

ITEM 19

WORKING GROUP PROPOSAL

MANDATE REDETERMINATION PROCESS

UPDATE

Background

On April 23, 2009, Assembly Budget Subcommittee Number 4 was briefed on the *California School Boards Association v. State of California* appellate court decision. Because the court found legislatively directed reconsiderations in AB 138 to be unconstitutional, the Assembly Budget Subcommittee directed the Legislative Analyst's Office (LAO), the Department of Finance (DOF), commission staff, and legislative staff to form a working group to develop legislation to establish a mandate redetermination process consistent with the court decision.

For the past year, commission staff, in consultation with the Legislative Subcommittee, has participated in the Working Group to develop legislation to establish a mandate redetermination process. In recent hearings, both the Senate and Assembly Budget Subcommittees directed the Working Group to continue working on the draft language.

The Working Group Draft, dated April 26, 2010, was distributed at both the Senate and Assembly Budget Subcommittees. On April 29, 2010, the Senate Subcommittee held the item open so the proposed statutory language can be further vetted, analyzed, and refined. On May 3, 2010, the Assembly Budget Subcommittee held the item open and directed staff to continue working on the proposal.

On April 30, 2010, Ms. Deborah Caplan, representing CSBA, CSAC, and League of Cities, filed comments on the draft. These comments were distributed to the commission and to the members of the Working Group.

On May 3, 2010, staff reviewed the Working Group Draft with the Commission and received comments on the proposed process from Richard Hamilton, CSBA General Counsel, and Allan Burdick, CSAC SB 90 Coordinator.

Update

On May 4, 2010, the Working Group, consisting of LAO, DOF, commission, legislative, and State Controller's Office (SCO) staff, met to review the April 26, 2010 draft, and to discuss concerns and possible amendments. The working group also discussed expansion of the group to include local government representatives.

Based on prior meetings and discussion and advice of Legislative Counsel, a New Working Group draft was issued on May 10, 2010, to an expanded Working Group that includes local government representatives. The significant changes to this draft (since April 26) were as follows:

- Requires commission to adopt regulations that will establish a two-step hearing process.
- Authorizes the Legislature, through statute, to request that the Department of Finance file a request for mandate redetermination.
- Deletes the requirement for the state libraries and archives to provide free copies of historical documents to the Commission staff. (Staff is working with the state libraries to work out a system.)

On May 12, 2010, the expanded Working Group met to review the May 10 draft. In addition to the state agencies and legislative and LAO staff, the working group was expanded to include representatives of the League of Cities, CSAC, and CSAC SB90 Group. Although invited, none of the school district representatives were available to attend this meeting.

After the May 12, 2010 meeting, a revised Working Group draft was completed to include the following changes:

- Requires the commission to notify Department of Finance, Legislative Analyst's Office, the State Controller and interested parties upon receipt of a complete request.
- Requires the State Controller to notify eligible claimants that a complete request for mandate redetermination has been filed. This notification may be included in the next claiming instructions issued by the State Controller.
- Makes a few clarifying clean-up edits.

We expect the May 12, 2010 Working Group draft to be submitted to Legislative Counsel. (See attachment.)

Other Issues

Commission members and representatives of the mandates community are concerned about how Commission staff will prioritize its pending workload if a mandate redetermination process is established. So far, there is no language in the Working Group draft that would provide the Commission with any statutory timelines for completion of a request for mandate redetermination. Staff also notes that as currently drafted, there are no limitations on which prior test claim decisions may be the subject of a request. For example, all of the SB 90 decisions made by the Board of Control under the original Revenue and Taxation Code provisions are included in the scope, as well as all prior decisions made by the Commission under the original Revenue and Taxation Code provisions, Constitution, Government Code provisions, and published court decisions.

The Working Group draft also includes a two-step hearing process which will add both work and time to the mandate redetermination process. This provision was added upon the recommendation of Legislative Counsel and also the CSBA, CSAC, and League of Cities coalition.