

June 1, 2011

Analysis of Newly Identified Mandates

LEGISLATIVE ANALYST'S OFFICE



ANALYSIS OF NEWLY IDENTIFIED MANDATES

Chapter 1124, Statutes of 2002 (AB 3000, Committee on Budget), requires the Legislative Analyst's Office to review each mandate included in the commission's semiannual report of newly identified mandates. In March 2011, the commission issued statewide cost estimates for two new mandates:

- Local Government Employee Relations
- Local Agency Formation Commissions

This report includes the analyses required pursuant to Chapter 1124 for the mandates shown above. The commission has not yet released its spring 2011 semiannual report. However, our office expedited the review of these mandates because Proposition 1A of 2006 requires the Legislature to take action in the annual budget act to fund, suspend, or repeal these mandates.

LOCAL GOVERNMENT EMPLOYEE RELATIONS

We recommend that the Legislature request its policy committees review Chapter 901 and propose amendments to eliminate the elements determined to be reimbursable mandates.

Background

The Meyer-Milias-Brown Act (MMBA) governs labor-management relationships in California cities, counties, and most special districts. Chapter 901, Statutes of 2000 (SB 739, Solis), amended MMBA to create an additional method for establishing an "agency shop" arrangement whereby employers deduct union dues or service fees from employees' paychecks. Chapter 901 also assigned to the Public Employment Relations Board (PERB) the responsibility for hearing certain labor disputes. Prior to passage of Chapter 901, labor disputes relating to local employees were resolved through locally adopted procedures and appeals from that process were filed in the courts.

Mandate Decision. Although the legislative history of Chapter 901 indicates that the Legislature did not expect that it would impose a state-reimbursable mandate, the Commission on State Mandates (CSM) found otherwise. On December 4, 2006, the commission ruled that the following costs associated with Chapter 901 are reimbursable.

- **Participating in PERB Procedures.** Except in cases when a PERB claim or charge is filed by a local agency, local government costs to participate in PERB procedures are reimbursable. Local governments may recoup their costs for a wide range of activities, including drafting briefs, assembling documentation and evidence, preparing witnesses, conducting depositions, and traveling to Sacramento.
- **Administer Agency Fee Accounting.** Local government costs to deduct from an employee's wages the payment of dues or service fees required pursuant to an agency shop arrangement are reimbursable. Local governments also may recoup

their costs to receive employee proof of in lieu fee payments made to charitable organizations.

On March 24, 2011, based on claims filed by 17 counties, 50 cities, and 6 special districts for the years 2000-01 through 2008-09, the commission estimated the state's costs for this mandate to be \$4.9 million. These costs are likely to increase significantly over time as local governments take steps to develop and maintain the documentation necessary to support mandate claims.

May Revision. The administration proposes to defer funding to reimburse local governments for this mandate to an unspecified future date. While the California Constitution generally does not permit the state to defer mandate reimbursements (except in cases when the Legislature suspends or repeals the mandate), the Constitution provides an exception for mandates relating to employee relations. Thus, the Legislature could continue the Chapter 901 mandate in the budget year and appropriate funding for it at a future date.

Recommendation

Maintaining Chapter 901 as a reimbursable mandate leads to three unintended consequences. Specifically, it:

- ***Transfers Local Government Management Costs to the State.*** Not only does the state pay for PERB's operating costs to hear local labor relations complaints (a cost the Legislature anticipated when it enacted Chapter 901), but the state is responsible for paying local management costs to participate in PERB cases.
- ***Reduces Local Government's Incentives to Settle Labor Disputes.*** Because local government's costs to participate in PERB proceedings are reimbursable, local agencies face little fiscal incentive to resolve employee complaints before they are filed with PERB.
- ***Creates an Uneven Playing Field Between Labor and Management.*** Under the Chapter 901 mandate, labor pays its costs to participate in the PERB process, but management shifts most of its costs to the state.

In our view, management and employee organizations generally should pay their own costs to participate in PERB proceedings. In addition, costs to administer agency shop provisions should be borne by the employers and employees involved. Reimbursing these costs instead as a mandate leads to unintended consequences and provides no incentive for local governments to control costs.

Accordingly, we recommend the Legislature modify Chapter 901 so that it is no longer a mandate. There are various ways of accomplishing this and the best approach would require careful balancing of competing objectives and legal requirements. As an example, the Legislature could amend Chapter 901 to allow local governments to (1) negotiate with employee groups as to which forum they would use to file future labor relations charges: the courts, PERB, or a local, neutral, employee relations commission;

and (2) charge a fee to cover the costs associated with administering the agency shop provisions. Based on the commission's decision, the availability of these alternatives could eliminate any claim that Chapter 901 constitutes a reimbursable mandate. Given the policy and legal complexities inherent in changes to Chapter 901, we think the task of drafting the amendments to eliminate its mandate provisions would be best referred to the Legislature's policy committees.

LOCAL AGENCY FORMATION COMMISSIONS

We recommend the Legislature eliminate future state costs for this mandate by amending the law to modify the requirement that special districts file written statements to Local Agency Formation Commissions (LAFCOs). Instead, we recommend that the law provide LAFCOs with the authority to require special districts to file these statements upon request.

Background

The LAFCOs are statutorily created administrative bodies within each county that make determinations regarding the formation and boundaries of local cities and special districts. Chapter 761, Statutes of 2000 (AB 2838, Hertzberg) made numerous changes to the authority and responsibilities of LAFCOs. Under current law, LAFCOs are required to adopt a sphere of influence for each local governmental agency and update those spheres of influence at least every five years. Special districts are required to file written statements on the functions or classes of services provided by those districts when a LAFCO adopts or updates a sphere of influence for a special district.

The CSM found the requirement that special districts file written reports to be a reimbursable state mandate. In March 2011, the commission adopted a statewide cost estimate of about \$277,000 based on claims submitted by 23 special districts for fiscal years 2002-03 through 2008-09. In the May Revision, the administration proposes to suspend this mandate.

Recommendation

We recommend the Legislature eliminate future state costs for this mandate by amending the law to modify the existing requirement that special districts file written statements to LAFCOs specifying the functions or classes of service provided by those districts. Instead, we recommend that the law provide LAFCOs with the authority to require special districts to file these statements upon request. This construction is consistent with another reporting requirement in this part of the Government Code and is not considered to be a reimbursable mandate because a local agency—not the state—imposes the reporting requirement.



The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the Legislature.

To request publications call (916) 445-4656.

This report and others, as well as an E-mail subscription service, are available on the LAO's Internet site at www.lao.ca.gov. The LAO is located at 925 L Street, Suite 1000, Sacramento, CA 95814.