STATE OF CALIFORNIA

PUBLIC EMPLOYEE
POST-EMPLOYMENT BENEFITS COMMISSION

PUBLIC MEETING

Friday, December 7, 2007
9:10 a.m.

San Diego City Council Chambers
202 C Street, Twelfth Floor
San Diego, California

Reported by: DANIEL P. FELDHAUS, CSR #6949, RDR, CRR

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A P P E A R A N C E S

PUBLIC EMPLOYEE POST-EMPLOYMENT BENEFITS COMMISSION

Commissioners Present

GERRY PARSKY, Commission Chair
Aurora Capital Group

MATTHEW BARGER
Hellman & Friedman LLC

PAUL CAPPITELLI
San Bernardino County Sheriff's Department

JOHN COGAN
Stanford University

CONNIE CONWAY
Tulare County Board of Supervisors

RONALD COTTINGHAM
Peace Officers Research Association of California

TERESA GHILARDUCCI, Ph.D.
Trustee
General Motors Retiree Health Pensions

JIM HARD
President
Service Employees International Union Local 1000

LEONARD LEE LIPPS
California Teachers' Association

DAVE LOW
California School Employees Association

CURT PRINGLE
Mayor, City of Anaheim

ROBERT WALTON
Retired (CalPERS)

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A P P E A R A N C E S

PEBC Staff Present

ANNE SHEEHAN
Executive Director

JAN BOEL
Staff Director

TOM BRANAN
Policy Director

STEPHANIE DOUGHERTY
Research Director

MARGIE RAMIREZ WALKER
Office Manager

Public Testimony

MICHAEL CARTER
State Controller's Office

KREG MULLER
HBPOA

JOAN M. RAYMOND
AFSCME, Local 127

Subject Matter Experts

JOHN BARTEL
Actuary

RICHARD KROLAK
Health-Care Expert

Also Present

STEVE ZEHNER
Los Angeles County
Office of the County Counsel

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BE IT REMEMBERED that on Friday, December 7, 2007, commencing at the hour of 9:10 a.m., at San Diego City Council Chambers, 202 C Street, Twelfth Floor, San Diego, California, before me, DANIEL P. FELDHAUS, CSR 6949, RDR, CRR, in the state of California, the following proceedings were held:

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(The proceedings commenced with Ronald Cottingham absent from the hearing room.)

CHAIR PARKSY: Ladies and gentlemen, if I could have everyone's attention, we'll begin our hearing.

I want to welcome everyone to our next-to-the-last commission hearing. I think this is our tenth hearing; is that right?

We've had ten hearings throughout the state. And I think everyone has an agenda.

I want to pay special thanks to the City of San Diego for hosting this. This is the second hearing that we have had in the San Diego area: First, in the downtown city. And particularly, I want to thank Mayor Sanders for both being here and for welcoming us to San Diego.

And if the Mayor would like to come forward, we really thank you very much. The Mayor has done a terrific job in San Diego.

As a resident of San Diego, I can tell you that the job that he has taken on is not an easy one; and he’s done a terrific job.

Mayor, thank you very much for hosting us.

MAYOR SANDERS: Thank you very much, Chairman Parsky.

I just want to welcome you all to San Diego.

The issue that you're addressing is probably one of the most critical issues to the state of California and all of the taxpayers and all the residents and all the government workers in the state of California, because you have such a far-reaching impact on just about everybody when you think about it.

A lot of municipalities are struggling with the same issues and coming up with solutions -- or at least trying to. And I think all of us will look anxiously toward what recommendations you make after you identify the problem, and then the solutions that you come up with.

So it's my pleasure to welcome you and to thank you for being here and to thank all of you -- and I know all of you have other jobs -- to thank you for taking the time to address this issue, because the future of California really depends on the solutions you come forward with. So thank you very much.

CHAIR PARKSY: Thank you very much, Mayor.

Okay, before we go into our public comment period, just to set the framework for this session, we are really down to the point of trying to come together on a final report, which will include recommendations.

Just a couple of introductory comments.

The Commission was established with the charge of identifying the magnitude of the liabilities associated with pensions and OPEB liabilities for public employees, and then to come up with a plan, a set of recommendations that would constitute a plan for meeting those obligations.

At every public hearing, I remind everyone that the public policy leaders -- the Governor and the legislative leaders -- have made it clear that the obligations that have been incurred for public employees will be met and that our recommendations are meant to be in that framework.

And our obligations are to come forward, recognizing that the policymakers want to meet those obligations; to recommend to them how they can do it in the most prudently, fiscally sound way. And that's the orientation that we're taking.

And so a good part of this morning's hearing will be to deal with recommendations that have already been discussed, commented on by individual Commission members.

A number of these, the Commissioners have indicated they wanted to be rediscussed in full. And so we will undertake to do that this morning, and then see if we can't build consensus around any changes that need to be made -- or further changes in these recommendations.

So with that, any other comments any Commissioners have?

Anne, any thoughts that you had?

MS. SHEEHAN: Well, the only comment I would --

CHAIR PARKSY: Your button.

MS. SHEEHAN: The only comment is, we are circulating other sections of the report, some of the case studies, the appendices. And we want to make sure that everyone responds back. Even if you're fine with them, just send us a note, "It's fine." If you have edits, send us the edits. But we want to make sure that we do hear affirmatively.

And we will be sending out quite a bit of background -- you know, appendices, background material, case studies.

So we will be following up to make sure, because I know some people, their e-mails, they've been traveling, their boxes are full or whatever. We will be confirming that you got them.

Over the next couple weeks, we will be sending -- in addition to what we discuss here today, we'll be sending some other materials; and we want to make sure that we do get responses back in the time allotted so we can go meet our deadline.

CHAIR PARKSY: Okay.

Our public comment period, we welcome public comments at each of our hearings.

We have, I think, two speakers that we have identified.

Margie, I have number two and number three, so there must be number one somewhere.

But we'll start with number two, Joan Raymond.

Is Joan Raymond here?

Okay, hello.

MS. RAYMOND: Thank you.

I've never gone from two to one so quickly before.

CHAIR PARKSY: Well, that's perfectly okay.

You're number one.

MS. RAYMOND: Good morning. Good morning, Chairman Parsky and Commissioners. Thank you for coming to San Diego.

I'm sorry the weather isn't cooperating.

I wanted to apprise you of the action taken by our City of San Diego blue-collar workers over the past three years in order to pay down the pension deficit that was caused by decades of underfunding by the City of San Diego.

I represent the City of San Diego blue-collar workers.

Three years ago, the City and AFSCME -- the American Federation of State, County, and Municipal Employees -- engaged in contract negotiations to address a pension underfunding that had gone on in the City for many, many, many years, to the point of becoming a crisis.

It was a mutual desire of the parties involved in the contract bargaining to positively impact the employees pension system in light of the decades of underfunding by past city administrations.

Ultimately, the negotiations were successful, and the City and AFSCME Local 127 entered into an agreement which each party characterizes their fair share to reduce the unfunded liability by more than $600 million by June 30th of 2008.

In 2005, City employees had identified resolving this pension underfunding as their number-one priority. During the discussion with the City, AFSCME presented a definitive plan that would have injected more than $600 million: $200 million for each year of the three years of the contract into the pension, thus significantly reducing the unfunded liability.

During the 2005 negotiations, the City suggested that City employees either take on a greater portion of the pension obligation by lessening the City's pension obligation, or to take a wage cut.

Our employees were of the opinion that shifting pension obligations at that point from the City to the employees was not a smart solution, because the whole reason our city pensions are at risk is the City's past underfunding.

AFSCME realized that agreeing to shift the pension obligations from the City to the employees onto the backs of the workers was really just another scheme by the City to side-step its pension obligations.

Besides, under the City's proposed scheme, no additional money was being injected into the system to pay down the UAAL.

So AFSCME wanted a real solution to the underfunding problem. The real solution for us was to take a wage cut, as hard as it seemed. But we felt that that would have a real effect, going right to the heart of the unfunded liability. And at the same time, the City could use the savings associated with the wage cut to fund leveraged mechanisms to reduce the unfunded liability.

Recently, through media contacts, we have learned that the City may not fulfill their current obligation to implement this $600 million.

It is important to note that each City employee has, and continues to do, our fair share to meet our end of the agreement.

Finally, AFSCME Local 127 has reached out to the leaders of City government to inquire as to what steps are currently in the making to ensure that this obligation is satisfied. Our best information establishes that the City would have to inject almost $500 million between now and June 30th of 2008 to meet its obligation.

So far, we do not see that there has been any progress towards reaching this $500 million benchmark; and it would be truly unfortunate if this benchmark is not met by June 30th of 2008.

Thank you very much for listening.

CHAIR PARKSY: Thank you.

Next, we have Michael Carter.

MR. CARTER: Good morning. My name is Michael

Carter, and I'm the chief operating officer of the Controller's office.

It is a pleasure to make comments on the recommendations by this very important commission. So we appreciate the opportunity.

I don't believe you have a letter that was prepared by the Controller's office, but it does reiterate the comments that I will be making this morning.

The first has to do with Recommendation 23, and I will also speak to Recommendations 24 and 28.

Recommendation 23 really hits at one of the core responsibilities of the Controller's office, which is to collect and report financial data for state governments and local governments.

And we would like to emphasize that at the Controller's office, we already have an advisory committee in place as required by statute that advises the Controller on collecting information.

We have roughly 6,000 entities, state and local governments, that we're working with to secure this information. And we just wanted to make sure that this commission, as you look at the best way to secure information for your policy-making platform, that you understand and appreciate that the Controller's office is in the business. It's really a daunting task, I must say, to collect data to modify our systems. But we would certainly appreciate your consideration of what we're doing so that as the outside world looks at the effort of this commission, as well as the Controller's office, we're not duplicating efforts.

And I must say that the Controller is really interested in working with this commission to make sure that there is an independent source -- and I'm sure that that's important to this commission -- and to work with your staff to ensure that that independence is maintained.

But we would certainly encourage you to understand and appreciate what it takes to collect the data. Not to suggest that it's something that is impossible to do, but it is a very comprehensive effort; and we would ask that you look at what the Controller's office is doing there.

You should also know -- and I'm sure you do -- that we are required to report GASB 45 information, and have done so. And that is the basis for your foundational information. And we will continue to have that responsibility.

So as you look at what's required under GASB 45, which is the underpinnings of what you'll do, and to know that for financial reporting purposes we'll continue that, please look at the other reporting requirements that will need to take place.

The Retirement Advisory Commission that we have authorized under statute has been commissioned several months ago. We have already embarked on the effort to look at what data is needed. We have not contacted the Commission to entertain the components that you are looking at but they can't be too far apart.

And so, again, it would seem to be a great opportunity to join forces to achieve mutual objectives and to ensure that we get to this work efficiently.

For Recommendation 24, which essentially says that the SCO should publish the annual report on public pensions currently required by law within nine months, we certainly support that concept. It's simple on its surface. But we would like to point out a couple of complications, one of which is that we rely on those entities that give us the data, so that we can publish the report. And there are issues with receiving audited data from these entities. And there are certainly some challenges with getting that information from them within a time frame that would allow us to publish audited data -- and I do emphasize "audited data" -- within that nine-month time frame. So you do have challenges with those requirements.

You do, for example, have the -- for example, with the Public Reporting Retirement System, that allows, by statute -- I think they're required to report their audited data within approximately nine months or so.

So you have conflicting requirements that you'll want to entertain. Nine months is certainly a goal. And we would want to work with you to make sure that you appreciate some of the requirements that the entities that feed this information to the Controller, and how we can best achieve a nine-month reporting time frame.

The other issue is -- and you may not want to hear it -- there are staffing issues, there are other mandated requirements. And this is not a ploy to secure resources for the Controller's office, but we have been seeking resources to accomplish better reporting time frames.

As you'll look at the 2003 effort where certain reports were mandated, similar to what you're looking at here, and when resources were cut, we simply shifted our focus to those reports that are mandated. Those that are not, they just simply have to take a little longer.

And that's just the reality, and we would like this Commission to appreciate that.

The last recommendation is: Establish a California advisory panel within the Office of the State Auditor or Legislative Analyst. I think I've spoken to that. You're looking for independence. Again, we have an advisory committee that we believe is foundational, and will be addressing many of the same issues for our GASB 45 report.

We do have an independent actuary under contract using CalPERS data. And it is a factual report. We cannot vary from the GASB standards. And so that, I think, would be a great opportunity for this commission to look at a mutual way to accomplish that.

The Controller is totally open to working with your respective staff to work on legislation, whatever is required, and to meet the objective of independence, and to make sure that all of your criteria and objectives are met.

And that is a summary of my comments. You will have a letter that gives you more details. And we truly appreciate the opportunity to bring this information before the Commission.

CHAIR PARKSY: Thank you.

I do have to hand it to you, I think that your request for help from this commission for additional resources, that's a very interesting comment. The

Controller's office should be very proud of your coming forward, asking for those resources.

I'm not quite sure we can do very much about that, but --

MR. CARTER: Yes. And certainly, sir, I appreciate the comment.

The main point there is, you just simply have to know that it does take resources, and so we just point that out for your consideration.

CHAIR PARKSY: I know that the staff will be working with you in terms of refining the three recommendations that you have commented on.

Any questions or comments from Commissioners?

Curt?

MR. PRINGLE: Yes, Mr. Chairman.

I want to thank the representative from the Controller's office.

I guess on Recommendation 23, in a nutshell, you are saying you receive this information already? Is there a mandated requirement for all public agencies to provide this information and for you to provide this report on those agencies?

MR. CARTER: We receive financial information from 6,000 government -- state government and local government entities.

As you know, OPEB and GASB 45 is a new issue.

MR. PRINGLE: Sure. But I guess what I'm saying is, I think the meat of this is basically saying that, through this recommendation, the Commission would be seeking some objective reporting elements that the outside observer could compare agency to agency, and make assumptions or make decisions based upon elements of actuarial assumptions, the level of OPEB benefits, and that type of thing.

So when the Controller issues a report on the state's GASB obligations, it doesn't include local agency information.

When the Controller's office issues general discussion on GASB reporting obligations for all the other agencies, it doesn't have that level of presentation.

And I guess what I see here -- and I don't necessarily see you arguing against that –- is that is what this Commission thinks would create a value to the public to be able to have some place within state government where all of that information could be provided, and then you share back some of those objective measures so agencies could be compared to one another.

MR. CARTER: That's exactly right, sir. And as I've indicated, that is a mutual goal. That's exactly what we're working on, and --

MR. PRINGLE: But there's no obligation present for you to provide that; is that right?

MR. CARTER: There is an obligation. And the obligation comes in the form of the financial reports that the locals must provide. And we accumulate and publish that information. So it will require some modification to our reports. And that's exactly what the advisory -- our advisory committee is working on with local government entities, is to see how to collect and form that information.

And I will guarantee, it won't be too far off from exactly what you're saying.

MR. PRINGLE: Okay, but if this commission were to suggest there's legislation to be drafted, even though we may all may wish that this commission could pass legislation, we can't. Therefore, this would go through a legislative process by which you would have the opportunity to share publicly why certain information should be available and why it shouldn't.

MR. CARTER: Exactly right. And the Controller's office is offering the student to work with your staff, using our legislative capacity to represent the interests of this commission.

Truly, there is a mutual interest in collecting the data.

MR. PRINGLE: Sure. But my challenge is, if we're not going to be around for the next legislative session, our job is to present recommendations.

CHAIR PARKSY: In our current form. We'll be around, but --

MR. PRINGLE: Some of us may not be.

But, in fact, what I am caught with you is, I'm trying to figure out, if we just said these things are important to us to have legislation that requires the Controller to be able to share this information -- collect it and share this information publicly, you can have whatever commissions and spend whatever time studying it you want, or work it through the legislative process. But I'm trying to figure out what, in this recommendation, what don't you think we should ask for you to present?

MR. CARTER: I believe the solution, if I understand the concerns correctly, is if this does come in the form of legislation for our respective staffs to craft that legislation in a form that represents your hard work and decisions. And that legislation will guide the future efforts of the Commission and how exactly the data is collected.

So I see an end product here, and it's just a matter of your recommendation being in a form that allows the continuance of your hard work. And we would like to be a part of that.

CHAIR PARKSY: Well, I think the heart of the recommendation coming from this commission is that there should be embodied in the legislation a mandate, a requirement, and that the nature of the data be such that the public can understand it, and understand it in a timely way.

MR. CARTER: Certainly.

CHAIR PARKSY: It seems to us that's the responsibility of the Commission. And I think, obviously, we'll let staff work with you. But I don't think there's anything that we've heard here that would cause us to back away from a mandate, because I think it's consistent with what this commission has been established for.

MR. CARTER: Yes. And my only caution, sir, on a mandate is, there is a state-mandate process. And I would encourage you to consider that we already have a process in place. And so as you talk about a precise mandate, I would defer to your respective staffs. There's a good possibility we can do that without a mandate because we already collect the financial data, and that is the purpose of the advisory committee. It still gets you the data without necessarily a mandate, you can go that route; but there is a state mandates process, which I'm sure you are all aware of.

MR. PRINGLE: Mr. Chairman, on that, I think you were suggesting that this does not imply a mandate towards local agencies; this directs a mandate towards the Controller's office to provide a product.

MR. CARTER: Right.

MR. PRINGLE: So I don't think there's a state reimbursement on mandate requirement of the state reimbursing the state. But with that being said, you did suggest in your comments that in terms of affording and prioritizing reports and presentations, you make prioritization based upon those that are mandated you. Therefore, on Recommendation 24, isn't that basically suggesting that this commission feels that we should place a mandate on a timely reporting of public post-retirement benefits?

MR. CARTER: I think that this commission should certainly consider the best ways to work with the Controller's office.

We're here today to say that we are interested in working with you. There is a resource issue. But as you talk about mandating to the Controller's office, we would then have to mandate to the locals.

So I think there's a way to get to that and do your mandate to the Controller's office. I would have to defer to the Commission.

But I can certainly appreciate what you're saying, sir. That's an excellent point.

MR. PRINGLE: But I'm just suggesting that 24 just helps you see what our priority would be. Our priority is only one thing, because that's the only thing we're charged with. Therefore, if you suggest the prioritization of funding of reports is based upon what are mandated of you, if a report is mandated, it must be provided within nine months of a reporting deadline, then obviously that's going to be one in which it's provided within nine months of the reporting deadline, because you would do your job and the Controller is efficient and focused on performing to the legal requirement of his job.

MR. CARTER: Excellent point.

CHAIR PARKSY: Yes, David? Do you have something?

MR. LOW: I’d like to ask a question.

You had mentioned that the Controller's office currently has an advisory commission.

Can you tell me what the makeup of that commission is?

MR. CARTER: Yes, Mr. Low. That is basically comprised of local government officials, financial officials, and I believe there is some sprinkling of those that are in the retirement industry. Their exact titles, I would have to get you that information.

MR. LOW: Could you send that to us?

MR. CARTER: We would be happy to. That's a very good question.

CHAIR PARKSY: Thank you very much. We really appreciate your coming forward.

We'll be working with you to finalize all of these recommendations.

MR. CARTER: Thank you very much.

CHAIR PARKSY: You're welcome.

Our last speaker -- I may have trouble here because of the writing. Kreg, K-R-E-G?

MR. MULLER: Correct, sir.

CHAIR PARSKY: That's your first name?

MR. MULLER: Yes, sir.

CHAIR PARKSY: What's your last name? I can't quite make it out.

MR. MULLER: Sorry, I was running late.

Muller, M-U-L-L-E-R.

CHAIR PARSKY: Oh, that's quite clear now. Okay.

MR. MULLER: And I'm the president of the Huntington Beach Police Officers Association. I've addressed you at a couple other meetings. And I appreciate the task that you folks have been asked to do.

My comments will be very brief this morning.

As you compile and give your final report to the Governor's office, I ask you to choose your words carefully because I anticipate that we will see your words used out of context throughout the initiative process and other locations, that may not be what you truly mean. So I would hope that your final report to the Governor will make several points clear.

First, examples throughout the state. The collective bargaining process works. It is very clear through the testimony as I've heard and speaking with both the City and labor groups throughout the state, that it works fine, that CalPERS is not the evil here. In fact, it appears that CalPERS can actually be a good portion of the solution with the strong recommendation of prefunding for retirement benefits.

So I guess that is what I mainly came to say, is to make it clear that CalPERS is not the evil here and that we strongly recommend that governments take a strong, hard look at prefunding, and that it makes a lot of sense.

Thank you very much.

CHAIR PARKSY: Thank you very much.

That completes the public comment period.

And we're going to move now into a discussion of a number of recommendations and one or two other topics.

Just one kind of general comment about the structure or outline of the final report. We're trying to come up with what is the best way to clearly present in the final report what we've been asked to do, namely, to identify the magnitude of the obligations, and then come forward with evaluating various approaches; but then come forward with a plan -- our recommended plan to how to satisfy these obligations.

So as all of you have seen, all of the recommendations that we are contemplating, we're thinking a little bit in terms of how they can be ordered, put in an order that would be more reflective of the charge that we got.

So in that connection, I think there's -- on the outline that we distributed, there is a section that's entitled "Executive Summary." I thought we would include in that executive summary, a summary of the recommendations as you have seen them go around in their current form.

And those recommendations, I think we're going to try to put them in an order that addresses the charge that we have got. And you'll see that as we're going to send those around another time with revisions, but they'll be structured that way.

Then when we get to the section marked "Recommendations," there's much more detailed background. The recommendations won't change, but the background material, all of which has also been provided, will be more -- to give a fuller explanation.

We didn't want to have in the executive summary too much because we want to focus heavily on the recommendations there.

The finally comment I'd make is that as you look at some of these recommendations, I welcome everyone's thoughts about should the recommendation really come first and the rationale or brief background that are all contained in what you've seen come after, as you seek to perhaps revise some of them.

All of that may be a little bit confusing, but we'll come back and recite it again.

This reflects a number of comments that I have received about how can we make the report clear in terms of what we're really asking or recommending in response to the Commission charge.

And if we just have a somewhat -- I shouldn't say "disorganized" -- but somewhat random set of X-number of recommendations without keying it very clearly into the charge, and we're supposed to come forward ultimately with a plan. That was part of the charge that we had. So we're going to want to try to couch the recommendations under the overall heading of, "Here is a plan for addressing this important need."

So it will become clear, if it isn't. But at least think a little bit about structure as we go forward.

Teresa?

DR. GHILARDUCCI: This is good. I was wondering where I could bring this up.

In reflecting on this process in the last few months, I've thought about what we've heard; you know, what has been the content of the testimonies. And in thinking about all the public commentary that we had, and every hearing, except for -- well, almost every hearing we've heard from people who either represent workers and retirees, and to some extent we've heard from employers. And I think it would be easy for us to ignore the successes of the programs that we are charged to evaluate and to fix. Because what I heard from the retirees, from the workers or the people that represent them is general satisfaction with their program, and the satisfaction came from those promises being understood, and then people, these individuals, planning their retirement lives based on those plans.

So if I had to summarize what we heard, we heard the importance of having the benefits clearly defined, whether they be proportionate or whether or not they prevent spiking, or whatever it was. It was the sense that they knew what those plans were when they were working. As they approached retirement, they successfully folded those in. So that's one thing we heard.

So I would like to reflect that kind of general satisfaction that, by and large, we've heard about systems that work.

We have also heard a lot of fear. And it was mainly on the fear of the cost of unexpected events, usually around health care.

So I would like our report -- and it should probably be right up front in this executive summary -- that we really oversaw programs that worked, especially if they were clearly defined and individuals understood them. And we should also point out that the specter of health-care costs spiking and lack of cost containment was an issue; and then we can talk about what our recommendations were.

CHAIR PARKSY: I think that's very much part of the charge that we have. Namely, there's a section that will evaluate, if you will, current plans that are in place. And some of the references or some of the background we will have on case studies that will be there are oriented around making positive -- identifying the positives that exist in terms of approaches that can be taken.

So the charge includes identifying the magnitude of the unfunded liabilities, evaluate plans that have been trying to address this, including the identification of those, and then coming up with a plan that we would have through a series of recommendations. So it very much ties into that.

MR. PRINGLE: Mr. Chairman?

CHAIR PARSKY: Yes, Curt?

MR. PRINGLE: I do just want to bridge a little bit off of what Teresa said, and one general comment before we go into some of the individual recommendations.

As we look at even the executive summary, I do think we probably need to start off in a little different place than the way it is starting off, and maybe do a little broader discussion of satisfaction of employees, the collective bargaining system working in most cases, yet an unfunded obligation of benefits that remains and the public's concern about that, and the need to address that, and those types of things and put it in that context.

But I'd also like to suggest we should start off with the first recommendation being what we think is the biggest and the strongest.

Because I would worry -- and not necessarily that we're trying to challenge Hemingway and having something that would be a best-seller, but I do want to make sure that people read beyond the first or second recommendation without thinking that we're just dealing with less than the significant issues. Therefore, you know, something like the whole recommendation on prefunding or something of that stature should be, in my opinion, as we generally talk about where the state of employment benefits are today, and how we are in this position, then hit with something at the very first recommendation, Recommendation Number 1 being strong enough, that people will say, "Okay, there is some meat here and some strong suggestions," that then pulls us in to talk about part-time health benefits or benefits to part-time employees, and some of the other things that are important but maybe not necessarily what we'd like to lead with.

And, you know, in terms of structurally, I think it brings a lot more value to the report to have someone look at it and immediately see there is some strength and value in that.

I also will probably reiterate 12, 13 times today that --

CHAIR PARKSY: You can do 12. You don't get 13.

MR. PRINGLE: I don't think I have to go beyond that. But it's the point I made at our last meeting. But I really do think it's interesting where certain recommendations we have chosen to say words like, "Legislation shall be drafted to," whereas our recommendations say, "This would be good."

If we're really making a recommendation, let's make a recommendation, and let's make a recommendation to do something.

"Local government should adopt ordinances to…"

"Local government should consider improving this."

"Legislation should be drafted…"

"The Administration should address this issue."

Whatever the point is, I really do want to see if we can get it so we're saying something to somebody as opposed to just making good, general statements that are nice. We should be recommending something.

CHAIR PARKSY: We'll see if we can't work on the verbs that we would apply to the recommendations. They obviously have to take into account what everyone thinks the recommendations should be, but I think it's -- we were charged with coming back with, among other things, a plan, a set of recommendations which the policymakers will have to take into account, as they take into account recommendations coming in a variety of areas. But I do think that to the extent that all of these recommendations can carry with it the same approach in terms of the verbs that are used, it would be helpful.

And whether or not the policymakers adopt every recommendation this year as opposed to next year or the year after, that will be up to them. But I don't think it is necessarily -- assuming we can reach agreement. I don't think it necessarily means that this group needs to make that decision for them, as long as we acknowledge that that may happen.

MR. PRINGLE: No, no, Mr. Chairman, you're totally right. I'm just suggesting as someone who has been a policymaker at both the state and the local level, to say this is one where this commission feels that local governments need to address. This is one that we need to have the Legislature through -- it is something that's so important that we should make it universal throughout the state.

We need to, I think, not -- I believe that there will be value out of this report. And the local entities will look through it and say, "Okay, what are those recommendations to local governments that we should consider?" And those local governments are going to think about it.

CHAIR PARKSY: Exactly.

MR. PRINGLE: They may not do it, but at least we should make sure we create the neon arrow that points out those recommendations that they should pay attention to.

CHAIR PARKSY: Okay, let's see if we can't put some meaning around some of those comments by looking at -- what we're going to try to do this morning, there are a few, quote, recommendations that hadn't been discussed. There are other recommendations that we've asked each of the Commissioners to identify that they would want more full discussion about, and then there are some recommendations that we've asked for just editing or comments about. And we've received those.

So I think we'll try to focus today on a series of recommendations that people have asked should be discussed again in a session of all of us.

And, Tom, why don't you start us off and then we’ll try to move through them?

MR. BRANAN: Mr. Chairman and Commissioners, I would like to say that staff agrees with the recommendation from Commissioner Pringle on the formatting of the recommendations. And we did make some of those changes, but there are others that we can do, so that they'll be in a more consistent format.

I think the first thing on our agenda this morning is listed as “Local Control.” And this is an effort by staff to identify some items which have been brought up in testimony at earlier hearings, but which have not been taken up in greater detail. And the two most important such recommendations, one comes from the office of the Legislative Analyst. And that was their proposal that pension benefits be bargained at the district level.

The second such proposal is one that probably will appear as a ballot initiative, and that is that there should be a statewide mandate to roll back pension formulas and establish lower formulas across the state.

We think that there is a common thread running through these, and also that is the basis of our decision not to bring them back in greater detail. And that is that pensions should be bargained by the entity that pays for them.

The enhanced benefits that sparked, I think, some of the initiative efforts to reduce benefits were authorized by state legislation. And that was SB 400, AB 616, and AB 1937.

They were authorized by the State, but they were bargained by each local entity that adopted them. And it's our feeling that they were bargained at the local level, they're paid for at the local level; and that if locals want to reduce those benefits, that can be done through the local bargaining process. That is available to every agency that adopted enhanced benefits.

So while we've heard at, I think, each hearing from proponents of a statewide mandated rollback, that was our thinking for not pursuing that particular option.

And secondly, dealing with the schools, currently schools neither bargain pensions nor pay for them. And the Legislative Analyst's proposal was that they do begin to bargain them. And I think underlying that recommendation, was that they should also begin to pay for them.

The problem is, from our perspective, they really don't have the financial wherewithal to pay for those. That's paid for by the State, and the State is the entity that sets school formulas.

So those are the two issues that we've heard from some of you about, and that is our rationale for not bringing them before you in greater detail.

CHAIR PARKSY: And just before we ask for comments, consistent with that would be not to include any specific recommendations on those two subjects?

MR. BRANAN: That's correct.

CHAIR PARKSY: Okay, let's just pause.

I know Lee will have comments. So we’ll see.

MR. LIPPS: Well, I think really just a clarification.

I can understand where -- I think you said the Legislative Analyst points out that school districts don't bargain pensions, which would be correct. That comes through the Legislature. However, the statement that school districts don't pay pensions, they may not make the pension payouts to individuals, but they do pay into the pension system, as well as the employee. And they pay a significant amount. So I just wanted to clarify that one particular point.

MR. BRANAN: That is true. But unlike a local agency, a city or a county, they're not -- they don't -- they rely on the State to also make part of the payment for pensions.

MR. LIPPS: Yes.

CHAIR PARKSY: Dave?

MR. LOW: That's not completely accurate, either, that there is a state portion that goes for teacher retirement. There is no state portion that goes for classified employee retirement into CalPERS. That is fully paid, either by the school district or the employee, with no state supplement.

MR. BRANAN: Okay.

CHAIR PARKSY: John?

MR. COGAN: The rollback initiative, as I understand it, that's outside our mandate; right? I mean, the Governor told us that he does not want benefits of current retirees tampered with.

MR. BRANAN: That's true.

MR. COGAN: That really is --

CHAIR PARKSY: But I think -- your mike is not on -- I think that because these issues have been raised, either through public comment or otherwise, we just wanted to make sure that the Commission understood we were not going to attempt to address it in the context of this report, and make sure that that reached concurrence by everybody here.

Yes?

MR. CAPPITELLI: Yes, I support this for the first part of this where it deals with the formulas and any broad-brush recommendation.

I think it's important, though, if that's how strongly we feel as a commission, perhaps somewhere in the report we ought to state exactly what was just said so that when people look through the report and they're searching for that or asking the question as to why it wasn't addressed, it will be clear to the reader why it wasn't addressed.

And so I think you had -- the way that you couched that I thought was good. If you could reduce that to writing in some form that we could see, so that we can include that in here, so that it will send the message from the Commission as to why we don't feel that a broad-brush proposal that rolls back something is somehow going to address this issue; because we've spent enough time up here to know that that is not the case.

CHAIR PARKSY: John?

MR. COGAN: That was the reason I raised the question of whether making recommendations for specific benefit levels is within the purview or not in the purview of the Commission.

My understanding is that it was not in the purview of the Commission, and so it would be best just to avoid it and not try to take a position on whether we might favor any initiative that would change benefits across the board. I think it's a big mistake for us to take a position on that; but more importantly, I think it's outside of our mandate.

CHAIR PARKSY: I think if we couch any part of the commentary on this subject, it can be couched in the context of what the charge of what the Commission was; and to reiterate the fact that the policymakers have said benefits that had been promised will be met, and not attempt to go beyond by trying to take positions one way or the other; but make it clear that in creating this charge, the Governor and the legislative leadership has made that commitment.

Okay, Tom, you now may proceed ahead.

MR. BRANAN: Then if it's suitable with the Commission, I'd like to move to the recommendations that we've seen but that people have had concerns with or made comments about.

CHAIR PARKSY: That's a good subject. We'll see how you do going through that.

MR. BRANAN: Maybe since we've just heard from the Controller, that would be a good place to start.

CHAIR PARKSY: Okay.

Dave?

MR. LOW: I'm just not have sure that jumping back and forth is going to be a very productive process.

It might be simpler just to go through; and if there's no objections, we just kind of move --

CHAIR PARKSY: Do you mean go through each one?

MR. LOW: In order, yes.

CHAIR PARKSY: That's fine.

As I said, I would separate out editing that you may think still needs to happen. You'll have plenty of opportunity to do that from -- we ought to have a more complete discussion of the recommendations.

I think that we've identified a number of the recommendations -- eight or nine; is that right?

MR. BRANAN: That's correct.

CHAIR PARKSY: -- where Commissioners have said, "Let's have an open discussion."

I'm happy to kind of go through each one and say, "Do you want this discussion," and as we come to one that has been identified, identify it. But I just wouldn't suggest that -- no one will have -- everyone will have an opportunity to edit any of them. So separate out those that you may want to edit from those you want to discuss.

We've identified, I think, eight or nine that everyone has said, "Let's discuss these."

MR. LOW: Maybe just go through --

CHAIR PARKSY: We can go through --

MR. LOW: Maybe go through those eight or nine, and see if there's any that we want to go back and forth.

CHAIR PARKSY: That's what we're going to do.

MR. LOW: Okay.

CHAIR PARKSY: So you are going to identify these eight or nine. Let's kind of go through those.

MR. BRANAN: The first one was Recommendation 23.

DR. GHILARDUCCI: What are the other ones, just so we know?

CHAIR PARKSY: Yes, why don't we list the eight or nine that we're going to talk about?

MR. BRANAN: All right, although they will probably appear out of order.

Let me see if I have this here.

In terms of -- some of these really are editing or clarification, so I'll go ahead and mention those.

But number one is such, but it is minor.

CHAIR PARKSY: Just go through the numbers.

MR. BRANAN: Oh, you want to go through everything?

CHAIR PARKSY: Yes, just so that the Commissioners can know which ones you're going to put up on the screen for discussion and which ones we're just going to continue to edit.

MR. BRANAN: Okay.

MR. LIPPS: Excuse me, Chairman. After he's done, if there are one or two that we want to add, we can do it at some point?

CHAIR PARKSY: Certainly.

MR. LIPPS: Thank you.

CHAIR PARKSY: The whole purpose is so you can see which ones we would openly discuss. Just make a notation if there are others you want to add to that.

Once he's finished with that, we'll ask.

MR. BRANAN: Okay, all right. They are in order:

Recommendation Number 10, dealing with prefunding by the state.

Recommendation 23, which deals with --

CHAIR PARKSY: That's okay, you don't have to explain. Just give the numbers.

MR. BRANAN: Recommendation 24, 29, 31, and 30, and 33.

CHAIR PARKSY: Well, I am sure Number 9 will be asked, so we ought to add Number 9 as well.

MR. BRANAN: And Number 9.

MR. LIPPS: One more time, please.

CHAIR PARSKY: Yes, 9 and 10, we’ll talk about as well.

MR. LIPPS: Once more through the numbers?

MR. BRANAN: That's just cruel.

That would be Numbers 9, 10, 23, 24, 29, 30, and 33.

MR. CAPPITELLI: 31 also?

DR. GHILARDUCCI: 31.

CHAIR PARKSY: Okay, 9, 10, 23, 24, 29, 31, 30 and 33.

MR. BRANAN: That's correct.

CHAIR PARKSY: Okay, we'll get through all of those, and then we'll come -- and then you can identify any others that we'd like to have a full discussion about, recognizing that all of the other recommendations will be revised with editorial comments that have come from everyone, and then sent around again for comment.

Okay, you want to work backwards; is that what you're saying?

MR. BRANAN: Not necessarily. If I'm denied being able to jump around --

CHAIR PARKSY: No, no, we’re not denying you anything. We just want to get through all of these.

That’s all right. You can go in whatever order you like. People can turn the pages to the recommendations.

If you think we can get through several of these a little quicker, if that's the method to our madness, that's perfectly okay.

Go ahead.

MR. BRANAN: Well, let's start with Recommendation Number 9.

CHAIR PARKSY: Okay. That will take you a little while, but that's fine.

MR. BRANAN: Number 9, there really weren't objections to 9 as much as it was connected with concerns with Number 10. And some of the proposals, the suggestions were that 10 be entirely eliminated and that 9 stand in for both of those.

CHAIR PARKSY: Well, let's kind of step back a little bit and talk about the difference between what we can or should, or have the obligation to do in terms of making a recommendation to the legislative leadership and the Governor, vis-à-vis what the State ought to be thinking about doing at some point in time, and what we can do or should do vis-à-vis local authorities around the subject of prefunding.

So general comments about the prefunding policy, the concept, and then we can talk a little bit about concerns about the recommendations.

Jim, do you want to start us off here?

MR. HARD: Yes. I'm more referring to 10, which -- I think that from my understanding from all the testimony and the data and everything and, frankly, our experience in the process with state service and collective bargaining, actually, we proposed prefunding of health care back in the eighties; and the Deukmejian Administration was not interested in that.

I think that prefunding is the optimum way to deal with this, just as with retirement pensions. But I don't understand why, in 10, when, in fact, our general approach is to look at all the data, look at the specifics of the financial status of the government entity, look at the bargaining history.

In 10, we're going to ignore everything and recommend that in the current budget year they begin prefunding, which just seems to go counter to every other entity we're looking at. We're suggesting they look at their own specifics, but with the State of California we're not.

And I think -- and now, we've even got -- I didn't remember Gabriel, Roeder, Smith & Company, but now we're even getting down to their specific -- maybe that's where those dollar amounts were presented.

And I just think that it's not an appropriate approach for any government entity, including the State. I think that prefunding is a goal that both the

Administration and the Legislature should pursue and create a strategy to get there. I'm totally in favor of that.

But mandating it in one particular budget year I don't think is tenable, actually. From any practical point of view, it makes no sense to me with a $10 billion deficit. So I would want this significantly changed.

CHAIR PARKSY: And just a clarification. There's no objection, if you would, to the policy of prefunding.

MR. HARD: No, absolutely not.

CHAIR PARKSY: It goes back historically.

And, once again, the constituency that is the beneficiary of this policy are the public employees.

Part of our mandate is to try to signal, recommend to policymakers, how can you honor the promises that you have made.

And I hear what you're saying, going all the way back to the eighties, you certainly would be an advocate of prefunding.

MR. HARD: Yes, I would be, as long as the government entity looks at the facts that it's facing in whatever budget process they have and bargaining process they have.

CHAIR PARKSY: Okay, Bob?

MR. WALTON: Thank you.

I think this goes back to something Mr. Pringle said earlier, that, you know, really this is one of the primary focuses of why this Commission was created, was to address this issue.

So I think that an up-front statement that the State of California should establish prefunding as its policy, that's a righteous approach, the right thing to do, is something that needs to be said.

I don't think it needs to be said in the context of the current budget. But I think going forward with the rest of the recommendation, that the State should consider the implementation of what was recommended in the Gabriel-Roeder-Smith -- I assume that's the Controller's report? That was what was contained in the Controller's report?

MR. BRANAN: Yes, that's correct.

MR. WALTON: That's what you're referring to. Since that's on the table, it's there, what's our view of that? Well, the State ought to look at that and consider implementing those recommendations, without really respect to the current budget or not. It's just something the State ought to look at. And it's their decision as policymakers on whether or not they feel it's appropriate at this time to go forward or not. But, again, I think that the primary emphasis of this recommendation is that prefunding the OPEB benefits is the right thing to do.

MR. BRANAN: That's correct.

(Mr. Cottingham entered the hearing room.)

CHAIR PARKSY: Let's skip comments, and we'll come back.

Curt?

MR. PRINGLE: Yes, I think this is very consistent with Recommendation 9. If I were to modify 9 a little bit, I would say, "All public employers shall identify," and use the word "shall" consistently, because that is a stronger word that says, "This is not what you should do, but you will do it."

But Recommendation 9 basically says all public employees shall identify that obligation and identify a strategy for prefunding that obligation. And if you don't, it doesn't say you won't be able to pay your employees, it doesn't say you'll have to stop doing business; it says you'll have to publicly disclose what your strategy is.

Number 10 is consistent because here, we're not creating a mandate to a subordinate government in any fashion; we're basically saying, "This shall be the policy of the State of California, and here is an identified strategy for prefunding.” And if you choose not to adopt it, it doesn't say it has to be adopted or there's no other option or you have to take it out of this current budget year. It says, "This is the strategy for prefunding; and if you don't adopt it, you have to do the same thing we're calling on in Number 9, and that is identify a strategy by which you wish to address that liability."

To me, not only does it state the public policy that we're intending both for the State and the local governments to be a preeminent public policy, but also it says we understand that there's circumstances in any budget year; and if you can't do it, express what your plan is. And if their plan is “We'll start next year,” or if their plan is, “We'll start in 20 years,” you know, they can make that plan and live with those consequences.

But the point is, I think it's kind of fundamental to us on this point to say, you tell the State that they should establish prefunding as a policy and either do it or explain why they're not, and present a plan by which they will address that obligation.

I mean, I think it's not saying that the current $10 billion hole has gotten another billion and a half larger; it basically has said, set it as a priority and publicly talk about how you wish to address this hole. And I think that is an acceptable place for us to be with enough wiggle room around it not to make it look like we are unrealistic to the present budget circumstances.

CHAIR PARKSY: Lee?

MR. LIPPS: Curt, if what you're suggesting is essentially the insertion of some sort of phrase in the beginning of Recommendation Number 10, that says that, "The State should begin prefunding its OPEB liabilities when fiscally practical," the insertion of that type of a statement, I think that that's something --

(*Cell phone ringing*.)

MR. LIPPS: Five bucks.

MR. PRINGLE: I think they found my car keys. I hung up on them, but I will try to get back to them later.

MR. LIPPS: Then I would see it as also being consistent with Number 9. We'd have to take on it the second sentence of Recommendation Number 10, but --

MR. PRINGLE: So you believe, right at this moment in time, that you are certain that this is not a priority of the State Legislature and the Governor, and that it is not fiscally possible this year?

See, I believe that's what the Legislature is for, in its full analysis and budget deliberations.

We're not saying that they have to.

MR. LIPPS: Here, let me tell you what I'm saying: Is that in an ideal world, prefunding is and should be a priority. It takes care of some long-term costs.

However, requiring prefunding now -- which is what it says in its current fashion, as opposed to when it's fiscally practical; and this next year, it is not fiscally practical without severely impacting a whole variety of programs or suspending some programs. But the general statement about when it is fiscally practical or that with all due -- you know, with all due speed, you know, something along those lines, it doesn't make it a requirement in this current budget year if the financial realities are what we have been led to believe them to be. You know, then I think we have two consistent statements.

CHAIR PARKSY: We'll get everybody's comments here.

The only thing I would urge everyone to bear in mind is that there's only one hat we're wearing as commissioners, and that is to step back and look at the issue of making sure we recommend what's the best way to ensure that the obligations that have been undertaken will be met.

And if we collectively believe that prefunding, as a matter of policy, is the best way, that's a statement that should really come from this Commission.

I think there may be other priorities that may come into play on a given year. And we're not naive so we don't understand that. But I think that one of the concerns that has been expressed over the months is that perhaps, left alone, policymakers may choose courses that are not either oriented around ensuring that these obligations will be met, which I'm sure all public employees would object to, and we would, or do something that's not fiscally prudent.

So I think it's important that we have on the record, at least, what we think, as commissioners, would be the most prudent way to go.

Whether the policymakers adopt it this year, next year, or whenever, that distinction, it seems to me, we ought to be thinking about.

MR. LIPPS: Mr. Chair, when we make a statement like, "This is the best way," that's sort of a blanket statement that covers a multiplicity and a diversity of public agencies, both large and small.

It may be the best way for perhaps some of the larger entities due to the nature and the size of their budgets. It may not be the best way for other public agencies -- and I'm not thinking of just small school districts, but primarily school districts -- who are currently underfunded.

And if they were to believe that they had to begin prefunding, that's going to impact the current educational program in a severe way, and create its own economic erosion, you know, for the students whose education is being affected this year, so we can prefund something 30 years out.

So I think it's very difficult for us to make a statement to say that “This is the best way,” and have it apply to the variety of public agencies that we have in this state. So we have to be very, very careful about that and figure out a way how to differentiate under which circumstances it might be the best way. And in some cases, it may never be the best way.

CHAIR PARKSY: And exactly what you're just saying I think has driven the staff to separate out Recommendation 9 from Recommendation 10, exactly for the reasons you've identified. Because a number of people have said, "Well, why don't you just make it one recommendation?" And it was really to try to address -- and I think you've made these comments before -- and it was intended to do that.

MR. LIPPS: But even as we just take a look at

Number 10, we have to think about the impact that a recommendation like this for next year would have on next year's budget in terms of then the pressure to either not fully fund programs that are currently being fully funded, or to suspend Proposition 98, things of that nature. Because we can only say it's an additional one and a third billion dollars. But when on top of $10 billion, and we don't know where that's coming from, we've dried up all of our other resources, it creates a very different kind of problem that at least we need to be cognizant of as we assess the strength of the statement that we're going to be making, as opposed to, "Look, prefunding is good when you can do it, when it's fiscally practical. And the State of California should take advantage of it when it's fiscally practical."

And that may come at some point. I don't know that we should be creating as a matter of policy the pressure that they do it next year and have to deal with -- when they have a variety of other things to deal with.

CHAIR PARKSY: Dave?

MR. LOW: Yes, I think that we're dealing with several issues related to prefunding here. One is whether it's the best practice or not.

Secondly, when, timing-wise.

And then third, this issue of separating out state, locals, and schools.

On the issue of if it's the best practice, I think that there are a lot of arguments to be made for it being -- maybe not the best practice, but a very good practice. It does offer the advantages -- full prefunding offers the advantages of the best-assumed interest rate, getting the fastest, guaranteeing the benefit.

But even in addition to what Lee talked about in terms of other budgetary considerations, there may be situations where even from a health-benefit perspective, it may not be the best practice. If you have a small, fixed retiree, OPEB -- say, you're just giving the retirees $50 a month, it's fixed, it's in your budget. A prefunding process is going to double that cost on the short-term, at least, because you're setting money aside. And maybe you can just absorb a fixed cost that's small in a regular budget process. So I'm not sure whether prefunding in that case may be the best practice.

But in the vast majority of cases, it probably is. It's probably the preferred and the best practice.

And I'm comfortable with a strong statement talking about the advantages of prefunding. But I do think that this timing issue is really important. And the fact is, I don't know what the Legislature will decide as a priority; and certainly, I think that they ought to consider prefunding as part of the next budget process. But we do have to understand that adding $1.3 billion onto a $10 billion budget deficit does create a problem, and creates some very difficult choices.

And I understand that we have a very fixed task as a commission. But I certainly also take very great heed in the gentleman's comments about the words we use and the recommendations we make can be twisted to people's advantage.

And if employers come to the table and say, "I'm basically taking the recommendation that we need to prefund, and we need to prefund now, and I know we have a big budget deficit, so your choice is either we cut all of these other programs or we maybe roll back your benefits." Because that's the other thing that's going to come to the table. If employers feel like they're compelled to prefund, they're going to start leveraging employees to try to roll the benefits back or limit them. And that's one of the things that we've said we don't want to see happen.

So we could be inadvertently sort of pushing them in that direction by making the box smaller in terms of timing. And I have very big concerns about that.

CHAIR PARKSY: John?

MR. COGAN: To me, there's no question that prefunding is the right policy.

You know, there was a Commission I think we heard about 80 years ago that established prefunding for pensions -- that establish prefunding for pensions. And now we've got a very good pension system for Californians.

I've got the report here. The report says, in describing the importance of prefunding, it says, "An unsound system, that is one that's not prefunded, is worse than none."

And I think that statement applies as well to health benefits as it does to pension benefits.

And so I think the most important recommendation we can make is what Bob and Curt said, to say that prefunding is the right policy. And I think the stronger we can make that statement, the more powerful our Commission report is going to be.

Having said that, Jim makes an excellent point -- I agree with Dave as well, and Lee -- that there are timing exceptions to when you prefund.

I don't think, Lee, that there are other exceptions but timing. There are periods of economic difficulties where you might want to not put in some money for prefunding because of other priorities. I can see that. But I don't think that means that prefunding is not the right policy.

And so to go to specifics, the idea in our recommendation with respect to the State of having the recommendation be with respect to the current budget, I agree with Jim, let's take it out. Let's not say that the State should do it in the current budget.

Having said that, Jim, I do think that we should be urging the Legislature and the Governor and local governments to begin prefunding as soon as is practicable or as soon as is possible, to give some more strength to our recommendation and our belief that it is, indeed, the right policy.

And it seems if we make the kind of changes that I think Curt is saying, Bob is saying, Jim, I think I've heard you say, put 9 and 10 together, and have them as one significant recommendation. We don't distinguish between the State and the local governments -- that is, for both of them prefunding is the right policy; and prefunding as soon as is practicable is the way they should go.

And I don't think we should get into discussions so much about how or where the money should come from when we begin prefunding. That's a job for the Legislature.

CHAIR PARKSY: Connie?

MS. CONWAY: Well, I'm a little hesitant to put any disclaimers on it simply because we're making a recommendation. And I agree that I just think it should be a strong recommendation.

How soon they act on it, whether they act on it, I just think if you keep putting disclaimers on it, like, "Well, not this year but next year," or "Whenever possible," or that kind of thing, dilutes the idea that it's a good idea. And I believe I have heard everyone in here say that it's the right way to go.

And I also, just in my own mind, and this is my thought, is that -- and I don't want to be a negative person -- but no matter what we recommend, obviously, we don't have the strength behind it to make it happen other than our recommendation, and will they take it into consideration. I'm assuming the Governor will. I don't know about anybody else.

That's just my thought.

CHAIR PARKSY: Teresa?

DR. GHILARDUCCI: Since John referred back to what we did 80 years ago, I'd like to amplify that. And I'm going to speak to this idea that we just take the first sentence of Recommendation 10.

And let me tell you why, without the rest of the sentences, that's a very, very strong statement. That means that we've done what California did with its pension liabilities 80 years ago: That the system was established because there was an immediate need, retirees needed benefits, and there was a declaration that they be prefunded.

With that declaration, that meant whenever there was a consideration in the budget for raising revenue or there was a surplus or the period -- for whatever reason, there was extra revenue, it meant that there was already an obligation for that revenue.

You also see that carry through when ERISA was passed, and the same kinds of declarations were made to companies.

Now, that was accompanied by the kinds of strong statements and timing that we are kind of approaching here, even though they were very specific and they were actually over 20- and 30-year periods of time.

If you even think about the Social Security history, there was a consideration that part of it be prefunded. And by 1960, a third of it would be prefunded.

The statement that it be fully funded was not there. And so we're making a statement here that's much stronger than the statements made for Social Security and certainly Medicare.

So I think we could satisfy what we want here -- and this is what I want to emphasize -- by just having that first sentence. Because that tells the Legislature there is never a time for a contribution holiday; there's never such thing as a surplus that can be claimed by another priority.

CHAIR PARKSY: Okay, Matt?

MR. BARGER: I'm not hung up on specific wording on this, but I think we do need to make a strong statement that it's the fiscally correct thing to do, to prefund. So that sense has to get across.

I think the sense that there's only a $10 billion problem, there's actually a $11½ billion problem, you know. And they may choose not to deal with it this year. I suspect they probably will. But that doesn't get away from it, in fact, being a current budget priority that they're making a conscious decision to defer.

I think California actually sort of has an obligation, as the State is the strongest entity, I think to sort of be in a leadership role for the counties and cities. And I think it's worthwhile sort of having a specific recommendation for them as opposed to lumping the two together.

And I'm loathe to put in restraints about, well, fiscal -- any one year you might not want to do it or whatever, but I think it vitiates the strength of the point, which is prefunding is the right thing to do, and you consciously are making a decision if you don't do that.

So I don't want to vitiate it. I think we should separate out the state. And I think making it as clear as possible that prefunding we think is the right thing to do should come across.

I could live with something like what Teresa was saying I do.

CHAIR PARKSY: Bob?

MR. WALTON: In looking at all three of the recommendations as they're currently listed, really, I think Recommendation 11, where you say "public agencies, including the State of California" -- it's everyone, “providing OPEB benefits should consider adopting prefunding as a preferred strategy.” To me, that's the foremost statement.

“All public employers should identify their OPEB liability." That's true.

As far as Recommendation Number 10 -- and it doesn't matter to me whether these are all rolled into one recommendation or still separate in the three -- the Recommendation Number 10, the State of California, this Commissioner has heard testimony about there's two specific recommendations been presented regarding the OPEB liability: One contained in the Controller's report, referred to as the Gabriel, Roeder and Smith report, and we ought to focus the Legislature towards that, saying, "This is something you ought to look at. Consider this."

We're not saying when to adopt it, how to adopt it, just look at it.

The other is the director of Finance made a presentation to this Commission about another approach, the hybrid approach. The Legislature should look at that.

These are options to consider, and I think we should point them to at least two options considering prefunding as a preferred strategy.

CHAIR PARKSY: Curt?

MR. PRINGLE: Well, I guess I think they should be distinct recommendations. I think we should, again, be very clear with the State. I guess even though I might be mad at John's comments, Teresa softened it a bit.

And I do see, in fact, that the first sentence of Recommendation 10 is the strongest; but I don't think we should just leave it hanging like that. And maybe I could just offer a suggestion that, if people feel good with the first sentence -- which I hope everybody does -- then I would offer a second sentence that says something like, "The Governor and the Legislature should present in this year's budget a prefunding strategy to address the State's OPEB liability."

And just -- again, not only should we say, "Yes, this is the preferred option," but I think we should say "and do it now, come up with a plan, whatever your plan is."

I mean, to tell someone to begin the process of prefunding doesn't say "prefund everything," it means begin the process of prefunding. If that's $100 million, if that's $50 million, if it's a billion dollars, I think it starts that process of showing the Legislature that this has to be taken seriously.

This is a tough budget year. No one on this dais is suggesting that in this tough budget year we should suspend all of the collective bargaining agreements in the state and pay employees less. No one suggests we should take any action that is improper that way.

We, this body, are focused on this issue. Therefore, for us not to say the Legislature should address it as soon as possible, I think is setting aside our responsibility.

Again, we are not -- maybe by referencing directly -- and maybe, Bob, “We can say the Governor and the Legislature, in considering the GRS report of May 2007, shall present in this year's budget a prefunding strategy,” or something at least referencing that, so it's not like we're avoiding that.

But, again, I want to make sure we call on them to say, "Okay, now, we're calling on other agencies to come up with the strategy. State, this is your job to come up with a strategy this year as well." And I would feel comfortable that way.

CHAIR PARKSY: Ron?

MR. COTTINGHAM: I think Commissioner --

CHAIR PARKSY: You have to push the middle button there, the little black button.

MR. COTTINGHAM: I think actually Commissioner Pringle has hit the nail on the head. He has echoed exactly what the GASB people have said in their written recommendations and in their oral presentation to this commission, is that you don't need to pay off your liability, what you need to show is that you have a strategy.

So if the emphasis is to give the Governor and the Legislature the chance in this budget cycle -- because we know, again, they're in a very difficult budget cycle, that their deficits have already been mentioned -- it comports with exactly what GASB has said, is, "Show us a good, viable strategy or plan for addressing your OPEB liability."

So I think that would be an excellent suggestion to carry forward as a recommendation from the Commission.

CHAIR PARKSY: Thank you.

Lee?

MR. LIPPS: I do agree with Curt's second sentence. But I --

CHAIR PARKSY: No, no, Curt had about 15 sentences there. You can identify the second one, but you ruled out all 14 of the other ones?

That's it?

MR. LIPPS: Well, okay, yes, yes.

However, I am not comfortable with the first sentence as it is currently written, and that was sort of Curt's preamble.

I understood what Teresa was trying to say. And if, in fact, the first sentence were to take out the word "current" and just say "prefunding as a budget priority," take out the word "begin," "and prefund its OPEB liabilities," adding in John's phrase, you know, "when fiscally practical" or “whenever practical, whenever fiscally practical,” then I'm comfortable with the sentence that way.

That first sentence right now says it should begin prefunding this year. And I don't think that that's a responsible recommendation.

CHAIR PARKSY: Jim?

MR. HARD: Going back to different issues: One, I did not hear everybody agree that prefunding was -- I heard Lee, and it sounds like there's a difference of opinion -- and Dave say that it is perhaps possible that prefunding in certain circumstances is not the preferred approach; so I am in favor of keeping these recommendations separate.

I think it's appropriate for us to have a recommendation for the State of California. It is the body that created this commission, the Governor. It's hard for me to tell from what people have said whether I really agree with them or not.

CHAIR PARKSY: We'll give you a chance. Don't worry.

MR. HARD: Then I liked what I heard from everybody, and most of what I heard from everybody, and everything I heard from a number of people.

I think that Bob Walton is right that we should have specifics, point them to -- I don't mind pointing them to this; and I want the State to begin prefunding, but I want them to be able to look at the revenue and obligation, facts, and everything else when they do it.

So I don't -- and I agree with Matt, that I don't need a phrase that says, "Well, if fiscally feasible," or whatever, I don't need that there. I think that I agree with Lee, that I took it, to begin with, "the current budget year" means this budget. Put it in this budget and move it. And I hear the nuance that, "Well, it's not full funding," which is something that I don't think is practical in this budget year.

So these other sentences, I need this whole thing -- I would want it rewritten along the lines of what I've heard. But collectively, I don't know how to put all these comments together. Except --

CHAIR PARKSY: Our job will be to try to make something out of this sausage.

MR. HARD: Right.

So I think we should have a statement -- a strong statement about prefunding for the State, not for other entities, because the State is the size where it's proven it works for retirement. I think that should be there. We don't need a qualifying phrase, I don't think, in it.

I don't think it's appropriate to be saying “the current budget year.” I think they should have a strategy, I think we should point them to things. And I think that they should -- the Legislature and the Governor should make public their strategy. And if they don't have a strategy, well, then they'll have to make that public also.

So those are the things, I think.

And I'll be looking forward to seeing the words on the piece of paper.

CHAIR PARKSY: Okay.

MR. HARD: Unless we want to do it --

CHAIR PARKSY: No, no, we want to get -- on these issues where people wanted a discussion, we wanted to get a sense here. We'll make some suggestions of an approach before we're finished here.

Paul?

MR. CAPPITELLI: I just had a comment, and that is that -- and with all due respect to my colleagues and their concerns about whether or not this somehow translates into something else falling off the table of some great importance, I think we're taking a step back in time here with spending too much time on going back and revisiting whether or not the wording on this is appropriate.

The reason we've come up with this wording is that at prior commission meetings we've heard testimony, and we've already vetted out a number of things to get to this, because I believe we could probably reach consensus on one thing, which is that prefunding of health care is the best approach to address the situation or the crisis at hand.

And any other ancillary recommendations that we make, whether it be to the State or other local entities or whatever, it's really not our concern as to whether or not they have the money to do it right now or whatever. We need to make the statement that you asked the Commission to come up with a strong recommendation as to how to address the issue, and we've done that.

To go back now and to try to wordsmith this recommendation so that somehow we make it clear that, “You can do it, but if you do it, we don't want anything else to suffer,” that's not really within our purview or our challenge. I think we're taking a step back in time as a group to go back and to revisit this. I think we need to figure out a way that we can live with the overall recommendation if we need to make some minor adjustments. But overall, I think this addresses the issue at hand.

CHAIR PARKSY: Is there anyone that would either object to or feel that the general statement that John made or that Paul made about prefunding is -- we'll do the words right -- but prefunding is the best or the right policy to approach funded OPEB liabilities? Is there anyone that would feel that they would object to a strong statement?

Put aside timing, put aside everything else. Just on the issue of what's the best policy, consistent with what was said -- 80 years ago, is that what --

MR. COGAN: Uh-huh.

CHAIR PARKSY: Is there someone here that would feel that's not the right approach?

MR. LIPPS: To refer back to something I said earlier, Mr. Chair, it's the ideal approach. It may not be the right approach for every public entity. There are some public entities where pay-as-you-go may make much more sense due to the somewhat limited size of their obligation and/or duration. It may not be -- prefunding may not be their best option. They may have better things to do with their money in their programs or their infrastructure.

So to make the blanket statement that it is the best approach, I do have a little problem with that in some perhaps limited cases.

MR. LOW: Gerry?

CHAIR PARKSY: Yes?

MR. LOW: I agree. The fact is, why would I want to set up an irrevocable trust, and the management systems that they incur, and the administrative cost of that, if my OPEB liability is really a promise to pay every retiree $50 a month, it's just not fiscally practical in that case.

So in the vast majority of cases, I would say yes. But there are going to be exceptions; but the words we use, I think we have to choose them very carefully.

CHAIR PARKSY: And I think that's right.

Let's just separate out our recommendation to the State, do we feel that's the best policy?

Is there anyone that would object to that?

(No audible response)

CHAIR PARSKY: Okay, so we can start with a very strong statement about the best policy as a direction to the Governor, the legislators, the State.

From there, I think we've got a little bit of work to do. But I do think that if we can come out with, consistent with what was said about pensions and taking into account some things, I think we will be doing a good public service for the constituents that we're here collectively to represent, in a sense.

I mean, we're here to basically send a message to public employees that, "There have been promises made to you, and we're going to recommend policymakers how those are going to be honored, so that at the end of the day, you'll get them."

So I think we ought to -- and, again, this is not meant to be a final sign-off on anything. But I think it sounds, at least to me, like a separation of the two makes sense, for local authorities and the State, the way the recommendations are now being done. And if you'll give us some liberty, we'll try to revise both of these consistent with what was said.

But to make a very strong, very clear statement at least to the state policymakers that this is a policy, in effect, that is right, that is prudent, and that you shouldn't avoid indefinitely.

Okay, let's keep going.

MS. BOEL: That's a little tough, Gerry, but we'll try.

CHAIR PARKSY: Well, I assure you that I will be working closely with the staff.

MS. BOEL: I hope so.

CHAIR PARKSY: And we will recirculate for editing.

Okay, Tom?

MR. COGAN: Gerry?

CHAIR PARKSY: Sorry.

MR. COGAN: I don't want to let this go. I think the staff needs a little bit more clarification, and we are run up against a little bit of a deadline.

CHAIR PARKSY: I'm sorry, go ahead.

MR. COGAN: I'm wondering if we can talk a little bit about why we would have a different recommendation for the State --

CHAIR PARKSY: I'm sorry, we should have clarified that.

MR. COGAN: -- and for the localities.

Dave and Lee, as I heard both of you, am I right in thinking that it's because there are some exceptions that might be out there for the localities, small localities with small OPEB benefits and the like, is that really what distinguishes the state from the localities here? Or are you thinking something else is the reason why we want to have separate recommendations?

MR. LIPPS: I'm thinking of the local agencies -- and I'm not limiting it just to school districts -- that do offer limited OPEBs, perhaps just up to age 65, maybe just for three years, the amount that they expend each year is 1 percent, a half of a percent of their budget. It's not much more than that. They're not projecting it to go up.

It makes perfect sense for them to spend $125,000 as part of their regular budgeting process year after year after year. It's not impinging on their program; and it doesn't make sense for them to start putting, you know, $300,000 away extra to reach a full-funding model when the cost is perfectly -- and impact their program this year, as opposed to this is a perfectly manageable cost. They don't see any big escalators in all the rest of that.

When we think about retiree benefits, we've had these benefit packages around also for 70 or 80 years in some fashion, without any prefunding whatsoever.

So there was always an unfunded liability, and it hasn't destroyed -- it's starting to impinge a little bit on some of the local municipalities, but it hasn't destroyed the economies as perhaps may have been predicted 70 or 80 years ago when people started -- however you started calculating unfunded liabilities.

I'm just saying that for some public agencies, it depends on their finances, the money they have coming in.

I think a good example is in our case profiles, was Encinitas School District. They were able to do some prefunding, but they were able to do some prefunding because I believe they're a basic A district, which means that they get more money on a per-student basis than your average school district due to property taxes and so on. They're able to put some money away for prefunding. For them, it may make some sense. But for others, they may just be a manageable expenditure on a year-to-year basis that doesn't impinge on their program, and they don't see a -- there's no foreseeable problem.

DR. GHILARDUCCI: Gerry?

CHAIR PARKSY: Teresa?

DR. GHILARDUCCI: I want to state my principles, and then talk about the language around it later.

These are my principles: That a future promise should be partially funded or fully funded. Partially funded is fine with me. Because that identifies that it's irrevocable. So even if it's 20 bucks you're promising for a three-year period that you're promising, and it's very small, there should still be a liability calculated for it and a plan to pay for it, even if it's partial. Because if it's not prefunded, then I would consider that de minimis benefit revocable.

So the only way to promise retirees that they'll get what they're promised, no matter how large, is that the liability is measured and it is partially funded.

MR. COGAN: Teresa said the principle far better than I have. I think it's the principle -- it's the principle that should guide us.

I would be a little bit stronger and say "fully fund promises as they are incurred."

And Teresa said earlier that we're hearing a lot about the fear that retirees have, that they're not going to get record health benefits.

Why is there that fear out there? One simple reason: Because the benefits haven't been funded; right?

And so I don't see, even for the small districts or even the districts that have low OPEB benefits, Lee, I don't see why we should make an exception for them.

The only exception that I can think of, the only rationale for an exception, would be if the costs of establishing prefunding of the administrative costs and so forth outweigh the benefits to the workers, but you don't have to set up a big-time trust if you're a small entity. You could put the prefunding money in a bank account. And I don't see, at the end of the day, that even these high administrative costs are an argument for having an exceptions policy for the localities or the districts.

And so I'm wondering if it's not better and more powerful to put the two recommendations together, if, indeed, the only reason for keeping them apart is that there are exceptions at the local level. Unless we can identify some real clear exceptions, I think, Lee.

CHAIR PARKSY: Yes, Curt?

MR. PRINGLE: I guess I don't understand why we're trying to drive to say that we're not a state entity and should have a different premise to present to the State. I mean, we can't mandate local agencies to do certain things unless we want to pay for it.

So to say: “Come up with your plan, develop a plan, and then create a prefunding strategy or an alternative” is really what we're saying in 9.

I don't want that to be the recommendation of the State. I want to be more direct. I want to be harder. We are a state agency, and we can make the hardest possible recommendation to the State.

We can't make that similar recommendation to a local agency, because once we say “You must prefund to this level” or “You must begin prefunding this year” or -- it's a different relationship we have in terms of making those statements.

So that's why I think there's value in saying, "Yes, everybody should create this plan as presented under Recommendation 9. And the State, yes, create a plan, but start as quickly as possible to prefund, and this is what you need to do," so it just bridges off of Number 9. But I think it does allow us to then differentiate the State because we are talking to the State, and we are being precise. And we don't have to -- when we talk to the State, we're not getting muddled up into really this disproportionate of districts and governments, in terms of size and programs. I mean, we know exactly what the State has and what the State doesn't have -- money.

But the point is, at least we can have that discussion clearly with the State.

And I think that gives it more value. And I think it will be a much clearer presentation to the Governor and the Legislature what we mean than to say, "We're going to lump in -- oh, when we're talking about all government employers should do this, yes, and the largest one in California should, too," to me, that is really a weak presentation as opposed to, "Yes, all governments should do this; and, by the way, State, you need to do this and be aggressive in that action." I think it makes it much clearer from a state-directed commission's perspective.

MR. COGAN: Okay, I’m not disagreeing with you. I'm not disagreeing with you at this point.

It's just not clear to me, if we're not going to recommend to the State that the State begin to fund these in the current budget -- if we're not going to do that, then what's the difference in the specificity of the recommendation to the locality versus the State?

MR. PRINGLE: Well, I'm not giving up on the first premise.

MR. COGAN: Ah. Okay.

MR. PRINGLE: I still think it's important to begin that process --

MR. COGAN: I understand.

MR. PRINGLE: -- and also to be very clear in the second sentence of Recommendation 10, which I understand staff is going to formulate for us.

MR. BRANAN: Right.

CHAIR PARKSY: I do think that -- well, two separate things.

Curt, you've certainly articulated the reason for separating out the recommendations; that's one of the main reasons. I think that at least what I've heard is that the Commission is certainly comfortable with being on record about prefunding as a matter of policy, and especially with respect to the State.

I think that we'll try our hand at avoiding a directive that full prefunding happened in the current budget. I think you could have read the recommendation that is on the table that way. And that may not be either practical or certainly not consistent with everyone's point of view.

However, I think we want to see if the notion of saying to the State policymakers, "It's important not just that this policy be identified for you, but that you begin." And "begin" may be a dollar or it may be a billion and a half dollars. But I mean, either it's going to happen or it's not going to happen. And I think, frankly, all of the people that showed up at our hearings, all of the people that many of you are representing, want to have some assurance that this process will happen.

And so I think without trying to be too dogmatic about the notion of full prefunding in the current budget, which I do think sounds like really does cause some real, very legitimate concerns, I do think that the audience that has been before us, what we've been created for, is looking for us to push the policymakers to begin a process that will assure them they're going to get their benefits.

And so I think let's try, in the context of -- and I think John's point is right, if we said nothing, then we could probably collapse the two. If we said nothing about beginning, I think we probably should collapse the two. But by saying that, I think that's a separate reason for, really, addressing the State, and still taking into account at the local level a myriad of different issues that may have to come up in the current period.

Does that help you at all, Tom?

MR. BRANAN: Yes, Mr. Chair.

And I would like to suggest that Recommendation Number 9 also might give comfort to some of the Commissioners who are worried about smaller agencies not being able to -- or feeling that they're being forced into something that doesn't fit their needs.

CHAIR PARKSY: Right.

Do you mean, the way in which you phrased Number 9?

MR. BRANAN: Well, the way number nine is written, it makes it clear that if you did have an agency that, say, set aside a few dollars a month, that they can look at their own circumstances and decide if they need full-blown prefunding, a bank account, or whatever it is.

CHAIR PARKSY: Well, I think consistent with what John was seeking on Number 9, recognizing that you need to take different things into account, I think we ought to think a little bit about if a local agency is not going to begin to prefund, they ought to explain what their rationale is and why to their constituents, because it places in jeopardy the promises that they have made.

MR. BRANAN: And the last sentence of Number 9, it does address that.

CHAIR PARKSY: Well, yes. But, again, the only question I would have is alternatives.

I mean, I think that if we really want to be behind the concept of prefunding, recognizing there may be -- somebody may come up with an exception. I'm not quite sure one has been identified. The local agency ought to be on the line to explain to their constituents why they are not doing it. And it doesn't quite say it quite that way, I don't think.

MR. BRANAN: Okay.

CHAIR PARKSY: John?

MR. COGAN: At the risk of --

CHAIR PARKSY: No, no, that's okay.

MR. COGAN: Tom, when I look at 9, I see, quite honestly, something that's far too weak for what I would hope this commission can accomplish.

Identifying the liability, while they have to do that under GASB; identifying prefunding options, I believe that's the charge of our commission. And it looks like we're kind of foisting it off on them; and then determine such a strategy, if such a strategy is appropriate, that gives them the leeway to say, "No, you don't want to prefund," which is why I say that it's too weak.

And so I would hope that if we could recraft 9, if it's separate from 10 -- if we recraft 9, start from scratch and not try to work off of that language. Paul may have concern about it.

But it just seems to me it doesn't say anything. It says, "Do whatever you want to do."

CHAIR PARKSY: Well, again, if it's consistent with a belief by the Commission that prefunding, as a matter of policy, is overall the best policy; but by saying to the local authority, "You have to come forward" or "You should come forward and explain why you're not going to begin," I think you're moving -- recognizing there may be a reason -- we haven't been able to identify it -- they may have a reason for doing it, and Lee may be able to identify it -- but it would place the onus on the local authority to, in fact, go against the general policy, which we think is the most prudent policy.

MR. BRANAN: Okay, that sounds good.

CHAIR PARKSY: Teresa?

DR. GHILARDUCCI: Just for the sake of history, in the 1920s, in the 1950s, oftentimes in recessions, very poor employers and their employers negotiated pension plans. They could not afford anywhere near a significant funding. But they put a penny an hour, two pennies an hour, and they built up. And the reason why is because the employer and the employees said, "This is a promise that we'll keep."

And so the only reason I can think of for not prefunding, even at the level they can afford it, is that it's a revocable benefit, and it's not a promise.

CHAIR PARKSY: Yes, Matt?

MR. BARGER: Just from sitting here, listening to this debate, is how striking the contrast between what the approach is for pensions when we're not even talking about doing anything other than what is necessary to fund them going forward, and OPEB saying, "Well, it's important but it's clearly not as important as pensions because those aren't on the table in terms of filling a hole.”

I keep coming back to probably a stronger statement, too. And personally, if it was me, I would be telling, "Look, given a $11½ billion hole, not a $10 billion hole, you can choose not to put some of that money aside, but you'd better be pretty conscious that you're doing something important; and you are vitiating a promise you're making, to some extent.”

The other point I'd make, which nobody's touched on, but which is pretty obvious, they've got a 10 or 11½ billion dollar problem this year, they're going to have another problem next year.

So instead of just saying, "No, well, it's just this year" kind of misses the point that, no, it isn't. And "If not now, then when" sort of questions come up.

So I don't feel a need to tell the State of California you have to put a billion and a half dollars against the budget next year, but I do feel the need to say, "Look, this is every bit as important as pensions. And if those are funded, these should be funded."

And I take it from both honoring promises that are made to workers, but also saying, "You know, look, these promises were made, you've got to fund them, you've got to pay for them. You can't just make promises."

CHAIR PARKSY: And they have gone beyond that. They have said they are going to.

MR. BARGER: Yes.

CHAIR PARKSY: So they certainly have an obligation to identify and do it.

Okay, let's take our hand a little bit here. I will work closely with you on seeing if we can't come up with something on these two recommendations.

Okay, Tom?

MR. BRANAN: The next recommendation we're looking at is 23.

And you heard from the Controller's representative today. And I would just say on that, that I do feel that the request -- the idea that this should be put in statute is a valid one. And you can just look at other reports that the Controller does, such as the pension report. That was also set out in statute. So I don't feel any need to reconsider what has been put before you in terms of asking for legislation.

CHAIR PARKSY: Does anyone here feel any differently about that? I think Curt made a good statement about that.

Does anyone feel differently?

(No audible response)

CHAIR PARSKY: Okay. Anything else that you would suggest altering there?

MR. BRANAN: No. But I will say that Stephanie and I met with the Controller's staff earlier this week, and we had a very good meeting, and they seemed quite interested, as you heard earlier today, in pursuing this OPEB report. So it really is getting down to just questions of how best to do it.

But I'd say there's even an eagerness there to do it.

CHAIR PARKSY: Lee?

MR. LIPPS: Gerry, the only concern that I have is one that I have raised earlier with this. The report itself, I have no problem with, and even in Recommendation 24, the word "should" I think should be changed to "shall." You know, it will come out each year, as it's already required to be done.

My only concern has to do with when we mandate it -- I'm a little reluctant to mandate something of local agencies that then generates a mandated cost reimbursement that the State in recent years has not been funding. That's just my general concern.

I also know from experience that if submitting the information is voluntary, that a lot of local agencies won't submit it for a variety of reasons. Usually very small ones, not so much the larger ones.

And I don't know how we overcome that. I just hate mandating a cost on somebody who will not be reimbursed for it. And certainly our counties have faced that with some of their election expenses over the last three or four years. And certainly that's been happening with school districts.

CHAIR PARKSY: Bob?

MR. WALTON: You know, I think you have to look back at the process that's going to be used. GASB 43 and 45 has already mandated all public employers to report this information on their financial statements. That's already there. So this commission isn't doing anything regarding a mandate in that regard.

Current law requires public employers to report financial data, which will include this OPEB liability to the State Controller. That mandate is already there.

What this recommendation is mandating is the Controller to produce a report specific to OPEB benefits based on information they're already required to accumulate from public employers. I believe that's correct.

MR. BRANAN: I believe it is.

MR. WALTON: So this isn't an extra obligation on public employers at all. That obligation is already there. It's just a matter of the Controller to take that information and prepare a report like they do today for pensions, specific to OPEB benefits.

MR. BRANAN: That's our understanding as well.

MR. LIPPS: I don't think school districts will see it that way.

MR. CARTER: Thank you, Mr. Chair and Members.

The only comment I would make in that regard is to what degree the Commission will be requesting the information that goes beyond the GASB standards. And I think you're going beyond that. And so if that is the case, and recognizing that we do have existing channels and requirements there, Mr. Walton, you're absolutely correct about that, that there are some basic requirements. To what degree you go beyond that would be questionable, to what degree it is mandatory or voluntary. And we just simply think that we have a channel in place to accommodate this commission.

To what degree you want to go, to what statutes, legislation, we'll be happy to work with you on that. We are eager to join with you simply because it's the right thing to do.

Thank you.

CHAIR PARKSY: Curt, did you have a comment?

MR. PRINGLE: Well, I think we're just, for some reason getting all muddled up in stuff.

I totally agree with Bob. But I'm looking at, data should include a brief summary of benefits. Even if we have to reimburse for that, I think it's pretty handy.

"Relevant actuarial assumptions." Well, I believe that is a requirement in the GASB reporting, so that's not anything new.

"Including but not limited to mortality and retirement rates." That's foundational to what they're going to be presenting.

"The rate of medical affiliation and the rate of return on assets used in their estimation." I mean, if that is something that they do not have readily available, then I think a mandate would be good to at least make sure they have it readily available. Otherwise, we're asking for four or five things, and I have a hard time to think that that's a big cost factor.

Now, I know public agencies will always try to seek reimbursement from the state for every, quote, mandate. But at some point along the way, I believe this information is available in the Controller's office. What we're mandating here is the Controller to make it available in some consistent format.

CHAIR PARKSY: Is that correct, from your standpoint, Tom?

MR. BRANAN: Yes. And also part of our first meeting with them, and something we'll follow up on, is going over the survey information that this commission asked through its initial survey, and deciding how that could better be done with subsequent surveys.

So we are looking at what will be included.

CHAIR PARKSY: Any other comments?

MR. LOW: Yes, Mr. Chairman.

CHAIR PARKSY: Sorry, Dave.

MR. LOW: We've just gone through something very similar to this. We did a bill a few years ago, AB 58, and it's was to study the -- and it relates to some of your other recommendations -- it was to study the value of creating a statewide pool for school districts and the cost benefits of doing that. The study was just completed.

I can tell you that the practical job of trying to just find out what school districts' health benefits was enormous. And we have huge holes in that still.

So the brief summary of benefits, while it sounds very easy, I can guarantee you it will be an enormous task.

So I'm thinking that the Controller's office has some very legitimate issues here that you may want to sit down with them and talk about what is readily available and easily attainable that will give us a report that gets us what we need for a comparison basis on OPEB. Do we need a brief description of the benefits? Maybe not. Maybe we just need to know what the OPEB liability is and what their local OPEB GASB-required report says, and we provide a good comparison.

So I think we do need to sit down with the

Controller's office and work with them so that they can provide us a valuable report; because I know there's a law that says that school districts have to report the crimes committed on their campus. There's a local requirement that says, "You've got to record the crime. Then you've got to send it to the Attorney General's office, and the Attorney General is supposed to fill out a report.” They could never get that report on time.

They had to do a law that said that superintendents would be personally fined on their salaries in order to make them report that information. And you can imagine the kind of uproar that that created.

So it's not as easy as it sounds; and so I think we need to work very closely with the Controller's office so that we get a practical report that's attainable and gives us good information.

CHAIR PARKSY: Tom?

MR. BRANAN: Yes, that's the process we've started.

And I just heard from one of our contract actuaries, that everything that is listed in this, in this recommendation, is available now through footnotes to GASB. But I'll have to pursue that.

CHAIR PARKSY: Okay, go ahead, Tom.

MR. BRANAN: Number 24, in our meeting with the

Controller, they made a good argument why nine months was not realistic for them to produce this annual report.

In that meeting, we agreed to 12 months.

I see in their fax, they may want a little more time than that. But if the Commission will give us that leeway, we'll finalize that.

CHAIR PARKSY: Does that seem all right?

Okay, proceed ahead.

MR. PRINGLE: Mr. Chairman?

CHAIR PARKSY: Yes?

MR. PRINGLE: If I could on that, we were just kibitzing here. So someone slipped you a note that said all of that, that you're asking, in terms of data, is articulated in the GASB report; is that right?

CHAIR PARKSY: In 23, yes.

MR. PRINGLE: In 23.

MR. BRANAN: I believe so.

John?

MR. BARTEL: Yes, it's in the footnote and in the actuarial report used to generate the footnote. So it's both of those things.

MR. PRINGLE: How about if we just make it simple and require them to provide their GASB report to the Controller?

MR. BRANAN: Well, that's certainly something that we can -- I think we need to sit down with the Controller's staff and make sure that fits both our needs.

MR. PRINGLE: Well, because what the Controller's staff is going to say, “Oh, it's going to cost us a lot of money to go through each GASB report and pull that data out.” I get that. But at the same time, every school district is going to say, "Oh, we're going to have to go through our own GASB report and pull that information out," and then it's chargeable back to the State.

So if we're going to make someone do it, you might as well have it done through the Controller's office and have them up their request for additional funding to the Legislature as opposed to an unfunded mandate.

CHAIR PARKSY: Do they hire you here, is that the -- well, I think, Tom, you need to make sure that there's nothing that we're going to be recommending that's not contained in the GASB report. If that's the case, there doesn't seem to be a reason to list items. You could just -- the recommendation could make reference to the reports.

MR. BRANAN: Sure.

CHAIR PARKSY: Matt?

MR. BARGER: Let me cut you a break and skip over to 24 instead of 23.

CHAIR PARKSY: That's a good idea.

MR. BARGER: 24, just the thought that even a year after isn't possible is fairly striking.

And where I'm going with this that I understand --

MR. COGAN: Matt, have you ever dealt with the IRS?

MR. BARGER: I mean, most entities I'm aware of do their audits within three months after the fiscal year. So, I mean, this is a long time to come up with a report, and obviously something where timeliness is of interest, I wonder whether or not, at a bare minimum, we could state something that, you know, timeliness is important. You know, the objective ultimately ought to be something much shorter than this, and da, da, da, rather than just saying I think the 16 months or 18 months or something in the letter, which is a long time. And to me, just sort of inexplicably a long time.

MR. BRANAN: It is a long time but --

MR. BARGER: It’s certainly not the best practice.

MR. BRANAN: I think part of the problem, to be fair to the Controller, is they're dependent on local agencies providing the information before they can then massage it and present it in a report. And many local agencies don't do that, even though they can be fined for not providing it.

MR. BARGER: But I think they're tying it to a decline that says some people take as long as a year to do their audits, which is -- you know, they ought not be taking that long. I suppose the Commission could point that out as well while we're at it, but that's just sort of an unacceptably long time to get information out.

CHAIR PARKSY: Well, again, not to elaborate on a recommendation, but it's certainly possible, I suppose, to tie the requirement -- first of all, to place the obligation on the local agency to provide their audit timely, and then require a certain time frame from the time of receipt on the part of the Controller rather than just identify it as a fiscal year if they can't get the information.

I know that would satisfy them. I can't speak for them, but I will, anyway. That's okay.

MR. BRANAN: All right.

CHAIR PARSKY: Okay, keep going.

MR. BRANAN: Then the next one was not called out, but it is part of the discussion with the Controller, and that is Number 28. And the Commission has discussed the role of this advisory panel.

We had some discussion in the second paragraph there, it now says, "This panel should be within either the Office of the State Auditor or the Office of the Legislative Analyst."

Today, you heard the Controller say that that office would like to handle it.

I think there are potential problems with each of these.

The State Auditor asked that we consider a very real possibility of conflict of interest if they oversaw this group; and they didn't want it.

The Controller, I think, has a similar problem, in that he sits on both the PERS and STRS boards, and that could be a problem.

My suggestion would be that we strike that sentence, because I think, ultimately, the Legislature is going to decide where this is. They could make it even an independent office, if they wanted to. But that would be my suggestion, we strike the sentence that suggests where it should be housed.

CHAIR PARKSY: Rather than indicate that any conflicts of interest should be taken into account and where it's established?

MR. BRANAN: Well, I think in the legislative process, those things will come up. And I think they would be better able and have more time to evaluate those conflicts.

MR. WALTON: The sentence you're talking about is "this panel should"?

MR. BRANAN: Yes.

MR. WALTON: Take that sentence out. Leave the location of this advisory panel, which could include being strictly an independent panel or commission or whatever, up to the legislative process, which it will be, anyway.

MR. BRANAN: That's correct.

MR. WALTON: And I think that's a good suggestion.

CHAIR PARKSY: Okay, go ahead.

MR. BRANAN: The next one is Recommendation --

CHAIR PARKSY: Oh, sorry, Dave?

MR. LOW: Before we move on from this, we had a lot of discussion during the hearings about best practices and actuaries; but I don't recall explicitly a discussion about legislation creating an actuarial panel.

I recall a discussion about actuaries talking about advisory panels. And it sounded to me more like on a voluntary basis to provide best practices and guidance.

I'm not quite clear that there's enough work to create a state-funded actuarial panel under some state agency.

I'm worried that if we do create that and there's not a lot of work, that what we're creating is a body that's going to be looking for work.

And agencies already have to have actuaries. They have to hire an actuary to do their GASB report. Pension systems have to hire an actuary to do their valuations. So now we're creating the full Employment for Actuaries Act here, which I'm a little uncomfortable with.

I see three other recommendations in here talking about the requirement for all these actuarial services. And, you know, no offense to the actuaries in the room, but, I'm sorry, I don't see the relative value versus the cost is justified to me in doing this, especially many of the services we're talking about here are redundant services.

And I'm not sure that the Commission ought to be advocating for redundant and costly services.

MR. BRANAN: Well, concerning the full services for actuaries, it's been our intention all along that the actuaries serving on this advisory panel would not be employed. They would serve much as the commissioners serve. They would have full-time staff. And the size of that staff would be determined by the Legislature.

CHAIR PARKSY: I do think, Dave -- I recall fairly extensive discussion about the establishment of this by legislation. I think we did have --

MR. BRANAN: This language was before the Commission.

CHAIR PARKSY: Yes, I thought so. I recall that, too.

MR. LOW: My oversight there.

I still would like to -- to me, I'm not quite clear on precisely what they would be providing in this recommendation and what the value would be and what -- more precisely, what the value added would be; and so I'd like to see more clarity there.

MR. BRANAN: All right.

CHAIR PARKSY: Okay.

MR. BRANAN: Number 29, this is the recommendation that the State Auditor conduct an audit of the two statewide retirement systems. And there have been concerns, as you just heard, that this is a redundant cost, because the systems already do financial audits with auditors that they employ and bring in.

In discussing this with the State Auditor staff, I think what I had envisioned but had not made clear was more of a fiduciary or performance audit. And staff would see that tied to the recent adoption by STRS of a stronger conflict-of-interest policy.

And I think that a fiduciary audit could set a baseline going forward for seeing where the agencies have been, if there have been problems or not; and going forward, seeing how that conflict of interest -- and I think PERS staff, at least, is talking about taking another look at a conflict of interest for the PERS board.

CHAIR PARKSY: Well, maybe you ought to articulate that a little bit more clearly, the difference -- what is a "fiduciary audit"?

MR. BRANAN: Well, a fiduciary audit or a performance audit would be to look at policies and procedures, to see if they've been followed. And it could be in -- well, as you saw in the City of San Diego pension problems, you had fiduciaries who really were not acting as plan fiduciaries. And that's something that this sort of audit can identify.

I think another one, another area would be in the letting of contracts. And my interest, especially, would be in investment contracts.

So to see, is there a policy in place, look at how contracts have been let, did that procedure follow the existing procedures.

And it would be something -- we're still saying every three years. The auditor pointed out that they have been doing performance audits, which this would be a type of, for over 40 years. And what they often see is that you will have a couple of audits scheduled, as we have every three years.

If they don't find anything in the second or the third audit, whatever is decided beforehand, then the requirement can be sunset.

CHAIR PARKSY: Well, I think inherent in this recommendation, you were seeking -- or the Commission would be seeking to have an independent financial audit. That's certainly understandable.

And it doesn't mean that we can't discuss the notion of fiduciary.

MR. BRANAN: That's true.

CHAIR PARKSY: You're suggesting taking the independent financial audit away?

MR. BRANAN: I'm not. I think an independent financial audit has value.

But what I hadn't made clear before was also this notion of more of a performance audit.

CHAIR PARKSY: I see. So that would be in addition to this?

MR. BRANAN: Yes.

CHAIR PARKSY: Bob, how do you feel about that?

MR. WALTON: Well, currently, for PERS, at least -- CalPERS -- the law requires an independent financial audit to be performed, which is done annually. It's paid for by the system.

So there are those that may feel that since the system pays for it, it's not, quote, unquote, independent.

So to the extent that you feel you need independent -- truly independent, i.e., it's not being paid for by the system -- then the auditor general or someone else can perform that. But the system certainly shouldn't have -- and what we're recommending -- wouldn't pay for those audits.

The auditor general currently has the authority, and has done so in the past, to audit CalPERS.

This doesn't add anything to their authority that they currently have today. So I'm not sure it's necessary as regarding financial audits.

The performance --

CHAIR PARKSY: Just to pause on that, though, Bob.

MR. WALTON: Okay.

CHAIR PARKSY: The only question for this group would be, is it prudent policy to put it in as a recommendation as opposed to they have the authority to do it. Left alone, they might not.

MR. WALTON: Sure. That's a good point. I don't know.

MR. BRANAN: And just to follow up on that, I discussed that with their staff, and they do have the authority to do audits. Usually they have to be directed by that the joint legislative committee that oversees them.

And also, if they have a whistleblower or that sort of information come to them, they can initiate an audit.

But in terms of an ongoing, regular audit, like we're calling for here, they really can't initiate that themselves.

MR. WALTON: So that's really the difference, really? What this recommendation would call for, is to have the auditor general perform an audit on a more routine manner, through a cycle every three years or whatever the appropriate time frame would be?

MR. BRANAN: That's correct, and to make it clearer what that should entail.

CHAIR PARKSY: Dave?

MR. LOW: My understanding is that the financial audits are required now, they're doing them.

So doing an additional financial audit would be redundant in some respects and create some cost to the system to have to go through the process twice.

A duplicate financial audit, I think currently, is illegal. There's current law that prohibits the Auditor or these entities from providing the same financial audits. So we would have to overturn current law and open up the opportunity to do that. And I'm not sure that that's feasible, or I'm not even sure that it's practical.

Now, this whole idea of the fiduciary audit is a new issue to me; and I find it far astray from the charge of the Commission in terms of identifying OPEB liabilities and figuring out a way to pay for them, and now opening the door to basically, in my opinion, coming right up to the line of asserting that there's some sort of things going on within these two systems.

Because I don't know why we identified CalSTRS and CalPERS and leave out the rest of the systems in California and say, "Well, now we want to start challenging and auditing you to determine whether you're somehow inappropriately letting contracts or doing things that are maybe not legal or not prudent." And I find that very, I think, risky in terms of what it looks like we're doing here.

And I'm not very comfortable with that. I really dislike that idea. I would oppose it. And I think that it takes on a whole tenor that's not really appropriate for us to focus on the task that we've been charged with at this commission, and I don't think it's a good idea.

CHAIR PARKSY: John?

MR. COGAN: Dave, are you worried about shopping around for another --

MR. LOW: Yes. A solution looking for a problem, is what I'm worried about.

CHAIR PARKSY: Lee?

MR. LIPPS: Actually, I did want a clarification on something that Dave then subsequently raised.

I did get an e-mail from one of my colleagues on this issue who suggested, and I think she cited Proposition 162, specifically prohibits audits of --

MR. LOW: There's a law. There's a law.

MR. LIPPS: Oh, there is a law? Okay.

I'm just trying to get to how accurate that is in terms of, is this moot under current law? Do we need to change the law, I guess is my question.

CHAIR PARKSY: Tom?

MR. BRANAN: On that point, I've never heard of that law. That doesn't mean it doesn't exist. But I think more importantly, when I had almost an hour discussion with the Auditor's staff and explained what we wanted to do, they did not bring it up. That also doesn't mean that it isn't there, but I just -- I can't respond because I don't have any information on it.

MR. LIPPS: She had sent me a link on the Treo, but I couldn't open it on my Treo, so I couldn't see the language. It's the fault of the Treo.

MR. WALTON: If I might, Tom. You may look under the retirement law, the PERS retirement law, the section that requires the independent audit. I think there it states -- Dave, refresh my memory -- that, "These audits shall not be duplicated by," and it lists what kind of audits they have.

Dave, do you have it there?

CHAIR PARKSY: Curt, while they're looking it up --

MR. PRINGLE: Mr. Chairman, I do think -- I would like to get a follow-up on Dave's question, why would we focus on CalPERS and CalSTRS and why would we not, you know, contemplate other systems or entities, particularly '37 Act counties and such. I actually think that there's greater concern, at least in my eyes, from some of the smaller systems, than necessarily CalPERS and

CalSTRS.

So as you're talking about some of the fiduciary relationships and fully vetting and understanding investment practices, I see there's greater value in having that discussed possibly on a local level; so why would we not include them?

MR. BRANAN: Our reasoning is that they're two statewide retirement systems. And it would be the State Auditor as a neutral party who would come in and do the audit.

I think having the Auditor do whatever the number is right now -- 90 local agencies or some subset of those would be a tremendous task.

CHAIR PARKSY: Jim?

MR. HARD: Yes, I think -- isn't there with CalPERS the necessity -- didn't we hear that they switch auditors every several years, that they can't maintain the same audit organization?

MR. WALTON: I think -- well, it changed several times -- in fact, I changed it or wrote legislation that changed it.

I think that the current limit is a five-year audit contract. I don't know that I recall, but I think that's right; but then you can't hire the same one the next time.

And it became a problem because the number of large financial firms that can do an audit the size of CalPERS has gotten very narrow, so you've almost eliminated the competition by not allowing the same one to rebid. But I think they can have a five-year audit but they can't rebid until they've been gone for five years.

MR. HARD: So I am kind of struck by Dave's comment about is this a solution in search of a problem.

Are there questions about that, CalSTRS -- I mean, I guess if you want one that's not hired by the entity because there's a reason, you have some reason to be concerned about that, I wonder if it's worth the cost to the State Auditor. And I wonder what they'd have to do to audit both of these entities. I mean, I haven't heard any testimony or any information that would lead me to believe we need another audit of CalSTRS or CalPERS.

I guess we could throw it in there if we're looking for recommendations. But I'm not --

CHAIR PARKSY: No, I don't think that's going to be our policy.

MR. HARD: I'm not enthusiastic about this.

CHAIR PARKSY: Tom?

MR. BRANAN: Well, I think as with any audit, you don't know if there's a problem without the audit.

And I do think there's something to be said for an independent, neutral auditor.

However, what Dave was saying, in the PERS law, there is a prohibition against the Department of Finance or the State Auditor from doing a financial audit in the same year that that system hires an outside auditor.

Now, I assume that could be dealt with by the retirement system relying on the State Auditor's audit that year; or, if that were not realistic, I would say this does not look like, to me, that it prohibits a performance audit.

CHAIR PARKSY: Well, let's separate -- I think we should separate out the two.

The financial audit, I think we should think a little bit about. We certainly don't want to do anything that's prohibited here, or recommend doing something that's prohibited.

Let's really step back and think about whether or not we're making a recommendation that has meaning and can be beneficial as opposed to duplicative.

On the performance fiduciary area, we have a section of our report with some recommendations relating to conflict of interest and other things. I, for one, don't think that it's appropriate to install that this year. And if we want to strengthen, to some extent, references to conflict-of-interest policy, there's a recommendation to it. I, for one, I don't think it fits here.

MR. WALTON: I agree. I would agree.

CHAIR PARKSY: Let's keep going.

MR. BRANAN: Just for clarification, are you saying that a fiduciary audit should not be part of the recommendations? Or that if it were, it would go further back in the recommendations?

CHAIR PARKSY: I think the latter. I do not think we should be considering it here in lieu of a financial audit. I think if we don't feel that the reference to conflict of interest or the identification of your conflict-of-interest policy isn't strong enough, and that more is needed, we should include it there. But basically, to remove the financial audit and substitute a performance audit here, that doesn't seem logical to me.

MR. WALTON: I agree.

CHAIR PARKSY: Okay, keep going.

MR. BRANAN: The next one is Number 30. And this is one that currently, under the '37 Act, if an employer adopts new benefits, they can be applied either prospectively only or prospectively and retroactively. That's a bargainable point.

Under PERS, if an employer adopts new benefits, they are automatically implemented for retroactive and prospective.

And the recommendation was that any public employer be able to bargain to make it -- to bifurcate that. That you can bargain to implement them prospectively only, or for all service.

And there has been opposition voiced from some of our commission members, as well as from labor representatives who are not represented on the Commission.

CHAIR PARKSY: Okay, do some of our Commissioners want to express their concerns?

Jim?

MR. HARD: Well, my concern is that prospective benefit changes -- it goes against our concern for retaining qualified personnel because it would not reward -- as we said earlier here, I was reading, we want to encourage employees to stay on the job. And that would not do it.

That was the concern I raised.

CHAIR PARKSY: Dave?

MR. LOW: Again, I feel like this recommendation, to some degree, is far afield from what we were tasked to do by the Governor. I don't see any relationship to it at all. As a matter of fact, in some respects, probably perversely moving away from that.

I mean, it essentially says it's easy -- it will make it easier to increase the benefit prospectively because it will reduce the cost when you take away all the past service.

Under the current law, by requiring the retroactive provision of the benefit, the overall cost of the benefit is higher. So it's harder to provide a benefit. And you have to incur that cost and pay for the cost and do the actuarial report. Now, we're going to make it easier to create sort of a two-tier system.

Politically, I think it's also skirting up against some issues that are going on right now, that I'm not sure where we want to go. I mean, we've got this Moorlach case happening down in Orange County with the sheriffs, where they're trying to take away their retroactive benefits. And this commission is going to start treading on those grounds and putting ourselves in a precarious, I think, political situation. It's opposed by the labor unions.

So I just don't see the value of going there on this recommendation. I would reject and eliminate it.

CHAIR PARKSY: Yes, Curt?

MR. PRINGLE: To me, it's interesting on this one recommendation, where folks who have been arguing consistently on leaving things available to the collective bargaining system don't trust it, and all of a sudden saying that this is something available in '37 Act counties, but this shouldn't be a bargainable issue for other retirement -- or other systems.

So I don't believe this has anything to do with the Moorlach case, which challenges specifically a retroactive benefit. That is a constitutional challenge that they're making in whatever fashion they choose to make, talking about the ability to give a retroactive benefit. It has nothing to do with giving a prospective benefit only.

Therefore, from my point of view, I have tried to be consistent in the discussion on benefits to say, "Yes, there is a value in leaving them available to be bargained and to be available for consideration. Just to suggest -- not to mandate or require or imply, but to offer within the bargaining system, this is an option. I don't think it's offensive, it's wrong.

I actually don't think, under most circumstances, it would be applied.

But I do think it is something that, when state groups wish to bargain, they have that as a tool, as another step in that bargaining practice. So to me, I feel very comfortable with this.

And I would like to suggest how many '37 Act counties have, in fact, adopted prospective-only benefits; and I would say that there are very few.

For exactly the points you have mentioned -- but for that matter, the point I mentioned, because it's bargainable. And those units are not going to bargain something that they don't feel is in their members' best interest.

So to have the fear of the collective bargaining system, I would suggest, I don't have that fear.

CHAIR PARKSY: Lee?

MR. LIPPS: Perhaps I'm misunderstanding this then. It's my understanding that this really is only going to be applying to CalPERS, because the '37 Act Counties already have a chance to do it both retroactively and prospectively.

Do I understand that part correct, Tom?

MR. BRANAN: It would apply to CalPERS.

MR. LIPPS: CalPERS and --

MR. BRANAN: And if there were other agencies that had a similar arrangement, it would apply to them as well.

MR. LIPPS: Okay, but in CalPERS, Curt, they don't bargain their benefits. The pension benefits are not bargained. This is not a collective bargaining issue. The CalPERS board itself is one that sets the benefit levels. At least that's how I was reading this.

MR. BRANAN: This is at the local level.

MR. WALTON: No, he's -- I'm sorry to interrupt. You're talking about health benefits, and this is specific to pension benefits.

MR. BRANAN: This is pension benefits, yes.

MR. WALTON: All right. The CalPERS board does not set pension benefits for local governments.

MR. BRANAN: The Legislature, and sometimes with the PERS board's help, establish formulas.

MR. LIPPS: Okay, but it's not a collective bargaining issue, I guess is what I'm trying to --

MR. BRANAN: It is, at the local level.

CHAIR PARKSY: Yes, it is, at the local level.

MR. LOW: Because under CalPERS, it's not an issue mainly, primarily for school employees, because that's set at the state level.

But there's a thousand agencies that bargain their benefits through CalPERS at the local bargaining table.

MR. LIPPS: And my mindset was on school employees. I apologize.

Thank you.

CHAIR PARKSY: Bob?

MR. WALTON: A couple points.

First, as it relates to CalPERS, I think if we were to move down this road on this recommendation, it should be limited to changes in formulas and, as you said, not all retirement benefits. Some are just -- don't relate to service. And CalPERS has some 56 benefit options other than formula changes that can be adopted. So those shouldn't apply.

But I guess I --

MR. BRANAN: Just on that point, the last time the Commission discussed this, that was a recommendation. And "benefits" was replaced by "pension formula."

MR. WALTON: I understand. And I think that's a move in the right direction.

Although I think I would agree with Mr. Low that when you really look at Recommendation 30, how do you put that in context to the task of this commission? What does it have to do with OPEB liability and funding those liabilities? It really doesn't. And I'm not sure this is the road -- I would agree with Dave -- that we need to go down. We weren't asked to do so, and I think it's inappropriate that we do so.

CHAIR PARKSY: Well, I don't -- if the

Commission wants to make a recommendation relating to pensions, I don't think that the charge was limited just to OPEB.

MR. WALTON: Well, I agree with that, absolutely. It applies to both pensions. But I don't think this recommendation has anything to do with funding pension liability, unfunded or otherwise.

CHAIR PARKSY: John?

MR. COGAN: My sense is very much the same as Bob -- Dave. As I said from the beginning, that it's a mistake to get into the recommendations that relate to specific benefit levels or formulas and the like. We're buying a lot of trouble.

Curt, I think your argument is very good; but I thought I heard you say that even if we were to recommend this change and the change were to be made, that it would probably have little effect. And so I'm thinking, jeez, if we're getting into this territory where it's tangential to the essential mission, it's going to have very little effect and maybe we should let it go.

CHAIR PARKSY: Well, or said another way, if you're going to put your toe in certain waters, you want to have it be meaningful, right.

I think you should take all that into account. Okay.

MR. BRANAN: The next one is Recommendation 33.

And just as a bit of history, when we first began -- at least when I began with the Commission --

CHAIR PARKSY: Was that a long time ago or --

MR. BRANAN: Yes, it seems like it.

CHAIR PARKSY: How long have we been doing this?

MR. BRANAN: Years.

CHAIR PARKSY: Do we go back to the 80 years ago, or are we --

MR. BRANAN: I remember, actually, I helped write that report.

But there was some interest in fraud, and addressing fraud because of the cost element, either pension -- primarily pension, but also disability. So what I did was, with the help of legislative staff, identified three bills -- disability fraud bills -- that had gone through both houses of the Legislature. And between those three, there was one no vote in one house.

(Ms. Conway left the room for the day.)

MR. BRANAN: And as you'll recall, when I brought these to the Commission, I assured you that they were non-controversial.

And at the time, I also had that assurance from some labor representatives.

But number two is definitely no longer non-controversial. And my recommendation -- I think pension -- or disability reform is akin to getting a group of people together and arguing about how many angels can dance on the head of a pin. And it takes forever, it takes prolonged negotiations. And I think anything in this area that is controversial, the Commission can't really address it.

So my recommendation would be to retain Number 1 and Number 3 and delete Number 2.

CHAIR PARKSY: Does that seem to make sense? Okay.

MR. LOW: And I just want to add that we are very, very serious about addressing disability reform. We think that abuses of the system are damaging to everybody, from the employee's side to the employer's side.

And along that line, we are working with a bunch of the police officer organizations, firefighters, and others to try to identify additional disability reforms that may be put forward legislatively. And probably within a week, we might be able to have some additional recommendations for you.

MR. BRANAN: Mr. Chair, I know we're approaching the hour, but could we take a quick break?

CHAIR PARKSY: We certainly can.

MR. BRANAN: Thank you.

CHAIR PARKSY: Why don't we take -- we're going to try to finish by 12:30, in any even;, but why don't we take five minutes to let the staff take a break?

(Recess from 11:57 a.m. to 12:08 p.m.)

CHAIR PARSKY: Tom, are you ready?

MR. BRANAN: Yes, Mr. Chairman.

CHAIR PARKSY: Just before, Tom, you move to what I know are recommendations that we haven't discussed -- is that right?

MR. BRANAN: Correct.

CHAIR PARSKY: Okay. I just want to be sure -- there were some comments that we got from one or more commissioners relating to qualifications for board members relating to that.

And we're going to want to make sure that we include a response on that subject. It doesn't have to be done now; but we're going to want to add to the recommendations that relate to best practices in terms of -- that the appointments to the board should carry with it qualifications, experience -- we'll come up with some things.

MR. BRANAN: And that was my understanding as well, that the recommendation applies to the appointed members.

CHAIR PARKSY: Right.

MR. BARGER: Well, there's some that I think were pointed out that you don't have any control over; but you can't do anything about that.

CHAIR PARKSY: Yes, if it's mandated by statute or things like that. But I think in terms of best practice, we can make a strong recommendation in terms of qualifications.

MR. BRANAN: Yes.

CHAIR PARKSY: Okay, all right, let's go ahead.

MR. BRANAN: The next recommendations are items that have been scheduled at earlier hearings but we didn't get to. And they pertain to health care and to a couple of suggestions from local government about dealing with OPEB bonds and one other item, which I'll remember when we get to.

CHAIR PARKSY: That's -- okay, after 80 years, you're allowed that.

MR. BRANAN: It's starting to show.

If it's okay with the Commission, I think I'll just read the recommendations and not go into background.

CHAIR PARKSY: That's fine. And then we'll see whether we have commentary.

MR. BRANAN: And I will say, I have Richard

Krolak here who is on staff and is our health-care expert, so that he is available to answer questions.

Recommendation 1, "Employers and employees should cooperate to evaluate and implement proven cost containment methods as a strategy to control or reduce OPEB liability. These strategies should include benefit designs that emphasize evidence-based treatment protocols, appropriate cost-sharing responsibilities for employees and retirees, and flexibility of benefit designs that provide incentives to employees and retirees for wellness and chronic-disease management programs."

CHAIR PARKSY: Let's just pause there. Not try to edit, just commentary as to whether the subject should be included from his Commissioners' standpoint or not.

Dave?

MR. LOW: I'm not sure whether it should be included or not; but if it's going to be included, it needs to be far more expansive. I think that we've identified three of the areas among many, many cost containment options.

And cost containment is a big and difficult issue. You know, we're not talking here about the potential for hospital rate regulation, insurance rate regulation, transparency, protocols, electronic data collection.

And what we have identified here are those that tend towards the area of employees shifting costs to employees, where you're changing the cost-sharing responsibilities, co-pays and deductibles. And I think that that's a far too limited discussion. So I think that we either have to jettison the thing or we have to expand it substantially. I certainly don't feel comfortable with it the way it's written.

CHAIR PARKSY: Jim?

MR. HARD: Well, I agree with Dave.

And I don't think we can get expansive on the Commission in the time frame we have. And besides that, I have kind of a feeling there would be a real kind of dissension among us about what are the policy things that could be created to do cost containment. Because one that I heard in front of this Commission was a single-payer program for health care. And I don't know that we'd have unanimity on the panel for that.

And I don't even know what is appropriate cost-sharing responsibilities for employees and retirees, I'm not sure what that refers to; and I don't know that I want to take the time, given one more meeting, to figure it out.

CHAIR PARKSY: Lee?

MR. LIPPS: If it's not going to be jettisoned, I would just strictly limit it to the first sentence without trying to get expansive at all. But I think the first sentence says basically employers and employees should cooperate to examine their programs and see what's most cost-effective. To me, that makes rational and logical sense.

CHAIR PARKSY: Yes, Ron?

MR. COTTINGHAM: I don't think we need it at all. I mean, this is kind of restating the obvious, or stating the obvious. This is something that is occurring already. I mean, some of us that belong to labor organizations that are umbrella organizations hear from our members on a pretty regular basis about what they're doing in their local communities to work out their issues with their employing entity. So it's something that's already occurring.

I don't know that we need to state that you should continue doing what you're doing. It just, again, seems redundant and not necessary.

CHAIR PARKSY: John?

MR. COGAN: I could go either way on it.

It does seem to me, though, that these recommendations deal with the design of the plan, of the benefit plan. And what you've limited your recommendations to are plan changes as opposed to more broad policy.

So I see there being a thoughtful distinction that you've drawn between the two. And you haven't ventured into the field of broad public policies, and that's wise.

MR. BRANAN: This is definitely the same dilemma that we had.

You heard in some of the earlier public testimony that this Commission should solve the health-care problem; and we thought that while we probably could, we had other things to do. So it was very narrow in terms of the kinds of things that were realistic -- the scope that we could put forward. So that's why it reads the way it does. We're very aware that it's just a piece of the problem.

MR. COGAN: Right. And I guess at the end of the day, as Ron said, what we're really adding when we make a statement that plans should be redesigned to reduce costs, and here are three ways in which they can be modified, in a very general sense.

I'm not sure we're adding that much, so I'm not sure we lose much if we were to take it out.

Yet, on the other hand, I'm comfortable with Lee's recommendation, if you just go with the first sentence. But then it doesn't really say much at all.

CHAIR PARKSY: Tom, do you have the sense that --

MR. BRANAN: I do have a very good sense, Mr. Chairman.

Recommendation 2 --

CHAIR PARKSY: That's good.

MR. BRANAN: -- "Public employers should consider use of dependent-eligibility audits to make certain that all covered dependents are eligible for coverage under the employer's health plan. Clear policies should be documented for members on dependent coverage and responsibility for reporting of any changes and liabilities if services are provided to ineligible dependents."

CHAIR PARKSY: Teresa?

DR. GHILARDUCCI: I'm not sure where this is coming from because this is just standard practice. It's also you have to review whether or not the employees are eligible still. I mean, it's just an ongoing process.

So did we hear testimony that I was talking to Curt at that time --

MR. BRANAN: That was when we heard it.

DR. GHILARDUCCI: It was? That would have been it.

You know, that this was actually the -- a very important issue, and widespread or something we needed to address? Because I didn't --

MR. BRANAN: No, we have not had testimony. This came from the pertinent literature. That when such audits are done, they still find many ineligible people. So we thought it was something that was worth putting out there to see if the Commission was interested.

DR. GHILARDUCCI: I'm all in favor of recommending that audits be done, but there's lots of other things that are caught in audits as well. So I don't know we're singling out this. And I feel uncomfortable with it being there, so I would like it gone also.

CHAIR PARKSY: Would anyone like it included?

(No audible response)

CHAIR PARSKY: Okay, go on.

MR. BRANAN: Recommendation 3, now Number 1: "Employers should evaluate participation in larger risk and purchasing pools, including regional pools which include both public and private employers, as a means to more effectively spread risk, increase purchasing power and share administrative costs."

CHAIR PARKSY: Any objections?

(No audible response)

CHAIR PARSKY: Okay, you have scored.

MR. BRANAN: All right.

CHAIR PARSKY: Lightly, you have scored.

MR. BRANAN: Great.

Recommendation 4, "Health-plan sponsors should identify individuals who are Medicare-eligible and inform them of the need to enroll in Medicare in a timely manner."

This is one that we brought to you in Fresno.

CHAIR PARKSY: Right.

MR. BRANAN: And there were several statements from people in the audience. And at that point, we were talking only about PEMHCA, and they were saying that this was already done.

We've had subsequent contact with PEMHCA staff and PERS staff. And, in fact, this was something that was routinely not done until just a few years ago.

What, two years ago?

MR. KROLAK: Four years ago. It was four years ago.

MR. BRANAN: And they put a cost on it themselves of over $30 million.

So I think that emphasizes how important this is, and that's why we've brought it back to you again.

CHAIR PARKSY: John?

MR. COGAN: Just a question about the use of the word "need," and “inform them of need.”

Do you mean the benefits?

MR. BRANAN: Well, it's the requirement.

DR. GHILARDUCCI: It's the requirement.

MR. COGAN: Okay, I'm fine.

CHAIR PARKSY: Any -- Curt?

MR. PRINGLE: You know what? Someone who knows this stuff needs to tell me. So it's federal law that you have to be notified, but I also know within some state programs, Bob was expressing, that you cannot participate unless you do get a basic plan through Medicare.

So tell me what we're really trying to do here.

MR. BRANAN: Well, the problem is that the basic plan that your active employees -- people under 65, or who are not yet Medicare-eligible, the basic plan costs more than if you have Medicare as your primary payer and have a supplemental plan as --

MR. PRINGLE: No, no, I get that. But isn't there some state and federal requirements for participation or taking -- making that election?

MR. BRANAN: Yes, there is a state requirement.

MR. PRINGLE: So we are saying that we think it's important to create -- a health plan sponsor needs to identify those individuals.

I mean, if we were really bold, we would say, "Health plans would require" or "health-plan sponsors would require that." But we're not going to say that; right?

MR. BRANAN: I'm fine with saying that.

MR. WALTON: Richard, that's a requirement in PEMHCA now, that you cannot be in a basic plan if you're Medicare-eligible?

MR. KROLAK: It is now, correct.

MR. WALTON: But that's not necessarily true of all plans?

MR. KROLAK: Exactly. You still have some situations -- and, again, going through all of the various local plans, there are still some situations.

And usually, it does fall to the health plan to fairly aggressively audit age, eligibility for Medicare A and B, and those kinds of things, yes.

CHAIR PARSKY: Curt?

MR. PRINGLE: Can we get back to the point, so PEMHCA, through the State, that plan requires -- what we're talking about now. So there are some that are local plans that don't; right?

MR. KROLAK: (*Nodding head.*)

CHAIR PARKSY: And is that what this is supposed to address?

MR. KROLAK: Yes, basically it's to clarify that there is this option, for lack of a better term, and that there is the opportunity for employers to identify these individuals, and basically put the responsibility where it's supposed to be.

Since 1986, everyone is in Medicare, but that's Medicare A. B, you pay a separate premium.

So for some individuals, if they choose not to participate in B, and they just skip their A benefit and they stay in a basic plan, they're getting a different benefit package paid for from a different way. And the employer, depending on the cost-sharing and so on, is picking up a bigger -- potentially a much bigger tab.

CHAIR PARKSY: Are you suggesting that the recommendation be strengthened here in terms of requirement?

MR. BRANAN: That would be fine, a requirement.

It's really a two-part recommendation, if you look. One is that the health-plan sponsor identify these people and inform them.

CHAIR PARKSY: Right.

MR. BRANAN: And the next one is that once individuals become eligible, they should be automatically and immediately enrolled. And that is what was not happening in PEMHCA.

I think when it's up to the health-care plans themselves, they have been very quick to identify these people and automatically enroll them.

CHAIR PARKSY: John?

MR. COGAN: Just to be clear, would we, with the acceptance of this recommendation, lead to individuals who do not now have to join Medicare, be forced to join Medicare, Part B?

MR. BRANAN: Only if they wanted to stay in the employer's health-care plan.

MR. COGAN: You have to join Medicare or you're out of your employer health-care plan? That's what we'd be saying?

MR. WALTON: That’s the current requirement in PEHMCA.

CHAIR PARKSY: In PEMHCA.

MR. COGAN: I'm trying to be precise here.

Are we requiring anybody who's not now so required to become a Medicare beneficiary as a consequence of this policy?

MR. PRINGLE: What policy? The PEMHCA policy presently?

DR. GHILARDUCCI: No, people not in PEMHCA. People not in PEMHCA.

MR. PRINGLE: I don't see this as requiring anything in Recommendation 4. But in Recommendation 5, it says that there will be an enrollment.

Is there -- so the automatic enrollment would be to people who wouldn't otherwise be a Medicare beneficiary?

DR. GHILARDUCCI: Right.

MR. BRANAN: These are people who are Medicare-eligible but who have not been joining Medicare. And they stay in a more expensive plan, which means the employer is spending -- in this case, it could be OPEB -- money. They're spending money that need not be spent on that individual.

And this is already the law. These are recommendations that people get more -- that they're more quick to identify people and enroll them.

MR. COGAN: And that includes the non-PEMHCA agencies?

MR. BRANAN: Correct.

MR. COGAN: "Yes" or "no."

MR. BRANAN: Yes, it would be everyone, under a public employer health-care plan.

MR. COGAN: It's the law for everyone now?

MR. KROLAK: Again, when you participate in Medicare, you participate in Medicare A.

B requires a separate premium. The supplements usually require that you be in A and B.

DR. GHILARDUCCI: Right.

MR. COGAN: So we would be --

MR. KROLAK: So you would be, in effect, making a statement about, "You will now participate in Medicare B."

DR. GHILARDUCCI: B, right.

MR. COGAN: That causes me a little bit of heartburn, as I think I've indicated before, that people that are choosing not to join -- I understand the savings to the local employer. But people that are choosing not to join Medicare, Part B, are doing so for a reason.

DR. GHILARDUCCI: They're not good.

MR. COGAN: Pardon me?

DR. GHILARDUCCI: They're not good.

MR. COGAN: Well, I'm not willing to make that judgment.

CHAIR PARKSY: Especially if it's "usually."

MR. COGAN: I just want to be clear what we're doing; and then if we are forcing individuals to go into Medicare and pay the premiums now, how much a month is the Medicare, Part B premium?

MR. KROLAK: Again, it's now means-tested. It starts at, I think, 96 and goes until, I believe -- don't quote me, but I want to say like 118 or something like that.

MR. COGAN: 118 a month?

MR. KROLAK: Correct.

MR. COGAN: Right, right. So we're talking about a thousand dollars a year.

Is Part D in this as well, in this mandate?

MR. KROLAK: Again, most health plans that employers sponsor, they either have a separate Part D, which would require an additional premium by an individual, or it's wrapped in the plan.

MR. COGAN: Right, right.

We know what those premiums are.

And what's the Medicare, Part D, premium?

MR. KROLAK: D, they vary from everything from --

MR. COGAN: Average?

MR. KROLAK: Yes. Oh, $35, or something like that, a month.

MR. COGAN: Right, right.

CHAIR PARKSY: So your concern, John, is for those that law doesn't force this, in effect, enrollment?

MR. COGAN: Yes, I see two types of people: People that are not well-informed and should be involved in Medicare but it's a darn good program, and so I can see a benefit to those people getting enrolled.

But I also see there are people out there that choose not to enroll in Medicare, Part B, because it's not financially in their interest to do so. And this then is a requirement that they do so, and that's where I’m a bit uneasy.

CHAIR PARKSY: So Recommendation 4 is okay from your standpoint?

MR. COGAN: Well, when I asked the question, I thought I was asking it about 4, whether 4 required any individuals in the State, who now have an option not to join Medicare, Part D, to join Medicare, Part D.

MR. KROLAK: 4 is just identifying them.

CHAIR PARKSY: It's identification. That's why I think 4 should be read. You can at least identify them.

5, however, was a mandatory enrollment.

MR. COGAN: Yes.

CHAIR PARKSY: And that's what gets you uneasy.

MR. COGAN: A little bit, yes.

CHAIR PARKSY: Would Commissioners be okay with leaving one and not the other?

MR. COTTINGHAM: No, that's not -- the thing that I wanted to address is I think in some of the earlier documentation they discussed, the need to inform these people. Because if they decide to later enroll them, there's a penalty. So they need to be informed up front. So I think that is an important point of this recommendation.

CHAIR PARKSY: Right. Well, I mean, inherent in identifying them and informing them is accomplishing that.

MR. COTTINGHAM: Yes.

CHAIR PARKSY: So 4 would address that as well?

MR. COTTINGHAM: Yes.

CHAIR PARKSY: So you would be okay with 4?

MR. COTTINGHAM: I'm in favor of keeping 4.

CHAIR PARKSY: But not 5?

Well, at least John has expressed some concern about 5.

DR. GHILARDUCCI: I think I'm in favor of keeping 5.

CHAIR PARKSY: You are?

DR. GHILARDUCCI: Yes.

I want to ask if my assumptions are correct. What I think I know is that people who don't enroll in Medicare B are either ill-informed and just want the cash now instead of the insurance, and that's not a good reason.

The other reason they don't enroll in Medicare B is because their employer doesn't force them to, because it's inconvenient. And the employer, for some reason, is just letting that happen.

So what you're trying -- that's always been a problem.

And so what you're trying to do is fix that.

John, why do you have problems with that?

MR. COGAN: It doesn't make individuals better off.

I mean, it's nice to say that all the people who don't enroll are doing so because of ignorance.

DR. GHILARDUCCI: No, I think that's a small amount. I think that they're doing it because their employer will pick it up.

MR. COGAN: Now, it seems to me that if the federal government is going to be in the business, then it might be better to have the locality offer an inducement to the worker, to the retiree to join Medicare Part B. And both then the worker could be better off because it's a voluntary transaction; and certainly the employer would be better off because, as you guys have pointed out, their costs would fall. Not by as much as a mandate requiring only individuals to come in.

But that might be an acceptable kind of compromise that avoids making individuals worse off to save the state some --

DR. GHILARDUCCI: That's a good bargaining ploy. You could team up with SEIU. That’s great. I like this.

CHAIR PARKSY: Well, is it right that at the heart of the recommendation was a cost-savings objective?

MR. BRANAN: That's correct.

MR. KROLAK: Right.

CHAIR PARKSY: So to the extent that you include the reference to inducement, it's less of a cost savings for the employer?

MR. KROLAK: I almost heard that, basically, sort of like share the savings and divide the investment or an incentive, something like that.

DR. GHILARDUCCI: Touché.

CHAIR PARKSY: Okay, well, why don't you see if you can't re-craft that? Not to take all the cost savings away, since that's at the heart of the recommendation. But you can create some suggestions that may be picked up in the bargaining process. We'll just see.

DR. GHILARDUCCI: That's good.

CHAIR PARKSY: Okay.

MR. PRINGLE: And on that, Mr. Chairman --

CHAIR PARKSY: Yes?

MR. PRINGLE: -- I would suggest that we change it to "require all participation" or "require local plans to create through the collective bargaining system a means by which all eligible Medicare employees are moved into a Medicare system."

I mean, there is this disproportionality -- I mean, we just did it with our collective bargaining on two different collective bargaining units. So I know very clearly the reluctance of some, and the reluctance of some is money coming out of your pocket. So money is coming out of the individual employee's pocket, and yet as a public employer, I have the opportunity to save a significant amount.

I certainly understand that on the table and considered and discussed is an important thing.

But I also think -- and this is, I guess, John's theory -- that Medicare is a bad system, and it may very well be.

MR. COGAN: Wait, just a second --

CHAIR PARKSY: This is a part of his method, you know.

MR. COGAN: I know. I've seen it. I've heard about it.

MR. PRINGLE: The flip side of that, though, is it's a system that is in place, and it's a significant savings in this obligation and the OPEB's obligations that are out there.

And I think if we just leave it kind of amorphous to say, “Yes, we should encourage folks to do it,” then I think we kind of miss the mark on realizing what that savings is. And I think that savings is a valuable savings. And if it has to be derived through a collective-bargaining process, so be it. I mean, I don't think there's anything wrong with that.

MR. COGAN: I have to say that when you require somebody to pay a premium for a benefit that they don't value, it's in effect cutting their pension, because you're just reducing disposable income every month by the amount of the premium. And so that's why I think it's not -- you know, it's just -- I'd like to see it encouraged, and I'd like to see --

CHAIR PARKSY: Some inducement to it.

MR. COGAN: -- some inducement, financial inducements would be preferred.

CHAIR PARKSY: Let's see if we can't -- oh, Bob?

MR. WALTON: Yes, just a comment. Two things: One, the Medicare benefit is something both the member and employer have already paid for through their -- they've already paid for Medicare.

MR. COGAN: Part B?

MR. WALTON: Yes -- no, no, no. Through your Medicare tax, your Social Security tax.

MR. COGAN: That's Part A.

MR. KROLAK: That's A. A portion of B.

MR. WALTON: I’m sorry, you’re right.

CHAIR PARSKY: This is Part B.

MR. WALTON: Everyone who is eligible for Medicare that doesn’t join and stays in the basic plan, costs everyone else in the basic plan money.

MR. KROLAK: Right.

MR. WALTON: It makes the cost of the basic plan higher.

MR. KROLAK: That's correct.

MR. WALTON: And so that person that chooses not to join Medicare is taking money out of the pocket of everyone else that's in the basic plan. It's very, very marginal, but it does cost money to leave them in the basic plan.

MR. COGAN: How is that so if the employer is making the right contribution for the individual?

MR. WALTON: Because the older you are, it costs more in the health-insurance business. And by leaving the older members in the basic plan, it costs the basic plan more money.

MR. COGAN: But they must be charging -- paying the wrong price then? They're not paying the actuarial price of that.

MR. WALTON: They're paying the cost because that older employee -- that older retiree now, if they're retired after 65 -- they cost more than a 40-year-old employee. And by leaving them in the basic plan, you're making the cost of that basic plan higher than it otherwise would be.

MR. COGAN: Right. But under that rationale, maybe we should separate out all the people that are age 65 and have them in a separate pool and those that are under 65, they're paying for them.

MR. WALTON: If you go back, under PEMHCA, because they're in a separate program, they're under a supplement to the Medicare program, that's exactly what you did.

MR. KROLAK: Exactly.

MR. WALTON: We do that today.

MR. COGAN: Right.

Do you favor that as a policy?

MR. WALTON: I think it is a good policy.

MR. COGAN: And I'm not so sure.

CHAIR PARKSY: Well, I think -- at the heart of this recommendation was a cost-savings approach. However, I think we ought to round it by including reference to encouraging inducements in order to make this happen, because it will still create cost savings.

MR. WALTON: Absolutely. I have no problem with that.

CHAIR PARKSY: Okay, proceed.

MR. BRANAN: Recommendation 6, this goes to -- this is one of two recommendations which came from the working group of local agencies that have helped us with our survey and have come up with some suggestions.

Recommendation 6 is, "The Commission should seek federal guidelines to ensure the federal government will pay its proportional share of payroll cost obligations for bonded debt service used to prefund OPEB trusts."

And the background on this is, if an employer pays for OPEB on a pay-as-you-go basis, the federal government does pay a proportional share of that. They have not indicated if they will do the same thing on debt service to pay for the OPEB.

And the request has come from local governments that the Commission seek this kind of assurance, that OPEB expenses, in terms of debt service, would be handled the same way.

CHAIR PARKSY: John?

MR. COGAN: Would we -- if we adopted this recommendation, would be, in effect, creating an incentive to use bonds as the means of prefunding?

MR. BRANAN: Well, a similar question came up from another commissioner in terms of since the Commission didn't really warm to the use of OPEB bonds, why are we doing this? And I think it's true that the Commission didn't seem enthusiastic. But there are local agencies that would like to have it as an option; and this makes it too unknown to them.

MR. COGAN: Right.

So if an agency were to choose to prefund health benefits by a surcharge on payrolls – let's say diverted into a fund -- would that be reimbursable by the federal government?

DR. GHILARDUCCI: I don't know.

MR. BRANAN: I don't know.

MR. COGAN: All right. So we're creating now an incentive -- it would be under this recommendation -- an incentive to prefund the benefits through a debt rather than --

DR. GHILARDUCCI: A diversion.

MR. COGAN: -- a diversion of current resources. And that just strikes me as a bad policy.

I'd prefer it if you would have a recommendation on both. However it's prefunded, the federal government should recognize that as a legitimate expense. That would be the way I would go, or leave it out. But I don't think it's a good idea to create an incentive for agencies to prefund their obligations with debt.

CHAIR PARKSY: I think that is clearly --

MR. BRANAN: I think that was the sense of the Commission.

CHAIR PARKSY: Yes.

MR. BRANAN: But it is an option that locals would like.

MR. COGAN: Right.

CHAIR PARKSY: Well, I think it seems that in order to remain consistent about the policy of OPEB bonds, that John's suggestion seems right: We either be requesting reimbursement, if you will, under whatever prefunding strategy. That probably would seem to make sense.

MR. BRANAN: Good.

CHAIR PARKSY: Okay.

MR. COGAN: Can I ask a few more questions?

CHAIR PARKSY: Yes.

MR. COGAN: On pensions, when local governments -- state governments finances -- prefunds our pensions, is that reimbursable by the feds?

MR. BRANAN: Initially, they would not commit -- are you talking about pension bonds?

MR. COGAN: No, no, no.

MR. BRANAN: Because --

MR. COGAN: Just prefunding. Regular, old prefunding by a surcharge on it.

MR. BRANAN: Oh, I think so, yes.

MR. COGAN: It is?

MR. BRANAN: We have someone here -- is Steve here?

This is Steve Zehner, who is the lobbyist for L.A. County.

CHAIR PARKSY: Good afternoon, Stephanie.

DR. GHILARDUCCI: That's the name tag there.

MR. ZEHNER: I am Steve Zehner with the Los Angeles County Counsel's office. I'm part of the county's legislative office in Sacramento, and have participated in the coalition meetings.

And I'm really here today, not on behalf of the L.A. County Board of Supervisors, but the CSAC segment of the coalition. The L.A. board has not considered these recommendations so I can't speak on behalf of the county.

Having said all that, I've forgotten the question.

CHAIR PARKSY: That's okay.

MR. COGAN: With respect to prefunding pensions, when the State or the locality prefunds pension benefits, are those reimbursable under the federal/state system?

MR. ZEHNER: Well, I think they are.

The best analogy I can give you is a couple years ago, the issue came up with the federal Office of Management and Budget about whether pension-obligation bonds were part of what the feds would reimburse. And they came to the conclusion that, yes, as long as there was a demonstration that it was cheaper to go with the bonds over the long term, then they would continue to pay that portion attributable to whatever the function was the feds were funding.

And I assume they'd probably go in the same direction with something like this.

MR. COGAN: Well, maybe we can have it clarified.

Is it possible to get that clarified --

CHAIR PARKSY: Yes, we should clarify that for sure.

MR. COGAN: -- and then come back and take another look at it.

CHAIR PARKSY: And maybe link it to the policy, if it really applies, on the pension side.

MR. COGAN: Right, right.

Thanks.

CHAIR PARKSY: Okay, Tom?

MR. BRANAN: Number 7, "The Commission should seek clarification in state statute, in the Internal Revenue Code, and from GASB, that OPEB trust funds may be used for both benefit payments and for early retirement of debt used to establish the OPEB trust if all OPEB debt has been expunged."

And this is kind of a "what if" consideration, that if there is a prefunded account and it -- say, for whatever reason, the employer no longer has to provide retiree health care that -- excuse me, but I think this should have been written for bonds; wasn't it?

MR. ZEHNER: No. It's really anything.

MR. BRANAN: Okay, any prefunded account.

MR. ZEHNER: Any individual health-care benefit.

MR. BRANAN: That's right. And the universal health care is the most common reason given for this one.

That they could be used both for benefit payments and for early retirement of debt used to establish the OPEB trust.

So right now, they could not use the funds in the trust to retire whatever debt set up the trust. And

I think that --

CHAIR PARKSY: Is that right, that you cannot -- if debt was used to establish the trust, the funds cannot be used, ultimately, to retire?

MR. BRANAN: It's for the exclusive use of the beneficiaries.

CHAIR PARKSY: I see. And this would suggest that you could divert funds away from the beneficiaries to satisfy the debt?

MR. BRANAN: Well, everyone would have to be in agreement, obviously, that the debt had been expunged. But it is for that eventuality that they could then use it to pay off the debt, since there was no -- the beneficiaries would be provided for by another source.

CHAIR PARKSY: I want to go back to John's comment. I mean, I'm not quite sure that given the attitude of the Commission about OPEB debt generally, that this makes a lot of sense to include.

MR. WALTON: Mr. Chairman?

CHAIR PARKSY: Yes?

MR. WALTON: I think it goes beyond OPEB debt. Quite a ways beyond. It's a very -- somewhat simple scenario. It may never happen, it probably will never happen.

But you establish a trust for your OPEB

liability, exclusive benefit purpose, and you have that, it's working fine, fully funded. Then you have the U.S. government, Congress and president passing universal health care, that covers everyone, so the employer no longer has any liability for OPEB. It's gone. It's wiped clean. Because now, everyone's under a single-payer system. What happens to that money that's sitting there in a trust that has a single purpose, that is no longer necessary? That's what this issue is trying to resolve. What can you do with that money?

And if you had an OPEB debt, you can go back and pay it off. You can do other things.

But if it has an exclusive purpose that is no longer necessary, what happens to the money? And that's what this is trying to address.

MR. COGAN: Got it.

MR. BRANAN: And these are irrevocable trusts.

CHAIR PARKSY: John?

MR. COGAN: So I guess the question is, operationally, how do you get at this definition of "expunged"?

I see an example, right, and so the question is, what does it mean for a fund to no longer have any liabilities, and does it apply to a fund that's overfunded? That is, you don't need those funds to meet your liability?

MR. BRANAN: Well, in that case, your liability hasn't been expunged. You just have more money on hand than you need.

MR. COGAN: So what does it mean for liability to be expunged then?

I mean, I see the example. I can envision an example where the federal government -- I can't even envision this, but…

CHAIR PARSKY: That one, I can't envision.

MR. COGAN: Not in my wildest nightmares -- not in my wildest nightmares, that the federal comes along and says every health-care obligation incurred by everybody over age 55 is --

CHAIR PARKSY: We're taken care of.

MR. COGAN: Yes. So short of that, what do we mean by -- how do we operationalize the definition of expunge? If you can do it in a reasonable way, I think it's a good idea.

MR. BRANAN: That is the case that prompted this recommendation. That is what the employers are looking at as a possibility. It could be state or federal.

MR. COGAN: Hope springs eternal. Somebody has to pay.

CHAIR PARKSY: Well, the word "expunge," I think, is a little bit still confusing here. I think you need to clarify that, you know, the funds are sitting in a trust for no purpose.

MR. WALTON: That's correct. It no longer has a purpose.

CHAIR PARKSY: It no longer has a purpose, and yet the trust is irrevocable, so you have to deal with what can be done in that interesting hypothetical situation.

Matt?

MR. BARGER: I have sort of two comments on it.

One is, again, I think you narrowed the -- and similarly, the comment about Number 6, when you narrow it to -- either it can be used for benefit payments or early retirement of debt, you know, again, you're sort of encouraging the ability to issue OPEB bonds, I mean, I would be okay with just not having this at all and figure this is going to be a really common problem that somebody is going to have to figure out at some point; or say, "Look, if you somehow do completely expunge all these, it goes back to, you know, who put the money in, in the first place?" -- you know, end of story. I don't see why we have to single OPEB bonds.

CHAIR PARKSY: Okay. Well, Tom, if you really believe that this is something that the Commission should address, I would revise it to not -- both of these recommendations -- not to isolate the OPEB bonds concept.

MR. BRANAN: Let me go back to the group that proposed them.

CHAIR PARKSY: Thank you.

Is that --

MR. BRANAN: That covers my part of the presentation.

CHAIR PARKSY: The only other thing I wanted to make sure we had clear, we did get a number of comments on recommendations from individual Commission members. All of those comments, we will attempt to take into account in revising, adding to the recommendations. And they will be recirculated for further comment.

And then we have -- if we're still not in a reasonable ballpark by our last meeting, then we'll address them again.

But the thing I think I said at the beginning, which is, we want to try to get the order of the report in a stronger presentation.

So we'll mark for each person to see, we'll mark the changes that will have been made in any of the recommendations.

You're obviously welcome to read everything, but you'll see the changes marked, and we'll go through a process and try to get your comments back.

And then any recommendations you want identified again for the last hearing, they'll make them.

Does that seem right, Tom?

MR. BRANAN: That's fine. And we'll be able to send these changes out to you probably the first part of the week.

CHAIR PARKSY: Yes, I think Monday or Tuesday we'll send them around.

Okay, thank you all very much.

(Proceedings concluded at 12:50 p.m.)

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REPORTER'S CERTIFICATE

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

That the testimony of said witnesses was reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand on the 17th day of December 2007.

DANIEL P. FELDHAUS
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