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September 5, 2013  
COMMISSION ON  
STATE MANDATES

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September 5, 2013

Ms. Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**RE: Commission Request for Comments on Draft Staff Analysis and Proposed Statement of Decision for Mandate Redetermination (Sexually Violent Predators, 12-MR-01)**

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the Draft Staff Analysis and Proposed Statement of Decision for the Mandate Redetermination (12-MR-01) requested by Finance on the Sexually Violent Predators test claim decision.

We continue to assert that Proposition 83 constitutes a subsequent change in law as defined in Government Code section 17570. Pursuant to Government Code section 17556, subdivision (f), the Commission shall not find costs mandated by the state if the statute imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.

The filing by the Orange County Board of Supervisors attempts to diminish the effect of article IV, section 9 of the California Constitution on the statutes amended by Proposition 83. The characterization of the voters' statutory amendments as mere restatement of large portions of the statutory scheme inaccurately downplays the Constitutional mandate that "a section of statute may not be amended unless the section is re-enacted as amended."

Orange County's reference to Government Code section 9605 is misleading. The application of that section to the facts before us does not mean the voters failed to re-enact the statutes they amended via their approval of Proposition 83. Rather, section 9605 speaks only to the effective date of the un-amended portions of the amended statutes. More specifically, in disagreeing with a similar argument made by the Orange County District Attorney, the California Supreme Court said:

Article IV, section 9 of the state Constitution mandates that a 'section of a statute may not be amended unless the section is re-enacted as amended.' The purpose of this section is to avoid the 'confusion which almost always results when amendments are attempted by way of directing the insertion, omission or substitution of certain words, or by adding a provision, without setting out the entire context of the section [of the statute] to be amended. The effect of this section is that voters considering an initiative (like Proposition 114) that seeks to make discrete amendments to selected provisions of an existing statute, are forced to

reenact the entire statute as amended in order to accomplish the desired amendments. (*Yoshisato v. Superior Court* (1992) 2 Cal.4th 978, 989-990).

In footnote 6, the court said:

The People, through the District Attorney of Orange County, appear to contend otherwise, based on their reading of Government Code section 9605. That section provides, inter alia, "Where a section or part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form. The portions which are not altered are to be considered as having been the law from the time when they were enacted. . ." From this, the District Attorney reasons that the unaltered parts of section 190.2 were not in fact "reenacted" by Proposition 114, but instead "simply remained the law as previously enacted." Contrary to the District Attorney's view, the quoted portion of the Government Code section does not purport to stand for the proposition that statutory amendments may be accomplished without reenacting the statute as amended, as required by article IV, section 9 of the Constitution. Instead, it merely establishes that the effective date for unaltered portions of an amended statute remains the date on which the original, unaltered enactment was first operative. (*Yoshisato* at p. 990).

Government Code section 17556, subdivision (f), applies to the voters' approval of Proposition 83 and the SVP mandate. The voters reenacted the entire statutes they amended in Proposition 83.

Orange County suggests also that the Attorney General and the Department of Finance will essentially collude in the future on proposed ballot measures to avoid reimbursable state mandates. According to Orange County, the Attorney General "could lead voters down the primrose path" by providing the electorate information resulting in passage of the initiative while another body of state government is "lying in wait" to seek redetermination of a state mandate. This language disparages the significant duties the Attorney General and the Department of Finance have in the preparation of a ballot measure's title and summary.

The Attorney General has duties specified in the Constitution and Elections Code regarding the language provided to voters about a ballot measure. Article II, section 10(d) of the California Constitution requires the Attorney General to prepare a title and summary for an initiative measure before its circulation for signatures. Elections Code section 9051(c) says "In providing the ballot title and summary, the Attorney General shall give a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure."

Case law has established that the Attorney General's title and summary need not be an exhaustive description of all of a measure's provisions. The title and summary inform the public of the general purpose of the [measure] ... [it] need not contain a complete catalog or index of all of the measure's provisions ... substantial compliance with the 'chief purpose and points' provision is sufficient ... Within certain limits what is and what is not an important provision is a question of opinion. Within those limits the opinion of the attorney-general should be accepted by this court. (*Lungren v. Superior Court* (1996) 48 Cal.App.4th 435, 439-440).

Further, in a post election challenge, the court said, "We need only add that in light of the fact that the Legislature has determined in the Election Code that an election cannot be undone on

the basis of alleged deficiencies in an impartial analysis, trying to achieve the same result under the rubric of constitutional due process, as was unsuccessfully attempted in *Horwath*, requires a showing that the impartial analysis profoundly misled the electorate, not just that it didn't educate the electorate as to all the legal nuances of the measure." (*California Family Bioethics Council v. California Institute for Regenerative Medicine* (2007) 147 Cal.App.4th 1319, 1348).

The Department of Finance also has a statutory duty in the preparation of the title and summary. Elections Code section 9005(b) requires the department to jointly prepare the estimated fiscal impact of the ballot measure, if adopted, on state or local government. As noted before, when these sections applied to Proposition 83 put before the voters in 2006, the new test claim decision process in Government Code section 17570 did not even exist at the time.

In light of the language in case law, statutes, and the Constitution, the Commission would be correctly applying the law in finding provisions of the SVP mandate no longer reimbursable.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst, at (916) 445-3274.

Sincerely,

*for* TOM DYER  
Assistant Program Budget Manager

Enclosure

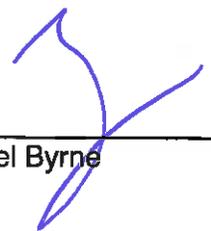
Enclosure A

DECLARATION OF MICHAEL BYRNE  
DEPARTMENT OF FINANCE  
CLAIM NO. 12-MR-01

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

9/5/2013  
\_\_\_\_\_  
at Sacramento, CA

  
\_\_\_\_\_  
Michael Byrne