

ITEM 12
EXECUTIVE DIRECTOR'S REPORT

Workload, Budget, and Tentative Agenda Items for Next Meeting (info)

I. WORKLOAD

A. COMPLETED WORKLOAD SUMMARY

Type of Caseload	Completed in 2011/2012	Completed in 2012/2013 ¹
Test Claims	14	10
Incorrect Reduction Claims	35	40
Parameters & Guidelines	8	12
Parameters and Guidelines Amendments	8	2
Statewide Cost Estimates	6	8
Request to Review Claiming Instructions	1	0

B. COMMISSION WORKLOAD REPORT

Type of Action	Pending on 7/1/2012	Filed Since 7/1/2012	Completed Since 7/1/2012	Pending on 4/5/2013
Test Claims	36	1	10	27 ²
Test Claim Reconsiderations	0	1	0	1
Test Claim Reconsiderations or Reinstatements Based on Court Action	0	0	0	0
Incorrect Reduction Claims	125	2	40	87
Incorrect Reduction Claims to be Reconsidered Based on Court Action	0	0	0	0
Requests for Redetermination	0	1	0	1
Joint Reasonable Reimbursement Methodologies	0	1 ³	0	1

¹ As of May 8, 2013.

² This includes seven test claims filed by school districts and 20 filed by local agencies. Ten of the local agency claims are regarding regional water quality control board permits, some of which have been placed on inactive status by the claimants pending the outcome of litigation regarding the extent of the federal clean water mandate.

³ The term of agreement for 07-RRM-01 is currently expired. This matter is pending a joint request from the claimant and Finance to either amend or extend the term or for the Commission to hear and decide the claimant's proposed Ps&Gs.

Proposed Parameters and Guidelines	11	5 ⁴	12	4
Proposed Parameters and Guidelines Amendments	12	3	2	13
Requests to Review Claiming Instructions	0	0	0	0
Parameters and Guidelines to be Amended, Set Aside, or Reinstated, as Directed by the Legislature or Court Action	0	0	0	0
Statewide Cost Estimates	9	11 ⁵	8	12
Appeals of Executive Director's Decisions	0	1	1	0
Regulatory Actions Pending	0	0	0	0
Pending Requests To Jointly Develop Legislatively Determined Mandates	0	0	0	0
Applications for Findings of Significant Financial Distress Pending	0	0	0	0

II. 2013-14 BUDGET

The Commission's budget was heard in Senate Budget Subcommittee 4 on April 25, 2013 and in Assembly Budget Subcommittee 4 on May 7, 2013. The Commission's budget change proposal for two additional staff was approved unanimously in both subcommittees.

Attached, in Exhibit A, is a record of the actions taken and the relevant agenda items from the April 25, 2013 Senate Budget Subcommittee 4 hearing. Key among the actions taken was a recommendation that the Department of Finance submit a request for a new test claim decision on the Open Meetings Act/Brown Act Reform⁶ mandate in light of the passage of Proposition 30 and alleged subsequent changes in law therein (Item 5, Exhibit A). The mandate suspension items were continued to the May 9, 2013 hearing, where they are recommended for approval as proposed by the Administration and are set for vote only.

Attached, in Exhibit B, is a record of the actions taken and the relevant agenda items from the May 7, 2013 Assembly Budget Subcommittee 4 hearing. As shown in Exhibit B, issue 1 (the Commission's budget change proposal), issue 2 (continued suspension of previously suspended mandates), issue 3 (suspension of new mandates with SCEs) and issue 5 (trailer bill proposal to make 5 mandated programs discretionary) were approved. Issue 4 "Suspend Mandates without Statewide Costs Estimates," was held open for a future meeting yet to be determined as of the writing of this report.

⁴ Proposed parameters and guidelines may be submitted by the test claimant or expedited and issued by Commission staff upon the adoption of an approved test claim.

⁵ Statewide cost estimates are not filed, but are issued after claiming instructions have been issued and initial claims have been received.

⁶ *Open Meetings Act/Brown Act Reform* (Stats. 1986, ch. 641 and Stats. 1993, chs. 1136, 1137, and 1138) (CSM-4257 and CSM-4469).

III. TENTATIVE AGENDA ITEMS

The tentative agenda items are subject to change based on Commission workload, litigation, requests for extensions of time to file comments on draft staff analyses, hearing postponements, pre-hearing conferences, and the complexity of the statutes and executive orders that are pled.

July or September Meetings

A. TEST CLAIMS

1. *Accounting for Local Revenue Realignments*, 05-TC-01
County of Los Angeles, Claimant
2. *Standardized Testing and Reporting (STAR) II*, 05-TC-02 and 05-TC-03
San Diego Unified School District and Grant Joint Union High School District, Claimants and *Standardized Testing and Reporting (STAR) III*, 08-TC-06
Twin Rivers Unified School District, Claimant
3. *Public Guardianship Omnibus Conservatorship Reform*, 07-TC-05
County of Los Angeles, Claimant
4. *General Health Care Services for Inmates*, 07-TC-12
County of Orange, Claimant
5. *High School Exit Examination II*, 08-TC-02
San Jose Unified School District, Claimant
6. *Medi-Cal Eligibility of Juvenile Offenders*, 08-TC-04
Alameda County, Claimant
7. *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*, 08-TC-03
County of Los Angeles, Claimant
8. *Sheriff Court-Security Services*, 09-TC-03
County of Los Angeles, Claimant

B. PARAMETERS AND GUIDELINES AND REQUESTS TO AMEND PARAMETERS AND GUIDELINES

1. *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22
County of Los Angeles, Claimant
2. *Habitual Truants*, 01-PGA-06 and 09-PGA-01
Clovis Unified School District and San Jose Unified School District, Requestors
3. *Teacher Credentialing*, 03-TC-09
San Diego County Office of Education, Claimant
4. *Crime Statistics Reports for the Department of Justice*, 12-PGA-01
State Controller's Office, Requestor

C. REQUESTS FOR RECONSIDERATION

1. *California Public Records Act*, 02-TC-10 and 02-TC-51

Request for Reconsideration of Statement of Decision and Parameters
and Guidelines Adopted April 19, 2013
California Special Districts Association, Requester

D. STATEWIDE COST ESTIMATES

1. *Behavioral Intervention Plans (BIPs)*, CSM-4464
San Diego Unified School District, Claimant
2. *Public Contracts (K-14)*, 02-TC-35
Clovis Unified School District and Santa Monica Community College
District, Co-Claimants
3. *Discrimination Complaint Procedures*, 02-TC-46
Santa Monica Community College District, Claimant
4. *Charter Schools IV*, 03-TC-03
San Diego Unified School District, Claimant
5. *Local Agency Ethics (AB 1234)*, 07-TC-04
City of Newport Beach and Union Sanitary District, Co-Claimants
6. *Tuberculosis Control*, 03-TC-14
County of Santa Clara, Claimant

E. INCORRECT REDUCTION CLAIMS

1. Health Fee Elimination, 05-4206-I-04 and 05-4206-I-08
San Mateo Community College District and San Bernardino Community
College District, Claimants

F. MANDATE REDETERMINATION REQUESTS

1. *Sexually Violent Predators (CSM-4509)*, 12-MR-01
Department of Finance, Requestor

Senate Budget and Fiscal Review— Mark Leno, Chair

SUBCOMMITTEE NO. 4

Agenda

Senator Richard Roth, Chair
 Senator Tom Berryhill
 Senator Lois Wolk



Thursday, April 25, 2013
 9:30 a.m. or Upon Adjournment of Session
 Room 112

Consultant: Mark Ibele

Agenda Part A

State Administration and Local Finance

Overview of Redevelopment Agencies and Fiscal Impacts

Legislative Analyst’s Office and Department of Finance 1
Item 1—Redevelopment Agencies: Information Item.

Proposed Discussion / Vote Calendar:

8885 Commission on State Mandates 4
Item 1—Mandate Reform: Information Item.
Item 2—Additional Staff for Commission (BCP#1). Approved 2-0.
Item 3—Fund Mandates in Governor’s Budget. Approved 2-0.
Item 4—Suspend Selected Mandates in Governor’s Budget. Held Open.
Item 5—Request New Determination Open Meeting Act Mandate. Approved 2-0.
Item 6—Repeal/Make Permissive Selected Mandates. Adopted TBL 2-0.

9210 Local Government Financing 15
Item 1—Subventions for Insufficient ERAF. Held Open.

0509 Governor’s Office of Business and Economic Development..... 18
Item 1—Workload and Moving Expenses. Approved 2-0.

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-651-1505. Requests should be made one week in advance whenever possible.

Proposed Discussion / Vote Calendar:

8885 Commission on State Mandates

Department and Budget Overview: The Commission on State Mandates (Commission) is a quasi-judicial body created for the purpose of determining the state mandated costs. The objective of the Commission is to impartially hear and determine if local agencies and school districts are entitled to reimbursement for increased costs mandated by the state consistent with Article XIII B, section 6 of the California Constitution. The Commission consists of the Director of Finance, the State Controller, the State Treasurer, the Director of the Office of Planning and Research, and a public member and two local government representatives appointed by the Governor and approved by the Senate.

For 2012-13, the Commission was budgeted at \$1.6 million and 11 positions for state operations. This administrative support level is proposed to increase slightly to \$1.8 million and 13 positions in the budget year. Costs associated with funding mandates proposed in the Governor's Budget are approximately \$50 million in both the current and budget year.

Background and Detail: The Commission is responsible for determining whether a new statute, executive order, or regulation contains a reimbursable state mandate on local governments, and for establishing the appropriate reimbursement to local governments from a mandate claim. The Constitution generally requires the state to reimburse local governments when it mandates that they provide a new program or higher level of service. Activities or services required by the Constitution are not considered reimbursable mandates. The Constitution, as amended by Proposition 1A of 2004, requires that the Legislature either fund or suspend local mandates. Payments for mandate costs incurred prior to 2004 are one exception noted in the Constitution and such pre-2004 mandate costs can be repaid over time. Another exception in the Constitution is for mandates related to labor relations. In these cases, the state can defer payment of the mandates and still retain the mandates' requirements. In most cases, if the Legislature fails to fund a mandate, or if the Governor vetoes funding, the legal requirements are considered suspended pursuant to the Constitution.

Mandate reimbursement claims are filed with the Commission for the prior fiscal year—after that fiscal year is completed and actual costs are known. The state pays the mandate claims in the following fiscal year. For example, local costs incurred in 2011-12 are reported and claimed in 2012-13, and the state will reimburse locals for these costs as part of the 2013-14 budget. Suspending a mandate does not relieve the state of the obligation of reimbursing valid claims from prior-years, but it does allow the state to defer payment. For example, several elections-related mandates were suspended for the first time in the 2011-12 budget. This means the activities for locals were optional in 2011-12 and locals cannot claim reimbursement for any new costs incurred in 2011-12. However, the mandate claims for these costs in 2009-10

and 2010-11 are still due—either over time or all at once in the year when the mandate suspension is lifted. The state owes local governments approximately \$1.8 billion in non-education mandate payments. Of this, about \$900 million is associated with pre-2004 mandate claims.

Issues Proposed for Discussion / Vote:

- 1. Mandate Reform (Discussion Issue).** Determining whether a particular requirement is a state-mandated local program and the process by which the reimbursable cost is determined is an extensive, time-consuming, and multi-stage undertaking. State and local officials have expressed significant concerns about the mandate determination process, especially its length and the complexity of reimbursement claiming methodologies.

According to an LAO review a few years ago, it took the Commission over five years to complete the mandate determination process for a successful local government test claimant. The review of new mandates claims found that the Commission took almost three years from the date a test claim was filed to render a decision as to the existence of a state-reimbursable mandate. The Commission took more than another year to adopt the mandate's claiming methodology and almost another year to estimate its costs and report the mandate to the Legislature. Because of the current backlog, the delay can be even longer. The Commission has submitted a budget change proposal for 2013-14 to address the backlog issue and speed up the mandate process but the resulting improvements are still not expected to meet the statutory time frame.

This lengthy period of review and determination presents several difficulties that affect both the state and local governments. Among the most important are flip sides of the same coin, specifically:

- Local governments must carry out the mandated requirements without reimbursements for a period of some years, plus any additional time associated with development of the mandate test claim, appropriation of reimbursement funds, and the issuance of checks.
- State mandate liabilities accumulate during the determination period and make the amount of state costs reported to the Legislature higher than they would be with an expedited process. Policy review of mandates is hindered because the Legislature receives cost information years after the debate regarding its imposition.

In addition to the delays that characterize the review and determination process, there are other significant issues. On the cost determination side, since most mandates relate to expanding existing programs (rather than instituting completely new ones), local governments have difficulty in measuring the associated marginal costs. The complexity of the claiming methodologies means

local governments' claimed costs frequently are not supported by source documents showing the validity of such costs or are not allowable under the mandate's reimbursement methodology. Accordingly, the State Controller's Office has disallowed a significant number of all reimbursement claims over the last few years, leading to frequent appeals, more uncertainty and mounting bills.

Staff Comment and Questions: The Administration indicates in the Governor's Budget that it will pursue policies to improve the mandate process, including deferring decisions to local government decision-makers and allowing for maximum flexibility. In addition, LAO has in the past recommended a 'best practices' approach for various local activities and requirements. The Legislature could consider these approaches and compare their advantages with policies adopted at the state level and the likely costs of such mandated programs. In addition, in some cases, reimbursement amounts for local government activities are well in excess of reasonable costs, which appear to warrant some additional oversight of reimbursement standards and practices.

Questions: (1) *What suggested reforms do you have for the mandate process?* (2) *Absent fundamental reform, what are the best interim steps the Legislature can take to synchronize imposing requirements on local governments and awareness of cost imposed on the state?* (3) *What type of reforms are necessary to address incidents of high cost reimbursement claims by local governments?*

Staff Recommendation: No action required. Information issue.

- 2. Additional Staff for Timely Mandate Determinations (Governor's Budget BCP#1):** The Governor's Budget proposes an augmentation of \$245,000 (General Fund) for additional staff for the Commission. The requested positions would be devoted to increasing the capacity of the Commission to better comply with statutory time frames and accelerate the reduction in the backlogs associated with various Commission activities, including: test claims, establishment and amendments to parameters and guidelines, statewide cost estimates, and incorrect reductions claims. The proposal is for one staff attorney and a senior legal analyst.

Background: As noted in the discussion below, the mandate process suffers from a number of fundamental weaknesses. One of the areas of administrative shortfall is the timeliness of responses from the Commission with respect to the activities noted above. With limited resources, the Commission has made some progress in reducing the backlogs, and this proposal will further advance these efforts.

Staff Comment: The proposal clearly does not address the more fundamental issues associated with mandate determination and cost reimbursement. Most of

these issues must be addressed through legislation. Nevertheless, the proposal would result in additional progress to reducing the delays that are endemic in the current system.

Staff Recommendation: Approve the budget request.

Vote:

3. **Mandate Funding (Governor's Budget Proposal):** The Governor's mandate proposal is a continuation of the status quo in terms of mandates in effect and mandates not in effect. The Governor's Budget proposes expenditures of \$48.4 million (General Fund) related to 13 non-education mandates. These 13 mandates are identical to those funded and kept in force during the current year, the payments on which constitute the bulk of the General Fund cost for this item. These mandates all relate to public safety or property taxes and are listed in the following table:

**Mandate Funding in Governor's Budget
General Fund
(Dollars in Thousands)**

Funded Mandate Title	Amount
Allocation of Property Tax Revenue	\$520
Crime Victim's Domestic Violence Incident Reports	175
Custody of Minors-Child Abduction and Recovery	11,977
Domestic Violence Arrests and Victim's Assistance	1,438
Domestic Violence Arrest Policies	7,334
Domestic Violence Treatment Services	2,041
Health Benefits for Survivors of Public Safety Officers	1,780
Medical Beneficiary Death Notices	10
Peace Officer Personnel Records	690
Rape Victim Counseling	344
Sexually Violent Predators	21,792
Threats Against Police Officers	3
Unitary Countywide Tax Rates	255
Total	\$48,359

Staff Comment: At the time the agenda was finalized, no concerns had been raised with this budget request. The mandates selected for funding continue the policy adopted in previous years by the Legislature.

Staff Recommendation: Approve the budget request for continued funding of selected local government mandates.

Vote:

4. Mandate Suspensions (Governor's Budget Proposal): The Governor's Budget proposes the suspension of numerous mandates in order to achieve budgetary savings. Many of these have been suspended for several years, typically as part of the budget process. In general, mandate suspension has not been subject to thorough policy review that would evaluate the costs and benefits of the mandate, but rather have been suspended solely for the purpose of budgetary savings. The policy decision to establish the mandate in the first place has not generally been a substantial component of the discussion.

Mandates proposed for suspension include mandates suspended in prior years (Group 1), immediate suspension of five new mandates with statewide cost estimates (Group 2), and four new mandates without statewide cost estimates (Group 3). These are discussed separately below.

Group 1: The mandates proposed for continued suspension are those mandates which have been previously suspended (Group 1). These are listed in the figure below.

**Mandates Suspended in Governor's Budget
General Fund
(Dollars in Thousands)**

Suspended Mandate Title—Group 1	Amount
Adult Felony Restitution	\$0
Absentee Ballots *	49,598
Absentee Ballots-Tabulation by Precinct *	68
AIDS/Search Warrant	1,596
Airport Land Use Commission/Plans	1,263
Animal Adoption	45,321
Brendon Maguire Act*	0
Conservatorship: Developmentally Disabled Adults	349
Coroners Costs	222
Crime Statistics Reports for the Department of Justice & CSRDOJ Amended	160,705
Crime Victims' Domestic Violence Incident Reports II	2,010
Deaf Teletype Equipment	0
Developmentally Disabled Attorneys' Services	1,198
DNA Database & Amendments to Postmortem Examinations: Unidentified Bodies	310
Domestic Violence Information	0
Elder Abuse, Law Enforcement Training	0
Extended Commitment, Youth Authority	0
False Reports of Police Misconduct	10
Fifteen-Day Close of Voter Registration*	0
Firearm Hearings for Discharged Inpatients	156

Grand Jury Proceedings	0
Handicapped Voter Access Information*	0
In-Home Supportive Services II	444
Inmate AIDS Testing	0
Judiciary Proceedings (for Mentally Retarded Persons)	274
Law Enforcement Sexual Harassment Training	0
Local Coastal Plans	0
Mandate Reimbursement Process I	6,910
Mandate Reimbursement Process II (includes consolidation of MRPI and MRPII)	0
Mentally Disordered Offenders': Treatment as a Condition of Parole	4,909
Mentally Disordered Offenders' Extended Commitments Proceedings	7,215
Mentally Disordered Sex Offenders' Recommitments - Verify Name	340
Mentally Retarded Defendants Representation	36
Missing Person Report III	0
Not Guilty by Reason of Insanity	5,213
Open Meetings Act/Brown Act Reform	113,101
Pacific Beach Safety: Water Quality and Closures	344
Perinatal Services	2,337
Personal Safety Alarm Devices	0
Photographic Record of Evidence	279
Pocket Masks (CPR)	0
Post Conviction: DNA Court Proceedings	411
Postmortem Examinations: Unidentified Bodies, Human Remains	5
Prisoner Parental Rights	0
Senior Citizens Property Tax Postponement	481
Sex Crime Confidentiality	0
Sex Offenders: Disclosure by Law Enforcement Officers	0
SIDS Autopsies	0
SIDS Contacts by Local Health Officers	0
SIDS Training for Firefighters	0
Stolen Vehicle Notification	1,117
Very High Fire Hazard Severity Zones	0
Victims' Statements-Minors	0
Voter Registration Procedures*	2,481
	\$408,703

LAO Perspective: LAO has raised questions regarding the six mandates slated for suspension by the Governor's Budget that deal with elections matters. The LAO recommended that these six mandates identified by an asterisk (*) in the table above not be suspended but rather funded in the budget, along with the direction that the Administration work with counties to explore alternative funding mechanisms.

Staff Comment: No concerns have been raised regarding the continued suspension of these mandates, other than issues noted by LAO. Staff notes that suspending the election mandates would not preclude the Administration from working with counties to explore alternative funding mechanism, as suggested by LAO. The selected mandates in the figure have been suspended in prior years.

Staff Recommendation—Group 1: Approve the continued suspension of all the mandates included in the table above.

Vote:

Group 2: The second group of mandates proposed for suspension is made up of five mandates with newly identified cost estimates. These comprise three mandates associated with elections—Modified Primary Election, Permanent Absentee Voter, and Voter Identification Procedures. These three mandates are considered by the committee as a separate agenda budget item. The remaining two mandates with statewide cost estimates are related to public safety—Domestic Violence Background Checks and Identity Theft—and will be considered in Senate Subcommittee #5. Note that these five mandates constitute the so-called “Reserve Builders”, the suspension of which generates \$111.0 million in General Fund savings.

Staff Recommendation—Group 2: No action required in this item.

Group 3: The third group of mandates designated for suspension is made up of four mandates without statewide cost estimates, as yet. Two of these mandates—Tuberculosis Control and Interagency Child Abuse and Neglect Investigation Reports—will be addressed in Senate Subcommittee #3. The remaining two mandates in this group—California Public Records Act and Local Agency Ethics—are discussed below.

- **California Public Records Act.** The core provisions of the California Public Records Act (CPRA), relating to the right of residents to inspect public records and receive copies on request, are not reimbursable mandates. The reimbursable mandate portions of the CPRA relate to providing assistance to those seeking records, notification to the requestor regarding whether the records may be disclosed, and expunging home addresses and phone numbers of employees that relate to request. Suspension would not affect the obligations of local governments to comply with the core provisions of the CPRA. LAO recommends that the provisions of the law that constitute mandates be recast as optional ‘best practices.’ LAO indicates that the statewide costs—when they are provided—are likely to be in the tens of millions of dollars annually.

- **Local Agency Ethics.** The Commission determined that state law makes it mandatory for some local governments (largely general law cities, and certain special districts, that are required to pay compensation) to adopt policies relating to reimbursement of expenses and provide ethics training for officials who receive compensation. LAO points out the somewhat puzzling inconsistency of imposing the mandate on local governments (that are required to pay compensation) and not on others. LAO recommends changes in law that would make compensation optional for all local governments (thus removing the mandate) or exclude from the requirement those local governments that are obligated to pay compensation.

Staff Comment: There are important policy issues that are imbedded in each of the two mandate programs discussed in this item. LAO's proposal to recast the CPRA mandate as best practices makes policy sense, as it would require local governments to adopt the best practices or, alternatively, announce at the first public meeting that it was not going to adopt best practices. Similarly, for the Local Agency Ethics mandate, there are numerous issues associated with local government compensation and associated ethics that are best left to a policy discussion.

Staff Recommendation—Group 3: Approve suspension of Local Agency Ethics and California Public Records Act mandates.

Vote:

5. **Open Meeting Act Mandate (LAO Issue).** Most of the core requirements pertaining to California's Open Meeting Act preceded the 1975 operative date of mandate law and are thus not reimbursable. However, the Commission has determined that certain post-1975 procedural amendments to the Brown Act are a reimbursable state mandate. These "Open Meeting Act" mandates require local agencies to (1) prepare and post agendas 72 hours before a hearing, and (2) follow certain noticing and reporting procedures for items considered in closed session. The Open Meeting Act mandate has been suspended since 2011-12, and the Governor's budget proposes to suspend the Open Meeting Act mandate in 2013-14. Suspending this mandate would make local governments' compliance with provisions related to posting and preparation of agendas and closed session procedures optional in 2013-14.

In November 2012, voters approved Proposition 30 which included language intended to prospectively exempt all provisions of the Open Meeting Act statutes from being considered a state-reimbursable mandate. However, the proposition did not explicitly set aside the Commission decision on the Open Meeting Act mandate. State law defines a process by which local governments and state agencies may request the Commission to issue a new mandate decision based

on subsequent changes in law or other factors. Since Proposition 30 passed, no such requests have been filed with the Commission.

In the absence of a new Commission decision, the Legislature's requirement to fund, suspend, or repeal the Open Meeting Act mandate in 2013-14 is somewhat opaque. Although Proposition 30 states that the Open Meeting Act mandate statutes "shall not be a reimbursable mandate," it does not explicitly (1) set aside the Commission ruling on the Open Meeting Act or (2) modify the constitutional requirement that the Legislature fund, suspend, or repeal laws determined to be a reimbursable mandate.

LAO Perspective: In order to avoid the risk of litigation, LAO suggests the Legislature fund, suspend, or repeal the Open Meeting Act mandate in 2013-14, and direct DOF to file a request for a new Commission decision on the Open Meeting Act mandate as soon as possible.

Staff Comment: If the Open Meetings Act mandate were funded in the budget year, the fiscal impact would be significant. Suspension of the mandate allows the state to defer payment of prior year local government reimbursements of \$113 million and avoid any additional annual cost.

Staff Recommendation: Direct DOF to file a request for a new Commission decision on the Open Meeting Act mandate as soon as practicable.

Vote:

6. Repeal Selected Mandates (Governor's Budget—Proposed Trailer Bill). The Governor has proposed trailer bill language that would effectively repeal five mandates by making them permissive. The proposal would make permissive five mandates that have been suspended since 1992. These mandates have been either pre-empted by federal law or state constitutional requirements or represent best practices that local governments have provided or should be providing to citizens without state involvement or reimbursement. The five mandates proposed for recasting as permissive are:

- **Adult Felony Restitution.** The California Penal Code requires probation officers to recommend to the sentencing judge whether restitution to the victim should be a condition of a defendant's probation before a probation-eligible defendant is sentenced for felony conviction. The statute is now unnecessary. Victims have a right under the California Constitution to restitution and courts must order restitution from the wrongdoer in every case where a victim suffers a loss—independent of probation's recommendation. The essential issue here, a victim's right to restitution, is protected by the Constitution. Therefore, making this statute permissive will have no effect on that core issue.

- **Victims' Statements-Minors.** The California Welfare and Institutions Code requires probation officers to obtain a statement from a victim of a felony committed by minor. The officer must include the statement in the officer's social study that is submitted to the court. Marsy's Law gives victims the constitutional right to give probation officers information regarding an offense's impact on them. These activities are part of a probation department's core responsibilities that by this time should be a "best practice" to conform to Marsy's Law.
- **Deaf Teletype Equipment.** The California Government Code requires counties, which provide any emergency services, to provide deaf teletype equipment at a central location within the county to relay requests for such emergency services. This mandate is preempted by federal law (Title II of the American with Disabilities Act (1990), and its implementing regulations, which prevent a public entity from denying a benefit to a qualified individual on the basis of his or her disability. Locals are potentially subject to an ADA lawsuit should they not provide this equipment.
- **Pocket Masks.** The California Penal Code requires law enforcement agencies to provide each peace officer a portable manual mask designed to prevent spread of communicable diseases when applying CPR. This should be a standard operating procedure that local agencies perform without regard to whether it is a reimbursable mandate, since local governments have an inherent interest to keep officers and the public safe by using such preventive measures.
- **Domestic Violence Information.** The California Penal Code imposes a reimbursable mandate by requiring the following from local law enforcement agencies: development and implementation of policies for officers' responses to, and recording of, domestic violence calls; preparation of a statement of information for domestic violence victims; monthly compilation of summary reports submitted to the Attorney General; and, development and maintenance of protection order records and systems to verify such orders at an incident scene. The statues that make up this mandate were enacted in 1984. Nearly 30 years later, society has a raised awareness of the seriousness of domestic violence crimes and enforcement of domestic violence-related offenses is a major part of local law enforcements' standard protocol. Consequently, the requirements in these statues should be standard operating procedure without reimbursement.

Staff Comments: The mandates noted above have been suspended in excess of 20 years. During this time, local governments have not been required to carry-out the activity—based on state law. However, the first three mandates discussed are

specifically pre-empted by federal law or the California Constitution. The latter two mandates should be carried-out by local governments as a matter of course.

Staff Recommendation: Approve the proposed trailer bill language.

Vote:

ITEMS TO BE HEARD																																					
ITEM																																					
8885	COMMISSION ON STATE MANDATES	14																																			
INFORMATIONAL	MANDATES OVERVIEW INFORMATIONAL ONLY	14																																			
ISSUE 1	ADDITIONAL STAFF FOR TIMELY MANDATE DETERMINATION MOTION: APPROVE AS BUDGETED. <table border="1" data-bbox="425 619 1203 972"> <thead> <tr> <th>MEMBERS</th> <th>AYE</th> <th>NO</th> <th>ABSENT</th> <th>NOT VOTING</th> </tr> </thead> <tbody> <tr> <td>Daly (Chair)</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Morrell</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Mullin</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Nazarian</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Wagner</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total</td> <td>5</td> <td>0</td> <td></td> <td></td> </tr> </tbody> </table>	MEMBERS	AYE	NO	ABSENT	NOT VOTING	Daly (Chair)	X				Morrell	X				Mullin	X				Nazarian	X				Wagner	X				Total	5	0			16
MEMBERS	AYE	NO	ABSENT	NOT VOTING																																	
Daly (Chair)	X																																				
Morrell	X																																				
Mullin	X																																				
Nazarian	X																																				
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<p>ISSUE 3</p>	<p>GOVERNOR'S PROPOSAL TO SUSPEND MANDATES WITH STATEWIDE COST ESTIMATES</p> <p>MOTION: SUSPEND THE FOLLOWING MANDATES: DOMESTIC VIOLENCE BACKGROUND CHECKS, IDENTITY THEFT, MODIFIED PRIMARY ELECTION, AND PERMANENT ABSENTEE VOTERS.</p> <table border="1" data-bbox="430 388 1201 745"> <thead> <tr> <th>MEMBERS</th> <th>AYE</th> <th>NO</th> <th>ABSENT</th> <th>NOT VOTING</th> </tr> </thead> <tbody> <tr> <td>Daly (Chair)</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Morrell</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Mullin</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Nazarian</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Wagner</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total</td> <td>5</td> <td>0</td> <td></td> <td></td> </tr> </tbody> </table> <p>MOTION: SUSPEND VOTER IDENTIFICATION PROCEDURE MANDATE.</p> <table border="1" data-bbox="430 840 1201 1197"> <thead> <tr> <th>MEMBERS</th> <th>AYE</th> <th>NO</th> <th>ABSENT</th> <th>NOT VOTING</th> </tr> </thead> <tbody> <tr> <td>Daly (Chair)</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Morrell</td> <td></td> <td>X</td> <td></td> <td></td> </tr> <tr> <td>Mullin</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Nazarian</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Wagner</td> <td></td> <td>X</td> <td></td> <td></td> </tr> <tr> <td>Total</td> <td>3</td> <td>2</td> <td></td> <td></td> </tr> </tbody> </table>	MEMBERS	AYE	NO	ABSENT	NOT VOTING	Daly (Chair)	X				Morrell	X				Mullin	X				Nazarian	X				Wagner	X				Total	5	0			MEMBERS	AYE	NO	ABSENT	NOT VOTING	Daly (Chair)	X				Morrell		X			Mullin	X				Nazarian	X				Wagner		X			Total	3	2			<p>20</p>
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<p>ISSUE 5</p>	<p>REPEAL SELECTED MANDATES – TRAILER BILL LANGUAGE</p> <p>MOTION: ADOPT TRAILER BILL LANGUAGE.</p> <table border="1" data-bbox="430 1533 1201 1890"> <thead> <tr> <th>MEMBERS</th> <th>AYE</th> <th>NO</th> <th>ABSENT</th> <th>NOT VOTING</th> </tr> </thead> <tbody> <tr> <td>Daly (Chair)</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Morrell</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Mullin</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Nazarian</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Wagner</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total</td> <td>5</td> <td>0</td> <td></td> <td></td> </tr> </tbody> </table>	MEMBERS	AYE	NO	ABSENT	NOT VOTING	Daly (Chair)	X				Morrell	X				Mullin	X				Nazarian	X				Wagner	X				Total	5	0			<p>24</p>																																			
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ITEMS TO BE HEARD

8885 COMMISSION ON STATE MANDATES

INFORMATIONAL ONLY: MANDATE OVERVIEW

A presentation on the Commission of State Mandates, including a discussion about mandate reform and a request for staff for timely mandate review will be provided.

BACKGROUND

The Commission on State Mandates (COSM) is charged with the duties of examining claims and determining if local agencies and school districts are entitled to reimbursement for increased costs for carrying out activities mandated by the state. COSM was created as a quasi-judicial body and made up of the Director of Finance, the State Controller, the State Treasurer, the Director of the Office of Planning and Research, a public member with experience in public finance, and two additional members of local public bodies appointed by the Governor and approved by the Senate. This budget item appropriates the funding for staff and operations costs of COSM and appropriates non-education mandate payments to local governments. The Governor's Budget calls for expenditures of \$52.9 million, representing a slight decrease from the current year of \$53 million. State operations and administrative costs are approximately \$1.9 million and the number of positions is proposed to increase by two positions to 13.0 over the current year.

Mandate Process. The Commission is responsible for determining whether a new statute, executive order, or regulation contains a reimbursable state mandate on local governments, and for establishing the appropriate reimbursement to local governments from a mandate claim. The Constitution generally requires the state to reimburse local governments with its mandates that they provide a new program or higher level of service. Activities or services required by the Constitution are not considered reimbursable activities.

The Constitution, as amended by Proposition 1A of 2004, requires that the Legislature either fund or suspend local mandates. Payments for mandate costs incurred prior to 2004 are one exception noted in the Constitution and such pre-2004 costs can be repaid over time. In most cases, if the Legislature fails to fund a mandate, or if the Governor vetoes funding, the legal requirements are considered suspended pursuant to the Constitution.

Mandate Reimbursement Claims. Claims are filed with the State Controller's Office for the prior fiscal year, after the fiscal year is completed and actual costs are known. The state pays the mandate costs in the following fiscal year. Suspending a mandate does not relieve the state of the obligation to reimburse valid claims from prior years, but it does allow the state to defer payment.

Mandate Reform. State and local officials have expressed significant concerns about the mandate determination process, including the length and complexity of the reimbursement claiming methodologies.

In 2007, the LAO released a report about the mandate process that showed the following:

- It took the Commission over five years to complete the mandate determination process for a successful local government test claim.
- Almost three years from the date a test claim was filed to render a decision as to the existence of a state-reimbursable mandate.
- An additional year to estimate costs and report the mandate to the Legislature.

Since 2007, the backlog has grown and as a result, the time for a determination has continued to increase. Included in the Administration's proposal is a budget change proposal for the Commission for additional staff to address the backlog, which will be discussed later in this agenda.

The main challenges for the state and local governments, due to the lengthy process, were identified in the LAO's report. These include:

- Local governments must carry out the mandated requirements without reimbursements for five years, plus any additional time associated with the development of the mandate test claim, appropriation of reimbursement funds, and the issuance of checks.
- State mandate liabilities accumulate during the determination period and make the amount of state costs reported to the Legislature higher than they would be with an expedited process. Policy review of mandates is delayed because the Legislature receives cost information years after into the process.

STAFF COMMENTS

In 2007, the LAO had recommended best practices to improve the process. The Subcommittee may wish to inquire about what reforms are needed to improve the mandate process, decrease the backlog and to shorten the time that is needed for mandate review.

ISSUE 1: ADDITIONAL STAFF FOR TIMELY MANDATE DETERMINATIONS

The Administration's proposal includes an ongoing augmentation of \$245,000 and two positions to hire additional staff to comply with statutory timeframes and to accelerate the reduction of test claim, parameters and guidelines (Ps&Gs), parameters and guidelines amendment (PGA), and statewide cost estimate (SCE), and incorrect reduction claim (IRC) backlogs.

BACKGROUND

Due to the ongoing budget challenges, staffing levels at the Commission have slowly decreased. In 2001-02, the Commission had a high of 17 positions, in the last fiscal year the staffing level was 11 positions. While staffing has decreased, the amount of work has increased.

At its May 26, 2011, meeting, Commission staff unveiled the first Backlog Reduction Plan, which was last updated in May 2012, and is planned to be updated again in July 2013. The 2012 plan indicates that all of the backlogged test claims may be complete by the end of 2014-15.

STAFF COMMENTS

As a short term fix, additional staff is needed to address the current backlog at the Commission. However, a larger approach is needed to reform the mandate process and should be discussed.

ISSUE 2: GOVERNOR'S PROPOSAL TO FUND AND SUSPEND MANDATES

The Governor's Budget includes a proposal to fund and suspend mandates consistent with the mandates that are currently funded and suspended. Those proposed mandates are outlined below.

BACKGROUND

- 1. Proposed Mandates to be Funded:** The Governor's Budget proposes to fund \$48.4 million (General Fund) for non-education mandates. These mandates are consistent with the mandates funded in the current year budget. The mandates proposed to be funded are related to law enforcement and property taxes.

	2013-14 Total Estimate
2013-14 Funded Mandates (000s)	
<i>Allocation of Property Tax Revenues</i>	520
<i>Crime Victims' Domestic Incident Reports</i>	175
<i>Custody of Minors - Child Abduction and Recovery</i>	11,977
<i>Domestic Violence Arrest Policies</i>	7,334
<i>Domestic Violence Arrests and Victim Assistance</i>	1,438
<i>Domestic Violence Treatment Services</i>	2,041
<i>Health Benefits for Survivors of Peace Officers and Firefighters</i>	1,780
<i>Medi-Cal Beneficiary Death Notices</i>	10
<i>Peace Officer Personnel Records: Unfounded Complaints & Discovery</i>	690
<i>Rape Victim Counseling</i>	344
<i>Sexually Violent Predators</i>	21,792
<i>Threats Against Peace Officers</i>	3
<i>Unitary Countywide Tax Rates</i>	255
Total Funded Costs	\$48,359

2. Proposed Mandates to be Suspended: The Governor's Budget proposes the suspension of mandates that were included in current year budget. Mandates suspended in prior years are listed below for a total of \$408.7 million.

2013-14 Suspended Mandates (000s)	2013-14 Total Estimate
<i>Adult Felony Restitution</i>	\$0
<i>Absentee Ballots*</i>	49,598
<i>Absentee Ballots – Tabulation by Precinct*</i>	68
<i>AIDS/Search Warrant</i>	1,596
<i>Airport Land Use Commission/Plans</i>	1,263
<i>Animal Adoption</i>	45,321
<i>Brendon Maguire Act*</i>	0
<i>Conservatorship: Developmentally Disabled Adults</i>	349
<i>Coroners Costs</i>	222
<i>Crime Statistics Reports for the Department of Justice & CSRDOJ Amended</i>	160,705
<i>Crime Victims' Domestic Violence Incident Reports II</i>	2,010
<i>Deaf Teletype Equipment</i>	0
<i>Developmentally Disabled Attorneys' Services</i>	1,198
<i>DNA Database & Amendments to Postmortem Examinations: Unidentified Bodies</i>	310
<i>Domestic Violence Information</i>	0
<i>Elder Abuse, Law Enforcement Training</i>	0
<i>Extended Commitment, Youth Authority</i>	0
<i>False Reports of Police Misconduct</i>	10
<i>Fifteen-Day Close of Voter Registration*</i>	0
<i>Firearm Hearings for Discharged Inpatients</i>	156
<i>Grand Jury Proceedings</i>	0
<i>Handicapped Voter Access Information*</i>	0
<i>In-Home Supportive Services II</i>	444
<i>Inmate AIDS Testing</i>	0
<i>Judiciary Proceedings (for Mentally Retarded Persons)</i>	274
<i>Law Enforcement Sexual Harassment Training</i>	0
<i>Local Coastal Plans</i>	0
<i>Mandate Reimbursement Process I</i>	6,910
<i>Mandate Reimbursement Process II (includes consolidation of MRPI and MRPII)</i>	0
<i>Mentally Disordered Offenders': Treatment as a Condition of Parole</i>	4,909
<i>Mentally Disordered Offenders' Extended Commitments Proceedings</i>	7,215
<i>Mentally Disordered Sex Offenders' Reccommitments - Verify Name</i>	340
<i>Mentally Retarded Defendants Representation</i>	36
<i>Missing Person Report III</i>	0
<i>Not Guilty by Reason of Insanity</i>	5,213
<i>Open Meetings Act/Brown Act Reform</i>	113,101
<i>Pacific Beach Safety: Water Quality and Closures</i>	344
<i>Perinatal Services</i>	2,337

<i>Personal Safety Alarm Devices</i>	0
<i>Photographic Record of Evidence</i>	279
<i>Pocket Masks (CPR)</i>	0
<i>Post Conviction: DNA Court Proceedings</i>	411
<i>Postmortem Examinations: Unidentified Bodies, Human Remains</i>	5
<i>Prisoner Parental Rights</i>	0
<i>Senior Citizens Property Tax Postponement</i>	481
<i>Sex Crime Confidentiality</i>	0
<i>Sex Offenders: Disclosure by Law Enforcement Officers</i>	0
<i>SIDS Autopsies</i>	0
<i>SIDS Contacts by Local Health Officers</i>	0
<i>SIDS Training for Firefighters</i>	0
<i>Stolen Vehicle Notification</i>	1,117
<i>Very High Fire Hazard Severity Zones</i>	0
<i>Victims' Statement-Minors</i>	0
<i>Voter Registration Procedures*</i>	2,481
	\$408,703

STAFF COMMENTS

The LAO has raised concerns about the six elections mandates (identified above with an *) that have been suspended since 2011-12, as well as the newly identified elections mandates proposed to be suspended, which will be discussed below. The LAO states that the State has an interest in election uniformity and that suspending elections mandates could lead to inconsistencies in elections. If the Legislature were to fund the six long-standing elections in addition to the newly identified mandates, it is estimated to cost about \$60 million in 2013-14 and \$30 million in ongoing costs.

ISSUE 3: GOVERNOR'S PROPOSAL TO SUSPEND MANDATES WITH STATEWIDE COST ESTIMATES

The Governor's Budget includes the suspension of nine new mandates. The first five of these mandates include statewide cost estimates.

BACKGROUND

Suspension of Five New Mandates with Statewide Cost Estimates: The first of these mandates include the suspension of five mandates with a cost savings of about \$111.0 million. These mandates include:

- *Domestic Violence Background Checks* (\$18.2 million). For any charges involving act of domestic violence, prosecutors must perform a background check on the defendant. The prosecutor must present background information to the court when it considers a plea agreement, sets bond or releases a defendant on his or her own, or issues a protective order. The costs of drafting and sending report also are reimbursable. According to the LAO, the requirements placed on local prosecutors by this mandate program are unnecessary to achieve the Legislature's objectives of ensuring that judges have pertinent information when setting bail.
- *Identity Theft* (\$79.2 million). Requires law enforcement agencies to take a police report and begin an investigation when identity theft is reported. There is concern from agencies representing identity theft victims that suspending the mandate could lead to confusion among law enforcement agencies over who is responsible for creating a report when theft crimes involve victims and perpetrators in different locations. However, current law states that in cases where the identity theft occurred, local law enforcement may refer the matter to the law enforcement agency where the suspected crime was committed for further investigation.
- *Modified Primary Election* (\$1.7 million). Requires county election offices to add information to the voter registration card stating that voters who decline to state a party affiliation can vote a party ballot if the political party authorizes such persons to do so.
- *Permanent Absentee Voters* (\$4.6 million). Requires county election offices to make permanent absent voter status available to any voter – previously this only applied to physically disabled. An explanation of the absentee voting procedure and how voters' names will be deleted from the permanent absent voter list if they fail to return an executed absentee voter ballot for any statewide election must be included.

- *Voter Identification Procedure* (\$7.2 million). Requires local election officials to compare the signature on each provisional ballot envelope with the signature on the voter's affidavit or registration. If the signatures do not compare, the ballot shall be rejected.

STAFF COMMENTS

As mentioned above, the LAO recommends that the election mandates not be suspended. The concern is that the mandates will not be applied consistently. However, the LAO also states that despite the suspension of the current six election mandates, local governments have continued performing the mandated functions.

ISSUE 4: GOVERNOR'S PROPOSAL TO SUSPEND MANDATES WITHOUT STATEWIDE COST ESTIMATES

The Governor's Budget includes the suspension of nine new mandates. The last four mandates do not include statewide cost estimates.

BACKGROUND

Suspension of Four Mandates without Statewide Cost Estimates: The budget includes proposals to suspend four mandates that were determined by the COSM to be reimbursable activities. However, the Commission has not adopted cost estimates for the suspension of these mandates. These mandates include:

- *California Public Records Act.* The main provisions of the California Public Records Act (CPRA) that provide the right of residents to inspect public records and receive copies of those documents are not reimbursable mandates. The portion of the law that is reimbursable pertains to assistance in seeking records, notification of the requestor as to whether or not records may be disclosed, and removing employee information from records that are disclosed. The suspension of this mandate will not affect the main provisions of the CPRA law. The LAO recommends recasting the provisions that are determined to be reimbursable as best practices.
- *Local Agency Ethics.* AB 1234 requires local governments to adopt written policies detailing the conditions under which elected officials are entitled to reimbursement for expenses and provides specified ethic training to elected officials who receive a salary or other form of compensation. Current state law makes it optional for most local governments to provide compensation or expense reimbursement to elected officials. However, state law makes payment of compensation or expense reimbursement for a small number of local governments that include general law counties and certain special districts. The suspension of this mandate would affect the general law counties and the special districts. Since there is no cost associated with the suspension of the mandate, it would seem that suspended the mandate would be premature. Alternatively, a policy discussion should be had about making the payment of the compensation or expense reimbursement optional for all local governments. The LAO recommends eliminating all future costs related to this mandate by modifying state law to make payment of compensation or expense reimbursement optional for all local governments.

- *Tuberculosis Control.* Requires local detention facilities to submit a written treatment plan to relevant health officers for tuberculosis (TB) patients when they are released or transferred to another jurisdiction and requires local health officers (LHO) to review treatment plans from a health facility within 24 hours. The activities required by the TB control mandate likely reduce the spread of TB through a standardized application of a treatment plan. LAO's analysis states that it is premature to weigh the public health benefits of suspending the mandate before understanding the cost information.
- *Interagency Child Abuse and Neglect Investigation Reports.* Imposes requirements relating to child abuse investigations on local agencies including distributing Department of Justice's (DOJ) suspected child abuse form to mandated reporters, referring and cross-report child abuse and neglect matter to relevant agencies, and notifying suspected child abuser that they have been reported to the Child Abuse Central Index. According to the LAO the child abuse and neglect reporting required under the ICAN mandate represents, in most cases, a critical component of the state's child welfare system in that it affects how child abuse and neglect reports are received, how local governments share information about such reports, and the core functionality to identify suspected child abusers. This item was heard in Subcommittee No. 1 and they recommended the adoption of the LAO recommendation to (1) reject the Governor's proposal on this mandate, and (2) establish a workgroup to evaluate the ICAN mandate.

STAFF COMMENTS

In the past, mandates have been suspended only after a statewide cost estimate has been adopted. The mandates listed above do not contain these costs. Without a statewide cost estimate, there are no budgetary savings in 2013-14 and therefore the question can be raised as to whether or not these mandates are being suspended prematurely.

ISSUE 5: REPEAL SELECTED MANDATES – TRAILER BILL LANGUAGE

The Governor has proposed trailer bill language to repeal five mandates by making them permissive. These five mandates identified have been suspended in the Budget Act each year since 1992. These mandates have either been pre-empted by federal law/state constitutional amendments or are best practices that local governments have been providing citizens without state involvement for years.

BACKGROUND

Below are the five mandates proposed to be amended by the trailer bill:

- *Adult Felony Restitution.* The California Penal Code requires probation officers to recommend to the sentencing judge whether restitution to the victim should be a condition of a defendant's probation before a probation-eligible defendant is sentenced for a felony conviction. Under current law, victims have a constitutional right to restitution and courts must order restitution from the wrongdoer in every case where a victim suffers a loss – independent of probation's recommendation. Therefore, making this statute permissive will have no effect on the core issue.
- *Victims' Statements-Minors.* The California Welfare and Institutions Code requires probation officers to obtain a statement from a victim of felony committed by a minor. The officer must include the statement in the officer's social study that is submitted to the court. Marsy's Law gives victims the constitutional right to give probation officers information regarding an offense's impact on them. These activities are part of a probation department's core responsibilities and should be a "best practice" to conform with Marsy's Law.
- *Deaf Teletype Equipment.* The California Government Code requires counties, which provide any emergency services, to provide deaf teletype equipment at a central location within the county to relay requests for such emergency services. This mandate is preempted by federal law (Title II of the American with Disabilities Act (1990)), and its implementing regulations, which prevent a public entity from denying a benefit to a qualified individual on the basis of his or her disability. Locals are potentially subject to an ADA lawsuit should they not provide this equipment.
- *Pocket Masks.* The California Penal Code requires law enforcement agencies to provide each peace officer a portable manual mask designed to prevent the spread of communicable diseases when applying CPR. Pocket Masks should be standard operating procedures and best practices without the state being responsible for reimbursement, since local governments have an inherent interest in maintaining the public safety by using such measures.

- *Domestic Violence Information.* The California Penal Code imposes a reimbursable mandate by requiring the following from local law enforcement agencies: development and implementation of policies for officers' responses to, and recording of, domestic violence calls; preparation of a statement of information for domestic violence victims; monthly compilation of summary reports submitted to the Attorney General; and, development and maintenance of projection order records and systems to verify such orders at an incident scene. The statutes that make up this mandate were enacted in 1984. The requirements in these statutes should be standard operating procedure.

STAFF COMMENTS

The five mandates discussed have been suspended for over 20 years. While some mandates have been pre-empted by federal law or the California Constitution, the others should be best practices used by local governments.