

**Assembly
California Legislature
Committee on Local Government**
**KATCHO ACHADJIAN
CHAIR**

**Informational Hearing on State Mandates
Assembly Local Government Committee**

Tuesday, December 10th, 2013

10:30 am, Room 444

Agenda

I. Welcome and Opening Remarks

--Assembly Member Katcho Achadjian, Chair, Assembly Local Government Committee

II. Brief Overview and History of State-Mandated Local Programs

--Marianne O'Malley, Managing Principal Analyst, State and Local Finance, Legislative Analyst's Office

--Michael Byrne, Principal Program Budget Analyst, Department of Finance

--Tom Dyer, Legislative Director, Department of Finance

III. Review of State Mandates Process and Update on Backlog Reduction Plan

--Heather Halsey, Executive Director, Commission on State Mandates

--Camille Shelton, Chief Legal Counsel, Commission on State Mandates

IV. The Local Government Perspective on State Mandates

--Jean Hurst, Senior Legislative Representative, California State Association of Counties

--Tim Cromartie, Legislative Representative, League of California Cities

--Kyle Packham, Advocacy and Public Affairs Director, California Special Districts Association

V. State Controller's Office: Role in Mandates Process

--Jim L. Spano, Chief, Mandated Cost Audits Bureau, Division of Audits, State Controller's Office

--Jay Lal, Manager, Local Reimbursements Section, Division of Accounting and Reporting, State Controller's Office

VI. Public Testimony

VII. Closing Remarks and Adjournment



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Hearing Goal

The goal of this hearing is to provide information to members about the state mandates process, including the history of state-mandated local programs and the role of the Commission on State Mandates in mandate determination and reimbursement, and to hear from representatives of local governments about their perspectives on state mandates.

Background on State Mandates

The concept of state reimbursement to local agencies and school districts for state mandated activities originated with the Property Tax Relief Act (Act) of 1972 (Senate Bill 90, Chapter 1406, Statutes of 1972). The primary purpose of the Act was to limit the ability of local agencies and school districts to levy taxes. To offset these limitations, the Legislature declared its intent to reimburse local agencies and school districts for the costs of new programs or increased levels of service mandated by state government. The Legislature authorized the State Board of Control to hear and decide upon claims requesting reimbursement for state-mandated costs.

In 1979, voters approved Proposition 4, which superseded the Act by adding Article XIII B to the California Constitution. Article XIII B imposes appropriations limits on the tax proceeds of state and local governments. Section 6 of Article XIII B requires that, whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state must provide a subvention of funds to reimburse that local government for associated costs (with certain exceptions).

To implement Section 6 of Article XIII B, the Legislature created the Commission on State Mandates (Commission) in 1984. The Commission is a quasi-judicial body whose primary responsibility is to hear and decide test claims alleging that the Legislature or a state agency imposed a reimbursable state-mandated program upon a local government.

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, 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 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.

Attached are flow charts of the mandate determination process compiled by the Commission on State Mandates.

Recent Legislation

SCA 3 (Leno and Steinberg), Chapter 123, Statutes of 2013, proposes amendments to the California Constitution that require local agencies to comply with the California Public Records Act and the Ralph M. Brown Act and exempt the state from reimbursing local agencies for related costs.

AB 392 (Jones-Sawyer), Chapter 77, Statutes of 2013, makes changes to the allocation method and reporting requirement for prorated state mandate claims.

SB 112 (Liu), Chapter 144, Statutes of 2011, requires any amendment of the parameters and guidelines boilerplate language for purposes of state reimbursement of any claim relating to a statute or executive order that does not increase or decrease reimbursable costs to limit the eligible filing period commencing with the fiscal year in which the amended parameters and guidelines were adopted.

AB 1222 (Laird), Chapter 329, Statutes of 2007, establishes a streamlined alternative state mandate reimbursement process, clarifies an existing reimbursement methodology, and enhances existing claiming requirements for certain mandates.

SB 2652 (Laird), Chapter 168, Statutes of 2006, provides for the consolidation of incorrect reduction claims filed with the Commission on State Mandates.

AB 2224 (Cohn), Chapter 313, Statutes of 2004, creates statutory authority for the Controller to implement recommendations of the Bureau of State Audits concerning state mandates.

AB 2851 (Laird), Chapter 316, Statutes of 2004, implements several changes recommended by the Assembly Special Committee on State Mandates.¹

AB 2853 (Laird), Chapter 889, Statutes of 2004, implements several changes recommended by the Assembly Special Committee on State Mandates by making five state-mandated local programs optional.

AB 2856 (Laird), Chapter 890, Statutes of 2004, revises the procedures for receiving claims and for hearings on claims, and the definitions of terms related to the procedure and hearings, defines additional terms, abolishes the State Mandates Claim Fund, and deletes the option of paying claims from this fund.

Additional Resources

- Legislative Analyst's Office. What is a Mandate: An Overview.
<http://www.lao.ca.gov/laoapp/PubDetails.aspx?id=1534>
- State Controller's Office. State Mandated Programs.
http://www.sco.ca.gov/ard_mancost.html
- Commission on State Mandates. DIRECTOR OF FINANCE: 2013 REPORT ON WORKLOAD LEVELS AND BACKLOG REDUCTION PLAN
http://www.csm.ca.gov/docs/DOF_2013.pdf

¹ In 2003, then Assembly Speaker Wesson established the Special Committee on State Mandates which was tasked to review all reimbursable state mandates, particularly suspended or deferred mandates, and to make recommendations for reforms to the reimbursement process.

Mandate Determination Process

Statute or Executive Order

In enacting a statute or imposing an executive order, the Legislature, Governor, or a state agency may impose a new program or higher level of service on local agencies or school districts. If the statute or executive order does not contain sufficient funding and there are increased costs as a result of the change, affected local agencies and school districts may seek reimbursement by filing a test claim with the Commission on State Mandates.

Test Claim

"Test claim" means a claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. A test claim allows local agencies and school districts to identify prospective reimbursable costs resulting from the new statute or executive order. The Commission hears and makes a determination on each claim.

Parameters and Guidelines

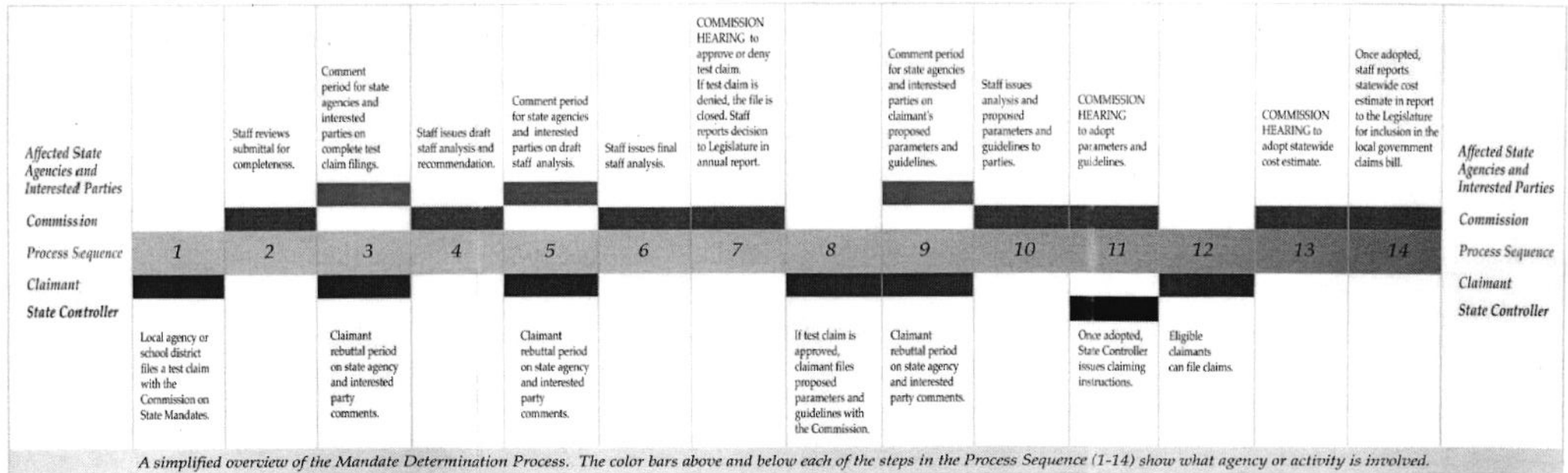
If the Commission approves a test claim, it must determine the amount to be subvended to local agencies and school districts. The test claimant develops proposed parameters and guidelines that identify the mandated program, eligible claimants, period of reimbursement, reimbursable activities, and other necessary claiming information. The Commission hears and may adopt, amend, or reject the claimant's proposed parameters and guidelines.

Statewide Cost Estimate

Following the Commission's adoption of parameters and guidelines, a statewide cost estimate for eligible costs is adopted by the Commission. These estimates are reported to the Legislature. They form the basis for the local government claims bill, which appropriates funds to the State Controller to pay reimbursement claims.

State Controller's Claiming Instructions

In the final step, the State Controller issues claiming instructions, which local agencies and school districts follow when filing claims for reimbursement. The reimbursement claims must be filed by the dates specified in the claiming instructions. The Controller shall pay eligible claims within 60 days after the filing deadline or 15 days after an appropriation is effective, whichever is later.



A simplified overview of the Mandate Determination Process. The color bars above and below each of the steps in the Process Sequence (1-14) show what agency or activity is involved.

STATE CONTROLLER'S OFFICE ROLE IN STATE MANDATE PROCESS

When the State amends or enacts a statute that results in increased costs for local agencies or school districts, but does not provide a funding source, the affected local agencies and school districts may seek reimbursement from the State. First, the agency or district must file a test claim with the Commission on State Mandates. If the Commission determines that the statute does impose mandated costs, local agencies and school districts may file claims for reimbursement of those costs with the State Controller's Office (SCO). The SCO's responsibilities include:

- Developing claim forms and instructions as each mandate is different.
- Maintaining information to facilitate claimants filing mandate claims, including the annual Mandate Manual.
- Receiving and processing approximately 20,000 annual claims each year and making payments in accordance with the annual Budget Act appropriations.
- Preparing three legislatively mandated reports which include various data on claims received, payments, and audit adjustments.
- Participating in the Commission on State Mandate process.
- Performing desk reviews and field audits of mandate claims.

As of October 2013 the total balance due to Local Agencies is \$1.6 billion. As a point of comparison, the total due to schools and community colleges is \$4.4 billion. Details on these amounts can be found in the 2013 AB 3000 report that is located on the SCO website.

Local Agency	Net Balance	Percentage
Counties	\$991 million	60%
Cities	\$625 million	38%
Special Districts	\$27 million	2%
Total Local Agencies	\$1.6 billion	100%

Commission on State Mandates

Legislative Briefing Document

December 10, 2013

I. Commission Overview

A. Article XIII B, section 6

1. Historical perspective: In 1978, the voters adopted Proposition 13, which added article XIII A to the Constitution. Article XIII A imposes a limit on the power of state and local governments to levy taxes. In 1979, the voters adopted Proposition 4, which added article XIII B to the Constitution. Article XIII B limits the power of state and local governments to spend their proceeds of taxes, or property tax revenue, by imposing a spending limit.
2. Purpose: The purpose of Article XIII B, section 6 is to reimburse local governments, subject to both the tax and spend limitations imposed by articles XIII A and XIII B, who are required to expend their proceeds of taxes on state mandated programs. (See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46; *County of Fresno v. State of California* (1991) 53 Cal.3d 482; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264.)
3. Statutory Creation: Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local government for the costs of state-mandated new programs or higher levels of service. The Commission on State Mandates (Commission) was established to render sound quasi-judicial decisions and to provide an effective means of resolving disputes over the existence of state-mandated local programs. The Legislature declared this was to relieve increasing reliance by local governments on the judicial system and declared its intention that the Commission, as a quasi-judicial body, act in a deliberative manner in accordance with the requirements of the Constitution. (Gov. Code, § 17500.) The Commission has sole and exclusive authority to determine mandates. (Gov. Code, § 17552.)

B. Commission's Vision and Mission Statements:

1. Vision: The Commission on State Mandates timely renders sound decisions, in compliance with article XIII B, section 6 of the California Constitution, to resolve disputes regarding reimbursement for state-mandated local programs and relieve unnecessary congestion of the courts.
2. Mission: To fairly and impartially:
 - Hear and determine matters filed by state and local government;
 - Resolve complex legal questions in a deliberative and timely manner; and
 - Produce well-reasoned and lawful decisions.

C. Organizational Structure

1. Organization:

The Commission consists of seven members:

- Director of Department of Finance
- State Controller
- State Treasurer
- Director of Office of Planning and Research

- Two members, each of whom is either a school board member, county supervisor or city council member
- A public member with experience in public finance

2. 12.5 positions:

- Executive Director (appointed by Commission)
- Chief Legal Counsel (appointed by Commission)
- Assistant Executive Director
- 3 attorney III positions
- 1 attorney I position
- 1 senior legal analyst position
- 2.5 associate governmental program analyst positions
- 1 senior information systems analyst position
- 1 office technician position

3. Agency

The Commission is independent and does not report to an agency.

4. Contacts

- Heather Halsey, Executive Director: heather.halsey@esm.ca.gov
- Jason Hone, Assistant Executive Director: jason.hone@esm.ca.gov
- Camille Shelton, Chief Legal Counsel: camille.shelton@esm.ca.gov

Commission Telephone Number: (916) 323-3562

5. Commission Decision-Making

The Commission is required to conduct at least six meetings per year. Therefore, the Commission holds bimonthly meetings, usually on the fourth Friday of the month, in January, March, May, July, September and December (first Friday). Agenda materials and supporting documentation are uploaded to the Commission’s website about 14 days before each hearing at <http://www.esm.ca.gov/hearing.shtml>

D. Reporting Requirements

Reports to the Legislature

1. Approved Mandates. At least twice each year, the Commission is required to report to the Legislature on the number of mandates it has found, the estimated statewide costs of these mandates, and the reasons for recommending reimbursement.¹ This report notifies the Legislature of the state’s liability for the costs of new programs or higher levels of service under article XIII B, section 6 of the California Constitution and “costs mandated by the state” pursuant to Government Code section 17514.
2. Denied Mandates. The Commission is also required to annually report (January 15) on the number of mandates it denied.²
3. Incorrect Reduction Claims. The Commission is required to annually report (January 15) on the number of incorrect reduction claim decided.³

¹ Government Code section 17600.

² Government Code section 17601.

³ Government Code section 17602.

These reports may be found at: http://www.csm.ca.gov/leg_reports.shtml.

4. Test Claim Decisions. Within 30 days of a decision on a test claim or parameters and guidelines, the Commission is required to notify the appropriate Senate and Assembly policy and fiscal committees, the Legislative Analyst, the Department of Finance, and the Controller of that decision.⁴

Report to Department of Finance

The Commission is required to report annually (September 15) to the Department of Finance on its pending caseload.⁵ You may find these reports on the Commission's website at http://www.csm.ca.gov/report_dof.php.

E. Mandate Determination

1. Mandate Determination Overview

Local governments (cities, counties, special districts, K-12 school districts, and community college districts) may file "test claims" with the Commission alleging that state statutes or executive orders impose new programs or higher levels of service upon them. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. (Gov. Code, §17521.)

After receipt of comments on the test claim, the Commission hears and determines whether or not a reimbursable state-mandated new program or higher level of service has been imposed. If a test claim is approved, the Commission determines the amount to be subvended to local agencies or school districts for reimbursement through the adoption of parameters and guidelines. Parameters and guidelines may specify reimbursement based on actual costs or include a reasonable reimbursement methodology. The Commission is also required to adopt and report to the Legislature estimates of the statewide costs of mandated programs.

2. Implementing Statutes (Gov. Code, § 17500 et al.)

Gov. Code, § 17500 – The Commission shall render sound quasi-judicial decisions and provide an effective means of resolving disputes over the existence of state-mandated local programs. The Legislature also intends that the Commission will act in a deliberative manner in accordance with the requirements of article XIII B, section 6.

Gov. Code, § 17561 – The state shall reimburse each local agency and school district for all costs mandated by the state as defined by section 17514.

Gov. Code, § 17514 – "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute or executive order enacted or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of section 6, article XIII B.

Gov. Code, § 17516 – defines "executive order" subject to article XIII B, section 6.

"Executive order" means any order, plan, requirement, rule, or regulation issued by any of the following:

- (a) The Governor.
- (b) Any officer or official serving at the pleasure of the Governor.
- (c) Any agency, department, board, or commission of state government.

⁴ Government Code section 17555.

⁵ Annual Budget Act (Stats. 2011, ch. 33, SB 87).

Gov. Code, §§ 17518, 17519, 17520 – define “local agency”, “school district”, and “special district,” respectively.

3. **Backlog.** Government Code section 17553 requires the Commission to adopt procedures to ensure that a statewide cost estimate is adopted within 12-18 months after receipt of a test claim when a determination is made by the Commission that a mandate exists. This statutory requirement has not been fully implemented for reasons discussed below. There are currently 21 test claims pending on the Commission’s caseload. (See CSM website at http://www.csm.ca.gov/pending_caseload.php.) The backlog exists for several reasons:

- 1984 – When the Commission was created, the statutes allowed the filing of test claims on statutes and regulations going back to 1975, with no statute of limitations.
- 2002 – A.B. 3000 imposed a three-year statute of limitations for the filing of test claims. It also provided a one-year grandfather clause to file test claims on statutes and executive orders going back to 1975, resulting in 51 new test claims filed in fiscal year 02-03, and 23 test claims filed in 03-04.
- From fiscal year 02-03 to 08-09 the Commission’s position authority was reduced from 17 PYs to 10.5 PYs.⁶
- 2004 –A.B. 2856 imposed a new statute of limitations of one year from the effective date of a statute or executive order, or the date of first incurring costs.
- 2004-2006 – Though A.B. 2851, 2855, 138, 1805; S.B. 512, 1895, the Legislature directed the Commission to reconsider 14 test claims. In 2009, the Third District Court of Appeal found the reconsideration statutes unconstitutional and directed Commission to set several reconsideration decisions aside.

As a result of the Court’s decision, Statutes 2010, chapter 719 (SB 856) added section 17570 to the Government Code, to establish a new process for redetermining existing mandates. Under this process, the Commission may adopt a new test claim decision to supersede a previously adopted one only upon a showing that the state's liability for that test claim decision pursuant to the California Constitution has been modified based on a “subsequent change in law.” To date, the Commission has received four requests to redetermine an existing mandate. If the Commission receives more redetermination requests, this will contribute to the Commission’s backlog.

- *Stormwater Claims.* Prior to 2010, Government Code section 17516(c) defined ‘executive orders’ to exclude any order, plan, or regulation issued by the State Water Resources Control Board or any regional water quality control board. Therefore, local governments were not authorized to file test claims on changes made to regional water permits. Government Code section 17516(c) was ruled unconstitutional by the courts. As a result, local agencies filed 15 new water permit test claims. The Commission decided five of the water claims, but those claims are currently being litigated. There are 10 remaining water permit test claims, some of which have been stayed pending the outcome of that litigation.

II. Mandates Analysis

A. Procedural and Jurisdictional Issues

1. Standard of review for Commission decisions.

⁶ Beginning fiscal year 13-14 the Commission’s staff has increased by two PYs.

- a. The determination of whether local government is entitled to reimbursement under article XIII B, section 6 is a question of law and not a question of equity. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.)
- b. Government Code section 17559 provides authority for a claimant or the state to commence a proceeding in accordance with Code of Civil Procedure section 1094.5 (Administrative Mandamus) to set aside any quasi-judicial decision of the Commission on the ground that the decision is not supported by substantial evidence. Under the substantial evidence test, the trial court reviews the evidence adduced at the administrative hearing to determine whether there is substantial evidence to support the agency's finding in light of the whole record. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515; *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814.) The Commission's findings of fact are accorded great weight unless shown to be clearly erroneous. (*City of Merced v. State of California* (1984) 154 Cal.App.3d 777, 782.)
- c. Statute of limitations to challenge a Commission decision in court is three years. (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 534; Code Civ. Proc., §338(1).)

2. Standing to seek reimbursement under article XIII B, section 6.

- a. Cities, counties, K-12 school districts, county offices of education, and community college districts are local government entities eligible to claim reimbursement under article XIII B, section 6. (See Gov. Code, § 17511, 17515, 17518, 17519, 17520.)
- b. Other entities must be subject to both the tax and spend limitations of articles XIII A and XIII B and have a direct interest in mandate reimbursement.

1) Claimant's interest in the program must be direct.

In *Kinlaw*, 54 Cal.3d at pages 334-335, medically indigent adults and taxpayers brought an action alleging that the state violated article XIII B, section 6 by enacting statutes that shifted financial responsibility for funding health care for medically indigent adults to the counties. The Supreme Court denied the claim, holding that the medically indigent adults and taxpayers interest in mandates claims is indirect and that they therefore lack standing to prosecute the action since they have no right to reimbursement under article XIII B, section 6.

2) Claimant must be subject to the tax and spend limitations of articles XIII A and XIII B.

- a) Reimbursement is not required when the costs are recoverable from sources other than tax revenue; i.e., service charges, fees, or assessments (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.) Redevelopment agencies were found not subject to article XIII B, section 6 since they were not bound by the spending limitations in article XIII B, and were not required to expend their proceeds of taxes. (*Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 65 Cal.App.4th 976, 986. The Third District Court of Appeal adopted the reasoning of the *Redevelopment Agency decision in City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281.) Based on these cases, Government Code section 17520 was amended to delete joint power agencies and redevelopment agencies from the definition of "special district."

b) In 2006, the Second District Court of Appeal issued an unpublished decision finding that CSAC Excess Insurance Authority (a joint powers authority) had no standing to claim reimbursement for its costs under article XIII B, section 6 based on the statutory amendment to Government Code 17520. The court determined, however, that the JPA had standing to claim reimbursement on behalf of its county members, *in a representative capacity*, for costs incurred by the counties. (*CSAC Excess Insurance Authority v. Commission on State Mandates, Second District Court of Appeal, Case No. B188169, issued December 22, 2006.*)

3) There must be an expenditure of local government proceeds of taxes and not just a reduction of that revenue. *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264 involved statutes that reduced the local agency's receipt of tax revenues and transferred the reduced portion to the Educational Revenue Augmentation Fund (ERAF) for distribution to schools. The court held that the amount reduced was not reimbursable since there was no expenditure of tax proceeds. The court held that the statutes did not result in "increased actual expenditures."

3. Statutes or executive orders pled must be enacted after January 1, 1975.

B. Substantive Mandates Analysis

1. Basic Elements

- a. Increased costs alone do not result in a reimbursable state-mandated program.
- b. Required elements that trigger the reimbursement requirement:
 - The state must be requiring local government to perform a mandated activity.
 - That activity must be newly required and constitute a new program or higher level of service when compared to prior law.
 - There must be evidence that local government has or will incur increased costs mandated by the state.
 - None of the exceptions to reimbursement identified in Government Code section 17556 apply to the activity.

2. Detailed Analysis and Case Law

- a. Do the test claim statutes or executive orders require local agencies to perform an activity or task?
 - 1) Identify the required activities identified in the statute or executive order.
 - 2) Is local government legally compelled to perform that activity?
 - a) Legal Compulsion - Does the plain language of the statute or regulation legally compel local government to perform an activity— "may" vs. "shall"
 - i. Required activities triggered by local discretionary decision do not result in a mandated program.

City of Merced v. State of California (1984) 153 Cal.App.3d 777 involved statutes requiring the payment of goodwill when property is taken by the government through eminent domain. The eminent domain statutes state that the use of eminent domain by a governmental agency is a discretionary act. However, the test claim statutes imposed a new requirement for the payment for

loss of goodwill when an agency exercises its discretionary power to take property by eminent domain. Even though the local agencies experienced increased costs, the court found that the test claim statutes did not mandate, or require, local agencies to perform any activities since the act of eminent domain was discretionary. (See also *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, which affirmed *City of Merced*.)

Department of Finance v. Commission on State Mandates (2003) 30 Cal.4th 727 (*Kern*) involved statutes that required school site councils to comply with the Open Meetings Act. The court found that the test claim statutes did not impose a state mandate since the establishment of school site councils is within the discretion of school districts.

- b) Practical Compulsion – requires substantial evidence in the record that local government has no reasonable alternative but to comply with the activity – or a showing that the failure to comply with the activity will result in certain and severe penalties, or other draconian consequences.

Department of Finance v. Commission on State Mandates (2003) 30 Cal.4th 727 (*Kern*) and *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888 – left open the question whether strict legal compulsion is necessarily required under the constitutional definition of “mandate.” The court did suggest, however, that a state mandate requires either strict legal compulsion or “certain and severe penalties such as double taxation and other draconian consequences.”

Department of Finance v. Commission on State Mandates (2009) 170 Cal.App.4th 1355, addressed the Commission’s decision approving reimbursement to school districts and special districts that employ peace officers for complying with the Peace Officer Procedural Bill of Rights Act (POBRA). The court held that to make a showing of practical compulsion as a matter of law, a claimant must make a concrete factual showing that not complying with a program will result in severe adverse consequences, and that exercising the authority to comply is the only reasonable means to carry out core mandatory functions. This requires substantial evidence in the record. The court found that school districts and most special districts were not legally compelled by the law to hire peace officers, but had the authority to employ them. The court also found that the school districts and special districts did not make a showing that hiring their own peace officers, rather than relying upon the county or city, in which it is embedded, was the only way as a practical matter to comply.

b. Does the required activity impose a new program or higher level of service?

- 1. Is the activity newly required? Compare the test claim statutes or executive orders to the legal requirements in effect *immediately before* the test claim statutes or executive orders. (See *Lucia Mar*, supra, 44 Cal.3d 830, 835.)

- a) **Beware of Unintended Consequences:** Government Code section 17565 states that “if a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.” This is consistent with the constitutional requirement to reimburse for *state-mandated* costs, since the costs in this case, though not new, were not mandated by the state prior to the new law. This rule is the subject of much confusion and heartburn. For example, during one budget crisis in the 1990s, several statutes containing reimbursable mandated activities and non-reimbursable pre-1975 activities were

repealed to achieve budget savings. Local government continued to perform the activities. The following year, the activities were reenacted and required again. This resulted in the enactment of large reimbursable new programs, since after reenactment whole programs (as opposed to discrete new activities added post-1975) were new and thus reimbursable due to the gap in time between repeal and reenactment.

2. Has there been a new shift of funds between the state and local government?

- a) Historically, needed two factors: (1) Before, and after, the test claim statutes or executive orders, the state had complete administrative control over the program; and (2) before the test claim statutes or executive orders, the state had borne the entire cost of the program. If these factors are satisfied, then there is a new program. (*County of San Diego, supra* – test claim statutes shifted the cost of medical care for medically indigent adults from the state to the counties. At the time the voters adopted section 6, the state was paying 100% of the medical care. The court found a “new program” and held that “section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before the adoption of section 6.”)

Compare, *County of Sonoma, supra* –the court found that the ERAF statutes did not impose a new program or higher level and found that “neither *Lucia Mar* nor *County of San Diego* held that subvention would be required for a change in allocation of the percentage of responsibility for a program [in this case, education] that has always been jointly funded by state and local governments.” (See also, *City of El Monte* decision on the ERAF statutes, which contains the same finding, with similar language.)

- b) Proposition 1A, enacted by the voters in November 2004, amended article XIII B, section 6(c), for counties and cities to provide that “a mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, and special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility. Proposition 1A does not apply to school district or community college district mandates.
- c) Also compare *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, where the shift in costs was between two local entities. Court held there is no new program or higher level of service when the shift of costs is between two local entities. This case involved statutes authorizing counties to charge cities for the costs of booking arrestees into county jails. The court held “it is clear that counties and cities were intended to be treated alike as part of ‘local government’; both are considered local agencies or political subdivisions of the State. Nothing in article XIII B prohibits the shifting of costs between local governmental entities.” (Id. at 1815.)

3. Do the new activities constitute a new program or higher level of service?

- a) Definition of “program” found in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 as follows:
- 1) Activities that carry out the governmental function of providing services to the public (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, finding that regulations requiring that firefighters be given protective clothing

and equipment constituted a new program or higher level of service since fire protection is a basic function of local government; *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, finding that education is a peculiarly governmental function); or

- 2) Activities that impose unique requirements on local government and do not generally apply to all residents and entities in the state (*County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, finding that regulations imposing certain safety precautions for all elevators, both public and private alike, was not unique to local government; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, finding that statutes which eliminated an exemption from providing workers' compensation death benefits to local safety members was not unique to local government since all employers, public and private alike, are required to provide workers' compensation benefits; See also *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 and *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.)

b) Other Cases interpreting "a new program or higher level of service"

- i. Prior law is general, but test claim statutes or executive orders mandate specific requirements: *Long Beach Unified School District v. State* (1990) 225 Cal.App.3d 155 involved statutes requiring the alleviation of racial and ethnic segregation in schools. The court acknowledged prior constitutional and case law requirements that schools had to alleviate segregation. But, the court found a higher level of service because while prior case law suggested certain steps to alleviate segregation, the test claim statutes required specific actions.
- ii. Increased costs alone are not a new program/higher level of service: *City of Anaheim v. State* (1987) 189 Cal.App.3d 1478 involved statutes that imposed a temporary increase in PERS benefits to retired employees that resulted in higher contributions by local agencies. The court found that: "Increasing the cost of providing services cannot be equated with requiring an increased level of service under a section 6 analysis. A higher cost to local government for compensating its employees is not the same as a higher cost of providing a service to the public." (See also, *City of Richmond*, supra, 64 Cal.App.3d at 1196.)
- iii. Higher level of service in an existing program – the test claim statutes or executive orders must "increase the level or quality of governmental services provided." Reimbursement is not required if the test claim statutes or executive orders merely implement some change that increases the cost of providing a service. (*San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal. 4th 859, 877.)
- iv. Compare - redirection of efforts within the program: The test claim statute in *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, required local law enforcement officers who normally respond to domestic violence calls to take a two-hour continuing education course on domestic violence every two years. Under existing law, local

law enforcement officers were already required to receive 24 hours of continuing education training every two years. The hourly requirement did not increase as a result of the test claim statute. (Id. at pp. 1179-1180.) The court held that “while the County may lose some flexibility in tailoring its training programs, such loss of flexibility does not rise to the level of a state mandated reimbursable program because the loss of flexibility is incidental to the greater goal of providing domestic violence training.” (Id. at p. 1194.)

c. Do the test claim statutes or executive orders impose “costs mandated by the state”?

1. Gov. Code § 17514 – defines “costs mandated by the state”.
2. Gov. Code § 17564 – local agencies only need to show that the program costs \$1000 to be eligible for reimbursement. Requires substantial evidence in the record.
3. Gov. Code § 17556 – Statutory exceptions to reimbursement:
 - (a) Local agency request. Need evidence in the record of a request – A resolution from the governing body or a letter from a delegated representative of the governing body of the local government that requests authorization for that entity to implement the program constitutes a request. Supporting a bill does not constitute a request.
 - (b) Test claim statute or executive order was declared existing law by the court.
 - (c) Test claim statute or executive order implemented a federal law and results in costs mandated by the federal government, unless the test claim statute or executive order mandates costs which exceed the federal mandate.

Gov. Code § 17513 defines “costs mandated by the federal government” and includes costs resulting from enactment of a state law where failure to enact that law to meet specific federal requirements would result in substantial monetary penalties or loss of funds to public or private persons, whether the federal law was enacted before or after the enactment of the state law, regulation, or executive order.

City of Sacramento v. State of California (1990) 50 Cal.3d 51, 70 provides test to determine whether there is a federal mandate – strict legal compulsion is not required - must look at factors (nature and purpose of the federal program, is there an intent to coerce the state to comply, when participation in the program began, the penalties for withdrawal or noncompliance, other consequences for failure to participate.)

Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564 provides test to determine whether the state’s compliance with the federal mandate imposes a reimbursable state-mandated program on local agencies. In other words, there is a federal mandate; but does the state statute or executive order implementing the federal mandate impose requirements beyond the scope of the federal mandate thus imposing a reimbursable state mandated program on local agencies?

County of Los Angeles v. Commission on State Mandates (1995) 32 Cal.App.4th 805 – involved statutes requiring counties to pay for experts and investigators hired by an indigent defendant in a murder case to assist in the preparation of the defense. The court held that the statute merely codified the

6th and 14th Amendments to the U.S. Constitution, which provides that indigent defendants have a right to counsel and experts to assist counsel in the defense. Thus, no reimbursement was required because there were no costs mandated by the state.

San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859, 880 – involved statutes requiring a mandatory recommendation to expel and mandatory due process expulsion hearing. The due process hearing had to comply with the basic federal due process requirements. But, in the absence of the test claim statute that required the principal to recommend expulsion for certain offenses, a school district would not automatically incur the due process hearing costs that are mandated by federal law. Court found a state mandate for the mandatory recommendations and that all costs, including costs incurred to comply with federal due process procedures, were reimbursable because the state made the triggering decision about when to expel and left no discretion to local officials. Compare – statutes where the triggering decision is discretionary on the part of the local entity, and that discretionary decision triggers a federal constitutional mandate to provide a due process hearing. When the triggering decision is discretionary on the part of the local entity, and the state hearing procedures, which may exceed federal requirements (but the excess state procedures are “incidental” to federal law and the costs are “de minimis”), such costs constitute a part and parcel of the federal mandate, and are not reimbursable. (*San Diego Unified*, supra, p. 888-890.)

- (d) Fee, service charge or assessment authority sufficient to pay for the mandated costs of the program. Applies whether or not authority is exercised.

Connell v. Santa Margarita Water District (1998) 59 Cal.App.4th 382 – involved statutes that authorized water districts to impose a fee. The water district contended that the fee authority was not sufficient to cover the costs. The court looked at the dictionary definition of “authority” (meaning the right or power to do something) and found that as long as a local agency has the right or the power to levy fees sufficient to cover the costs, reimbursement is not required. The court rejected the argument that fee authority granted by a statute must be analyzed in light of the surrounding economic circumstances.

Clovis Unified School Dist. v. Chiang (2010) 188 Cal.App.4th 794 – addressed the fee issue with respect to the Health Fee Elimination program. The statutory scheme provides that the CCD “may” require students to pay a fee for health supervision and services. The State Controller’s Office (SCO) reduced reimbursement claims by the amounts the CCDs are statutorily authorized to charge, even when a district chose not to charge the fees. The court held that to the extent a local agency or school district “has the authority” to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost. The claimants can choose not to require the fee, but not at the state’s expense.

- (e) The test claim statutes or executive orders, or an appropriation in a Budget Act or other bill, provides for offsetting savings which result in no net costs, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the costs of the state mandate.

Department of Finance v. Commission on State Mandates (Kern), supra – court found that the school districts failed to show that existing funding for the school site council programs was inadequate to cover the costs incurred as a result of the test claim requirements. The court found significant that none of the school site council statutes precluded schools from using the funds they received to pay for the administrative costs of preparing and posting an agenda. Also, one of the statutes specifically authorized districts to use the funds for administrative expenses up to 6%.

- (f) The test claim statute or executive order imposes duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a statewide election.

CSBA v. State of California (2009) 171 Cal.App.4th 1183. Duties imposed by a test claim statute or executive order are necessary to implement a ballot measure approved by the voters in a statewide or local election pursuant to Government Code section 17556(f), when:

- Local government is mandated by a ballot measure to perform a duty.
 - The Legislature or any state agency enacts a statute or executive order intended to implement the ballot measure mandate and also requires additional duties that are not expressly included in the ballot measure.
 - Absent the statute or executive order enacted by the Legislature or any state agency, local government is still required to comply with the duty mandated by the ballot measure.
 - The requirements imposed by the statute or executive order that exceed the ballot measure mandate are not reimbursable, but are considered part and parcel to the underlying ballot measure mandate, when the excess requirements are intended to implement (i.e., are incidental to) the ballot measure mandate, and whose costs are, in context, de minimis.
- (g) The test claim statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction (The Commission has found that the “but only” language encompasses activities that directly relate to the enforcement of the statute that changed the penalty for a crime, from arrest through conviction and sentencing. These activities include capture, detention, prosecution, defense, sentencing (including the penalty itself), and appeals. The exception did not include new administrative activities associated with the changed penalty.)

C. Parameters and Guidelines for Approved Test Claims

- a) Gov. Code §§ 17557 requires the adoption of parameters and guidelines, defines period of reimbursement beginning the fiscal year before the test claim is filed, and allows for amendments to parameters and guidelines as specified. 17558 et seq. describes Controller’s responsibilities after Ps and Gs are adopted.
- b) The claimant is required to submit proposed parameters and guidelines 30 days after the statement of decision is adopted. (Gov. Code, § 17557.) Commission staff may

expedite by drafting and issuing proposed parameters and guidelines within 10 days after adoption of the statement of decision, to assist the claimant. (Cal. Code Regs., tit. 2, §1183.12)

- c) The parameters and guidelines define the eligible claimants, the period of reimbursement, the reimbursable activities, direct and indirect costs, supporting documentation required to be submitted to the Controller's Office, and identification of offsetting revenue or savings. (Cal. Code Regs., tit. 2, §1183.1.)
- d) Reimbursable activities include those activities expressly approved in the Commission's statement of decision *and* those activities that the Commission determines are reasonably necessary to carry out the mandate based on substantial evidence in the record. (Gov. Code, §§ 17557; Cal. Code Regs., tit. 2, §1183.1.)
- e) Statutes 2004, chapter 890 (A.B. 2856) added Government Code section 17518.5 and amended Government Code section 17557 to encourage reimbursement for mandated programs based on a "reasonable reimbursement methodology," included in the parameters and guidelines instead of on actual costs. "Reasonable reimbursement methodology" shall be based on (1) cost information from a representative sample of eligible claimants, information provided by associations of local agencies or school districts, or other projections of local costs; and (2) shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner and, (3) whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other appropriations of local costs mandated by the state, rather than detailed documentation of actual local costs.
- f) Government Code section 17557.1 provides an alternative procedure through which Finance and the claimant can jointly agree to a "reasonable reimbursement methodology." This functions like a settlement and the Commission only approves it as to form. So far, there has only been one joint RRM reached.
- g) Parameters and guidelines may also be amended pursuant to Government Code section 17557 to:
 - 1) Delete a reimbursable activity that has been repealed by statute or executive order
 - 2) Update offsetting revenue
 - 3) Include a reasonable reimbursement methodology
 - 4) Clarify the reimbursable activities
 - 5) Define activities that are not reimbursable
 - 6) Consolidate the parameters and guidelines from two or more related programs.
 - 7) Amend boilerplate language governing the claiming process.

Unlike test claims, there is no statutory timeframe for completing requests to amend the parameters and guidelines.

D. Statewide Cost Estimate

After the Commission adopts parameters and guidelines, those parameters and guidelines are sent to the SCO. The SCO then has 90 days to issue claiming instructions. Local government then has 120 days to file their initial reimbursement claims with the SCO. Following the receipt of the initial reimbursement claims, the Commission estimates the statewide costs and sends the statewide cost estimate to the Legislature.

E. Incorrect Reduction Claims

1. Local agencies and school districts file claims for reimbursement for mandated programs with the SCO. The SCO is authorized to reduce reimbursement claims it deems excessive or unreasonable. If the SCO reduces a reimbursement claim, a local agency or school district may file an incorrect reduction claim with the Commission alleging that the SCO incorrectly reduced the claim. The Commission is required to hear these claims and determine if the claims were incorrectly reduced.

There is currently a backlog of 79 incorrect reduction claims pending before the Commission that allege the SCO incorrectly reduced reimbursement claims of local agencies and school districts. Unlike test claims, there is no statutory timeframe for completing incorrect reduction claims. Nevertheless, in response to a 2009 Bureau of State Audits report on the mandates process, the Commission has completed a total of 87 incorrect reduction claims over the course of fiscal years 11/12, 12/13, and the first half of 13/14, and has a workplan to complete the remaining incorrect reduction claims.

2. Potential Issues

- a. Whether a cost claimed is reimbursable under the Commission's statements of decision for the test claim and parameters and guidelines. These issues generally present questions of law.
- b. Whether the Controller's audit methods and reduction of costs are correct. Although the Controller's Office is required to follow the parameters and guidelines when auditing a claim for mandate reimbursement, the Controller has broad discretion in its auditing methods. Government Code section 12410 provides in relevant part: "Whenever, in [the Controller's] opinion, the audit provided for by [Government Code section 925 et seq.] is not adequate, the Controller *may make such field or other audit* of any claim or disbursement of state money *as may be appropriate to such determination.*" With audit issues, the Commission must determine whether the Controller's audit decisions were arbitrary, capricious, or entirely lacking in evidentiary support. (*American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.)

F. Requests for Redetermination

In 2010, Government Code section 17556 was amended to clarify that the exceptions apply whether they occurred before or after the enactment of the test claim statute or executive order. 17556 also allows a party to request that the Commission re-determine a prior test claim decision based on a subsequent change in the law that modifies the state's mandate liability, pursuant to Government Code section 17570. Four requests for redetermination have been filed with the Commission.

The redetermination statutes are being challenged in *California School Boards Assoc., et al. v. State of California, Commission on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance*, Alameda County Superior Court, Case No. RG11554698

Overview and History of State Mandates



Legislative Analyst's Office

Presented to:
Assembly Local Government Committee
December 10, 2013

1. Proposition 4 (1979)

- **“(a) 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”**

(Article XIII B of California Constitution)

2. Commission on State Mandates (1984)

- **Decide Test Claims Alleging State Imposed a Reimbursable Mandate**
- **Adopt Written Decisions, Based on the Record**

3. County of *Los Angeles v. State of California* (1987)

- **State Not Required to Reimburse for All Laws That Increase Costs**
- **Must Reimburse Costs Related to:**
 - New governmental programs.
 - Higher levels of governmental service.

Not a Reimbursable Mandate— Later Court Rulings

- **Federal Requirements**
- **Voter-Imposed Requirements**
- **Downstream Costs Associated With Optional Activities**
- **Shifts of Local Revenues**
- **Shifts of Costs Among Local Governments**

4. Mandate Suspension Process (1990)

- **“17581. (a) No local agency shall be required to implement or give effect to any statute . . . if:”**
 - Determined to be a mandate.
 - Listed in budget act.
 - Identified as suspended in budget act.

Item 8885 of 2013-14 Budget Act

(3) Pursuant to the provisions of Section 17581 of the Government Code, the mandates identified in the following schedule are specifically identified by the Legislature for suspension during the 2013–14 fiscal year

- (a) Absentee Ballots (Ch. 77, Stats. 1978 and Ch. 1032, Stats. 2002) (CSM-3713)**
- (b) Absentee Ballots-Tabulation by Precinct (Ch. 697, Stats. 1999) (00-TC-08)**
- (c) Adult Felony Restitution (Ch. 1123, Stats. 1977) (04-LM-08)**

5. Deferrals of Mandate Costs (2002)

- **\$800 Million Deferred in 2002-03**
- **By 2004-05, State Owes Local Governments \$1.5 Billion**

6. Proposition 1A (2004)

- **Every Year, State Must Pay a Mandate's Bills—or Suspend or Eliminate it**
- **Exceptions:**
 - Education and employee relations mandates.
 - Pre-2004 mandate bills.

Changes After Proposition 1A

- **Mandate Bills Become Payable Two Years After Cost Incurred**
- **\$1.9 Billion Backlog in Noneducation Mandates**

7. Proposition 30 (2012)

- **State Not Required to Provide Reimbursements for Realigned Programs**
- **Local “Opt Out” Provision**
 - Unless state provides funds, local agencies not required to implement future state laws increasing these programs’ costs.

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