REASSESSING THE STATE MANDATES PROBLEM IN CALIFORNIA

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REASSESSING THE STATE MANDATES PROBLEM
IN CALIFORNIA

A Thesis

by

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Department of Public Policy and Administration

Abstract

of

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This study describes the mandates process in California based on statutes, case law, and regulations. It examines various reports issued by the California Bureau of State Audits, the Legislative Analyst's Office, and the California Performance Review, and highlights the major problems surrounding mandates reform in California. To better understand the problem, this study also examines mandate provisions in other states with particular emphasis on a mandate study conducted in Minnesota.

This study concludes that the issues of high costs and process delays can be re-conceptualized as sub-problems stemming from a more fundamental problem that lies outside the mandates process -- with the system itself and with the relationship between state and local government. This study suggests a two-part approach for addressing the mandates problem in our state: lawmakers must first improve the system and the relationships, and then modify the specifics of the mandates process as needed. By practicing collaboration and delaying mandate effective dates, requiring mandate explanations, implementing pilot projects, and using sunset language, lawmakers can ensure an effective mandates system in California because the problems and concerns would be addressed *before* mandates are implemented and *before* the Commission on State Mandates' process for determining reimbursement even begins.

_______________________, Committee Chair
Mary Kirlin

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I hope that this study is useful to the Commission on State Mandates and its stakeholders.

With sincere gratitude,
Catherine M. Cruz
May 2005

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EXECUTIVE SUMMARY

In 2005, the existing system for reimbursing local agencies and school districts for the costs of state mandated local programs in California still is not the effective system that was intended by the Legislature in 1985. This study explores the problems and provides a comprehensive briefing of the mandates issue so that policymakers currently involved in the discourse can make better-informed decisions about mandates reform in California.

The discourse surrounding mandates reform in California began in 2001 after the Bureau of State Audits completed an audit of the *School Bus Safety II* program and found that the cost was over 48 times more than the Legislature anticipated. Since then, the discourse in California has focused only on specifics of the process, framing the following issues: 1) mandates are costing the state much more than expected, and 2) the process is never completed within the 12-month statutory timeline.

With regard to the high cost of mandates, current discourse suggests that the lack of information in legislation, the lack of state agency feedback, and the resultant incompleteness of analyses and cost estimates can be improved by encouraging more state agency participation in the process, requiring more State Controller claim audits, and improving the overall cost estimation process. Regarding process delays, current discourse suggests that flaws in the process timelines and the lack of resources can be overcome if the state provided additional resources in the form of funding or staffing, and required increased and consistent participation from affected state agencies so that the

Commission on State Mandates can complete the mandates process in a timelier manner.

There have been recent attempts to reform the existing mandates process in California, but they have not adequately addressed the mandates problem. Reform bills in 2004 focused on eliminating or modifying mandates to reduce immediate costs and tinkered with minor process requirements. They do nothing to control the cost of new mandates or help the Commission on State Mandates make determinations in a timelier fashion. Also, an approved ballot initiative required the state to either appropriate money to fund mandates within one year or suspend the mandate; however the initiative only applies to local agency claims, not school districts. By separating school districts from the requirement, the measure further complicates the mandates process.

Through an examination of mandate provisions in other states, this study finds that there is no apparent benefit between constitutional or statutory mandate provisions and there is no system model. Regardless of the type of system in place, whether upfront funding, reimbursement, etc., the states still confront variations of the mandates problem, especially as they relate to cost estimation and adequacy of funding. There are, however, various mandate mechanisms used by other states to address mandate concerns that may be useful for California.

A mandate study conducted in Minnesota uncovers a deeper problem with mandates. Minnesota has confronted similar problems as California, mainly those that relate to the lack of sufficient funding for state mandated programs. Minnesota's efforts to address mandate concerns date back to 1982 and are similar to California's recent efforts and the recommendations made by current discourse. However, the issues still persist. The significance of this Minnesota study is that the local governments' perspective of the issue was directly surveyed. Consequently, issues broader than process problems were revealed and policymakers were forced to look at a bigger picture. The study concludes that in order to ease the tension surrounding state mandates on local government, state and local officials must work together to improve relationships.

This conclusion implies that the issues of high costs and time delays in California actually stem from a more fundamental problem. California's current mandates process has resulted in an approximate $2 billion state debt to local governments, and the Legislature is not informed of such costs until an average of about five years after a program's implementation. The issues of high costs and process delays can be re-conceptualized as sub-problems stemming from a more fundamental problem that lies outside the mandates process – with the system itself and with the relationship between state and local government.

This study uses four criteria to evaluate options for addressing the mandates problem in California: 1) creates incentives to perform or consequences for inaction, 2) reduces overall uncertainty, 3) makes mandate costs more predictable, and 4) makes the Legislature aware of mandate costs earlier. The four options evaluated include:

Option 1: Require mandate explanations to address mandate concerns before they are adopted.

Option 2: Implement pilot projects, as necessary, to ensure that mandated programs serve their purpose.

Option 3: Delay effective dates to provide flexibility to local government.

Option 4: Use sunset language to force periodic reviews of mandated programs.

Options 1 and 2 make mandate costs more predictable and the Legislature aware of mandate costs earlier. Option 4 partially makes mandate costs more predictable. Options 2 and 4 reduce the state's uncertainty about the accuracy of reimbursement costs claimed by local government. None of the options address the need to create incentives to perform or consequences for inaction, and none fully address the need to reduce overall uncertainty surrounding mandate reimbursement and the accuracy of costs.

Unless the state resolves the budget deficit, local government uncertainty about reimbursement may not be relieved. However, the need to create incentives to perform or consequences for inaction, and the need to reduce the state's uncertainty surrounding the accuracy of costs can be addressed if both levels of government are willing to invest the time and effort to overcome the deep history and change the culture of distrust by working together. If the willingness is there, trust can be developed through the practice of collaboration, which may establish the context needed to create incentives to perform and to reduce uncertainty. Collaboration can be practiced on a case-by-case basis to address any problems or concerns with state mandates at the outset, or once the Legislature enacts a state mandate and before local governments implement the mandate.

Practicing collaboration would create an environment conducive to trust-building. Through active participation in collective problem-solving, trust can be developed and achieved, eventually leading to reduced uncertainty and restored confidence in the mandates system. Once confidence is restored, there will be a natural incentive for government officials to perform and behave efficiently and effectively. Collaboration also results in a shared meaning of the Legislature's intent, which should result in a clear understanding of the activities necessary to carry out a mandate. Further, because collaboration should address all problems and concerns with a mandate before the Commission's 12-month process begins, the Commission would be able to make timelier determinations resulting in the Legislature being aware of mandate costs sooner. However, collaboration will only be successful if high-level state leadership is visibly driving the effort, showing a commitment to improve working relationships.

Based on the information and analysis presented, this study suggests a two-part approach for addressing the mandates problem in our state. Lawmakers must first improve the system and the relationships, and then modify the process as needed. The first step in effective reform is to address the fundamental flaws of the system and of the relationships. To improve the system and relationships, disincentives must be transformed into incentives to perform, and trust between state and local government must be developed to restore confidence in the mandates system. Practicing collaboration coupled with delaying the effective date of mandates meets these challenges. Therefore, to improve the system and relationships, state and local government should practice collaboration before mandate implementation and the state should delay the effective date of mandates to provide time for collaboration. Furthermore, the state should encourage stakeholder participation in the process by creating additional incentives to perform or consequences for inaction.

Once the fundamentals of the system and relationships are sound, then the mandates process can be modified and improved. At least three options would be worthwhile for California to consider because they can make mandate costs more predictable and inform the Legislature of mandate costs earlier. Moreover, these options would not receive overwhelming political opposition. Therefore, to improve the overall process, the state should adopt the use of mandate explanations, pilot projects, and sunset language because they can make mandate costs more predictable and provide mandate cost information to the Legislature earlier. These recommendations for modifying and improving the mandates process also address the process issues identified by current discourse.

It is essential that policymakers address the fundamental flaws of the mandates system and the relationships before modifying the overall process. Tinkering with the process before understanding the underlying problem only results in temporary, band-aid solutions. Eventually the problem will resurface, as evidenced by Minnesota's long history of addressing the mandates problem. Thus, policymakers must take the time to understand and address underlying problems in order to achieve real reform.

Additionally, government officials must be reminded that they are ultimately accountable to the people of California. The public is not concerned about the power struggles between state and local government. They are only concerned with how well government carries out its duties. The Legislature declared in Government Code section 17500 that "the existing system for reimbursing local agencies and school districts for the costs of state mandated local programs has not provided for the effective determination of the state's responsibilities under…the California Constitution.…" Therefore, the problem must be addressed, starting with the system and the relationships. The recommendations in this study can ensure an effective mandates system in California because the problems and concerns would be addressed *before* mandates are implemented and *before* the Commission's process for determining reimbursement even begins.

CHAPTER 1.
INTRODUCTION TO THE CALIFORNIA STATE MANDATES PROCESS

In 2001, the California Legislature learned that a law they passed in 1997, known as *School Bus Safety II*, would cost the state over $290 million for the first six years of the program, an estimated annual cost of over $48 million. In response to a fatal accident involving a student crossing the street after getting off a school bus, the Legislature enacted this and several other requirements between 1994 and 1997 to improve the safety of students riding school buses. However, the Legislature did not expect the mandate to exceed $1 million in annual costs (California State Auditor, 2002).

Upon learning the actual cost of the program, the Legislature prohibited any payments to school districts until the California Bureau of State Audits completed an audit of the reimbursement claims. The audit report, *School Bus Safety II: State Law Intended to Make School Bus Transportation Safer Is Costing More Than Expected* (2002), highlighted problems with the mandates process and initiated the discourse about mandates reform in California.

A mandate, as used in this study, is a provision in legislation, statute, or regulation in which one level of government imposes a duty on a subordinate level of government. In the case of *School Bus Safety II*, the state required school districts to implement certain activities to make school bus transportation safer. The state requires local governments to implement specific programs and services for various reasons. For instance, state mandates ensure government services for all the state's citizens, regulate local actions having a negative consequence outside the local jurisdiction, and advance state interests in local affairs. However, although state law creates local governments, thereby making them subject to state authority, the state must still consider all the implications of state mandated programs. Contrary to the positive aspects, state mandates can also limit local autonomy, confuse lines of responsibility, be inefficient, and strain local budgets (Vos, Meyerhoff, & Grossback, 2000).

This study focuses on programs and services mandated upon local government entities by the state of California. In 1985, the Legislature enacted Government Code section 17500, which specifically states:

> The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under…the California Constitution.… Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 of Article XIII B of the California Constitution.[1]

In 2005, the existing system for reimbursing local agencies and school districts for the costs of state mandated local programs still is not the effective system that was intended by the Legislature in 1985. Therefore, this study explores the problems and provides a comprehensive briefing of the mandates issue so that policymakers currently involved in the discourse can make better-informed decisions about mandates reform in California. I will describe the issues as framed by current discourse, look at how other states handle mandate concerns, and suggest another perspective of the problem. Finally, I evaluate various options for reforming the existing system and make specific recommendations.

[1] Added by Statutes of 1984, chapter 1459 and amended by Statutes of 2004, chapter 890.

The remainder of this chapter provides background information about California's existing mandates process and illustrates the issues as framed by current discourse. Chapter two details the mandates reform discourse in California, discusses the issues as framed by the discourse, highlights the recommendations of various stakeholders, and details recent efforts at reform in California. Chapter three discusses how other states handle mandate concerns, examines a mandate study done in the state of Minnesota, and suggests a different perspective of the mandates problem. Chapter four offers specific criteria for evaluating reform options and analyzes some possibilities. Finally, chapter five provides conclusive remarks and specific recommendations.

Background

Mandate Reimbursement in California is a Constitutional Provision

California reimburses its local governments for certain costs associated with state mandated programs. The Property Tax Relief Act of 1972 limited the ability of local agencies and school districts to levy taxes so the Legislature declared its intent to provide reimbursement for the costs of new programs mandated upon local government entities. At the time, the State Board of Control determined what mandated programs required state reimbursement.

In 1979 voters approved Proposition 4, which superseded the Property Tax Relief Act of 1972 by adding article XIII B to the California Constitution. Article XIII B imposes appropriation limits on the tax proceeds of both state and local governments. Section 6 of article XIII B requires that whenever the Legislature or any state agency mandates "a new program or higher level of service" on local government, the state must provide a subvention of funds to reimburse the associated costs. Exempt from this requirement are those mandates that are requested by an affected local agency, that define a new crime or change an existing definition of a crime, or that were enacted before January 1, 1975. The Legislature enacted Government Code sections 17500-17630 to implement section 6 of article XIII B, effective January 1, 1985.

The Commission on State Mandates is a Quasi-Judicial Agency

In 1985, the Legislature also established the quasi-judicial Commission on State Mandates (Commission) to succeed the State Board of Control and to institute a more effective system for reimbursing local agencies and school districts for the costs of state mandated programs. Accordingly, one of the Commission's primary statutory responsibilities is to adjudicate claims alleging the existence of a reimbursable state mandated program (Commission, 2003).

Effective January 1, 1997, the Commission composition consisted of seven members – four state officials (director of the Department of Finance, state controller, state treasurer, director of the Office of Planning and Research); two local government officials (either a city council member, a county or city and county board of supervisors member, or a school board member); and a public member with experience in public finance. The local officials and public member are appointed by the Governor and are subject to Senate confirmation. Each appointed member serves a four-year term that is subject to renewal. The Commission meets once every other month in the state Capitol to hear and determine claims.

<u>The Mandate Determination and Reimbursement Process is Complex</u>

California's local agencies and school districts provide valuable programs and services for its citizens, including education, law enforcement, fire protection, and road maintenance. Many mandated programs exist and new ones are passed each year; however, not all of them are considered reimbursable by the state. According to the California Supreme Court,[2] a mandate is reimbursable by the state if it meets the following three criteria:

1) it is a new program or higher level of service,
2) that is unique to local government, and
3) that results in increased costs.

The mandate determination and reimbursement process is initiated when the Legislature, Governor, or a state agency imposes a new program or higher level of service on local government by enacting a statute or imposing an executive order that results in increased costs. If the statute or executive order does not contain sufficient funding, then affected local governments may seek reimbursement by filing a test claim with the Commission. Government Code section 17553 requires that the mandates process be completed within 12 months after receipt of a test claim, though up to a six-month extension of time is permitted. This process is illustrated in Figure 1 below.

If the Commission approves a test claim, it has determined that the alleged statute or executive order constitutes a reimbursable state mandated program. According to the timeline in the Commission's regulations (see Table 1),[3] the Commission should issue a

[2] *San Diego Unifies School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859,878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.
[3] California Code of Regulations, title 2, section 1181 et seq.

Statement of Decision 190 days after receipt of a test claim filing. The next step requires the Commission to develop parameters and guidelines, which describe the specific activities and costs that are eligible for reimbursement. The timeline states that parameters and guidelines should be adopted by the 303rd day. Following the Commission's adoption of parameters and guidelines, the State Controller's Office issues claiming forms and instructions for the claimants. At this point, eligible claimants can file initial reimbursement claims. Based on the claiming data, Commission staff develops a statewide cost estimate for eligible costs, which according to the timeline should be done by day 365. Once the Commission adopts an estimated cost of the program, it is reported to the Legislature. These estimates form the basis for the local government claims bill, which appropriates funds to the State Controller to pay reimbursement claims. The State Budget Act should include annual appropriations to fund ongoing mandates.

FIGURE 1. The Mandate Determination and Reimbursement Process

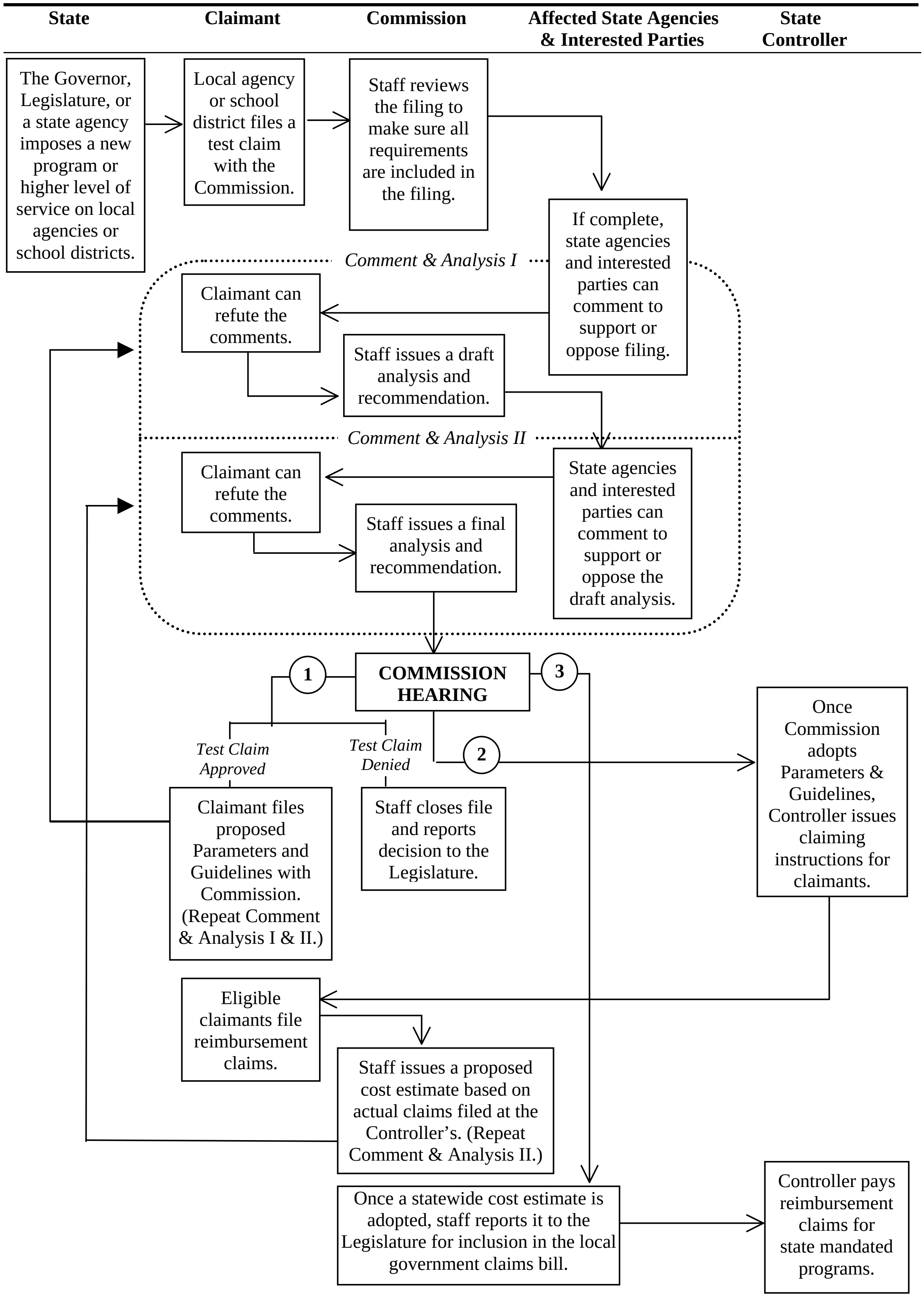


TABLE 1. Process Timeline in Commission's Regulations

PARTY/ACTIVITIES	DAY NUMBER
CLAIMANT files test claim with the commission.	0
COMMISSION staff begins counting days on the first day after receipt.	1
COMMISSION staff reviews test claim to determine if complete.	by 10
COMMISSION staff sends test claim to state agencies for review.	by 10
COMMISSION staff convenes informal conference with parties, if necessary.	by 30
STATE AGENCIES file comments on test claim.	by 40
CLAIMANT submits rebuttal.	by 70
COMMISSION staff completes draft analysis of test claim and serves on parties.	by 100
PARTIES submit comments on staff's draft analysis of test claim.	by 130
COMMISSION staff completes analysis and issues Proposed Statement of Decision.	by 160
COMMISSION hears test claim and adopts Proposed Statement of Decision.	by 180
COMMISSION staff issues Statement of Decision and serves on parties.	by 190
PARAMETERS AND GUIDELINES	
CLAIMANT submits proposed Parameters and Guidelines.	by 220
STATE AGENCIES AND PARTIES may file comments.	by 235
CLAIMANT rebuts comments.	by 250
COMMISSION staff completes draft Parameters and Guidelines and serves on parties.	by 265
PARTIES submit comments on staff's draft Parameters and Guidelines.	by 275
COMMISSION staff completes Parameters and Guidelines and serves on parties.	by 279
COMMISSION conducts hearing and adopts Parameters and Guidelines.	by 293
COMMISSION staff issues adopted Parameters and Guidelines.	by 303
STATEWIDE COST ESTIMATE	
COMMISSION staff develops Statewide Cost Estimate.	by 335
ALL PARTIES comment on Statewide Cost Estimate.	by 345
COMMISSION staff revises Statewide Cost Estimate.	by 350
COMMISSION conducts hearing and adopts Statewide Cost Estimate.	by 365

A Hypothetical Mandate: Illustrating the Mandates Problem

To illustrate the mandates problem as framed by current discourse, imagine that a scientific study has proven that children who drink a pint of orange juice every morning will result in them successfully graduating from high school. Scientists found that graduation rates increase to 100 percent if pure orange juice is consumed during the kindergarten year. In response to this scientific breakthrough, the California Legislature enacts a law effective in the 2005-2006 school year that requires all school districts to provide a pint of pure orange juice to all first-time kindergartners every morning for the entire school year. The Legislature expects that this mandate will improve high school graduation rates to 100 percent by the 2017-2018 school year, when the kindergarteners from the 2005-2006 school year are seniors in high school. The Legislature believes that this mandate will not exceed $1 million per year statewide.

Providing pure orange juice to kindergartners is a new activity for school districts. The legislation is vague, resulting in districts implementing the program in different ways. Some districts chose to train their cafeteria staff on how to squeeze fresh oranges, while others developed policies for procuring pure orange juice. Most districts updated their policies and procedures and developed a system for tracking the students that received orange juice during their kindergarten year. The districts incurred costs doing what they thought were necessary activities to comply with the law using existing resources.

At the end of the 2005-2006 school year, the Happy Valley Unified School District decides, on behalf of all school districts, to initiate the process for determining whether the state will reimburse districts for implementing the Orange Juice for Kindergartners program. The process, which by law states should be completed within 12 to 18 months after receipt of a test claim, is not completed until 2011, at which time the Legislature finds out that the state is now liable $24 million for the first eight years of the program.

There are Two Main Issues – Mandate Costs and Process Delays

This example highlights the following issues, as framed by current discourse:

- *Mandates are costing the state much more than expected*. While the Legislature only expected the Orange Juice for Kindergartners program to cost $1 million each year, the statewide cost estimate revealed that it would cost the state three times that amount.
- *The process is never completed within the statutory timeline*. The process for determining whether the mandate was reimbursable took approximately five years to complete, delaying the Legislature's awareness of the true cost of the program.

Mandates Identified as One of Seven Major Issues Facing the Legislature

In its report on the 2004-2005 budget, the Legislative Analyst's Office identified mandates as one of seven major issues facing the Legislature. Current discourse states that California's system for reimbursing local governments for the additional costs of implementing new state mandated programs has been ineffective because it has resulted in inadequately funded mandates. Since 2001, the Legislature has not passed a local government claims bill, which appropriates funds to the State Controller to pay reimbursement claims filed by local government. Instead the Legislature has deferred mandate reimbursement, which means local governments are still required to carry out the program, but are promised reimbursement at some future time. Therefore, as local governments bear the initial costs of mandated programs, the state's liability continues to escalate.

The State Controller's "Schedule of Appropriation Transfer and Deficiency Report," issued in May 2005, indicates that the total of unpaid claims for mandates adopted since 1975 through about August 2004 equals over $2 billion, including accrued interest through June 30, 2005 (State Controller's Office, 2005). Government Code section 17561.5 requires state payments to include accrued interest at the Pooled Money Investment Account rate if payments are not made within the specified period of time. Table 2 below shows the breakdown of the state's liability to local government entities; debt that is not included in the currently reported $9 billion state budget deficit.

TABLE 2. State Liability to Local Government
(Including Accrued Interest through June 30, 2005)

Total Unpaid Claims for Local Agencies	$ 1,196,295,784
Total Unpaid Claims for School Districts and Community Colleges	809,398,570
TOTAL STATE LIABILITY	**$ 2,005,694,354**

The issues of high mandate costs and lengthy process delays were emphasized in various reports about the mandates process. The next chapter further discusses the current discourse surrounding mandates reform in California.

CHAPTER 2.
THE MANDATES REFORM DISCOURSE IN CALIFORNIA

Compared to subjects such as education, homeland security, and social security, state mandates as a general subject is absent in most conversations about public policy and the state of affairs. However, ever since the *School Bus Safety II* audit report was released in 2002, the political environment changed, reflecting increased interest in the mandates arena and discussion concerning mandates reform. This chapter explains how the current discourse evolved, describes in detail the issues identified by current discourse, presents the recommendations of key stakeholders as evidenced in various reports, and details recent efforts at mandates reform in California.

Discourse Background

Three Key Events Led to the Evolution of the Mandates Reform Discourse

The discourse surrounding mandates reform in California evolved primarily because of the state's fiscal austerity. But three key events formed the basis of this discourse, as listed in Table 3.

TABLE 3. Key Events Leading to Mandates Reform Discourse

Year	Event
2001	Audit of *School Bus Safety II* program
2002	Creation of the Assembly Special Committee on State Mandates
2003	Audit of the *Peace Officers Procedural Bill of Rights* and *Animal Adoption* programs

As previously indicated, the first event was in 2001when the Legislature directed the California Bureau of State Audits to complete an audit of the *School Bus Safety II* program because the cost was over 48 times more than anticipated. The results of the audit prompted the creation of the Assembly Special Committee on State Mandates in 2002. Former Assembly Speaker Herb Wesson assembled this bi-partisan committee to systematically review the state mandates law and closely assess what the state requires of local governments. The following year, the Legislature directed the state auditor to complete yet another audit due to higher than anticipated costs – this time for the *Peace Officers Procedural Bill of Rights* program and the *Animal Adoption* program.

The Discourse Cross Cuts Across Different Levels and Branches of Government, and Centers around a Single Theme

Stakeholders taking part in the mandates reform discourse represent state agencies, local agencies, as well as the legislative branch of government. This widespread involvement emphasizes the mounting concerns about mandates issues. The stakeholders include the Commission, the California Bureau of State Audits (BSA), the State Controller's Office (SCO), the Department of Finance (DOF), and the California Performance Review (CPR) to represent the state; local government representatives and associations; and the Legislative Analyst's Office (LAO) and the Assembly Special Committee on State Mandates (ASCSM) for the legislative branch. Although every stakeholder has a different approach on how reform should be achieved, the discourse revolves around a single theme – that the *process* is flawed.

The Discourse Focuses on Specifics of the Process

The discourse has only focused on issues related to high mandate costs and lengthy processing times. Below is a discussion of each issue, which details how the discourse frames the problems and provides the recommendations of stakeholders who have written reports about and suggested reforms to the existing mandates process in California.

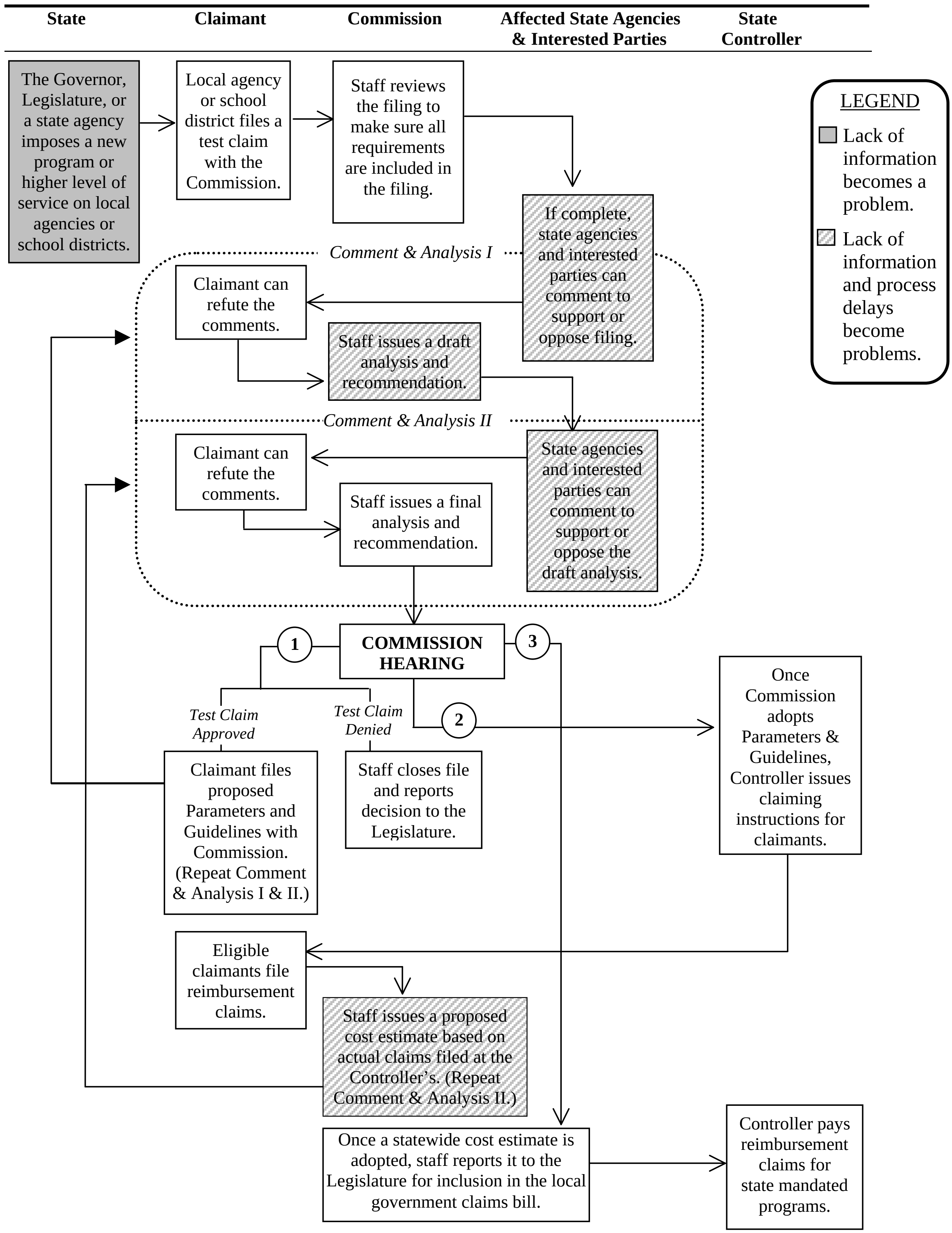
Issue 1: Mandates Cost the State More than Expected

Framing the Problem

Current discourse states that high mandate costs stem from incomplete information and feedback from key stakeholders in the mandates process. Usually, information is lacking in: 1) the legislation, 2) state agency feedback, and subsequently, 3) the Commission staff's analyses and cost estimates.

Information is a key element in the mandates process because it provides knowledge about what is unknown. Figure 2 below shows five points in the process where the lack of information becomes a problem, resulting in high reimbursement claims filed by local government entities.

FIGURE 2. Problem Points in the Current Mandates Process



First, lack of information can be a problem when the Legislature imposes a mandate upon local government entities by passing ambiguous laws. For example, a law may state, “School districts shall provide orange juice to all kindergarteners every morning for the entire school year.” However, if this is all the legislation says, it lacks information, or guidance, that school districts need to implement the program. Thus, districts are left to decide how best to implement the program within their existing resources. This lack of information in the legislation results in high mandate costs because some districts may implement the program in a way that is most convenient rather than the most cost-efficient.

On the contrary, because districts vary in size, composition, and resources, the Legislature is sometimes purposely vague to allow flexibility in program implementation. Accordingly, the quasi-judicial Commission is in place to make determinations by interpreting laws using the rules of statutory construction. The Commission counsels must do a careful legal analysis of the alleged test claim statutes, consistent with how courts would analyze these matters in the event that they are litigated. Therefore, to carry out this task, the Commission staff needs information from those directly involved with the programs.

To obtain information, the Commission invites affected state agencies and interested parties to comment and provide feedback at various points throughout the determination process, as shown in the Comment and Analysis phases in Figure 2. The specific parties that are included in a mailing list depend on the mandate in question. For instance, the California Department of Education receives mailings on programs such as

School Bus Safety and *High School Exit Exam*, whereas the Department of Motor Vehicles receives mailings regarding the *Administrative License Suspension* mandate. These departments are considered experts in the field because they administer these programs. Moreover, the Department of Finance and the State Controller's Office are on the mailing lists for every claim because they are key stakeholders in the mandates process. Although the initial mailing lists include only state agencies and parties that may be affected by the alleged mandate as determined by Commission staff, anyone can request to be included on a list at any time.

The problem that occurs is that affected state agencies do not actively and consistently participate in the process. Without their perspective on relevant issues, the process is futile in determining what activities are reasonable for reimbursement and in projecting accurate statewide costs. This lack of state agency feedback can result in incomplete and inaccurate Commission staff analyses and proposed cost estimates.

Recommendations of Current Discourse

At least three different entities have made specific recommendations for reforming the mandates process to alleviate the high cost of mandates. While each entity examined the problem from a different perspective, the reports still reveal three common recommendations, as shown in Table 4 below.

TABLE 4. Common Recommendations to Alleviate the High Cost of Mandates

✓	Affected state agencies need to provide more feedback in order to better define what costs/activities are or are not reimbursable.
✓	The State Controller needs to audit more reimbursement claims.
✓	The state needs to improve the overall mandate cost estimation process.

Following is a discussion of the different perspectives:

A Fiscal Perspective: California Bureau of State Audits. The BSA's mission is to promote "the efficient and effective management of public funds and programs by providing to citizens and government independent, objective, accurate, and timely evaluations of state and local governments' activities" (California State Auditor Website, www.bsa.ca.gov). Hence, concerned about the high cost of certain state mandated programs, the Legislature directed the BSA to conduct program audits of the *School Bus Safety II* program in 2001, and the *Peace Officers Procedural Bill of Rights* and *Animal Adoption* programs in 2003.

The auditors specifically found that the reimbursable activities were loosely defined in the parameters and guidelines, permitting local governments to file large reimbursement claims that included costs outside the scope of the Legislature's intent. Therefore, the BSA recommended that the parameters and guidelines more clearly define the reimbursable activities and that those activities reflect legislative intent. To accomplish this, the BSA stated that the Commission must ensure that all relevant state departments and legislative fiscal committees are provided the opportunity to provide feedback on test claims and proposed parameters and guidelines. Additionally, BSA indicated that in order to accurately identify mandate costs, "structural reforms are needed to afford the SCO an opportunity to perform a field review of initial claims for new mandates early enough to identify potential problems" (California State Auditor, 2003).

A Policy Perspective: The Legislative Analyst's Office. The LAO serves as the "eyes and ears" for the Legislature to ensure that the executive branch is implementing legislative policy in a cost-efficient and effective manner. Identifying mandates as one of the top issues facing the Legislature in 2004, the LAO identified a number of issues and proposed several recommendations to alleviate the problem of high mandate costs.

In its report, *Mandates: Overview of Process and Issues* (2003), the LAO indicated that mandate costs were rising rapidly. Thus, the LAO proposed different methods for reducing future state mandate costs, including the increase of state oversight and auditing of reimbursement claims (LAO, 2003). The LAO issued another report, *Key Elements of Mandate Reform – Major Recommendations Proposed* (2004), which consolidated some of the major reform proposals that key stakeholders supported, including claimant representative organizations, the SCO, BSA, and DOF. Specific recommendations included improving the reimbursement claiming system, tightening the definition of mandated costs, improving the State Controller's auditing process, and creating a cost estimating unit to assist during legislative development (LAO, 2004).

An Outsider Perspective: The California Performance Review. The CPR, though not involved in the mandates process, also made suggestions to improve the current mandates process after representatives of its General Government team met with the Commission's executive director and assistant executive director. Governor Schwarzenegger created the CPR in 2004 to formulate and recommend practical changes to government agencies, programs, and operations in order to reduce total costs of operations, increase productivity, improve services, and make government more responsible and accountable to the public.

CPR's report, *The Report of the California Performance Review – Government for the People for a Change* (2004), found that the state's mandates process is "cumbersome, inefficient, and costly to the state." Therefore, CPR recommended that the process be reformed to make it more cost-efficient, predictable, and fair for both state and local government. CPR specifically recommended that claimants use standardized costs units when claiming reimbursement, that state agencies review pending draft legislation early in the process with a focus on mandate impacts, and that state agencies also review and provide feedback into the parameters and guidelines when a mandate is determined to be reimbursable to better define activities (CPR, 2004).

<u>Issue 2: The Process is Never Completed Within the Statutory Timeline</u>

Framing the Problem

Although the Commission is required to submit reports to the Legislature at least twice a year to inform them of the number of mandates found, the reasons for reimbursing those mandates, and the estimated costs, the Legislature is not informed in a timely manner because of lengthy delays in the mandate determination process. Current discourse states that the problem of process delays is a result of: 1) a flawed process timeline, and 2) a lack of resources.

Government Code section 17553, subdivision (a)(2), states: "Ensure that a statewide cost estimate is adopted within 12 months after receipt of a test claim, when a determination is made by the commission that a mandate exists. This deadline may be extended for up to six months upon the request of either the claimant or the commission." Table 1 in the first chapter showed the suggested timeline in the Commission's regulations for timely processing test claims within 12 months. However, according to an examination of the 13 programs for which a statewide cost estimate was adopted between January 1 and December 31, 2004, the average time it takes for the Commission to process a test claim is approximately 59 months (see Table 5 below).

Although the processing time has improved for the newer test claims, the Commission has never met the 12-month processing period. Figure 2 above showed four points in the process where delays occur – during the Comment and Analysis phases and during the cost estimation process.

Delays in the process typically occur during the Comment and Analysis phases of the process. When the Commission invites state agencies and interested parties to comment on a filing, analysis, or recommendation, they are usually given 15 to 30 days. However, section 1183.01, subdivision (c), of the Commission's regulations allows any party to request an extension of time to file responses, opposition, recommendations, rebuttals, or comments with the Commission. As long as the requestor shows "good cause," as defined in section 1181.1, the Commission's executive director approves the extension request for a specified period of time, usually 30 days.

TABLE 5. Actual Completion Dates for Programs Determined in 2004

Process Step	Commission Test Claim Number												
	98TC01	**98TC05**	**98TC10**	**98TC16**	**98TC24**	**98TC26**	**98TC27**	**99TC03**	**99TC04**	**99TC06**	**99TC12**	**00TC05**	**00TC08**
Test Claim Filed	7/10/98	8/17/98	12/14/98	6/11/99	6/30/99	6/29/99	6/30/99	8/24/99	10/25/99	3/3/00	6/26/00	12/15/00	3/15/01
Latest Comments	3/3/99	-	4/28/99	3/3/00	3/22/02	9/10/99	8/17/99	7/31/00	11/22/99	4/7/00	8/14/00	2/26/01	4/19/01
Claimant Rebuttal	-	-	5/20/99	4/27/00	1/6/00	-	-	8/7/00	-	4/20/00	9/7/00	3/22/01	4/23/01
Draft Commission Analysis Issued	3/16/01	6/1/00	4/2/02	6/4/02	7/30/02	5/3/02	3/28/02	9/10/02	8/20/01	8/29/02	6/4/02	12/6/02	3/4/03
Latest Comments	4/24/01	7/5/00	6/6/02	6/27/02	-	5/24/02	4/23/02	10/2/02	-	9/11/02	7/25/02	12/30/02	-
Final Commission Analysis Issued	6/18/01	7/12/00	7/16/02	7/16/02	9/13/02	7/29/02	5/10/02	10/11/02	10/10/01	10/11/02	8/19/02, 9/13/02	1/13/03	4/11/03
Commission Adopts Decision	8/23/01	8/24/00	8/29/02	8/29/02	10/24/02	10/24/02	6/27/02	11/21/02	10/25/01	11/21/02	10/24/02	2/27/03	4/24/03
Proposed Ps & Gs (Parameters & Guidelines) Filed	9/5/02	10/25/00	9/23/02	9/19/02, amended 5/1/03	12/3/02	11/14/02	7/22/02	12/2/02	12/4/01, amended 7/23/02	11/21/02	11/1/02	4/4/04	4/25/03
Latest Comments	9/27/02	1/19/01	11/12/02	4/30/03	1/3/03	12/6/02	8/20/02	1/7/03	8/14/02	12/26/02	7/8/03	7/31/03	7/21/03
Claimant Rebuttal	11/5/02	-	-	4/30/03	-	-	11/22/02	-	8/13/02	1/17/03	-	-	6/26/03
Draft Commission Analysis Issued	4/29/03	8/27/02, 6/6/03	4/17/03	6/6/03	6/11/03	6/6/03	6/13/03	8/5/03, 10/7/03	2/14/03	8/5/03	10/7/03	10/15/03	10/6/03
Latest Comments	-	7/8/03	-	7/25/03	6/24/03	6/23/03	6/26/03	9/4/03	-	8/22/03	11/3/03	10/29/03	10/27/03
Final Commission Analysis Issued	5/16/03	2/6/03, 7/14/03	5/16/03	11/26/03	7/10/03	7/10/03	7/10/03	9/4/03, 11/10/03	2/14/03	9/2/03	11/12/03	11/10/03	11/7/03
Commission adopts Ps & Gs	5/29/03	7/31/03	5/29/03	12/2/03	7/31/03	7/31/03	7/31/03	12/2/03	2/27/03	9/25/03	12/2/03	12/2/03	12/2/03
Draft SCE (statewide cost estimate) issued	8/24/04	4/6/04	6/17/04	8/9/04	6/14/04	6/15/04	4/5/04	8/17/04	2/5/04	6/17/04	7/30/04	8/19/04	8/9/04
Latest Comments	-	-	-	9/27/04	-	-	-	-	-	-	-	-	-
Final SCE issued	11/22/04	5/6/04	7/6/04	10/18/04	7/6/04	7/6/04	5/11/04	9/3/04	3/1/04	7/6/04	9/9/04	9/9/04	9/3/04
Commission adopts SCE	12/9/04	5/27/04	7/29/04	12/9/04	7/29/04	7/29/04	5/27/04	9/30/04	3/25/04	7/29/04	9/30/04	9/30/04	9/30/04
TOTAL MONTHS	**77**	**69**	**69**	**66**	**61**	**61**	**59**	**61**	**53**	**53**	**51**	**45**	**43**

Average Time of Completion = 768/13 = 59 months

While the Government Code states that the process must be completed within 18 months, allowing for up to a six-month extension, the Commission's regulations places no limit on the number of extensions or length of extensions that a party can request. In fact, the Commission's regulations provide that this time period be tolled such that the process clock stops. Therefore, the process timeline is flawed because it is not aligned with the Government Code.

Furthermore, the timeline in the Commission's regulations only provide 30 days for development and adoption of a statewide cost estimate. The California state auditors correctly noted that this timeline does not include the Commission's practice for developing statewide cost estimates, which involves waiting for the claimants to file actual reimbursement claims. After the Commission adopts the parameters and guidelines for a program, the State Controller has 60 days to issue its claiming instructions. Once issued, claimants have 120 days to file their initial reimbursement claims. This totals 180 days that are not reflected in the process timeline.

Another source of process delays is the lack of resources. The Commission, like many state agencies, is understaffed. Thus, even if parties timely filed all comments and did not request extensions of time, the test claim file may sit for a period of time until a Commission staff member is available to analyze the matter. As of January 10, 2005, the Commission had 105 test claims pending hearing and determination. According to a Commission budget change proposal (2004), the Commission has averaged 19 test claim determinations over the past six years. At this rate, it would take over five years to complete the backlog alone. That does not include any new test claim filings or other workload. To justify its request for seven additional staff, the Commission stated:

> In 2004, the Legislature passed five statutes that require the Commission to reconsider 11 prior decisions by January 1, 2006. The Legislature also passed four statutes that narrow or make optional 13 mandates that will require the Commission to amend [parameters and guidelines.] The Commission must complete the new workload prior to eliminating the existing backlog. Without additional resources, the time it takes to process the current caseload will increase to approximately *seven* years. (Commission, 2004)

To date, only four additional staff has been approved to help reduce the backlog.

Recommendations of Current Discourse

Even though the BSA and LAO reports represent different perspectives, they still reveal two common recommendations to reduce delays in the mandates process, as shown in Table 6 below.

TABLE 6. Common Recommendations to Reduce Process Delays

✓	The Commission needs to improve the time it takes to carry out the mandates process.
✓	The state needs to provide additional resources in the form of funding or staffing, and require increased and more consistent participation from affected state agencies.

Following is a discussion of the different perspectives:

A Fiscal Perspective: California Bureau of State Audits. The BSA pointed out that significant delays in the determination of potential costs of mandated programs is an issue because the average completion time of a determination is about five years. The report for the *School Bus Safety II* audit stated:

> If the Legislature was informed sooner, it could have acted promptly to resolve the issues of concern and to prevent districts from incurring

> unnecessary costs. However, the Commission's practice for developing the statewide cost estimate involves waiting for claimants to file actual reimbursement claims, a process not reflected in the statutory timeline for completing the determination (California State Auditor, 2002).

The BSA suggested that the Commission carry out its process for deciding test claims, approving parameters and guidelines, and developing the statewide cost estimate for mandates in as timely a manner as possible (California State Auditor, 2002).

Other Stakeholders: A Policy and Administrative Perspective. Other stakeholders agree that the process needs to be completed in a timelier manner. The LAO's report, *Key Elements of Mandate Reform – Major Recommendations Proposed* (2004), suggests that process delays be addressed in order to improve legislative oversight. The LAO and SCO suggest that the Commission be funded to meet its statutory deadlines. Similarly, claimant representatives propose that state interest penalties be imposed two years after the effective date of a mandate to encourage adequate staffing of state agencies involved in the mandates process (LAO, 2004).

Therefore, with regard to the high cost of mandates, current discourse suggests that the lack of information in legislation, the lack of state agency feedback, and the resultant incompleteness of Commission analyses and cost estimates can be improved by encouraging more state agency participation, requiring more State Controller claim audits, and improving the overall cost estimation process. Regarding process delays, current discourse suggests that flaws in the process timelines and the lack of resources can be overcome if the state provided additional resources in the form of funding or staffing, and required increased and consistent participation from affected state agencies so that the Commission can complete the mandates process in a timelier manner.

Recent Reform Efforts Have Not Directly Addressed the Mandates Problem

While there have been recent attempts to reform the existing mandates process in California, they have not adequately addressed the mandates problem. Reform bills in 2004 focused on eliminating or modifying mandates to reduce immediate costs and tinkered with the Commission's test claim content requirements and other processes. Also, an approved ballot initiative required the state to either appropriate money to fund mandates within one year or suspend the mandate; however the initiative only applies to local agency claims, not school districts. Consequently, school district reimbursement claims may continue to be deferred. Following is a discussion of these recent efforts to improve mandates in California.

<u>Legislative Reform Efforts Focus on Reducing Immediate Costs</u>

Legislative reform efforts last year only concentrated on existing mandates. As stated earlier in this chapter, the results of the first Bureau of State Audits report prompted the creation of the Assembly Special Committee on State Mandates (ASCSM) in 2002. Specifically, ASCSM evaluated the Governor's budget proposals to determine whether specific mandates should be repealed or suspended, and also examined the mandates process to propose reforms.

In 2004, ASCSM sponsored six bills to repeal mandates that have been suspended for several years, to modify other existing mandates, and to propose process reforms. The Governor signed five of those bills into law between July and September 2004.

However, while the modification and elimination of a number of state mandated programs can, in effect, streamline government and reduce future costs for both state and local governments, none of them do anything to control the cost of new mandates or help the Commission make determinations in a timelier fashion. Thus, new mandates may still result in high costs, and when it is determined to have exceeded legislative intent, the problem would be addressed at that time. Because the attempts focus simply on reducing immediate costs, the Legislature forces itself to be reactive. The bills and their effect on the mandates process are detailed in Table 7 below.

A Ballot Initiative May Create Unintended Consequences

Stemming from Governor Schwarzenegger's agreement with local officials in 2004, he proposed a constitutional amendment that would significantly reduce state authority over major local government revenue sources. California voters approved the measure, known as Proposition 1A, at the November 2, 2004 general election. The measure affects the state mandates process because it added a provision to the Constitution that requires the state, beginning with the 2005-2006 fiscal year, to either fund a mandate or it is suspended for the fiscal year. While this change creates an incentive for legislators to actually fund mandates, it does not apply to those mandates that affect school districts. Of the 142 mandates included in the Governor's 2005-2006 Budget, 54 of them are education (K-14) mandates. Proposition 1A may result in the unintended consequence of continued deferment of school district mandate reimbursement claims in favor of local agency claims. Therefore, the measure further complicates the mandates process by separating school districts from the requirement.

TABLE 7. 2004 Reform Bills and Their Effect on the Mandates Process

Bill Number	Description	Effect
AB 2851 (Laird)	• Suspended three programs for school districts. • Repealed five programs. • Required the Commission to reconsider four programs to determine whether they continue to be reimbursable in light of recent federal statutes and federal and state court decisions.	This bill helps to streamline government and save taxpayer money by eliminating and revising specific programs.
AB 2853 (Laird)	• Made five programs optional. • Narrowed the requirements of one program.	This bill gives local agencies flexibility in the administration of financial and statutory reporting requirements by making programs optional.
AB 2854 (Nunez and Laird)	• Made one program related to elections optional.	This bill eliminates an unnecessary requirement on local governments.
AB 2855 (Nunez and Laird)	• Repealed three programs. • Made two programs optional. • Narrowed or clarified the provisions of four programs. • Required the Commission to reconsider two big education-related programs - *School Accountability Report Cards* and *Standardized Testing and Reporting*. • Limited what the Commission could determine a reimbursable mandate.	This bill makes certain school programs no longer reimbursable by the state. According to the Assembly Appropriations Committee, this bill is estimated to save over $6 million in Proposition 98 money. Also, it reduces the number of future reimbursable mandates by limiting what the Commission could determine as reimbursable.
AB 2856 (Nunez and Laird)	• Made several modifications to the state mandates process related to initial test claim filings. • Required the Commission to adopt a reasonable reimbursement methodology in parameters and guidelines such that accuracy and simplicity are balanced. • Codified in statute a portion of the Commission’s regulations. • Abolished the State Mandates Claims Fund.	This bill modifies some of the Commission’s processes.

Daunting Fiscal Challenges have Hindered Mandates Reform

In California today, government is faced with daunting fiscal challenges. According to the Public Policy Institute of California (2005), state revenues dropped by over $13 billion in fiscal year 2001-2002 because of sharp stock market declines and the national economic recession. Subsequently, California has faced large operating shortfalls. In May 2003, the gap between projected revenues and expenditures was an estimated $38.2 billion. While the last three enacted budgets have attempted to close the existing budget gap, many of the solutions were temporary in nature (Baldassare, 2005). For 2005-2006, the Governor proposes $109 billion in total spending, a 4.4 percent increase from the current year. The proposed budget includes $9.1 billion in proposed savings and borrowing, otherwise the state would face a shortfall of $8.6 billion in the budget year. According to 70 percent of state residents, the looming budget deficit is a big problem for the people of California (Baldassare, 2005).

Given the fiscal challenges surrounding California's political landscape, lawmakers have been unable to directly tackle the mandates problem in light of the widespread involvement of various government entities. At least three major challenges have captured our leaders' focus since fiscal year 2001-2002 when state revenues saw a sharp decline. The immediate challenge facing the Governor and Legislature today is how to address the current budget gap between state spending and revenues. Another significant challenge is deciding which among myriad programs should be funded, considering the limited amount of state funds. Currently, education, health, and social services dominate spending, accounting for over 80 percent of the General Fund. This leaves less than 20 percent for other General Fund expenses such as corrections; environmental protection; resources; business, transportation & housing; general government; labor and workforce development; and state and consumer services. Finally, the state also faces rising debt payments as a share of state revenues. It is estimated that by fiscal year 2008-2009, debt repayments will consume about 7.5 percent of the General Fund (PPIC, 2005). These more urgent fiscal issues have hindered mandates reform because the mandates problem will take some time to address and lawmakers must focus on other priorities.

The mandates problem is not isolated to the state of California. Many states mandate programs but do not provide sufficient funding for implementation. Therefore, to gain a better understanding of the problem, the next chapter examines how other states frame the problem and how they have dealt with the issues.

CHAPTER 3.
MANDATES IN THE OTHER STATES

In an effort to better understand the mandates problem, this chapter examines mandate provisions in other states and how other states address mandate concerns. Reviewing the various mandate mechanisms used by other states uncovers a variety of options for California. The chapter concludes with a reframing of the mandates problem in California in light of a study conducted in the state of Minnesota.

There is No Apparent Benefit Between Constitutional or Statutory Mandate Provisions and There is No System Model

Provisions regarding funding for state mandates started to appear in state constitutions and statutes in the late 1970s to early 1980s. The subject has been a contentious issue between state and local governments ever since. As of January 2005, there were at least 31 states other than California that have either constitutional or statutory provisions regarding funding or reimbursement for state mandated programs. While constitutional provisions can offer more protection against unfunded state mandates than statutory provisions, "[r]esearch suggests that general statutory or constitutional provisions that prohibit unfunded state mandates have seldom had the desired effect" (Vos, Meyerhoff, & Grossback, 2000).

Current mandate provisions are summarized in Table 8 below. Of the 32 states, at least 15 require that an appropriation be made before a mandate can be implemented, and at least 8 states provide reimbursement following mandate implementation. The benefit of the former is that local governments receive state funding before fully implementing a state program. In the latter, local governments are reimbursed some time after full implementation of a state program. Other provisions require voters to approve mandates, while other states require the Legislature to approve mandates with a two-thirds majority vote. Many states have some kind of body in place to review mandates, and a few states have more innovative provisions, such as Wisconsin's mandate waiver process.

TABLE 8. State Mandate Provisions by State, 2005

State	Source of Authority	Type of System			Notes
		Funding Upfront	Reimbursement	Other	
Alabama	Constitution	X			Mandates must be approved by affected jurisdictions.
Alaska	Constitution			X	Mandates must be approved by voters in affected jurisdictions.
California	Constitution		X		Local agency mandates are suspended if an appropriation is not made within one year.
Colorado	Statute		X		Mandates become optional if not funded.
Connecticut	Statute		X		
Florida	Constitution	X			Mandates must pass by a 2/3 vote of Legislature.
Hawaii	Constitution			X	State provides its share in the cost of new mandated programs.
Idaho	Statute			X	The legislative council reviews mandates and state programs.
Illinois	Statute		X		
Indiana	Statute			X	Administrative rules oversight committee reviews mandates that have a fiscal impact of more than $500,000.
Iowa	Statute	X			Mandates become optional if not funded.
Louisiana	Constitution	X			Mandates must be approved by affected jurisdictions.
Maine	Constitution	X			Mandates must pass by a 2/3 vote of Legislature.
Massachusetts	Constitution	X			Mandates must be approved by voters in affected jurisdictions.
Michigan	Constitution	X			
Minnesota	Statute		X		
Missouri	Constitution	X			
Montana	Statute			X	State provides a specific means to finance the new activity or service.
Nevada	Statute			X	State authorizes a specified source to pay for the expense.
New Hampshire	Constitution	X			Mandates must be approved by affected jurisdictions.
New Jersey	Constitution	X			Mandates will cease to be mandatory in effect and expire if not funded.

New Mexico	Constitution			X	State provides funding or a means of funding to pay the cost of performing the mandate.
Oregon	Constitution	X			
Rhode Island	Statute		X		
South Carolina	Statute	X			Mandates must be approved by 2/3 of the General Assembly members.
South Dakota	Statute	X			State can also provide a means of funding to pay the cost of performing the mandate.
Tennessee	Constitution			X	General Assembly must provide the state's share in cost.
Texas	Statute		X		
Utah	Statute	X			Funding may be provided for the first two years. Legislative Interim Committee reviews new programs.
Virginia	Statute			X	Governor may temporarily suspend any mandate if there is a finding that the local government entity faces fiscal stress.
Washington	Statute		X		
Wisconsin	Statute	X			Political subdivisions can request waivers (good for 4 years) from a state mandate not related to health and safety.

Source: Online search of state constitutions and statutes. <http://www.prairienet.org/~scruffy/f.htm>

Regardless of the type of system in place, the states still confront variations of the mandates problem, especially as they relate to estimating costs. Consider the upfront funding system. While it may make more sense than a reimbursement system because the state estimates the cost of a program before requiring local governments to carry it out, the cost estimations occur without exact knowledge about how the program will actually be implemented by local governments. Alternatively, while mandate reimbursement implies that a mandate will be fully funded, this has not always been the case.

California's process is one of the nation's first constitutionally established mandate reimbursement systems. The system seemed to be effective in its earlier years when the state had a healthy fiscal climate. However, as the state experienced consecutive budget deficits, beginning in fiscal year 2001-2002, local governments were no longer being reimbursed for state mandated programs. As previously stated, since 2001, the Legislature has not passed a local government claims bill to appropriate funds to the State Controller to pay reimbursement claims, resulting in a state debt of almost $2 billion as of November 2004 (State Controller's Office, 2004).

There are a Variety of Mandate Mechanisms for California to Consider

There are various mandate mechanisms used by other states to address mandate concerns, and thus, there are a variety of options for California to consider. Some of the mechanisms used by other states include: mandate explanations, pilot projects, delayed effective dates, sunset language, fiscal impact notes, local government or voter approval, and two-thirds vote of the Legislature.

Four Mandate Mechanisms that Might Work for California

The following discussion highlights mandate mechanisms that may be useful for California.

- *Mandate Explanations*. Prepared by the author of a bill, mandate explanations inform policymakers of the rationale behind proposed mandates on local governments. According to the Minnesota Office of the Legislative Auditor, mandate explanations must describe the following:
    - The policy goals that are being sought,
    - Performance standards that allow local governments flexibility,
    - How each standard governs staffing and other administrative aspects,
    - Revenue sources,
    - Reasons why financial or voluntary compliance would not work,

  - Efforts to gain the input of affected agencies regarding their capacity to implement the proposed mandate, and
  - Efforts to involve local governments in developing the proposed mandate.

  Mandate explanations are designed to address concerns before mandates are adopted. In Minnesota, the chair of the committee that hears a bill must request the author to prepare mandate explanations. Although the tool was enacted in Minnesota in 1997, it has not been utilized because they are optional (Vos, Meyerhoff, & Grossback, 2000).

- *Pilot Projects.* Other states also implement pilot projects. The benefit of this tool is that it allows the state to test programs in selected local governments before mandating them statewide. Pilot projects help identify a proposed program's unworkable provisions, undesired effects, and fiscal implications so that they can be addressed or eliminated before full statewide implementation. This tool has been used in Minnesota and Virginia with successful results (Vos, Meyerhoff, & Grossback, 2000).
- *Delayed Effective Dates.* Delaying the effective dates of mandates can provide flexibility to local governments because they are given additional time, usually one year, to prepare the resources necessary to carry out a program if the mandate is not accompanied by state funding. This mechanism is used by states such as Connecticut and Minnesota (Vos, Meyerhoff, & Grossback, 2000).

- *Sunset Language.* A number of states also utilize sunset language, which provides that a provision of law is automatically repealed on a specific date unless legislators reenact the law. This tool forces periodic reviews of individual mandates, thus addressing the concern that mandates outlive their usefulness (Vos, Meyerhoff, & Grossback, 2000).

Other Mechanisms that Might Not Alleviate Problems in California

Some states also have mandate mechanisms that might not alleviate the problems in California. For instance, fiscal impact notes are used by states with an upfront funding system to estimate the cost of mandates before they are passed by the Legislature. But according to Janet M. Kelly (1997), the process is politically motivated:

> Competing interest groups urge the use of their own data in analyses; local government advocacy groups offer worst-case scenarios to preparing agencies in an effort to inflate mandate costs; and sponsoring legislators' staff provide analysts with ridiculously low cost estimates festooned with unlikely "offsetting-savings" scenarios.

Therefore, it may be difficult to obtain accurate mandate cost estimates through fiscal noting.

Moreover, some states including Alaska and New Hampshire require that affected local governments or their citizens formally approve an unfunded mandate before they become effective. Other states, like Florida and Maine, require unfunded mandates on local government to pass by a two-thirds vote of their Legislature. Some argue that these provisions protect local governments from unfunded mandates, but they fail to proactively address problems that can occur once mandates are implemented, such as unanticipated high costs. More importantly, in the case of voter-approved mandates, it would discourage government from being accountable for any adverse implications that would likely result.

A Mandate Study in Minnesota Uncovers a Deeper Problem

> For many years, local government officials in Minnesota have expressed concerns about the Legislature and state agencies mandating them to comply with state laws and rules without providing additional funding. In addition, they have said that state-imposed requirements and restrictions, regardless of the funding connected with them, have often hindered the cost-effective delivery of services at the local level. (Vos, Meyerhoff, & Grossback, 2000)

This section discusses a mandate study done in Minnesota, a state that has confronted similar problems as California. The main problem in Minnesota relates to the lack of sufficient funding for state mandated programs, which create difficulties for local governments. The state has attempted to address mandate concerns as early as 1982. Minnesota's past efforts to address concerns are similar to California's recent efforts and the recommendations made by current discourse. They include eliminating or modifying various mandates, creating several task forces or bodies to review state mandates, revising the definition of mandates, and tinkering with the fiscal noting or cost estimation process. Though these efforts date back to 1982, the issues still persist.

In June 1999, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate state mandates on local governments. The Office of the Legislative Auditor issued it report in January 2000. The report, *State Mandates on Local Governments* (2000), highlighted six major findings:

1) There are various ways to define a mandate; therefore, people may mean very different things when they talk about "the mandate problem."

2) Most local officials have specific mandates they dislike, but some also think that "the mandate problem" should be addressed broadly because it results from the state not treating local governments as partners.
3) Most local government officials say that inadequate funding for mandates along with the fiscal constraints set by the Legislature make it difficult for them to provide mandated services and still address local priorities.
4) Most local officials think that state-imposed requirements on local governments are appropriate if at least partially funded.
5) Local officials say that the cumulative impact of state requirements is more detrimental to local operations than specific requirements.
6) Over the past 15 years, Minnesota has established entities and procedures to address state-local relations and mandate concerns. Some have been repealed and those that remain are used infrequently or not at all.

The staff of the Minnesota Legislative Auditor recommended that state and local officials make greater use of the tools currently available to address individual mandate concerns and collaborate on ways to improve the relationship between the state and local government (Vos, Meyerhoff, & Grossback, 2000).

The significance of this Minnesota study is that the survey directly sought the local governments' perspective of the issue. The Office of the Legislative Auditor surveyed local government officials from counties, cities, and towns throughout its state. Of the 654 surveys mailed, they had an overall response rate of 69 percent. The survey questions were designed to obtain opinions on state mandates in general and to identify specific mandates that help illustrate the concerns of local governments. The respondents were asked to answer the questions from the perspective of their specific jurisdiction based on their professional experience. Consequently, issues broader than process problems were revealed and policymakers were forced to look at a bigger picture.

Because issues still persist in Minnesota, despite the state's attempts to address specifics of the process, the study concludes that "[u]ntil state and local officials work together to improve state-local relationships, tension surrounding state mandates on local governments will likely continue unabated" (Vos, Meyerhoff, & Grossback, 2000). This conclusion implies that the issues of high costs and time delays in California actually stem from a more fundamental problem that relates to the relationship between state and local government in our own state. Therefore, in light of this deeper problem, it seems more apparent that any proposed solutions to improve the accuracy of cost estimations or the timeliness of mandate determinations in California will fail to make the system as a whole more efficient and effective until the system itself is fundamentally sound.

Reframing the Mandates Problem in California

California's current mandates process has resulted in an approximate $2 billion state debt to local governments, and the Legislature is not informed of such costs until an average of about five years after a program's implementation. The issues of high costs and process delays can be re-conceptualized as sub-problems stemming from a more fundamental problem that lies outside the mandates process – with the system itself and with the relationship between state and local government.

The first fundamental problem is that there are no incentives in place to encourage either state or local government to carry out their duties effectively and efficiently. In fact, the process is plump with disincentives because there are no strong penalties for inaction and no strict enforcement of the timeline. For instance, affected state agencies do not actively and consistently participate in the process because participation requires a significant amount of time to review comments, respond to allegations, and testify at public hearings. The Commission's regulations permit inaction by state agencies because there are no limits on the number of requests that can be submitted to extend the period of time for filing written comments; however, it would also be a disincentive to the Commission to limit the submission of comments because they would not have the information necessary to make informed recommendations and determinations. Even more, if the state were to enforce the 12-month timeline, the result may likely be more reimbursement claims to pay. The disincentive for local governments is the lack of sufficient state funding for mandated programs, which raises the issue of accountability and responsibility for adverse implications.

Secondly, the relationships are fundamentally flawed because there is distrust between state and local government. Distrust impedes working relationships and results in uncertainty. For local governments, there is uncertainty around when, or if, reimbursement will occur; and for the state, there is uncertainty around the accuracy of costs claimed. This uncertainty ultimately results in a failure of government to act in the best interest of citizens because if the state does not adequately fund programs, local government officials will neither have the money necessary nor the desire to implement the program in the way initially intended so that citizens actually realize benefits.

The next chapter offers criteria for evaluating various options for addressing the mandates problem in California and analyzes some of the options to consider.

CHAPTER 4.
ADDRESSING THE MANDATES PROBLEM IN CALIFORNIA

This chapter addresses the question of how to address the mandates problem in California. I will offer specific criteria for evaluating various options for reform and will use them to analyze some options to consider.

Four Criteria for Evaluating California's Options

In evaluating various options for addressing the mandates problem in California, I will use four criteria, as detailed below:

1) *Creates incentives to perform or consequences for inaction.* Creating incentives to perform or consequences for inaction is a key to improving the mandates system. Incentives or consequences give people motivation or a reason to perform. Currently, the system has no real incentives in place to encourage either state or local government to perform efficiently or effectively. Although one consequence for inaction is that the state must pay accrued interest to local governments when reimbursement is not made within a specified period of time, the penalty is not significant enough to promote timely decisions or active participation in the process. The incentives and/or consequences must be significant enough to effect the desired behavior.

2) *Reduces overall uncertainty.* Reducing overall uncertainty will restore confidence in the system. Currently, local governments are uncertain when, or even if, the costs they incur in implementing state mandates will be reimbursed by the state. On the other hand, the state is uncertain whether local governments are

claiming accurate costs. While both levels of government have valid reasons for not trusting the other, ultimately, the uncertainty leads to a failure of government in general to act in the best interest of the citizens.

3) *Makes mandate costs more predictable.* For mandate costs to be more predictable, the intent of the Legislature must be clear so that local governments understand what activities are necessary to implement. Currently, the State Controller's Office can reduce mandate reimbursement claims if the claimed costs are determined to be unnecessary, excessive, or non-reimbursable. If the policy goals are clear, however, local governments would not have to incur unnecessary costs and they would not be implementing activities that exceed the scope of the mandate. Accordingly, the State Controller's Office would not be reducing as many reimbursement claims during their audits.
4) *Makes the Legislature aware of mandate costs earlier.* Reducing the time it takes to inform the Legislature of mandate costs is important for the effective oversight of state mandated programs. The current average of five years before the Legislature is notified of a program's cost cannot be accepted as the norm.

Analyzing Options for Addressing the Mandates Problem

This section analyzes the following options that other states currently use to address the mandates problem: 1) requiring mandate explanations, 2) implementing pilot projects, 3) delaying mandate effective dates, and 4) using sunset language.

<u>Option 1: Require mandate explanations to address mandate concerns before they are adopted.</u>

Mandate explanations, as described in chapter three, are designed to address concerns before mandates are adopted. In Minnesota, mandate explanations are optional; but in California, they should be required to accompany a bill as it moves through the legislative process because they serve to inform policymakers of the rationale behind proposed mandates on local governments. Mandate explanations should clearly describe the policy goals that are being sought and involve feedback from affected local government and state agencies. Minnesota requires other specific information such as revenue sources and performance standards that allow local government flexibility, but California should evaluate what information it should require in order to better inform its policymakers.

Projecting Outcomes

Mandate explanations meet at least two of the four criteria presented at the beginning of this chapter (see Table 9 below). By making clear the policy goals being sought through the program, there will be less room for misinterpretation of legislative intent. Therefore, mandate costs should be more predictable. Additionally, because mandate explanations address mandate concerns at the forefront rather than after the fact, the Commission's 12-month process could be timely completed and the Legislature would be informed of mandate costs sooner.

While mandate explanations can make costs more predictable and the Legislature aware of costs sooner, they do not necessarily create incentives to perform or consequences for inaction. They also cannot reduce overall uncertainty such that confidence in the mandates system is restored.

TABLE 9. Evaluating Mandate Explanations

Criteria	Evaluation
Creates incentives to perform or consequences for inaction	
Reduces overall uncertainty	
Makes mandate costs more predictable	✓
Makes the Legislature aware of mandate costs earlier	✓

<u>Option 2: Implement pilot projects, as necessary, to ensure that mandated programs serve their purpose.</u>

Pilot projects require that programs be tested in selected jurisdictions before mandating them statewide. As a result, the state can identify a proposed program's unworkable provisions, undesired effects, and fiscal implications, and address or eliminate them before full statewide implementation. Pilot projects would ensure that mandated programs are properly implemented to serve their purpose, resulting in the intended benefits for citizens.

Projecting Outcomes

Pilot projects meet at least two of the four criteria presented at the beginning of this chapter (see Table 10 below). Eliminating the unworkable provisions, undesired effects, and fiscal implications of a program before it is implemented statewide allows the state to ensure that the program does only what the Legislature intends. In turn, costs are predictable, the Legislature can receive cost information sooner, and there is no uncertainty for the state about what costs local governments should be claiming. On the other hand, local governments are still uncertain as to whether and when reimbursement will be provided, and pilot projects do not necessarily create incentives to perform or consequences for inaction.

TABLE 10. Evaluating Pilot Projects

Criteria	Evaluation
Creates incentives to perform or consequences for inaction	
Reduces overall uncertainty	partial
Makes mandate costs more predictable	✓
Makes the Legislature aware of mandate costs earlier	✓

<u>Option 3: Delay effective dates to provide flexibility to local governments.</u>

The third option is delaying mandate effective dates. This option is designed to provide flexibility to local governments. In Minnesota, local governments are given additional time, usually one year, to prepare the resources necessary to carry out a program if the mandate is not accompanied by state funding. Delaying effective dates would also allow local governments to spread the cost of initial implementation over a longer period of time. However, this option does not do much in the way of making costs more predictable or notifying the Legislature of costs sooner. Thus, delaying effective dates alone does not fully meet any of the four criteria; rather, it presumes that the state will continue to make local governments bear the initial costs of mandate implementation.

Option 4: Use sunset language to force periodic reviews of mandated programs.

The fourth option, sunset language, provides that a provision of law is automatically repealed on a specific date unless legislators reenact the law. This option would force the state to periodically review individual mandates to address the concern that mandates outlive their usefulness.

Projecting Outcomes

The use of sunset language partially meets at least two of the four criteria presented at the beginning of this chapter (see Table 11 below). Because the life of a mandate is limited to a specific period of time, unless reenacted by the Legislature, costs become somewhat more predictable, presuming that initial costs are accurate. This option would require the state to review mandates to make sure they are working as intended and that they still serve a purpose in light of changes in law, and thus, it reduces the state's uncertainty about accuracy of costs. However, sunset provisions do not create incentives to perform or consequences for inaction, reduce local government uncertainty about reimbursement, or provide the Legislature with cost information earlier.

TABLE 11. Evaluating Sunset Language

Criteria	Evaluation
Creates incentives to perform or consequences for inaction	
Reduces overall uncertainty	partial
Makes mandate costs more predictable	partial
Makes the Legislature aware of mandate costs earlier	

Political Considerations

The political acceptability of a proposal must also be considered in evaluating options. If an option faces the risk of too much opposition or too little support, then it may not be feasible and should be reevaluated. This chapter analyzed the following four options for addressing the mandates problem in California:

Option 1: Require mandate explanations to address mandate concerns before they are adopted.

Option 2: Implement pilot projects, as necessary, to ensure that mandated programs serve their purpose.

Option 3: Delay effective dates to provide flexibility to local government.

Option 4: Use sunset language to force periodic reviews of mandated programs.

As to the first option, requiring mandate explanations should be politically acceptable as they are designed to provide the Legislature with more information for better oversight of state mandated programs. Similarly, option four, or sunset language, would pass the political acceptability test as it requires the state to review mandates to make sure they are working as intended and that they still serve a purpose in light of changes in law. On the other hand, pilot projects under option two might meet some political opposition from those local governments that are selected to test programs, while delaying effective dates under option three might meet detractors at the state level.

Summary of the Four Options

Table 12 below shows a side-by-side comparison of the four options analyzed against the four criteria.

TABLE 12. Comparing the Four Options

Criteria	Options			
	1	2	3	4
Creates incentives to perform or consequences for inaction				
Reduces overall uncertainty		partial		partial
Makes mandate costs more predictable	✓	✓		partial
Makes the Legislature aware of mandate costs earlier	✓	✓		

According to the foregoing analysis, none of the options address the need to create incentives to perform or consequences for inaction, and none fully address the need to reduce overall uncertainty surrounding mandate reimbursement and the accuracy of costs.

Local governments' uncertainty about mandate reimbursement became an issue when the state experienced consecutive budget deficits, beginning in fiscal year 2001-2002. Because of the need to reduce spending, the state deferred mandate reimbursement to local government. When California's fiscal climate was healthy, however, local governments were being reimbursed, but several years after the costs were initially incurred because the Commission's process always took more than 12 months to complete. Therefore, unless the state resolves the budget deficit, local government uncertainty about mandate reimbursement may not be relieved.

On the other hand, the need to create incentives to perform or consequences for inaction, and the need to reduce the state's uncertainty surrounding the accuracy of costs can be addressed. As concluded from the Minnesota study, the fundamental problem with mandates lies deeper than the specifics of the process. The options that have been presented here address specifics of the process. While they may make mandate costs more predictable and the Legislature more aware, they do not address the more fundamental problems with the mandates system and the relationship between state and local government.

Practicing Collaboration May Establish the Context Needed to Create Incentives to Perform and to Reduce Uncertainty

Creating incentives to perform or consequences for inaction, and reducing uncertainty around accuracy of costs can address the fundamental problems with the mandates system and the relationship between state and local government. However, to accomplish these outcomes, policymakers must create an environment that is conducive.

To understand the relationship between state and local government, the origin of the distrust must be examined. The sour relationship between state and local government comes from a long history and culture of distrust that arguably begins with the passage of Proposition 13 in June 1978. Because of soaring real estate values and property tax bills, California voters overwhelmingly approved Proposition 13, which set the property tax rate at one percent of assessed value. Moreover, values are only allowed to increase by the rate of inflation, up to two percent each year. Other than that, property could only be revalued upon a change of ownership.

Before Proposition 13, local governments were free to establish their own separate property tax rates and received full proceeds of the tax. In the event of a budget shortfall, counties simply increased the property tax rate, passing the costs on to taxpayers. The tax rate in California before Proposition 13 reached as high as four percent of a property's market value (Huber, 2004). Under Proposition 13, however, local governments experienced a loss in revenue that amounted to billions of dollars each year. The state also became responsible for allocating the property tax among various local governments, limiting local governments' ability to raise revenues from the property tax (Huber, 2004). Consequently, Proposition 13 reduced the property tax base and reduced local fiscal autonomy. Because local government budgets are already diminished, the relationship between state and local government was eventually scarred as the state continued to dip into local government budgets during times of fiscal hardship.

Examining the history and culture between state and local government helps us understand the root cause of the distrust. But the problem can be corrected if both levels of government are willing to invest the time and effort to overcome the deep history and change the culture by working together. If the willingness is there, trust can be developed through the practice of collaboration, which may establish the context needed to create incentives to perform and to reduce uncertainty. Collaboration can be practiced on a case-by-case basis to address any problems or concerns with state mandates at the outset, or once the Legislature enacts a state mandate and before local governments implement the mandate.

According to the Center for Collaborative Policy, a joint program of California State University, Sacramento, and the McGeorge School of Law, University of the Pacific, "[c]ollaborative policy making is a process whereby one or more public agencies craft a solution to a policy issue using consensus-driven dialogue with diverse parties who will be affected by the solution or who can help to implement it." (http://www.csus.edu/ccp/collaborative/ #whatiscollaborative)

Collaboration is a tool that can be used given the right conditions. It is not appropriate for every organization, every problem, or every situation because specific conditions are necessary to initiate the process and specific conditions are also necessary to assure "authentic dialogue," which is the process of finding and developing shared meaning among participants. If the conditions are met, however, collaboration results in more effective, innovative, and lasting solutions to complex policy problems.

The Center for Collaborative Policy has identified conditions to determine whether a collaborative process is appropriate to a policy controversy and whether a collaborative process is feasible to initiate. The following discusses six conditions and why I believe that collaboration is an appropriate tool for addressing mandate concerns in California:

1) *The policy controversy is not an issue of basic rights or values.* Mandates are not an issue of basic constitutional rights or values. Rather, the issue is complex and affects multiple, even competing, interests. Collaboration requires dialogue in order to find and develop shared meaning among participants – in the case of mandates, participants would be developing a shared meaning of the Legislature's

intent with a specific mandate. In developing this shared meaning, the dialogue would have to involve the questioning of assumptions and of the status quo, thus forcing the participants to look at the bigger picture.

2) *All stakeholders are represented and are willing to participate.* Participants in a collaborative effort must ensure that all stakeholders are represented. For mandates, there should be representatives from affected local governments, state agencies, legislative staff, as well as interested parties. The exclusion of any stakeholder, even those considered weak, can result in an agreement that will fail to appear legitimate, thus creating potential opposition.

3) *A balance of power exists among the stakeholders.* A balance of power among the stakeholders is important to ensure that no one interest dominates the dialogue and that all are heard and respected. To ensure this balance, collaborative efforts usually involve an outside facilitator. However, this condition may be the most difficult to satisfy because the current stakeholders in the mandates process are all government entities that have different interests. While this condition refers to ensuring a neutral bargaining table, it also presents a problem because in reality, the state has authority over local government, and unlike local government, has its own independent sources of revenue. Accordingly, the balance of power coming to the table is skewed against local government. In light of this, collaboration will only be successful if high-level state leadership is visibly driving the effort, showing a commitment to improve working relationships.

4) *There are potential areas for agreement and external pressures to reach agreement.* Potential areas for agreement and external pressures to reach agreement, combined with having a balance of power, can be incentives for stakeholders to participate in the dialogue and to work toward arriving at possible resolutions. Potential areas for agreement with mandates include the specific activities and costs that should be reimbursed by the state, and external pressures to reach agreement may come from the Legislature.
5) *A realistic timeline is laid out for completion*. Effective collaboration requires a sufficient amount of time to discuss and reflect upon the different discourses. If collaboration is practiced prior to local government implementation of a mandated program, the state can provide time for the effort by delaying the effective date of the mandate (discussed in option three above). As previously indicated, delaying mandate effective dates alone cannot accomplish any of the four criteria; however, if coupled with practicing collaboration, it can help create the context for creating incentives and reducing uncertainty. Participants involved in the effort can discuss what timeline is realistic.
6) *Sufficient resources and funding are available to support the process*. Resources are available, but need to be mobilized for this specific purpose.

Assuming these six conditions are present to initiate a collaborative process, certain other conditions must also be maintained in the process to assure authentic dialogue. First, the stakeholders must establish ground rules. These rules are necessary to ensure that all are heard and respected, that everyone understands their role and purpose, and that there is a common understanding of the problem. Second, there must be upfront exploration of the stakeholders' interests, and therefore, the negotiations must be interest-based rather than position-based. Finally, the process must be transparent – there should be transparency of decision-making as well as transparency of products. This is important because the stakeholders need to be clear about how the decisions will be made and the decisions must also reflect the outcome of stakeholder discussions.

Practicing collaboration would create an environment conducive to trust-building between state and local government. Through active participation in collective problem-solving, trust can be developed and achieved, eventually leading to reduced uncertainty and restored confidence in the mandates system. Once confidence is restored, there will be a natural incentive for government officials to perform and behave efficiently and effectively. Collaboration also results in a shared meaning of the Legislature's intent, which should result in a clear understanding of the activities necessary to carry out a mandate. Further, because collaboration should address all problems and concerns with a mandate before the Commission's 12-month process begins, the Commission would be able to make timelier determinations resulting in the Legislature being aware of mandate costs sooner.

As concluded in the Minnesota study, "[u]ntil state and local officials work together to improve state-local relationships, tension surrounding state mandates on local governments will likely continue unabated" (Vos, Meyerhoff, & Grossback, 2000). I have outlined specific conditions, as identified by the Center for Collaborative Policy, which are necessary to initiate and sustain a collaborative process. While I believe a collaborative process is appropriate for addressing mandate concerns before implementation and on a case-by-case basis, it will not be successful or even possible if our state's top leaders do not commit to the collaborative effort.

The next chapter outlines specific recommendations for addressing the mandates problem in California.

CHAPTER 5.
CONCLUSIONS AND RECOMMENDATIONS

The previous chapters have described the existing mandates process in California, detailed the issues as framed by current discourse, presented the recommendations of existing discourse, and identified recent reform efforts in California. This study concludes that much of the focus in California has centered on a single theme – that the mandates *process* is flawed. Furthermore, an examination of other states revealed that there is no model system in place, but the states did use various mandate mechanisms to address mandate concerns. Most importantly, readers can obtain a different perspective of the mandates problem in California in light of a Minnesota mandate study, which uncovers a fundamental problem with the mandates system and the relationships. In view of this deeper problem, it seems more apparent that any tinkering with specifics of the mandates process will be fruitless until the system itself is fundamentally sound.

Recommendations for Addressing the Mandates Problem in California

Based on the information and analysis presented, this study suggests a two-part approach for addressing the mandates problem in our state. Lawmakers must first improve the system and the relationships, and then modify the process as needed.

<u>First Improve the System and the Relationships…</u>

The first step in effective reform is to address the fundamental flaws of the system and of the relationships. To improve the system and relationships, disincentives must be transformed into incentives to perform, and trust between state and local government must be developed to restore confidence in the mandates system. The analysis in chapter four suggests that the practice of collaboration coupled with delaying the effective date of mandates meets these challenges, as well as makes mandate costs more predictable and allows the Legislature to be informed of costs sooner. Therefore, to improve the system and relationships, state and local government should practice collaboration before mandate implementation and the state should delay the effective date of mandates to provide time for collaboration. However, successful collaboration requires the state's top leaders to make a commitment to improving working relationships with local government. Furthermore, the state should encourage stakeholder participation in the process by creating additional incentives to perform or consequences for inaction.

RECOMMENDATION #1:

To improve the system and relationships, state and local government should practice collaboration before mandate implementation and the state should delay the effective date of mandates to provide time for collaboration.

Furthermore, the state should encourage stakeholder participation in the process by creating additional incentives to perform or consequences for inaction.

…Then Modify the Process as Needed

Once the fundamentals of the system and relationships are sound, then the mandates process can be modified and improved. The analysis in chapter four suggests that at least three options would be worthwhile for California to consider because they can make mandate costs more predictable and inform the Legislature of mandate costs earlier. Moreover, these options would not receive overwhelming political opposition.

Therefore, to improve the overall process, the state should adopt the use of mandate explanations, pilot projects, and sunset language because they can make mandate costs more predictable and provide mandate cost information to the Legislature earlier.

RECOMMENDATION #2:

To improve the overall process, the state should adopt the use of mandate explanations, pilot projects, and sunset language because they can make mandate costs more predictable and provide mandate cost information to the Legislature earlier.

The recommendations for modifying and improving the mandates process address the process issues identified by current discourse. Therefore, the effects that can be achieved by mandate explanations, pilot projects, and sunset language are consistent with the results that current discourse would like to realize.

Conclusion

It is essential that policymakers address the fundamental flaws of the mandates system and the relationships before modifying the overall process. Tinkering with the process before understanding the underlying problem only results in temporary, band-aid solutions. Eventually the problem will resurface, as evidenced by Minnesota’s long history of addressing the mandates problem. Thus, policymakers must take the time to understand and address underlying problems in order to achieve real reform. According to Osbourne and Hutchinson (2004):

> Real reform is about changing the way systems work…. It is about clarifying their purposes and changing their incentives, accountability structures, and power structures to produce different behavior. If you

> cannot change these things, you will not get fundamental improvement. (pp. 333-334)

Additionally, government officials must be reminded that they are ultimately accountable to the people of California. The public is not concerned about the power struggles between state and local government. They are only concerned with how well government carries out its duties. As stated in the introduction, the Legislature declared in Government Code section 17500 that “the existing system for reimbursing local agencies and school districts for the costs of state mandated local programs has not provided for the effective determination of the state's responsibilities under…the California Constitution.…” Therefore, the problem must be addressed, starting with the system and the relationships.

In order to address the challenges facing our state today, policymakers must look beyond the traditional model of politics and policymaking and acknowledge that key problems cannot be solved without collaboration. To effectively deal with policy controversies, lawmakers must interact. This study acknowledges that stakeholders in the mandates process may not be ready to engage in a collaborative effort, but when the point comes, the practice of collaboration and deliberation has the capacity to generate trust, arrive at shared problem definitions, and develop an agreed upon path to problem resolution. By practicing collaboration and delaying mandate effective dates, requiring mandate explanations, implementing pilot projects, and using sunset language, lawmakers can ensure an effective mandates system in California because the problems and concerns would be addressed *before* mandates are implemented and *before* the Commission's process for determining reimbursement even begins.

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