

ITEM 1
LEGISLATIVE UPDATE
2009-2010 Legislation

Commission staff is currently tracking three bills that may affect the Commission: SB 894, AB 349, and AB 2082. SB 894 is supported by the Commission. Staff will prepare a bill analysis and staff recommendation of AB 349 for the May 27, 2010 hearing and meeting. Attached is a bill analysis of AB 2082 for discussion. Staff recommends the Commission oppose AB 2082 unless it is amended.

Following are summaries of the bills:

AB 349 (Silva), as amended on December 15, 2009. Under existing law, no local agency or school district is required to implement or give effect to any statute or executive order that has been determined to be a mandate, and identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. This is otherwise known as suspending mandates.

Under this bill:

- If the Governor's budget proposes to suspend state mandates, the Department of Finance would be required, on or after January 1, 2012, to provide to the Legislature all proposed statutory changes necessary to repeal the mandates proposed for suspension.
- The Budget Act that identifies suspended mandates, shall also, to the extent practicable, identify each affected section of law. However, failure to provide this identification would not halt or otherwise affect suspension of a mandate.

This bill attempts to repeal mandates that are suspended, and to further clarify what laws are being suspended. The author is concerned with the significant number of mandates on the books that have not been funded for several years. The author states there are currently over two dozen mandates that have been suspended for at least three years, ten of which have been suspended for at least 18 years.

The bill is supported by the California State Association of Counties, California Peace Officer's Association, California Police Chiefs Association, League of California Cities, and California Special Districts Association.

There is no known opposition to the bill. However, last year, the Legislature rejected a budget trailer bill that would have repealed numerous suspended mandates, because they believe that the repeal of mandates should be decided in policy committee. This bill could face the same opposition from the Legislature.

We also point out that this bill only applies to local agency mandates. It does not address school district mandates.

AB 349 passed the Assembly (77-0). Testimony was taken, and remains pending in Senate Budget and Fiscal Review Committee.

Staff Recommendation: Staff will prepare a bill analysis and recommendation for discussion at the May 27, 2010 hearing and meeting.

SB 894 (Senate Committee on Local Government) – As amended April 12, 2010. This is the 2010 Local Government Omnibus Act. It is the Committee’s annual bill to provide technical amendments for local government statutes. It includes the Commission’s legislative proposal CSM 10-01, which requires our Reports to the Legislature on Approved Mandates to include information on pending reasonable reimbursement methodologies being proposed as part of pending parameters and guidelines, joint proposals between Finance and local entities to develop reasonable reimbursement methodologies, or joint proposals to seek legislatively determined mandates, and any delays being caused by these alternative processes.

Adding this additional information to the Reports to the Legislature will implement a recommendation from the October 2009 Bureau of State Audits Report 2009-501, *State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and Controlling Costs and Liabilities*.

SB 894 passed Senate Committee on Local Government (5-0) on April 21, 2010; pending in Senate Appropriations Committee.

Commission Position: The Commission supports SB 894.

AB 2082 (Assembly Committee on Education) – As amended April 14, 2010.

This bill would (1) transfer the authority to decide incorrect reduction claims from the Commission on State Mandates to the Education Audit Appeals Panel; (2) expand the reporting requirements on mandated programs for the Legislative Analyst; and (3) require Legislative Counsel to include language in bills that impose mandates on school districts, that automatically repeals or sunsets the provisions in five years.

AB 2082 passed the Assembly Education Committee (9-0) on April 21, 2010; pending in Assembly Appropriations Committee.

Staff Recommendation: Oppose Unless Amended. Please see the following bill analysis.

ITEM 1
STAFF ANALYSIS
AB 2082 (Assembly Committee on Education)
Local Educational Agencies: Reimbursable State Mandates
(As Amended April 14, 2010)

SUMMARY

This bill would (1) transfer the authority to decide incorrect reduction claims from the Commission on State Mandates to the Education Audit Appeals Panel; (2) expand the reporting requirements on mandated programs for the Legislative Analyst; and (3) require Legislative Counsel to include language in bills that impose mandates on school districts, that automatically repeals or sunsets the provisions in five years.¹

PURPOSE OF THE BILL

According to the authors: the intent of this bill is to implement changes in the mandates process in order to: 1) reduce the impact of ineffective and unnecessary mandates placed on local educational agencies; 2) reduce the long-term liability to the state for mandate reimbursements; and 3) streamline the process and reduce the workload of the Commission so as to shrink processing time for all claims.

PROGRAM BACKGROUND

Existing Law

Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by article XIII B, section 6 of the California Constitution. This is a test claim filing.

Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561. This is an incorrect reduction claim filing.

Government Code section 17551 requires the Commission to complete test claims by adopting statewide cost estimates within 12 months of receipt of the test claim. Unlike test claims, there is no statutory deadline for completing incorrect reduction claims. Therefore, the Commission completes its test claim work prior to completing incorrect reduction claims.

Incorrect reduction claims are filed by individual claimants, and are a dispute solely between that claimant and the State Controller. Since the State Controller often reduces reimbursement claims from different claimants on the same program for the same reasons, the Commission may combine similar issues for purposes of analysis. However, it must issue a separate decision for each claimant. As a result, the number of incorrect reduction claims pending before the Commission can fluctuate greatly at any point in time. For example, 366 incorrect reduction claims were filed on the *Open Meetings Act*. The Commission approved the first claim and returned it to the State Controller for payment. Following that decision, the Controller paid the remaining 365 claims, and the incorrect reduction claims were withdrawn. In contrast, the

¹ Exhibit A.

Commission analyzed and determined each of the 44 incorrect reduction claims filed on the *Graduation Requirements* program.

AB 2082

Existing law authorizes cities, counties, special districts, and school districts, including community college districts, to file incorrect reduction claims with the Commission to dispute the State Controller's reduction of reimbursement claims.

Existing law creates the Education Audit Appeals Panel (EAAP) to "provide a quasi-judicial panel to allow local education agencies to appeal apportionment significant audit findings." The EAAP consists of the Superintendent of Public Instruction, Director of Finance, and the Executive Director of the Fiscal Crisis Management Assistance Team.

AB 2082 would transfer responsibility for hearing and determining incorrect reduction claims filed by school districts and county offices of education from the Commission to the EAAP beginning with the 2011-2012 fiscal year. Incorrect reduction claims filed by local agencies and community college districts would remain with the Commission. Incorrect reduction claims filed with the EAAP would be titled "appeals."

Section 1185 of the Commission's regulations provides that all incorrect reduction claims shall be filed with the Commission no later than three (3) years following the date the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.

AB 2082 would require school districts and county offices of education to file appeals with the EAAP within 60 days of the date on which the Controller notifies the district that a mandate reimbursement claim filed by that district has been adjusted to reduce the overall reimbursement.

Neither the statutes governing the incorrect reduction claim process with the Commission nor the Commission's regulations allow for the Commission to determine a claimant was in "substantial compliance" with the parameters and guidelines.

AB 2082 would allow school districts and county offices of education to present evidence or arguments at the EAAP hearing asserting in good faith that it was in substantial compliance with all legal requirements. Substantial compliance means nearly complete adherence to all elements of the parameters and guidelines adopted for that mandate by the Commission, and to all elements of the claiming instructions issued by the Controller.

There is currently no statutory or regulatory deadline under which the Commission must complete pending incorrect reduction claims. AB 2082 would require the EAAP to conduct a hearing on an appeal within 90 days of the date on which it receives the appeal.

Section 1185.7 of the Commission's regulations provide that if the Commission determines that a reimbursement claim was incorrectly reduced, it shall send the Statement of Decision to the Office of State Controller and request that the Controller reinstate the costs that were incorrectly reduced.

AB 2082 would provide that if the EAAP determines that the school district or county office of education is correct in its assertion, in whole or in part, the EAAP shall inform the Controller of its determination, and the Controller shall adjust the district's claim accordingly.

Government Code section 17558.7 authorizes claimants to file with the Commission a consolidated incorrect reduction claim on behalf of other claimants whose claims for reimbursement under the same mandate are alleged to have been incorrectly reduced if all of the following apply:

- The method, act, or practice that the claimant alleges led to the reduction has led to

similar reductions of other parties' claims, and all of the claims involve common questions of law or fact.

- The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.
- The consolidation of similar claims by individual claimants would result in consistent decisionmaking by the Commission.
- The claimant filing the consolidated claim would fairly and adequately protect the interests of the other claimants.
- Within 30 days of receipt of a notice of intent to file or consolidate an incorrect reduction claim from the original claimant, any other eligible claimant shall file with the Commission its notice of intent to join the consolidated incorrect reduction claim.
- The Commission shall notify each claimant that files an intent to join a consolidated incorrect reduction claim that it may opt out of the consolidated claim, and provides procedures for opting out.

Government Code section 17558.8 authorizes the Commission, on its own initiative, to consolidate incorrect reduction claims if the following apply:

- The same method, act, or practice is alleged to have led to the reduction of each claims, and all of the claims involve common questions of law or fact.
- The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.
- The consolidation of similar claims by individual claimants would result in consistent decisionmaking by the Commission.

AB 2082 would authorize school districts and county offices of education to file with the EAAP consolidated appeals on behalf of other school districts and county offices of education, and notices of intent to join consolidated appeals. The claimants filing the consolidated appeals and notices of intent to join the consolidated appeals would have to meet the same requirements as imposed on claimants filing consolidated incorrect reduction claims with the Commission. AB 2082 also includes provisions for opting out of consolidated appeals with the EAAP.

AB 2082 provides that by July 1, 2011, the Commission shall transfer all pending incorrect reduction claims filed on or before June 30, 2011, by school districts and county offices of education, and all documentation and Commission working papers related to those claims to the EAAP. Any incorrect reduction claims transferred shall be deemed to have been appealed to the EAAP. The EAAP shall hold a hearing on the appeals on or before the following dates:

Date	Incorrect Reduction Claims Filed
June 30, 2011	Prior to January 1, 2005
June 30, 2012	Between January 1, 2005 and January 1, 2007
June 30, 2013	Between January 1, 2007 and January 1, 2008
June 30, 2014	Between January 1, 2008 and prior to July 1, 2011

Government Code section 17559 authorizes the Commission to reconsider all or part of a test claim or incorrect reduction claim upon petition of any party. AB 2082 would prohibit the Commission from reconsidering any incorrect reduction claim that is eligible to be filed with the EAAP.

Other Provisions

Under existing law, the Legislative Counsel declares in the digest of each bill drafted, whether or not the bill imposes a state-mandated local program.

AB 2082 would require Legislative Counsel to include in each bill that is introduced or amended in either house of the Legislature, and would impose a state-mandated local program on school districts and county offices of education, to also include a provision that repeals the state-mandated local program, or makes the requirement inoperative, no later than five years following the date of the bill's operative date.

Government Code section 17562 requires the Legislative Analyst, in its annual analysis of the Budget Bill, to report on mandates costs, and to include recommendations whether specific mandates should be repealed, funded, suspended or modified.

AB 2082 would also require the Legislative Analyst, by January 1 following adjournment of a regular session of the Legislature, to review and report on each reimbursable state mandate imposed on school districts and county offices of education that meets the following criteria:

- Has been determined by the Commission to be a reimbursable state-mandated program.
- Eligible school districts, county offices of education or other local educational agencies have filed reimbursement claims on that mandate.
- No appropriation has been provided by the Legislature to fully fund current and pending reimbursement claims.

The report shall include:

- A summary of each mandate and its statutory source.
- Fiscal information, including the claims paid to date, unpaid claims, pending claims and history of appropriations.
- Recommendations whether the mandate should be amended, repealed or remain unchanged.

ANALYSIS OF BILL'S PROVISIONS

As part of its annual review of the proposed State Budget, the Legislative Analyst's office (LAO) recently presented a publication: *Overview of the K-14 Mandate System and Recommendations for Reform* to the Senate Budget Subcommittee on Education.

The LAO identified several major long-recognized fiscal and policy shortcomings with the mandates process for K-12 programs, including the growing backlog in funding mandates.

The LAO recommended comprehensive mandate reform for K-12 education mandates as follows:

- Use long-standing LAO criteria to assess K-12 mandates:
- Recommend funding 12 mandates, such as *High School Exit Exam, Immunization Records, and School District Fiscal Accountability* in a standardized format and paid in arrears.
- Recommend eliminating majority of mandates, such as *Notification of Truancy, Physical Education Reports, and Removal of Chemicals*.
- Recommend eliminating some mandates while preserving underlying policy, such as *Graduation Requirements and Criminal Background Checks*.

The Assembly Education Committee introduced AB 2082 in response to the LAO Report and as an alternative to the report recommendations.

Legal Issues Raised by AB 2082

Article XIII B, section 6 of the California Constitution states in relevant part that “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service... .” Article XIII B, section 8, defines “local government” to include any city, county, city and county, school district, and special district. Thus, except for the provisions of Proposition 1A, which amended article XIII B, section 6, subdivisions (b) and (c) with respect to cities and counties only, the reimbursement requirements of article XIII B, section 6 apply equally to cities, counties, and school districts.

In 1984, the Legislature established the Commission on State Mandates in Government Code sections 17500 et seq., (SB 2337) finding that the system that existed at the time for reimbursing local agencies and school districts for the costs of state-mandated programs (SB 90, Revenue and Taxation Code section 2201, et seq.) did not provide for the effective determination of the state’s responsibilities under article XIII B, section 6. The Legislature found and declared that the failure of the existing process to resolve the complex legal questions involved in the determination of state-mandated costs led to an increasing reliance by local agencies and school districts on the judiciary. Thus, in order to relieve the congestion in the judicial system, the Commission on State Mandates was created to render sound quasi-judicial decisions and to act in a deliberative manner in accordance with the requirements of article XIII B, section 6. (Gov. Code, § 17500.)

AB 2082 attempts to change the mandates process for K-12 school districts only and raises the following legal issues.

1. **AB 2082 authorizes the EAAP to adjudicate an incorrect reduction claim under a “substantial compliance” standard, which may conflict with existing mandates law (statutory and case law).**

Education Code section 41344.11, subdivision (a), as proposed, states that “Notwithstanding Sections 17558.7 and 17558.8 of the Government Code, commencing with the 2011-2012 fiscal year, a local educational agency may file an incorrect reduction claim as an appeal with the Education Audit Appeals Panel [EAAP] in accordance with Education Code section 41344.1.” Education Code section 41344.11, subdivision (a), further states that “A local educational agency may present evidence or arguments at the hearing if the agency asserts that the Controller’s notice contains any finding that was based on errors of fact or interpretation of law, or if the agency asserts in good faith that it was in substantial compliance with all legal requirements.”

Under Education Code section 41344.11, subdivision (b), “‘substantial compliance’ means nearly complete adherence to all elements of the parameters and guidelines adopted for that mandate claim by the Commission on State Mandates and to all elements of the claiming instructions for that mandate claim issued by the Controller.”

However, mandates law requires reimbursement for “costs actually incurred” for the reimbursable activities identified in the parameters and guidelines and claiming instructions and not for costs that “substantially comply” with the parameters and guidelines and claiming instructions. Thus, depending on how the “substantial compliance” standard is applied, it may conflict with existing mandates law.

Article XIII B, section 6 of the California Constitution provides that whenever the Legislature or any state agency mandates a new program or higher level of service on any

local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service. Government Code section 17514 defines “costs mandated by the state” as any increased costs which a local agency or school district is required to incur as a result of any statute or executive order that mandates a new program or higher level of service. If a test claim is approved, Government Code section 17557 requires the Commission to determine the amount to be subvented for reimbursement with the adoption of parameters and guidelines. The parameters and guidelines identify the activities that are eligible for reimbursement and instructions for claiming direct and indirect costs. (Cal. Code Regs., tit. 2, § 1183.1.) Once the parameters and guidelines are adopted, the Commission is required by Government Code section 17558 to submit the adopted parameters and guidelines to the State Controller’s Office. The State Controller’s Office is then required to issue claiming instructions for each mandate that requires state reimbursement. Government Code section 17558, subdivision (b), requires that the claiming instructions be derived from the test claim decision and the adopted parameters and guidelines. Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions constitutes a notice of the right of the local agencies and school districts to file reimbursement claims based upon the parameters and guidelines adopted by the Commission. Local agencies and school districts may claim reimbursement for state-mandated costs pursuant to Government Code section 17560, which authorizes a local agency or school district to file an annual reimbursement claim for “*costs actually incurred for that fiscal year.*” The reimbursement claims of the local agencies and school districts are certified under penalty of perjury that the costs claimed are true and correct. Government Code section 17558.5, subdivision (a), states that a reimbursement claim for “*actual costs*” filed by a local agency or school district is subject to the initiation of an audit by the Controller. Pursuant to Government Code section 17561, subdivision (d)(2), the Controller’s Office is authorized to audit the records of any local agency or school district to verify “*the actual amount of the mandated costs*” and may reduce any claim that the Controller determines is excessive or unreasonable.

These statutes, which require “actual increased costs” for reimbursement, are included within Chapter 4 of the Government Code that provide the “sole and exclusive” procedure by which a local agency or school district may claim reimbursement for costs mandated by the state under article XIII B, section 6. (Gov. Code, § 17552.)

In addition, the courts have determined that article XIII B, section 6 requires reimbursement for “*increased actual expenditures*” that result from a new program or higher level of service mandated by the state. (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281.)

Moreover, the courts have held that the reimbursement requirement in article XIII B, section 6 must be construed strictly, and not applied as an equitable remedy.

A strict construction of section 6 is in keeping with rules of constitutional interpretation, which require that constitutional limitations and restrictions on legislative power “are to be construed strictly, and are not to be extended to include matters not covered by the language used.” [Citation omitted.] [“Under our form of government, policymaking authority is vested in the Legislature and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation.”] Under these principles, there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

(*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.)

Thus, depending on how the “substantial compliance” standard in AB 2082 is applied to a particular reimbursement claim, it may conflict with existing mandates law.

2. **AB 2082 may result in an invalid retroactive application of the law.** Education Code section 41344.13, subdivision (a), as added by AB 2082, requires the Commission to transfer all pending incorrect reduction claims filed on or before June 30, 2011 by a K-12 school district to the EAAP.² Education Code section 41344.11, subdivisions (a) and (b), gives the EAAP jurisdiction to consider and approve a pending incorrect reduction claim if the claim “substantially complies” with all legal requirements in the parameters and guidelines and claiming instructions.

“Substantial compliance” is not identified as an acceptable audit standard in article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., or the case law interpreting article XIII B, section 6. Thus, neither the law, the parameters and guidelines, nor the claiming instructions for the programs that are the subject of the pending K-12 incorrect reduction claims identify or provide notice to school districts or the state that “substantial compliance” is an appropriate audit standard.

Applying a new standard, such as “substantial compliance,” to existing reimbursement claims may result in an invalid retroactive application of the law. If a new statute, such as AB 2082, affects substantive rights or liabilities of the parties that changes the legal consequences of past events, then the application of the statute may be considered retroactive and invalid. (*Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.)

3. **The application of a new “substantial compliance” audit standard may change the rights and liabilities of the state, and increase state-mandated costs.**

As indicated above, the reimbursement claims filed by the school districts and the audits performed by the State Controller’s Office have not been analyzed under a “substantial compliance” standard. AB 2082 imposes a new standard to these claims mid-stream. Under such circumstances, the rights and liabilities of the parties may be affected and the application of AB 2082 may be considered retroactive and invalid.

For example, if the State Controller’s Office reduced one of the pending reimbursement claims because the claim was excessive or unreasonable, and then under AB 2082, EAAP finds that the school district substantially complied with the parameters and guidelines - the application of the new audit standard changes the substantive rights and liabilities of the state for reimbursement of state-mandated costs.

The application of the new standard can also change the substantive rights of the school districts that did not file an incorrect reduction claim, but whose costs were reduced. The AB 2082 “substantial compliance” standard, as applied to pending incorrect reduction claims, affects only those school districts that have actually filed incorrect reduction claims. School districts did not have notice of a new “substantial compliance” audit standard when

² The pending incorrect reduction claims are filed on the following state-mandated programs for K-12 school districts: Collective Bargaining; Emergency Procedures, Earthquake Procedures, and Disasters; Graduation Requirements; Intradistrict Attendance; Mandate Reimbursement Process; National Norm-Referenced Achievement Test; Notification of Truancy; Notification to Teachers, Pupils Subject to Suspension or Expulsion; School Bus Safety II; School Crimes Reporting; School District of Choice, Transfer and Appeals; Standardized Testing and Reporting.

they filed their reimbursement claims. Thus, there may be districts that did not file an incorrect reduction claim for costs reduced by the State Controller's audit and the statute of limitations has now passed. If EAAP, under AB 2082, applies the "substantial compliance" standard to the benefit of the school districts that filed an incorrect reduction claim, the rights of the school districts that did not file incorrect reduction claims within the statute of limitations have been changed.

Under these scenarios, applying the "substantial compliance" standard mid-stream changes the rights and liabilities of the parties and, thus, AB 2082 may be considered retroactive and invalid. This may increase the statewide costs of the program.

4. **AB 2082 may result in conflicting decisions on the same state-mandated program.**

AB 2082 gives jurisdiction to the EAAP over all incorrect reduction claims filed by "local educational agencies." Education Code section 41344.11, subdivision (d), as added by AB 2082, states that "local educational agency" does not include a community college district. Thus, EAAP's jurisdiction under AB 2082 is only on incorrect reduction claims filed by K-12 school districts. The Commission would still have jurisdiction to hear and decide incorrect reduction claims filed by community college districts and local agencies. (Gov. Code, § 17551, subd. (d).)

There are several state-mandated programs that apply equally to all local agencies and school districts. For example, with respect to the pending K-12 incorrect reduction claims, the *Collective Bargaining* and *Mandate Reimbursement* Programs apply to K-12 school districts, community college districts, and local agencies. Community college districts have filed incorrect reduction claims on these programs, and these incorrect reduction claims are still pending.

Since two separate agencies, that would apply different legal standards to the incorrect reduction claims, would exist, there is a possibility that the decisions of the EAAP and the Commission on the same program would be different and conflict.

5. **AB 2082 may result in increased litigation.** Conflicting decisions on the same mandated program by two separate agencies may result in increased litigation to the state. In addition, different standards applied to the same program by EAAP ("substantial compliance") and the Commission ("increased costs actually incurred") may result in increased litigation to the state. Thus, AB 2082 may conflict with the Legislature's intent when it created the Commission to relieve the congestion in the courts (Gov. Code, § 17500).

6. **The settlement of an incorrect reduction claim filed with EAAP under AB 2082 requires an additional bureaucratic step for the EAAP to adopt a decision approving the settlement.** Education Code section 41344.11, subdivision (a), as added by AB 2082, provides that a local educational agency may file an incorrect reduction claim with the EAAP in accordance with Education Code section 41344.1. Education Code section 41344.1, subdivision (b), provides the EAAP with the statutory authority to adopt decisions to approve settlements between K-12 school districts, the State Controller's Office, and the Department of Finance. According to EAAP's website, 26 of the 49 recent decisions adopted by the EAAP have approved settlements.

The State Controller's Office and the claimant may now settle an incorrect reduction claim pending before the Commission.³ The Controller has the authority to pay any eligible claim

³ Under the Commission's regulations (Cal. Code Regs., tit. 2, § 1185.1), the Department of Finance does not receive formal notice of the filing of an incorrect reduction claim or file comments on the incorrect reduction claim. However, based on the court's decision in *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1996) 43

if an appropriation has been made. (Gov. Code, § 17561.) However, the parties are not required to have the Commission adopt the settlement agreement, as would be required under AB 2082. Rather, a settled incorrect reduction claim is simply withdrawn from the Commission's caseload. Thus, AB 2082 may not streamline the mandates process, but may instead result in an additional bureaucratic step to adopt a settlement agreement.

7. **AB 2082 creates a conflict in law regarding jurisdiction over incorrect reduction claims.** Education Code section 41344.11, subdivision (a), as proposed, states that "Notwithstanding Sections 17558.7 and 17558.8 of the Government Code, commencing with the 2011-2012 fiscal year, a local educational agency may file an incorrect reduction claim as an appeal with the EAAP in accordance with Education Code section 41344.1."

Government Code sections 17558.76 and 17558.8 address the consolidation of incorrect reduction claims. However, Government Code section 17551, subdivision (d), gives the Commission jurisdiction to "hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district to paragraph (2) of subdivision (d) of Section 17561." In addition, Government Code section 17552 states that "This chapter [Government Code section 17550 – 17617, which covers test claims, parameters and guidelines, claiming instructions, payment and audit of reimbursement claims, and the filing of incorrect reduction claims with the Commission on State Mandates] shall provide the *sole and exclusive procedure* by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." (Emphasis added.)

AB 2082 does not amend Government Code sections 17551 and 17552. Thus, if AB 2082 is enacted, both the Commission and the EAAP have jurisdiction to hear and decide incorrect reduction claims for K-12 school districts. This creates a conflict in law.

8. **AB 2082 does not address the relationship between the Commission and its decisions, and the EAAP and its decisions.** Education Code section 41344.11, as added by AB 2082, authorizes a K-12 school district to file an incorrect reduction claim with the EAAP in accordance with Education Code section 41344.1. Education Code section 41344.1, subdivision (b), states that the Controller is a party to all appeals pending before the EAAP, and that the Department of Finance may intervene as a party in any appeal. AB 2082, however, does not expressly provide the Commission with standing or provide any notice to the Commission of EAAP filings and decisions. This may create conflict and confusion.

The ultimate determination whether there are costs mandated by the state under article XIII B, section 6 of the California Constitution, is a question of law. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.) EAAP has the authority to interpret questions of law, and would have that authority under AB 2082 to decide an incorrect reduction claim. (Ed. Code, § 41344.11, subd. (a).)

The determination of an incorrect reduction claim, however, may require the interpretation of the Commission's Statements of Decision and parameters and guidelines. Prior findings of the Commission are binding on the parties and any decision on an incorrect reduction claim must be consistent with the Commission's prior decisions. The issues involved in an incorrect reduction claim vary and may include the following: whether the costs claimed are for activities determined by the Commission to be reimbursable state-mandated activities; whether a statute provides offsetting revenues and/or savings to fully offset or partially offset

Cal.App.4th 1188, it is believed that the Department of Finance has standing over all issues of state-mandated costs.

the cost of the mandate; whether a claimant to a reimbursement claim is an eligible claimant under the law; whether the costs claimed are excessive or unreasonable based on the test claim statutes, executive orders, and decision of the Commission. Thus, under AB 2082, EAAP would be interpreting the prior decisions of the Commission.

An example of an incorrect reduction claim that required an interpretation of the Commission's Statement of Decision and parameters and guidelines occurred in the school district's challenge to the Commission's ruling on the *Graduation Requirements* incorrect reduction claims (Sacramento County Superior Court, Case Nos. 03CS01401, 03CS01568, 03CS01569, 03CS01570, 03CS01702, 04CS00028). There, the Sacramento County Superior Court had the full administrative record on the test claim, the Statement of Decision, the parameters and guidelines, the claiming instructions, the statewide cost estimate, and all correspondence, agenda materials, and transcripts in order to determine the question of law whether school districts were required to offset their costs under the statutes. The court also specifically requested that the parties (the school districts and the Commission) file the complete legislative history of the test claim statute and file supplemental briefing on whether the court had jurisdiction to consider issues addressed in the Statement of Decision and parameters and guidelines adopted by the Commission. The court ultimately determined that the offset provision of the Commission's parameters and guidelines was vague and directed the State Controller's Office to re-audit the reimbursement claims pursuant to the court's interpretation of the statutes.

While the Commission is clearly considered a party for purposes of test claims, Statements of Decisions, and parameters and guidelines, and parameters and guidelines amendments (Gov. Code, § 17559; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188), it is not clear from AB 2082 if the Commission would be a party to incorrect reduction claims determined by the EAAP, or on any litigation that may follow.⁴ If the issue involves the interpretation of Commission decisions, the Commission has an interest in the proceedings and may want to intervene as a necessary party to the litigation. (*Redevelopment Agency of the City of San Marcos, supra*, 43 Cal.App.4th 1188.)

Moreover, EAAP decisions on incorrect reduction claims may further result in conflict and confusion if subsequent requests are filed with the Commission by school districts or the state to amend parameters and guidelines following an EAAP ruling on an incorrect reduction claim to clarify issues for the filing of reimbursement claims in future fiscal years. In the *Graduation Requirements* program, for example, school districts filed requests to amend the parameters and guidelines to clarify the offset language in accordance with court's ruling for the filing of future reimbursement claims. In the amended parameters and guidelines, the Commission amended the offset provision in accordance with the court's decision pursuant to Government Code section 17557, subdivision (d). Government Code section 17557, subdivision (d), authorizes the Commission to amend the parameters and guidelines upon request of a local agency, school district, or the state after public notice and hearing. Thus, EAAP decisions under AB 2082 would affect the future workload of the Commission, and although the decisions of the EAAP may be binding on the state and the school district on a specific incorrect reduction claim, the decision of the EAAP is not binding on the Commission. Government Code section 17557 does not require the Commission to amend parameters and guidelines. This only leads to confusion and conflict.

⁴ Under AB 2082, the decision of the EAAP on an incorrect reduction claim would be final, unless challenged by a party with standing under Code of Civil Procedure section 1094.5 (court review of an administrative orders or decisions).

Thus, the relationship between the Commission and its decisions, and the EAAP and its incorrect reduction claim decisions, is not addressed in AB 2082.

9. **AB 2082 is vague and ambiguous regarding the applicability of the new statute of limitations.** Education Code section 41344.11 would establish a statute of limitations for incorrect reduction claim appeals “within 60 days of the date on which the Controller notifies the local education agency that a mandate reimbursement claim filed by that local education agency has been adjusted to reduce the overall reimbursement.”

Under current law, the statute of limitations on an incorrect reduction claim filed with the Commission is three (3) years from the date the claimant is notified by the Controller of an adjustment. (Cal. Code Regs, tit. 2, § 1185, subd. (b).

AB 2082, if enacted, would become effective on January 1, 2011, and operative on July 1, 2011. (Ed. Code, § 41344.13.) By July 1, 2011, the Commission is required to transfer all pending incorrect reduction claims for K-12 school districts to the EAAP.

AB 2082 is not clear with respect to whether the new 60-day statute of limitations applies to claims that are adjusted/reduced beginning on January 1, 2011 or July 1, 2011. Thus, AB 2082 is vague and ambiguous regarding the applicability of the statute of limitations.

Workload Issues Raised by AB 2082

Increased Workload.

AB 2082 would shorten the statute of limitations for school districts filing incorrect reduction claims from three years to 60 days. Those districts that would be beyond the 60-day statute of limitations when the bill takes effect, may file incorrect reduction claims with the Commission prior to the bill’s effective or operative date. This could result in a large number of claims being filed. In 2002, the statute of limitations for filing test claims was shortened. Prior to the statute becoming operative, 54 test claims were filed with the Commission – twice the normal amount filed. If there are a large number of incorrect reduction claim filings, it will increase the workload for Commission staff to process the claims prior to transferring them to the EAAP.

The bill would require the Commission to transfer complete records for 41 incorrect reduction claims to the EAAP by July 1, 2011. A complete administrative record for each claim would include not only the incorrect reduction claim file, but also the entire record for the test claim and parameters and guidelines, including hearing agenda packages, transcripts and minutes. Test claim records often exceed 3,000 pages. For example, the *Graduation Requirements* program administrative record is one proposed for transfer to EAAP. This record includes the test claim, parameters and guidelines, several parameters and guidelines amendments, 44 incorrect reduction claims, and litigation. Once this record is compiled, it will likely exceed approximately 3,200 pages. Using existing support staff to complete this task will take them away from test claim work and hearing preparation.

Technical Flaws

Administrative Records. This bill would require the EAAP to complete claims prior to the deadline for the Commission to transfer the records to the EAAP.

WORKLOAD AND POSITION AUTHORITY

There are currently 157 incorrect reduction claims totaling \$83,728,267. pending before the Commission:

- Eighty-three (83) are filed by cities and counties for the following programs: *Investment Reports* (72); *Handicapped and Disabled Students* (4); *Absentee Ballots* (2); *Sexually Violent Predators* (2); *Open Meetings Act* (1); *Child Abduction and Recovery* (1); and

Firefighter's Cancer Presumption (1).

- Thirty-three (33) are filed by community college districts for the following programs: *Health Fee Elimination* (25); *Collective Bargaining* (7); and *Mandate Reimbursement Process* (1).
- Forty-one (41) are filed by school districts and county offices of education for the following programs: *School Crimes Reporting II* (8); *Notification of Truancy* (6); *School Bus Safety II* (5); *School District of Choice: Transfer and Appeals* (4); *Intradistrict Attendance* (4); *Graduation Requirements* (3); *Collective Bargaining* (3); *Emergency Procedures, Earthquake Procedures, and Disasters* (3); *Mandate Reimbursement Process* (1); *Notification to Teachers: Pupils Subject to Suspension or Expulsion* (1); *Interdistrict Attendance Permits*(1); *Standardized Testing and Reporting (STAR)* (1); and *National Norm-Referenced Achievement Test (NNRAT)* (1).

In 1999, the incorrect reduction claim workload increased from 27 to 187, and that number rose to 402 within six months. Therefore, in fiscal year 2000-2001, the Commission was provided with three two-year limited-term positions to address the incorrect reduction claim workload.⁵ Due to budget deficits, the limited-term positions expired in fiscal year 2002-2003, and three additional positions were also eliminated.

In 2004, the Legislature began directing the Commission to reconsider existing mandate decisions in light of new case law and statutes. The reconsiderations were required to be completed within short statutory deadlines, and superseded test claims and incorrect reduction claims. Also in 2004, two additional positions and funding for public meetings were eliminated, reducing our public meetings from 12 to 6. The reconsiderations and position and funding reductions further delayed elimination of the incorrect reduction claim (and test claim) backlogs.

In 2005-2006, the Commission was provided with three limited-term positions to eliminate the test claim backlog.⁶ In 2006-2007, those positions were made permanent. In 2008-2009, one staff counsel III position was eliminated due to budget constraints.

Nevertheless, despite continual position reductions and inadequate staffing resources, the Commission has continued to eliminate some incorrect reduction claim workload. Between 2000 and 2003, the Commission eliminated approximately 366 incorrect reduction claims on the *Open Meetings Act*, and completed 44 incorrect reduction claims on the *Graduation Requirements* program. In 2003, the Commission also completed 46 incorrect reduction claims on the *Certification of Teacher Evaluator's Demonstrated Competence* program. Between 2005 and 2007, the Commission was required to revisit the *Graduation Requirements* incorrect reduction claims when the court overturned the Commission decisions on those claims. However, between 2008 and 2010, because the Commission was reducing the test claim backlog, it did not complete incorrect reduction claims. During that period the number of claims increased to 157.

Commission staff has begun work on incorrect reduction claims in 2010. The draft staff analysis on the first incorrect reduction claim on the *Investment Reports* program was issued in March, and hearing is scheduled in May 2010.

Bureau of State Audits Report

In 2009, the Bureau conducted an audit of the mandates process, and issued Report Number 2009-501: *State Mandates: Operational and Structural Changes Have Yielded Limited*

⁵ 1 Staff Counsel III, .5 Staff Counsel, and 1.5 Associate Governmental Program Analyst positions.

⁶ 2 staff counsel III positions, and one associate governmental program analyst position.

Improvements in Expediting Processes and Controlling Costs and Liabilities. In this latest report, the Bureau stated that “. . . the Commission has only completed a limited number of these [incorrect reduction] claims, and consequently its backlog grew from 77 in December 2003 to 146 in June 2009.” The Bureau recommended that “To ensure that it resolves sufficiently its backlog of test claims, incorrect reduction claims, and the boilerplate amendment request, the Commission should do the following:

1. Work with Finance to seek additional resources to reduce its backlog, including test claims and incorrect reduction claims. In doing so, Commission staff should prioritize its workload and seek efficiencies to the extent possible . . .”

Due to severe and unprecedented state budget deficits, state agencies under the Administration are prevented from requesting additional positions at this time. The Commission is committed to working with Department of Finance to obtain additional staff when the budget situation improves.

FISCAL IMPACT

Additional Workload for Commission Staff

We estimate that the Commission will need one additional half-time office technician position for six months at a cost of **\$24,300** to complete compilation and transfer of 41 administrative records.

The bill would require the Commission to transfer complete records for 41 incorrect reduction claims to the EAAP by July 1, 2011. A complete administrative record for each claim would include not only the incorrect reduction claim file, but also the entire record for the test claim and parameters and guidelines, including hearing agenda packages, transcripts and minutes. Test claim records often exceed 3,000 pages. For example, the *Graduation Requirements* program administrative record is one proposed for transfer to EAAP. This record includes the test claim, parameters and guidelines, several parameters and guidelines amendments, 44 incorrect reduction claims, and litigation. Once this record is compiled, it will likely exceed approximately 3,200 pages. Using existing support staff to complete this task will take them away from test claim work and hearing preparation.

Therefore, we estimate the need for a limited-term additional position as described above to complete the task without delaying elimination of the test claim backlog and scheduling of Commission meetings.

The costs for potential increased litigation are unknown at this time. The costs for possible increased state-mandated costs are also unknown.

SUPPORT AND OPPOSITION

AB 2082 is supported by the Small School Districts Association. There is no known opposition to the bill at this time.

STATUS

AB 2082 passed the Assembly Committee on Education (9-0) on April 21, 2010,⁷ and is pending in Assembly Appropriations Committee.

⁷ Exhibit B, Committee analysis.

STAFF RECOMMENDATION

Staff recommends that the Commission adopt an **Oppose Unless Amended** position on AB 2082, as amended on April 14, 2010, unless all provisions regarding transfer of authority to decide incorrect reduction claims to the EAAP are removed. These provisions:

- Could impose a “substantial compliance” standard that may conflict with existing mandates law.
- The substantial compliance standard may result in an invalid retroactive application of the law.
- The substantial compliance audit standard may change the rights and liabilities of the state and increase state-mandated costs.
- May result in conflicting decisions on the same state-mandated programs, that could result in increased litigation.
- May impose an additional bureaucratic step to adopt a settlement agreement.
- Does not address the relationship between the Commission and its decisions and the EAAP and its decisions.