbursable. That finding was made by this
19 commission.

20 So what I am arguing is that the reimbursable
21 costs related to *Emergency Procedures* prior to AB 2855
22 were anticipated to continue to be reimbursable after
23 2855, by the very description of what 2855 did before the
24 final vote in the Senate took place.

25 CHAIR SHEEHAN: Questions?

1 Ms. Olsen?

2 MEMBER OLSEN: This question is for Camille.

3 What you just said then is that, really, we're
4 dealing with a technical issue here? That is, it's no
5 longer appropriate to fund this activity under this
6 particular P and G, but there could be another P and G in
7 the future that would fund this activity anew; is that
8 what I'm hearing?

9 MS. SHELTON: Possibly, possibly. The way that
10 the Legislature amended the *Earthquake Procedure*
11 statutes, they deleted "public schools" and kept it a
12 mandate for private schools. So that program under that
13 statute is no longer reimbursable.

14 And then what it did for the *Emergency*
15 *Procedures*, the discussion of it was moved into the
16 content of a Comprehensive School Safety Plan. And the
17 Commission has found what was reimbursable was to prepare
18 that plan, but not to implement the safety procedures
19 that are included within the plan.

20 So if school districts want to continue to be
21 reimbursed for implementing *Earthquake Procedures*, they
22 would have to file another test claim.

23 MEMBER OLSEN: Under that statute?

24 MR. PALKOWITZ: While you're on that topic --

25 MEMBER OLSEN: You shook your head "no." Do you

1 have to do that or --

2 MR. PALKOWITZ: No, we probably would; but the
3 problem is that period of time to file it may have
4 passed.

5 MR. MIYASHIRO: January 1st.

6 MR. PALKOWITZ: So though you may think, "Okay,
7 if I rule this way, they could just go out and file it
8 and we will be back in a couple years here on the issue,"
9 I believe a period of time to have filed is past. So
10 there is no recourse for districts throughout the state
11 to go now and file a new test claim on the four
12 procedures that were in *Emergency Procedures*, are now in
13 Comprehensive School Safety Plan.

14 Does that make sense?

15 MEMBER SMITH: I was just going to ask, being
16 relatively new on the Commission, did we ever ask for a
17 leg. counsel opinion? Or can we use that type of
18 guidance in the decision? It would at least appear that
19 the Senate intended to recast the *Earthquake Emergency*
20 *Procedure*.

21 I mean, the analysis kind of speaks for itself.

22 But we're not in a position, perhaps to disagree
23 with my own office, but -- so be it.

24 MS. SHELTON: Just to respond, leg. counsel
25 opinions are not binding on the interpretation of the

1 statute.

2 MR. PALKOWITZ: But in following that up, the
3 code section that allows a continuation from one statute
4 to another, the presumption is, there is a continuation
5 unless there's a contrary intent. And I guess you would
6 need to see a showing of what that contrary intent is, to
7 not have a continuation of it.

8 I mean, we have the exact language going from
9 one statute to another. So where is the contrary intent
10 that says, "No, this is not a continuation of those
11 activities"?

12 MEMBER SMITH: Camille, where is the contrary
13 language?

14 MS. SHELTON: When you look at the language for
15 Comprehensive School Safety Plans, the Legislature
16 directed that the school districts prepare a
17 comprehensive school safety plan.

18 The plain language of that statute did not
19 require them to implement any of the safety procedures
20 that they're developing.

21 MR. PALKOWITZ: But that statute was in place
22 before this took action.

23 MS. SHELTON: Right. So the Legislature moved
24 the *Earthquake Procedure* plans into the scope of the
25 Comprehensive School Safety Plan; and it becomes a plan

1 only.

2 MR. PALKOWITZ: I guess the Government Code
3 section that staff cited says you need to show a contrary
4 intent. Well, when this bill came about, where is the
5 contrary intent in this bill that says, "No, this is not
6 a continuation"?

7 What you're referring to is the Comprehensive
8 School Plan that was adopted before this bill.

9 MS. HIGASHI: The Comprehensive School Safety
10 Plan is a program that affects school sites. The
11 *Emergency Procedures* program was one where the mandate
12 was placed on the school district governing boards.

13 The program in *Emergency Procedures* also had a
14 provision that said specifically, "School districts shall
15 make their facilities available," et cetera, et cetera,
16 "during disasters." That language no longer remains in
17 the Comprehensive School Safety Plan amendment.

18 What has been -- how it is replaced is, it's the
19 language that says that within the scope of the *Emergency*
20 *Procedures*, there shall be a policy allowing for the use
21 of those facilities. So they're not entirely a perfect
22 match, as you are alleging here.

23 And I would also like to point out that the
24 procedures for the Comprehensive School Safety Plan are
25 different in terms of the development procedures, the

1 approval at school site level. There are also grants
2 available for new schools, and there's also separate
3 implementation grants available.

4 MR. PALKOWITZ: I think if we try to envision
5 when the Legislature looks at these two bills and saw the
6 *Emergency Procedures* and saw the Comprehensive School
7 Safety Plan and said, "Look, we're changing this to
8 private schools, we need to bring these activities over
9 so they will be required of public schools," now, did
10 they say, "Wait a minute, one is a plan for site and one
11 is for a district"? They said, "No, we want public
12 schools to do this." And that's where the continuation
13 is and the same enforcement and the same activities that
14 they wanted to do.

15 Yes, they are not exactly right. But where is
16 the contrary intent in this bill that says, "No, those
17 activities are not a continuation"?

18 And I think the code section you cited requires
19 that. And unless there's a contrary intent, then it is a
20 continuation.

21 CHAIR SHEEHAN: Any further questions?

22 *(No audible response)*

23 CHAIR SHEEHAN: No?

24 As the previous one, this is -- at least for
25 this -- this is a difficult one because they repealed

1 this, they moved it over here. I guess the only comment
2 that I would have is -- and I appreciate the analysis --
3 but the only observation I would have is the Legislature
4 could have added the additional language, if they
5 intended that to continue to be reimbursed.

6 In terms of the time, the Legislature could
7 direct us to reconsider some previous issues, if they
8 wanted to, but this is a difficult one also.

9 Robert?

10 MR. MIYASHIRO: If I might, I mean, they were
11 very clear in those mandates where they were going to
12 repeal the mandate and where they expected the state to
13 save money and no longer reimburse anything. This
14 clearly is not one of those provisions. This clearly is
15 a provision where they expected it to continue.

16 MS. HIGASHI: I would just like to add one point
17 of clarification.

18 The Commission statute for receiving test claims
19 is in Government Code section 17551. And the provision
20 for statute of limitations is basically, "They shall be
21 filed no later than 12 months following the effective
22 date of the statute, or within 12 months of incurring
23 increased costs as a result of the statute."

24 So it's possible that the increased costs could
25 be incurred later than 12 months.

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1 CHAIR SHEEHAN: Does that clarify for some of
2 the Commission members?

3 Okay.

4 MR. PALKOWITZ: May I respond to that?

5 CHAIR SHEEHAN: Absolutely.

6 MR. PALKOWITZ: This Commission, or your
7 predecessors, approved these activities as a mandate,
8 okay? And the inferences that we can make a decision
9 here and say, "Go file your test claim because there may
10 be increased costs" -- which I don't know there are --
11 and to have this test claim be part of this process for
12 the next two or three years and expect districts to
13 maintain records for a two- or three-year period on the
14 possibility they may get reimbursed is really not dealing
15 with the issue that's here now. That possibility is
16 really remote. It really is remote, that there will be
17 increased costs.

18 I haven't really analyzed why those increased
19 costs would be more under those activities under
20 *Emergency Procedures* versus the Comprehensive School
21 Safety. But we are talking about millions of dollars
22 here and the safety of the kids. So I really think that
23 the answer is what is the contrary language in this bill
24 that says, "No, this is not a continuation of these
25 activities?" Because if there's not, then the statutes

1 cited by staff says it is a continuation.

2 Thank you.

3 CHAIR SHEEHAN: Questions?

4 Did you want to --

5 All right, so if there are no further
6 discussions --

7 MS. OLSEN: Then I will --

8 MEMBER BLAKE: Can I ask a brief question of the
9 individual from San Diego?

10 MR. PALKOWITZ: Yes.

11 MEMBER BLAKE: If you're not expecting to incur
12 any increased costs where you could have the
13 justification to perhaps file another test claim within
14 12 months, why are you here? What are you seeking?

15 MR. PALKOWITZ: Okay, now, let me clarify that.
16 I appreciate what you're saying.

17 I guess what I'm saying is under the statute
18 where these activities were under *Emergency Procedures* --
19 let's say our district incurred a million dollar cost.
20 If now we go under the analysis, this is now under
21 Comprehensive School safety, and we have the
22 same million-dollar costs, it seems to me that is now --
23 has not increased it and, therefore, we can't file a test
24 claim.

25 MEMBER BLAKE: No increase on the increase?

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1 MR. PALKOWITZ: Yes, exactly. Yes.

2 MEMBER BLAKE: Okay.

3 CHAIR SHEEHAN: Any further discussion on this
4 item?

5 *(No audible response)*

6 CHAIR SHEEHAN: All right, if not, the chair
7 will entertain a motion.

8 MEMBER GLAAB: Madam Chair, I'll move this item.

9 MEMBER OLSEN: I'll second.

10 CHAIR SHEEHAN: We have a motion and a second to
11 adopt the proposed P's & G's from staff.

12 All those in favor, say "aye."

13 *(A chorus of "ayes" was heard.)*

14 CHAIR SHEEHAN: Opposed?

15 MEMBER SMITH: No.

16 CHAIR SHEEHAN: Abstentions?

17 *(No audible response)*

18 CHAIR SHEEHAN: That item is adopted.

19 Item 12, is that what we are --

20 MS. HIGASHI: That's where we are.

21 CHAIR SHEEHAN: Okay, Item 12.

22 Program analyst Cathy Cruz will introduce this
23 item.

24 MS. CRUZ: Good morning.

25 CHAIR SHEEHAN: Go ahead, Ms. Cruz.

1 MS. CRUZ: The Center for Collaborative Policy
2 conducted an assessment to scope out issues that should
3 be addressed in mandate reform discussions, students for
4 agreement on reforms, and the potential for using a
5 collaborative process to develop recommendations for
6 consideration by the Legislature and Governor.

7 The Center interviewed over 40 persons that
8 participated in the mandates process and issued a draft
9 report which staff made available on the CSM Web site on
10 March 17. There were numerous ideas for reforming the
11 mandates process which staff outlined on page 2 of the
12 staff report. Generally, the Center found that there was
13 a clear willingness among potential stakeholders to
14 consider the suggestions and perspectives of all other
15 stakeholders.

16 The Center found a few years where there were no
17 consensus among the interviewees, including changing the
18 composition of the Commission or including education
19 mandates in school districts and mandate reform
20 discussions at this time.

21 On the other hand, the Center found that there
22 were several issues where there was general agreement
23 among the interviewees, including the following:

24 The constitutional principle that if the state
25 requires a local government to carry out a function, the

1 state should pay for those new costs.

2 The information available to the Legislature for
3 their deliberation on proposed new mandates could be
4 improved significantly.

5 The mandate determination and reimbursement
6 process should take place in a shorter period of time.

7 There are several practices that delay the
8 determination of test claims, such as reconsideration of
9 existing mandates, the SB 1033 process, and the length of
10 time all parties take to review pending test claims.

11 Delay in reimbursing mandated costs is a
12 critical issue. The cost of a new program should be made
13 clearer upfront before bills are enacted.

14 The current parameters and guidelines system and
15 the process for calculating estimated costs for mandate
16 reimbursement should be shortened.

17 And finally, the State Controller's audits of
18 reimbursement claims are controversial.

19 The interviewees identified four factors that
20 were critical to their participation in the collaborative
21 process. Therefore, the Center concluded that using a
22 collaborative process to consider recommendations for
23 reform of the state mandates process is feasible if these
24 critical factors are adequately addressed.

25 The factors are:

1 First, it should enjoy the support of the
2 Legislature, and participants should be assured that the
3 Legislature would carefully consider any recommendations
4 offered resulting from this process.

5 Second, the Department of Finance should be
6 engaged directly in the collaborative process.

7 Third, the process should have the benefit of
8 neutral facilitation to guide the deliberations and
9 negotiations.

10 And, fourth, the process should have adequate
11 time and resources available to support the
12 deliberations. In particular, many interviewees believed
13 that the period between now and the time to introduce
14 related legislation in early 2007 is most opportune.

15 If the Commission and the Legislature agree to
16 use a collaborative process to pursue mandate reform, the
17 Center makes the following suggestions:

18 First, in order for the Legislature to have time
19 to consider the recommendations in the next legislative
20 year, the date for the report should be no later than
21 March 1st of 2007.

22 The second, the process should address both
23 education and local agency mandates. Although this may
24 make the process more complex, two subcommittees could be
25 organized to focus on the respective areas and the

1 recommendations brought back to the full group.

2 Third, the collaboration should take as a
3 starting point for discussions the ideas of the
4 Department of Finance, and then expand it to look at
5 additional ideas.

6 Fourth, the process should be entirely on the
7 mandates process itself and not on the substantive
8 content of any particular mandate.

9 Fifth, the collaborative process should start
10 with convening an organization and proceed through joint
11 fact-finding negotiations and implementation.

12 Overall, staff finds that the draft report
13 supports the use of collaborative process to pursue
14 mandate reform. Using a collaborative process will give
15 parties a better chance to communicate and to understand
16 all sides of an issue.

17 Staff organized a meeting yesterday afternoon to
18 allow interested parties to provide feedback on the
19 Center's draft report and recommendations.

20 Representatives from the Legislature, Department
21 of Finance, State Controller's Office, Department of
22 Education, school districts, and cities and counties
23 attended the meeting. Generally, the participants who
24 spoke out supported the use of a collaborative process to
25 discuss mandate reform. The Center will revise the draft

1 report to incorporate all the additional information
2 received at that meeting and this hearing, and issue a
3 final report in time for the Commission's April hearing.

4 Staff concludes that the Commission has the
5 following options:

6 Option 1 is to adopt staff's findings and
7 conclusions. Specifically, using a collaborative process
8 is feasible. The process should address both education
9 and local agency mandates as it relates to mandate
10 determinations. However, funding mandates for local
11 agencies and school districts should be deliberated
12 separately.

13 Also, process issues like the focus of the
14 deliberations or the use of any agency's ideas as a
15 beginning point should be decided by the stakeholders.

16 Previously, staff recommended that the
17 collaborative process on mandate reform be completed and
18 a report issued by December 2006. However, staff with
19 the Center indicates that there is not enough time to
20 complete this process by December.

21 We understand that Assembly Member Laird
22 indicates that a February 2007 completion date is
23 feasible. Therefore, staff recommends that the a process
24 be completed by February 2007 to ensure adequate time for
25 legislative hearings and for a bill to proceed through

1 the Legislature during the 2007 legislative session.

2 Option 2 is to partially adopt staff's findings
3 and conclusions. This would mean that the Commission
4 agrees that a collaborative process is feasible but does
5 not necessarily agree with staff's other conclusions.

6 Option 3 is to reject staff's findings and
7 conclusions, which would mean that the Commission does
8 not agree to proceed with a collaborative process, and
9 will pursue other methods for completing mandate reform.

10 Staff recommendation is that the Commission
11 adopt Option 1. If the Commission adopts this option,
12 staff: Will work with the Department of
13 Finance and the Legislature to obtain funding for the
14 process.

15 Will select and contract with a neutral
16 facilitator to guide and manage the collaborative
17 process.

18 Will work with the Department of Finance, the
19 Legislature, and other stakeholders to encourage their
20 participation.

21 And will report to the Commission at each
22 hearing on the progress of their collaborative process.

23 Staff also recommends that the Center's final
24 report be amended to clarify that the Legislature's and
25 LAO's ideas for reform will be fully considered, that

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1 Legislative and LAO staff have encouraged us to
2 participate in the collaborative process, and that the
3 final report will be formally submitted to the
4 Legislature for their review and consideration.

5 Regardless of what action the Commission takes,
6 staff will report to the Legislature, including the
7 Senate Budget and Fiscal Review Committee, and Assembly
8 Budget Committee, of any actions taken to implement the
9 Center's report.

10 At this time I'd like to introduce Mr. David
11 Booher with the Center for Collaborative Policy. David
12 is one of the co-authors of the draft assessment report.
13 And he's here to answer any questions or concerns you
14 might have regarding their findings or recommendations.

15 CHAIR SHEEHAN: Thank you.

16 David, would you like to say anything?

17 MR. BOOHER: Actually, no, unless there are any
18 questions.

19 CHAIR SHEEHAN: Questions I have, are you still
20 interviewing some folks that you have not been able to
21 schedule?

22 MR. BOOHER: Yes, we are.

23 CHAIR SHEEHAN: Okay, so --

24 MR. BOOHER: Or some folks, we've interviewed
25 and we've needed --

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1 CHAIR SHEEHAN: Clarification to go back?

2 MR. BOOHER: That's correct.

3 CHAIR SHEEHAN: So what we have before us, we
4 know will change to integrate their comments?

5 MR. BOOHER: Right. We don't think the basic
6 underlying recommendations will change.

7 CHAIR SHEEHAN: Will add to ---

8 MR. BOOHER: That's right. And clarify some
9 things, like the participation, the LAO and the
10 legislative staff.

11 CHAIR SHEEHAN: Great, okay.

12 MEMBER SMITH: Thank you, Madam Chair.

13 The Controller just wanted to pass along a big
14 "thank you" to the staff and to the Center for their
15 excellent work. He's very excited about this process,
16 and urges the Commission to support it. And I don't know
17 if we need a motion, maybe the direction of the chair,
18 unless there's a disagreement.

19 CHAIR SHEEHAN: Yes. There's a couple of things
20 or a couple of comments I have just on some staff
21 recommendation.

22 Any other comments, though, from other
23 Commission members?

24 *(No audible response)*

25 CHAIR SHEEHAN: I guess I am a little bit

1 nervous about the date. You know, March seems a little
2 bit late for whooping it up.

3 Now, in the staff recommendation, though, you
4 had December. And I think maybe January, February may be
5 a better time, so that we can make sure that we cover all
6 that needs to be done. So that would be the one
7 observation I would have.

8 I agree, it's important to talk about both local
9 and education. And I think we should start out that way.
10 It may be at some point that we do either parallel tracks
11 or, you know, figure out something, if we sort of divide
12 at a certain point in time. But there is much
13 commonality in those, we know there are differences in
14 those. But I do think it's important if we're going to
15 move forward to try and address all of the issues. And
16 if at a certain point in time we have to divulge, then we
17 will. But at least going forward.

18 I do want to thank staff also, as well as the
19 Center. I think we've made great progress. I think in
20 terms of -- from where I sit as the chair wanting to
21 improve upon this process, I think it's sort of unanimous
22 that everyone agrees that there can be improvement on
23 this.

24 I don't think any side involved in this is
25 pleased with the current way it works; and we all agree

1 it needs to be improved.

2 I appreciate the support of the Legislature,
3 especially Mr. Laird and his staff who have also really
4 encouraged us to move forward.

5 I don't know if there are some members of the
6 audience that briefly want to comment or add anything
7 to this before we move forward. It is going to be a
8 collaborative process. We do want the input from the
9 affected parties. It's only through the input of the
10 affected parties that we're really going to get the best
11 product out of this process.

12 So at this time, if there's anyone from the
13 audience who wants to say anything, I would open up the
14 microphone.

15 This is not the beginning of the process.

16 MR. BURDICK: Is it okay to comment? I didn't
17 stand to be sworn in. This is just an informational
18 item; okay?

19 Allan Burdick on behalf of the CSAC SB 90
20 Service.

21 And I would just like to thank the Commission
22 for moving forward with this process and hopefully that
23 it continues on.

24 At the local level, both for CSAC and the
25 League, CSAC has designated Steve Keil, if this goes

1 forward, to be their primary contact and to organize the
2 county effort. And he has already prepared to initiate
3 efforts next week, if the Commission decides to move
4 forward with this process.

5 Today is the first day of the CSAC legislative
6 conference, and Steve cannot be here.

7 I don't think we have any representatives from
8 the League here today; but they have participated in this
9 process and urged the participation as well.

10 So I think you have the full support of CSAC and
11 the League of Cities. And what we look at is the neutral
12 facilitator process.

13 Thank you.

14 CHAIR SHEEHAN: Thank you.

15 I appreciate that because it is very important
16 to have both those organizations engaged in this process.

17 MR. KAYE: Good morning. Leonard Kaye, County
18 of Los Angeles.

19 We would like to, first of all, highly endorse
20 this effort, and to stress, and based upon my
21 conversations yesterday with Commission staff and at the
22 meetings and so forth, to emphasize that this process
23 include the diversity of folks that are actually involved
24 in the day-to-day activity for SB 90 reimbursement,
25 preparing these test claims, and so forth. And that

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1 means perhaps your idea of extending the longer time
2 frame might be better to allow fact-finding to identify
3 folks and to formally notify them of this process, give
4 them an opportunity to be heard and to participate.

5 And again, we appreciate your efforts here.

6 Thank you.

7 CHAIR SHEEHAN: Thank you.

8 MR. EVERROAD: Glen Everroad, City of Newport
9 Beach, and co-chair of the SB 90 Advisory Committee.

10 And I would just concur with Mr. Kaye's comments
11 that we think that we should spend the time to do this
12 properly. It is obviously broken. We need to include
13 all parties and the review of this process and take all
14 suggestions. And we appreciate very much the
15 Commission's efforts in this regard.

16 CHAIR SHEEHAN: Great.

17 Thanks.

18 Yes, go ahead.

19 MEMBER BLAKE: Well, it's just one comment.
20 I've only been on the Commission for about a week, and I
21 can see it needs to be streamlined and reformed, so I'm
22 glad to see that this process is continuing. That was
23 one of the first items in my binder here.

24 The second, just an observation, is that
25 probably getting this process started sooner than later

1 is better. It's an election year, and there's going to
2 be a huge shift in the Legislature, a lot of new members
3 coming in, in December. And they're not going to really
4 get to work until January. And it seems to me that the
5 sooner this process can get started with these new folks
6 and potentially changing around some of the executive
7 offices, there might be other individuals that need to
8 get integrated into the system.

9 Thanks.

10 MEMBER GLAAB: Yes, Madam Chair and Members, I
11 had an opportunity to attend the workshop. And I just
12 wanted to thank all the participants who were there. I
13 think all of your input was very well received. I think
14 certainly by this particular commissioner and also staff,
15 and, as Mr. Everroad suggested, he may think the system
16 is broken and it needs fixing. With that in mind, I
17 think that we can move forward as quickly as we can; but
18 taking into account the fact that we do want to get it
19 right, we do want to take all the appropriate time, but
20 also build in some flexibility.

21 If by common agreement, there's some
22 stipulations to be made by all parties, then certainly
23 move forward and move on to the ones that are a little
24 more contentious. But I think this is an excellent
25 process and you should be commended for the fine work

1 that you did and certainly Commission staff.

2 Thank you.

3 CHAIR SHEEHAN: Great.

4 Any other comments from commissioners?

5 *(No audible response)*

6 CHAIR SHEEHAN: Then I guess I would like us to
7 see if we could entertain a motion to get the sense of
8 the Commission about wanting to move forward.

9 I guess looking at the recommendation, Option 1,
10 the only proviso, as I say, is some of the dates in there
11 in terms of December '06 versus -- what I would say is
12 submitted to the Legislature no later than February 1st,
13 so that legislation could be introduced next session --
14 no, it's a two-year session next year. So if they could
15 introduce -- because he could always introduce a spot
16 bill, if we refine it, so there are ways to do it.

17 I don't know, staff, did you --

18 MS. HIGASHI: That was a modification that
19 Ms. Cruz made to the initial staff recommendation.

20 CHAIR SHEEHAN: Okay, all right. I must have an
21 old copy then.

22 MS. HIGASHI: Right. She changed it in her oral
23 report.

24 MS. CRUZ: In my script, yes.

25 CHAIR SHEEHAN: I heard her say it. Okay.

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1 MEMBER SMITH: Madam Chair, I'll move that
2 Recommendation 1, that we -- that the Commission support
3 the collaborative process and move full steam ahead.

4 CHAIR SHEEHAN: We have a motion --

5 MEMBER OLSEN: Second.

6 CHAIR SHEEHAN: -- and a second.

7 All those in favor, say "aye."

8 *(A chorus of "ayes" was heard.)*

9 CHAIR SHEEHAN: Any opposed?

10 *(No audible response)*

11 CHAIR SHEEHAN: Great. We are moving ahead.

12 MS. HIGASHI: Thank you very much.

13 This brings us to my report, Item 14.

14 Basically, we're in the budget process right
15 now. I think all of you are aware of that. Only a
16 couple of actions have been taken on items related to
17 mandates.

18 The Senate subcommittee approved reconsideration
19 direction on a couple of old test claim decisions. And
20 other than that, all of the items are being held open
21 pending the May revision.

22 And the budget committees are both interested in
23 knowing about the Commission's action on Item 12, and
24 interested in how we wish to proceed. And we'll be
25 working through the details for the fiscal committee

1 staff and the Department of Finance to figure out what
2 would be necessary to get the funding to support the
3 process.

4 CHAIR SHEEHAN: Yes. And we've had that
5 discussion with the director. And I know both of the
6 committees, we had agreed to get back to them after the
7 action today in terms of how we want to proceed, so --

8 MS. HIGASHI: Other news is AB 2652 is our
9 sponsored bill to reform the incorrect reduction claim
10 process. And language has been submitted to Leg.
11 Counsel. We have not seen it yet. But we will be
12 working through that with all of the stakeholders
13 involved in that process.

14 CHAIR SHEEHAN: Okay.

15 MS. HIGASHI: Our hearing agendas are presented
16 also in my report. And there is one for April. We'll
17 need to add the *Charter Schools* test claim to that one.

18 And also, we have a long list of cases that will
19 be heard either in May or July. And we have not been
20 specific with which hearing pending the completion of the
21 analyses and receipt of written comments.

22 Also, we have on the public agenda table a list
23 of scheduling of matters for the rest of the year, so
24 that for all of the claimants and their representatives,
25 this will give you a rough idea of how we are proceeding

1 on the test claims that are currently in the Commission's
2 caseload.

3 Are there any questions about any of these
4 items?

5 CHAIR SHEEHAN: Questions for Ms. Higashi?

6 *(No audible response)*

7 CHAIR SHEEHAN: Okay. So if I understand, our
8 budget is not yet closed? You're going to go back to the
9 budget committee after --

10 MS. HIGASHI: Our budget will be open for quite
11 a while, until at least the May revision. Because all of
12 the mandated appropriations for local agencies are
13 included under the Commission's budget item number. So
14 that is a significant appropriation.

15 CHAIR SHEEHAN: Okay. Any other questions?

16 Any other comments from the public before -- do
17 we need anything on closed session? Do we need to go in
18 closed session?

19 MS. HIGASHI: No.

20 CHAIR SHEEHAN: We do not?

21 Then would any members of the public like to
22 address the Commission at this time on any other agenda
23 items?

24 *(No audible response)*

25 CHAIR SHEEHAN: No?

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Then if not, we stand adjourned; and we'll see
you at the April meeting.

(Proceedings concluded at 11:53 a.m.)

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REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand on April 10, 2006.



Daniel P. Feldhaus
California CSR #6949
Registered Diplomat Reporter
Certified Realtime Reporter