

ITEM 18
LEGISLATIVE UPDATE
2009-2010 Legislation

Commission staff is currently tracking three bills that may affect the Commission: SB 894, AB 349, and AB 2082. A bill analysis and staff recommendation on AB 349 is attached for discussion. Staff recommends the Commission take no position on AB 349.

Following are summaries of the bills:

AB 349 (Silva), as amended on December 15, 2009. Under existing law, no local agency or school district is required to implement or give effect to any statute or executive order that has been determined to be a mandate, and identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. This is otherwise known as suspending mandates.

Under this bill:

- If the Governor's budget proposes to suspend state mandates, the Department of Finance would be required, on or after January 1, 2012, to provide to the Legislature all proposed statutory changes necessary to repeal the mandates proposed for suspension.
- The Budget Act that identifies suspended mandates, shall also, to the extent practicable, identify each affected section of law. However, failure to provide this identification would not halt or otherwise affect suspension of a mandate.

See attached bill analysis for more detail.

AB 349 passed the Assembly (77-0). Testimony was taken, and remains pending in Senate Budget and Fiscal Review Committee.

Staff Recommendation: Pending discussion on May 27, 2010.

SB 894 (Senate Committee on Local Government) – As amended April 12, 2010. This is the 2010 Local Government Omnibus Act. It is the Committee's annual bill to provide technical amendments for local government statutes. It includes the Commission's legislative proposal CSM 10-01, which requires our Reports to the Legislature on Approved Mandates to include information on pending reasonable reimbursement methodologies being proposed as part of pending parameters and guidelines, joint proposals between Finance and local entities to develop reasonable reimbursement methodologies, or joint proposals to seek legislatively determined mandates, and any delays being caused by these alternative processes.

Adding this additional information to the Reports to the Legislature will implement a recommendation from the October 2009 Bureau of State Audits Report 2009-501, *State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and Controlling Costs and Liabilities*.

SB 894 passed Senate Committee on Local Government (5-0) on April 21, 2010; placed on second reading on May 4, 2010; passed the Senate (30-0) on May 10, 2010; pending in the Assembly.

Commission Position: The Commission supports SB 894.

AB 2082 (Assembly Committee on Education) – As amended April 14, 2010.

This bill would (1) transfer the authority to decide incorrect reduction claims from the Commission on State Mandates to the Education Audit Appeals Panel; (2) expand the reporting requirements on mandated programs for the Legislative Analyst; and (3) require Legislative Counsel to include language in bills that impose mandates on school districts, that automatically repeals or sunsets the provisions in five years.

AB 2082 passed the Assembly Education Committee (9-0) on April 21, 2010; pending in Assembly Appropriations Committee on May 19, 2010.

Commission Position: The Commission opposes AB 2082 unless amended to strike all provisions related to the transfer of authority to decide incorrect reduction claims to the Education Audit Appeals Panel.

ITEM 18

STAFF ANALYSIS AB 349 (Silva) State Mandates (As Amended December 15, 2009)

SUMMARY

This bill would require the Director of the Department of Finance, on and after January 1, 2012, to draft all statutory changes necessary to repeal a mandate that is proposed for suspension in the budget. The bill also requires that when a mandate is identified in the Budget Act as being suspended and for which no reimbursement is provided for that fiscal year, that the language in the Budget Act that suspends the mandate specifically identify, to the extent practicable, each affected section of the law. If a section of law is not specifically identified in the Budget Act, however, the suspension of that mandate is not affected if the statute, executive order, or the Commission's test claim number, has been specifically identified in the Budget Act, as is required by existing law.¹

PURPOSE OF THE BILL

The author is concerned with the significant number of reimbursable state mandates that have not been funded for several years, but remain in statute, and show up in the Budget each year. This bill would provide additional information to the Legislature and local governments regarding what mandates are suspended and which laws are affected by those suspensions.

PROGRAM BACKGROUND

Existing Law

Article XIII B, section 6 of the California Constitution requires that 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 to reimburse that local government for the costs of the program or increased level of service, except as specifically provided. Article XIII B, section 6, as amended by Proposition 1A, further provides that for the 2005-2006 fiscal year and every subsequent fiscal year thereafter, the Legislature is required to either appropriate the full payable amount in the annual Budget Act, or suspend the operation of the mandate for that fiscal year when the costs of a local government mandate (applicable to cities, counties, city and county, and special districts only) has been determined in the preceding fiscal year to be payable by the State. This requirement does not apply to school district and community college district mandates. In addition, this requirement does not apply to mandates that provide, or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee, retiree, or local government employee organization and that arises from,

¹ Exhibit A.

affects, or directly relates to future, current, or past local government employment.

Government Code section 17581 states that no local agency (city, county, city and county, and special district) shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year, if (1) the statute or executive order, or portion thereof, has been determined by the Legislature, the Commission, or any court to mandate a new program or higher level of service requiring reimbursement to local agencies pursuant to article XIII B, section 6 of the California Constitution, and (2) the statute, executive order, or portion thereof, or the Commission's test claim number, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. A mandate is considered to be specifically identified by the Legislature if it has been included within the schedule of reimbursable mandates shown in the Budget Act and is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements. Within 30 days after enactment of the Budget Act, the Department of Finance is required to notify local agencies of the suspended mandates. If a mandated program is suspended for a fiscal year and a local agency elects to implement the suspended program, Government Code section 17581 provides that the local agency may assess fees, not to exceed the costs reasonably borne, to the persons or entities that benefit from the suspended program. Government Code section 17581 does not apply to state-mandated local programs imposed on school districts that are funded through Proposition 98 (Cal. Const., Art. XVI, § 8), or on trial courts as specified in Government Code section 77203.

Government Code section 17581.5 is the suspension statute currently applicable to six specified school district mandates.

Government Code sections 17581 and 17581.5 are found in the Government Code sections that govern the mandates process and the processes of the Commission on State Mandates.

The 2009 Budget Act suspended most non-education mandates, except those that deal with law enforcement and victim rights mandates, voting procedure mandates, property tax administration mandates, Medi-Cal beneficiary death notices, and Brown Act/Open Meetings mandates.² The 2009 Budget Act deferred most education mandates, appropriating \$1,000 for the mandated programs,³ and suspended the following programs: School Bus Safety I and II, Law Enforcement Sexual Harassment Training, and County Treasury Oversight Committees.

² Appropriations were made for the following programs in the 2009 Budget Act: Threats Against Peace Officers, Custody of Minors-Child abduction and Recovery, Absentee Ballots, Permanent Absentee Ballots, Voter Registration Procedures, Absentee Ballots-Tabulation by Precinct, Brendan Maguire Act, Medi-Cal Beneficiary Death Notices, Sexually Violent Predators, Domestic Violence Treatment Services, Domestic Violence Arrest Policies, Unitary Countywide Tax Rates, Allocation of Property Tax Revenues, Rape Victim Counseling, Health Benefits for Survivors of Peace Officers and Firefighters, Crime Victim's Domestic Violence Incident Reports, Peace Officer Personnel Records, Domestic Violence Arrests and Victim Assistance.

³ The practice of deferring school district mandates is currently being challenged in *California School Board's Association v. State of California*, Fourth District Court of Appeal, Case No. D055659. The trial court held that deferring mandates was unconstitutional.

ANALYSIS OF BILL'S PROVISIONS

AB 349 would enact a new statute (Government Code section 13337.1) to require the Department of Finance, on and after January 1, 2012, to provide to the Legislature, in accordance with section 13308, all proposed statutory changes necessary to repeal a reimbursable state mandate proposed for suspension in the Governor's proposed budget.⁴

AB 349 adds an additional notice requirement for suspended local agency mandates by amending Government Code section 17581. Under existing law, whenever a mandated program is suspended in the Budget Act, the statute, executive order, or portion thereof, or the Commission's test claim number, has to be specifically identified by the Legislature in the Budget Act for the fiscal year of the suspension. In addition, existing law requires the Department of Finance to notify local government within 30 days after the enactment of the Budget Act, of the statutes, executive orders, or portions thereof, which have been suspended for that fiscal year. AB 349 would amend Government Code section 17581 (applicable only to local agencies) to require that when identifying a mandate in the Budget Act for suspension, language shall be included, to the extent practicable, each affected section of law. However, if a section of law is not so specifically identified, AB 349 would provide that the suspension of that mandate shall not be affected if the statute, executive order, or the Commission's test claim number, has been specifically identified in the Budget Act, as is required by existing law. The amendments proposed by AB 349 to Government Code section 17581 would not affect school district mandates that are suspended in the Budget Act.

WORKLOAD

AB 349 does not affect the Commission's workload.

FISCAL IMPACT

AB 349 does not have a fiscal impact on the Commission's budget.

SUPPORT AND OPPOSITION

AB 349 is supported by the California State Association of Counties, the California Police Officers' Association, the California Police Chiefs Association, the California Special Districts Association, the City of Costa Mesa, and the League of California Cities. There is no known opposition to the bill at this time.

STATUS

AB 349 was heard in the Senate Budget and Fiscal Review Committee on April 22, 2010, and was postponed.⁵

STAFF RECOMMENDATION

Staff recommends that the Commission not take a position on AB 349.

⁴ Government Code section 13308 requires the Director of Finance to provide to the Legislature, on or before February 1 of each year, all proposed statutory changes, as prepared by the Legislative Counsel, that are necessary to implement the Governor's Budget.

⁵ Exhibit B, Committee analysis.

AMENDED IN SENATE DECEMBER 15, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 349

Introduced by Assembly Member Silva

February 19, 2009

An act to ~~add Section 13337.1 to amend Section 17581 of, and to add Section 13337.1 to,~~ the Government Code, relating to state mandates.

LEGISLATIVE COUNSEL'S DIGEST

AB 349, as amended, Silva. State mandates.

Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, including school districts, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions. Existing law establishes a procedure for local governmental agencies to file claims for reimbursement of these costs with the Commission on State Mandates or the Legislature. Existing law provides *that* a local agency or school district is not required to implement or give effect to any statute or executive order, or portion thereof, that imposes a mandate during any fiscal year and for the period immediately following that fiscal year ~~if specified conditions are met with regard to reimbursement not being provided for that mandate~~ *the Legislature specifically identifies the statute or executive order, or the commission's test claim number, in the Budget Act, and that suspended mandate is included both within the schedule of reimbursable mandates shown in the Budget Act and is specifically identified in the language of a*

provision of the item providing the appropriation for mandate reimbursements.

~~Existing law requires the Governor to submit the budget required by the California Constitution to the Legislature within the first 10 days of the regular session of the Legislature and requires the budget to contain a complete plan and itemized statement of all proposed expenditures of the state.~~

~~This bill would require *the Director of Finance*, on and after January 1, 2012, if the budget submitted by the Governor to the Legislature proposes a suspended reimbursable state mandate, as defined, and it is the 3rd consecutive year of a Governor's Budget in which that reimbursable state mandate is proposed to be suspended, the Director of Finance would be required to provide to the Legislature all proposed statutory changes necessary to repeal the suspended reimbursable state mandate.~~

This bill would also require that a provision in the Budget Act that identifies a mandate for the fiscal year as one for which reimbursement is not provided to identify specifically, to the extent practicable, each affected law. The bill would provide that if a section of law is not specifically identified in the Budget Act, the suspension of that mandate would not be affected if the other requirements are met with regard to specifically identifying the mandate.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1.
- 2 SECTION 1. Section 13337.1 is added to the Government Code,
- 3 to read:
- 4 13337.1. (a) For purposes of this section, "suspended
- 5 reimbursable state mandate" means a statute or executive order
- 6 that meets both of the following criteria:
- 7 (1) The statute or executive order, or portion thereof, has been
- 8 determined by the Legislature, the Commission on State Mandates,
- 9 or any court to mandate a new program or higher level of service
- 10 requiring reimbursement of local agencies, including, but not
- 11 limited to, school districts, pursuant to Section 6 of Article XIII B
- 12 of the California Constitution.

1 (2) (A) The statute or executive order, or portion thereof, or
2 the commission's test claim number, has been specifically
3 identified as being one for which reimbursement is not provided
4 for that fiscal year in the budget that is required by the California
5 Constitution to be submitted by the Governor to the Legislature,
6 in accordance with this article.

7 (B) For purposes of this paragraph, a mandate shall be
8 considered to have been specifically identified only if it has been
9 included within the schedule of reimbursable mandates shown in
10 the Governor's Budget and it is specifically identified in the
11 language of a provision of the item providing the appropriation
12 for mandate reimbursements.

13 (b) On and after January 1, 2012, if the budget required by the
14 California Constitution to be submitted by the Governor at each
15 regular session of the Legislature, pursuant to this article, proposes
16 a suspended reimbursable state mandate and it is the third
17 consecutive year of a Governor's Budget in which that
18 reimbursable state mandate is proposed to be suspended, the
19 *mandate*, the Director of Finance shall provide to the Legislature,
20 in accordance with Section 13308, all proposed statutory changes
21 necessary to repeal the suspended reimbursable state mandate.

22 *SEC. 2. Section 17581 of the Government Code is amended to*
23 *read:*

24 17581. (a) No local agency shall be required to implement or
25 give effect to any statute or executive order, or portion thereof,
26 during any fiscal year and for the period immediately following
27 that fiscal year for which the Budget Act has not been enacted for
28 the subsequent fiscal year if all of the following apply:

29 (1) The statute or executive order, or portion thereof, has been
30 determined by the Legislature, the commission, or any court to
31 mandate a new program or higher level of service requiring
32 reimbursement of local agencies pursuant to Section 6 of Article
33 XIII B of the California Constitution.

34 (2) (A) The statute or executive order, or portion thereof, or the
35 commission's test claim number, has been specifically identified
36 by the Legislature in the Budget Act for the fiscal year as being
37 one for which reimbursement is not provided for that fiscal year.
38 For purposes of this paragraph, a mandate shall be considered to
39 have been specifically identified by the Legislature only if it has
40 been included within the schedule of reimbursable mandates shown

1 in the Budget Act and it is specifically identified in the language
2 of a provision of the item providing the appropriation for mandate
3 reimbursements.

4 *(B) When identifying a mandate in the Budget Act for the fiscal*
5 *year as being one for which reimbursement is not provided for*
6 *that fiscal year, the language of the provision that specifies that*
7 *reimbursement is not provided shall specifically identify, to the*
8 *extent practicable, each affected section of law. If a section of law*
9 *is not so specifically identified in the Budget Act, the suspension*
10 *of that mandate shall not be affected if the requirements of*
11 *subparagraph (A) are otherwise met.*

12 (b) Within 30 days after enactment of the Budget Act, the
13 Department of Finance shall notify local agencies of any statute
14 or executive order, or portion thereof, for which operation of the
15 mandate is suspended because reimbursement is not provided for
16 that fiscal year pursuant to this section and Section 6 of Article
17 XIII B of the California Constitution.

18 (c) Notwithstanding any other provision of law, if a local agency
19 elects to implement or give effect to a statute or executive order
20 described in subdivision (a), the local agency may assess fees to
21 persons or entities which benefit from the statute or executive
22 order. Any fee assessed pursuant to this subdivision shall not
23 exceed the costs reasonably borne by the local agency.

24 ~~(d) This section shall not apply to any state-mandated local~~
25 ~~program for the trial courts, as specified in Section 77203.~~

26 ~~(e)~~

27 (d) This section shall not apply to any state-mandated local
28 program for which the reimbursement funding counts toward the
29 minimum General Fund requirements of Section 8 of Article XVI
30 of the Constitution.

BILL ANALYSIS

SENATE COMMITTEE ON BUDGET AND FISCAL REVIEW
Denise Moreno Ducheny, Chair

Bill No: AB 349
Author: Silva
As Amended: December 15, 2009
Consultant: Brian Annis
Fiscal: Yes
Hearing Date: April 12, 2010

Subject: State mandates.

Summary: This bill requires the Department of Finance, beginning with the proposed budget for 2012-13, to draft statutory changes necessary to repeal a mandate that is proposed for suspension. Additionally, this bill requires - to the extent practicable - that when the budget act suspends or defers payment of a mandate, the language in the budget act shall specifically identify the affected section of law.

Background: Section 6 of Article XIII B of the California Constitution, as amended by Proposition 1A of 2004, requires the state to reimburse local agencies and school districts for increased costs if the Legislature passes a law or the administration issues an executive order or adopts regulations that require a local agency to perform a new or higher level of service. There are several exemptions to the reimbursement requirement, such as for laws expanding the definition of crimes.

Article XIII B also provides that certain mandates are suspended (that is, the local agency is not required to perform the mandate) in years in which there is no appropriation provided in the annual Budget Act. The local agency is not required to comply with a state mandate that has been suspended. The Legislature cannot suspend a state mandate relating to schools, community colleges, or local government employee rights.

Under current law, the mandate reimbursement process takes three years. In the first year, the local government incurs costs to implement the mandate which is initially covered with local funds. In the second year, the local

government totals the mandate costs for the prior year and submits a reimbursement claim to the state. In the third year, the state funds are appropriated in the budget act and locals receive their reimbursement. When a mandate is suspended in a particular budget act, repayment of past claims is deferred for that year and no new state payment obligations are created because the local government is not required to perform the activity in that year.

Due to the severity of the budget deficit, the 2009 Budget Act suspended most non-education local mandates. Generally, all reimbursable state mandates on local governments were suspended except those in the following categories:

- Law enforcement and crime victim rights mandates.
- Voting procedure mandates (to maintain necessary uniformity across the state).
- Property tax administration mandates (to maintain necessary fiscal information).
- Medi-Cal beneficiary death notices (due to greater savings from fraud prevention).
- Brown Act / open meetings mandate (to maintain transparency and access to government).

Some of the mandates suspended in 2009-10 were suspended for the first time. Others have been suspended for multiple years - some more than a decade.

Proposed Law: This bill requires the Department of Finance, beginning with the proposed budget for 2012-13, to draft statutory changes necessary to repeal a mandate that is proposed for suspension. Additionally, this bill requires - to the extent practicable - that when the budget act suspends or defers payment of a mandate, the language in the budget act shall specifically identify the affected section of law.

The purpose of the bill is to focus attention on a concern raised by the author about a significant number of reimbursable mandates on the books which have not been funded for several years. The author believes that the

-2-

provisions of this bill would provide additional information to lawmakers, schools, and local government officials about what mandates are suspended and which laws

are affected by those suspensions.

Fiscal Effect: This bill would result in minor absorbable costs to the Department of Finance. Since this bill would not repeal any mandates, it would not affect mandate costs.

Support:

California State Association of Counties
California Police Officers' Association
California Police Chiefs Association
California Special Districts Association
City of Costa Mesa
League of California Cities

Opposed:

None on file.

Comments: By requiring the Department of Finance to draft language to repeal mandates, this bill would create a minor new workload for the Administration. However, this bill does not require that those suspended mandates be repealed and the draft language may not create any benefit if neither the Administration nor the Legislature supports repeal. Adding the affected section of law to the budget act for suspended mandates may provide some additional level of clarity for local government; however, the budget act already includes the implementing chapter and year.

