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COMMISSION ON
STATE MANDATES



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September 5, 2013

Ms. Heather Halsey
Executive Director
California Commission on State Mandates
980 Ninth Street, Suite 300
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**RE: 12-MR-01, Mandate Redetermination Request, CSM-4509, Department of Finance,
Requestor – Comments to the Draft Staff Analysis and Proposed Statement of Decision for the
Second Hearing**

Dear Ms. Halsey:

On behalf of the California State Association of Counties, I respectfully submit our opposition to the mandate redetermination request 12-MR-01.

The state's obligation to provide reimbursement for the Sexually Violent Predators mandate has not ceased, and its liability has not been modified. Therefore, the Commission should reject the claim made by the Department of Finance.

First of all, and most importantly, the language in the California Constitution makes it clear that the state is required to reimburse counties for the costs of the program. Secondly, the parts of the Sexually Violent Predator (SVP) program that established a reimbursable mandate were not affected by the passage Proposition 83 (2006). Third, voter approval of Proposition 83 did not reenact the parts of the law that implemented the mandated activities.

1. The California Constitution is clear that the state is required to reimburse counties for the costs of the program.

The Constitution is unequivocal. Whenever the Legislature or a state agency mandates a new program on any local government, the state shall provide funds to reimburse the local government for the costs of the program. There are four exceptions allowed by the Constitution, but none of them are relevant in this case. In particular, there is no exception for statutes that voters have amended when those amendments do not relate to the activities found to be reimbursable.

There is no question in this case that the Legislature mandated a new program or higher level of service, evidenced by the Commission's Statement of Decision on the matter. By approving Proposition 83, voters merely amended irrelevant parts of the program the Legislature had long-before mandated. If voters instead had rejected Proposition 83, the reimbursable mandates would have continued uninterrupted. The claim that it is the voters instead of the Legislature who

have mandated this program—even though the program would have existed in substantially the same form whether voters approved or disapproved of the question posed to them—strains credulity.

The Constitution therefore requires, regardless of any contradicting statute, that the Legislature must either appropriate fund the mandate in the Budget Act or suspend its operation.

2. The parts of the SVP program that established a reimbursable mandate were unaffected by the passage of Proposition 83.

Of the fourteen sections and subsections that formed the basis of the Commission's 1998 Statement of Decision, Proposition 83 purported to amend only three, although even in these three cases the Legislature had already made substantially the same changes in the months prior to the ballot measure's passage (SB 1128, Alquist).

As argued by the California District Attorneys Association in their comments on this matter dated March 19, 2013, the Department of Finance claims Government Code Section 17556(f) applies so broadly as to make it no different than the interpretation already ruled unconstitutional by the courts (*School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183).

3. Voter approval of Proposition 83 did not reenact the parts of the law that implemented the mandated activities.

Case law is clear on the point that the mere recitation of unamended law to give context for proposed amendments does not constitute reenactment. The Department of Finance's claim relies entirely on the opposite presumption: that the mere recitation of the laws that mandated activities on counties does constitute a reenactment of those laws. California's Government Code contains statutory contradiction of the Department's position, and court cases contradicting the Department's position abound.

California Government Code Section 9605 states outright that the portions of an amended statute that remains unamended "are to be considered as having been the law from the time when they were enacted" and "not to be considered as having been repealed and reenacted in the amended form."

One example is *County of Sacramento v Pfund*, 165 Cal. 84, 87. In this case, briefly, statute set county clerks' "full compensation." Later statute allowed them to retain a percentage of fees (additional compensation), but later still the statutes setting full compensation were amended in certain particulars and "entirely reenacted," "and that such re-enactment should be held to be the latest expression of the legislative view." The court continues: "But it is conceded that the

amendments...made absolutely no change in the sections of the code as they previously stood. In other words, the provisions of the law, so far as [two relevant sections are] concerned, are identical, and so far as [the other relevant section], they were not changed in any material respect by the amendment.” The court found that considering the entire statute as having been wholly reenacted when only “certain particulars” were changed “is to do violence to the code and all canons of construction.”

Another example is *Swamp Land Dist. No. 307 v. Glide*, 112 Cal. 85-91, 44 Pac. 451. The court in this case likewise found that republication of the whole of an amended act is not repeal and re-enactment of the portion of the act unchanged by amendment, which continues as law throughout.

These examples are not comprehensive. Courts across the country have regularly found that the mere recitation of an entire statute when only a part of it is amended does not mean the entire statute should be considered repealed and reenacted. For the Commission to find otherwise, it must overturn more than one hundred years of conclusive case law.

The Department of Finance should be wary when using this argument. If it proves persuasive, then every time an old statute is amended in any particular—thus, by this reasoning, reenacting the entire section—local agencies will be able to bring new reimbursement claims for those “new” mandates.

For all these reasons, CSAC respectfully requests that the Draft Analysis be changed to reflect the fact that the state’s liability for the mandate in question is unchanged. If you have any questions about our position, please do not hesitate to contact Geoffrey Neill at 916/327-7500.

Thank you for your careful attention to this matter.

Respectfully,



Jean Kinney Hurst
Senior Legislative Representative