What Is a Mandate: An Overview

Legislative Analyst’s Office
December 2006

Californians Served by Many Different Governments

- Federal Government
- Special Districts
- State Government
- Schools
- Cities, Counties
- Community College Districts

Whenever Multiple Governments Serve the Same People...

California’s Reimbursement Requirement

- If State Government Mandates a Local Government Provide:
  - “New Program”
  - “Higher Level of Service”
- Constitution Requires State to Provide Reimbursement
ARTICLE XIII B, Section 6

"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 . . ."

Reimbursement Requirement

- Give Local Governments Financial Protection
- Added by Proposition 4, 1979
- Followed Proposition 13, 1978

Proposition 4 Sounds Straightforward, But . . .

- Sorting Out What Must Be Reimbursed Not Always Easy
- Sometimes:
  - Minor Requirements Are Reimbursable Mandates
  - Major Requirements Are Not
- California’s Definition of Reimbursable Mandate Differs from Other States and Federal Government

After Learning About Mandates, People Often Say . . .

- State's Cost to Reimburse Mandates Is Significant
- Number of State Requirements Found to Be a Reimbursable Mandate Is:
  - Fewer Than Expected
  - Fewer Than Bills Identified as “State-mandated Local Program”
Legislative Counsel Bill Example

Purpose of This Presentation

- Help You Assess Whether a Proposal Would Be a Constitutionally Required Reimbursable Mandate

A Reimbursable Mandate Is:

- New Obligation
- State Freely Chooses to Impose Upon Local Agencies
- Forces Local Agencies to Pay For New Governmental Program or Procedure

What Is a “Governmental Program or Procedure”?

- Requirements Regarding Traditional Governmental Service:
  - Schools, Police, Fire
- Requirements Not a Reimbursable Mandate If:
  - Not Focused On Government Programs
  - Not Unique to Government
  - Affects Private And Public Sectors Equally
  - Example: Minimum Wage
Reimbursable Mandates Usually Involve

- New Required Local Activity
- Pressure on Local Tax Revenues
  - Homeless Shelters
  - Care For Stray Animals
  - Visit Homes of Students
- Protecting Local Tax Revenues Part of Underlying Purpose of Proposition 4

Increased Costs Without Required New Activity or New Program... 

- Typically Not a Mandate
- Example: County General Assistance
  - Program Helps Poor
  - County Caseloads Could Increase If State Cuts Funds For Other Poverty Programs
  - Increased County Caseload Would Not Involve a New Program or New Activity
  - Probably Not a Reimbursable Mandate

State Requirements That Decrease Local Discretion?

- Not Reimbursable Mandate, Unless State Requires New Program or Higher Level of Service
- Example: Substitute One Class of Math for One Class of History
  - School Day Stays the Same
  - Facilities Stay the Same
- Proposition 4 Does Not Safeguard Local Discretion

Can a Change in Cost Sharing Be a Reimbursable Mandate?

- Yes, Under Limited Circumstances
- Proposition 1A (2004) Expanded Mandate Definition
- Definition Now Includes:
  - Some Actions By Legislature
  - That Shift Financial Responsibility
  - To Cities, Counties, or Special Districts
Proposition 1A (2004)

“(C) a mandated new program or higher level of service includes a transfer by the Legislature from the state to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the state previously had complete or partial financial responsibility.”

A Transfer of Financial Responsibility Could Be a Mandate, if . . .

- Shift Is By Legislature
  - Not Governor or State Agency
- To City, County, or Special District
  - Not Schools or Community Colleges
- Required Program
  - Something Local Agencies Must Implement
- Previous State Responsibility
  - Look For Pre-existing Statutes Assigning Responsibility

Confused?

Steps to Learning

- Broad Overview
- What Is Not a Reimbursable Mandate
- Explore Examples
- Rest of this Presentation:
  - Requirements Not Reimbursable Mandates
- Second LAO Presentation:
  - What’s a Mandate: Learning Through Examples
Exemptions—What Is Not a Mandate?

- Check Whether Proposal Meets Any Exemption In:
  - Constitution
  - Statutes/Case Law
- If Meets Any Exemption, Constitution Does Not Require Reimbursement
  - State May Elect to Provide Reimbursement

Three Constitutional Exemptions

- Before January 1, 1975
  - Need Not Provide Reimbursement for Requirements Enacted Before this Date
- State Laws Defining Crime or Changing Definition of Crime
  - Criminal Enforcement May Impose Costs, But Is Not a Reimbursable Mandate
- State Requirement That Local Agency Requested
  - If Ask For It, Not a Reimbursable Mandate

Four General Exemptions in Case Law And Statutes...

1. Voter-Approved Initiatives and Federal Requirements
2. Anything Local Agency Has a Choice Whether to Implement
3. Requirements Local Agency Could Pay For With Fees, Additional State Money, or Offsetting Savings
4. Requirements on Agencies Other than a City, County, Special District, School, or Community College District

Voter-Approved Initiatives and Federal Requirements

- Requirements Imposed By Voters or Federal Government, Not State
- Includes Laws to Implement Initiatives or Federal Requirements
  - But Not Laws that Go Beyond What Is Needed to Implement Initiative or Federal Requirement
Anything Local Agency Has a Choice Whether to Implement

- Permissive Activities Are Not Mandates
- Mandatory Requirements on Optional Programs Are Not Mandates
  - Example: Schools Receive Extra Funds If they Create Site Councils
  - Court Said Requirements Imposed On Optional Site Councils Are Not Mandates

Requirements Agency Could Pay for With Fees, Money Provided by State, or Offsetting Savings

- If No Pressure On Local Tax Revenues, No Requirement to Reimburse
- Local Preference Regarding Fees Not a Factor
- State Funding or Offsetting Savings
  - Funding Should Be Clearly Identified
  - Savings Should be Near Term and Identifiable

Requirements on Agencies Other Than a City, County, Special District, School, or Community College District

- Not Eligible: Joint Powers Authorities, Redevelopment Agencies, Councils of Governments, Charter Schools
- Because:
  - Agencies Voluntarily Created
  - Did Not Levy a Property Tax Before Proposition 13
  - Not Defined as Eligible Claimants In State Law

A Reimbursable Mandate is:

- A Requirement Freely Imposed By the State Upon a Local Agency
- That Requires Local Agencies to Pay For New Program or Higher Level of Service
A Reimbursable Mandate Is Not

- A State Requirement Enacted:
  - Before 1975
  - To Carry Out Federal Law or Voter-approved Measure
  - At the Request of Local Agencies
- A State Requirement That:
  - Defines a Crime
  - Is Voluntary or Imposed on a Program Local Agencies Chose to Create
  - Is Possible to Pay For Through Fees, Designated State Funds, or Offsetting Savings
  - Is Imposed Upon a Type of Agency that Never Levied a Property Tax

While List of Exemptions Is Long

- Many State Laws, Executive Orders, State Regulations Found to Be Mandates
- State Pays Hundreds of Millions of Dollars Annually For Mandates
- New Claims Filed Annually With Commission On State Mandates

Next Step

- Ready For Second Slide Presentation
- What’s a Mandate: Learning Through Examples