

ITEM 13
TRAILER BILL LANGUAGE AND
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.

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.

On May 19, Senate Budget and Fiscal Review Subcommittee Number 4 approved placeholder trailer bill language for a mandate redetermination process on a 2-0 vote.

On May 25, 2010, Assembly Budget Subcommittee Number 4 approved placeholder trailer bill language for a mandate redetermination process on a 4-0 vote.

Update on Legislative Counsel Draft

The working group draft was submitted to Legislative Counsel for inclusion in the General Government trailer bill. Here is a chronology of the drafting and review process.

May 21, 2010	First Legislative Counsel draft completed.
May 27, 2010	Commission staff met with the CSAC SB 90 Group to discuss the current proposal.
June 1, 2010	Staff submitted technical amendments.
June 23, 2010	Revised Legislative Counsel draft completed. ¹ Staff submitted technical amendments. ²
June 25, 2010	Expanded working group met to discuss letter from Deborah Caplan, representing CSBA, CSAC, and League of Cities, and revised Legislative Counsel draft. ³
June 30, 2010	Staff notified LAO of its preference for the revised Legislative Counsel draft with staff’s proposed technical amendments. Department of Finance

¹ Exhibit A.

² Exhibit B.

³ Exhibit C.

staff notified working group of its agreement with the Commission's comments.⁴

Ongoing Concerns

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. There is no language in the 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.

Next Steps

We expect a trailer bill to establish this mandate redetermination process. Upon enactment, staff will convene a workshop with working group members, claimant representatives, Department of Finance, and other state agencies to begin development of a rulemaking package to implement the mandate redetermination process. Depending on the enactment date, rulemaking will begin in September, October, or December. We will survey the Department of Finance, claimants, and other state agencies to determine future workload, and if necessary, develop a budget change proposal for additional staff.

⁴ Exhibit D.