

April 30, 2010

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. The commission's fall 2009 semiannual report identifies six new mandates:

1. Local Recreational Areas: Background Screenings.
2. In-Home Supportive Services (IHSS) II.
3. California Fire Incident Reporting System.
4. Fifteen-Day Close of Voter Registration.
5. CalSTRS Creditable Compensation/Service Credit.
6. Reporting Improper Governmental Activities.

This report includes the analyses required pursuant to Chapter 1124 for the four noneducation mandates shown above (numbers 1-4). Our office provided analyses of the education mandates in a separate publication: *Education Mandates: Overhauling a Broken System* (February 2010).

LOCAL RECREATIONAL AREAS: BACKGROUND SCREENINGS

Background

Two state laws seek to safeguard youths attending local recreational programs from sexual offenders:

- Chapter 972, Statutes of 1993 (AB 1663, Napolitano) prohibits local agencies from placing sex offenders in (paid or volunteer) recreational program positions with responsibility over minors.
- Chapter 777, Statutes of 2001 (AB 351, La Suer) details steps local agencies must take to implement Chapter 972, including inquiring on job/volunteer forms as to an applicant's criminal history and submitting the applicant's fingerprints to the Department of Justice (DOJ).

The legislative histories of these measures suggest that the Legislature had different expectations regarding their fiscal effects. Specifically, Chapter 972's bill analyses indicated that local agencies could charge applicants fees, thereby fully offsetting all local agency screening costs. Bill analyses for Chapter 777, in contrast, indicate that the Legislature expected its provisions to be a state-reimbursable mandate.

Mandate Decision. In December 2005, the Commission on State Mandates (CSM) determined that the costs of complying with three elements of Chapter 777 constitute a state-reimbursable mandate:

- Revising and printing position applications (one-time costs only).
- Transmitting fingerprints of volunteers and employees to DOJ.
- Paying DOJ's fingerprint processing fee for prospective employees. (The DOJ does not charge fees to screen prospective volunteers.)

In May 2009, based on claims filed by 142 local agencies between 2001-02 and 2007-08, the commission estimated the state's costs for this mandate to be \$2.99 million through 2007-08. The commission did not estimate the mandate's ongoing costs, but our analysis indicates that they could exceed \$1 million annually.

Governor's Budget

The administration proposes to suspend this mandate in 2010-11. Suspending the mandate would make local compliance with the requirements of Chapter 777 optional in 2010-11. It also would allow the state to defer to a future date its obligation to pay the \$2.99 million owed to local agencies. (Under the State Constitution, the state must fully fund a mandate in the budget, unless the Legislature suspends or repeals it. This provision has been interpreted to mean that the Legislature may *defer* payment of prior-year costs for suspended or repealed mandates.)

In our view, it is reasonable to screen prospective recreational program employees and volunteers who would have responsibility over minors. In this case, given that the prospective employees and volunteers would be working in local programs and providing services to local residents, we think the screening costs are more appropriately borne by the local agencies or the applicants—not the state.

The Governor's budget proposal would allow local governments to forego screening. Instead of suspending Chapter 777's requirements, we recommend the Legislature amend its provisions to specify that local agencies may offset their screening costs by charging applicants fees to transmit their fingerprints to DOJ and, in the case of prospective employees, paying DOJ's fingerprint processing fees. (We note that some local agencies already charge fees to prospective employees, pursuant to Penal Code Section 11105 [e].)

Because we do not recommend suspending or repealing the requirements of Chapter 777, our proposal would not allow the Legislature to defer payment of the mandate's prior-year costs (\$2.99 million). Accordingly, we recommend the Legislature augment Item 8885 of the *2010-11 Budget Bill* by \$2.99 million. In terms of future state costs for Chapter 777, we note that authorizing local agencies to charge fees does not automatically eliminate the Chapter 777 mandate. Rather, the Legislature would need to take two additional steps to eliminate the mandate's future state costs: (1) enact a mandate retermination process (discussed below) and (2) request the Department of Finance (DOF) to request reconsideration of this mandate. Accordingly, we recommend the Legislature take these steps this year—either in policy legislation or in a budget trailer bill.

Mandate Reconsideration Process. In 2009, an Appellate Court ruled that the Legislature's prior practice of referring mandates back to the commission for reconsideration was unconstitutional. Recognizing that the state needed a working quasi-adjudicatory

process to review mandate decisions in light of changing facts, circumstances, and legal thinking, the Legislature directed the commission to propose a new mandate reconsideration process, responsive to the court's concerns. The commission drafted a proposal and is currently reviewing it with interested parties. If the Legislature enacts a mandate reconsideration process, we recommend that the Legislature direct DOF to request the commission reconsider this mandate. We would assume that the expanded fee authority would offset all local costs and prospectively eliminate Chapter 777 as a state-reimbursable mandate.

IN-HOME SUPPORTIVE SERVICES II

Background

In 1999, the Legislature expanded certain county responsibilities regarding IHSS program oversight and employment policies. Specifically, Chapter 90, Statutes of 1999 (AB 1682, Honda) requires counties to appoint IHSS advisory committees to provide recommendations to their boards of supervisors—and for the boards to solicit these recommendations. Chapter 445, Statutes of 2000 (SB 288, Peace) added further requirements related to the membership composition of these advisory committees. In addition, Chapter 90 requires counties to establish an employer of record for purposes of collective bargaining for IHSS providers. The employer of record can be a public authority, non-profit consortium, or the county itself. Lastly, Chapter 90 requires counties to offer IHSS recipients the option of hiring an individual provider in addition to the counties' established mode of service delivery. Counties can decide to deliver IHSS through an individual provider, agency, or county worker mode. (Currently, in all counties, the majority of recipients receive services through the individual provider mode.)

Mandate Decision. In 2008, CSM determined that county costs to comply with two elements of Chapter 90 were a reimbursable mandate:

- *Advisory Committee.* County costs to establish and maintain the advisory committees are reimbursable to the extent that the costs exceed the resources provided by the state for this purpose. (The state annually provides funding of about \$53,000 to each county for this purpose for a total of about \$3 million.)
- *Employer of Record.* County costs to establish an employer of record are reimbursable. Under the commission's decision, these county costs are almost entirely one-time in nature. There is a very small chance, however, that a county could claim additional reimbursements in the future. This is because counties with more than 500 recipients must, upon the request of a recipient, offer recipients the option of employing an individual provider to provide IHSS in addition to their primary method of delivering IHSS. This could occur if a county were to begin to offer IHSS services primarily through an outside agency or county worker mode, and recipients in those counties requested a county to establish an individual provider for the delivery of their services.

In August 2008, based on claims filed by five local agencies between 1999 and 2008, the commission estimated the state's costs for that period for this mandate to be \$475,000.

Governor's Budget and Finance Letter

The Governor's budget proposes to suspend this mandate in 2010-11. Suspending the mandate would make local compliance with the advisory committee and employer of record requirements of Chapter 90 and Chapter 445 optional in 2010-11. It also would allow the state to defer to a future date its obligation to pay the \$475,000 owed to local agencies. (Under the Constitution, the state must fully fund a mandate in the budget, unless the Legislature suspends or repeals it. This provision has been interpreted to mean that the Legislature may *defer* payment of prior-year costs for suspended or repealed mandates.)

In April, the administration issued a Finance Letter regarding this mandate. Instead of suspending the mandate, the Finance Letter would augment the budget bill by \$475,000 General Fund to pay its prior-year costs. The Finance Letter also proposes to eliminate the requirement that counties have advisory committees. Thus, counties could maintain these committees or fold the activities of the advisory committees into the regular activities of the county Board of Supervisors. (In either of these cases, counties would be responsible for the costs.)

Recommendation

We do not find a compelling rationale that the state should mandate the forum where counties discuss IHSS policies. Whether a county establishes a committee to advise their board of supervisors should be based on local priorities and decisions. Thus, we recommend the Legislature approve the portions of the proposed trailer bill language which make these committees optional. Such an action also would eliminate future state costs for this portion of the mandate.

Similarly, we recommend that the Legislature adopt the administration's spring letter proposal to fund Chapter 90's prior-year mandated costs (\$475,000) rather than suspending or repealing the mandate. Funding these costs allows the state to continue mandating two key elements of IHSS program design: (1) county identification of the employer of record and (2) the opportunity for recipients to request that services be provided by specific individuals, rather than county or contracting agency employees. It is unlikely that the state would incur any additional *future* costs for these requirements.

Because these advisory committees would be optional under our recommendation, the Legislature could eliminate all state funding for the committees. The associated savings could be redirected to fund the mandated costs and other legislative priorities. Alternatively, if the Legislature decides to give counties a year to ramp down their advisory committee activities, a portion of the funding could be redirected to cover the costs of the mandate. (Specifically reduce Item 5180-111-0001 by \$475,000.) After the cost of the mandate is paid, about \$1.2 million General Fund (\$2.2 million total funds) would remain available for allocation to counties that continue to operate advisory committees in the budget year.

CALIFORNIA FIRE INCIDENT REPORTING SYSTEM

Background

Chapter 758, Statutes of 1972 (AB 2066, Chappie) requires all fire protection agencies in California to report information and data to the State Fire Marshal (SFM) relating to each fire in their jurisdiction. For two years (from July 1, 1990 to June 30, 1992), the SFM required fire protection agencies to submit fire data electronically. The SFM then eliminated the electronic filing requirement.

Mandate Decision. In 2006, CSM determined that the additional work in creating the electronic fire data between July 1, 1990 and June 30, 1992, constituted a reimbursable mandate. Four cities and one fire protection district filed for reimbursement for a total of \$220,000.

Governor's Budget

The administration proposes to suspend this measure in 2010-11 and defer payment of the \$220,000 to an unspecified future date.

Recommendation

Given that the SFM eliminated the electronic filing requirement eight years ago, there is no need for the Legislature to suspend it. Accordingly, we recommend that the Legislature modify the budget bill to delete this former requirement from the list of suspended mandates. In terms of the administration's proposal to defer payment of the mandate's prior-year costs, given the state's fiscal situation, we concur. In doing so, the \$220,000 would be added to the state's existing backlog of unpaid noneducation mandates, which currently totals over \$1 billion.

FIFTEEN-DAY CLOSE OF VOTER REGISTRATION

Background

Until 2001, California residents could register to vote or change their registration until the 29th day before an election. After that date, voter registration closed until the conclusion of the upcoming election. Chapter 899, Statutes 2000 (AB 1094, Hertzberg) allows new registrations or changes to voter registrations through the 15th day prior to an election.

Mandate Decision. In reaching a decision as to whether a law or regulation constitutes a state-reimbursable mandate, CSM looks at whether it requires local governments to implement new programs or activities. In its review of Chapter 899, the commission recognized that the shorter timeframe could increase county election costs, but the commission did not identify major new programs or activities being imposed on local government. Instead, the commission determined that only two, one-time administrative elements of Chapter 899 (related to voter notices) were a state-reimbursable mandate. Only one county filed for reimbursement for the Chapter 899 mandate. Upon review, the claim (\$3,493) was disallowed because it was for costs not permitted under the commis-

sion's decision. Accordingly, the commission estimated the statewide cost for this mandate to be \$0. (It is possible, however, that counties may claim additional costs related to Chapter 899 implementation under other state election mandates.)

Governor's Budget

The administration includes this mandate in its list of funded mandates. As a result, the requirements of Chapter 899 would remain operational (not be suspended) in 2010-11.

Recommendation

Given the Legislature's interest in having statewide uniformity in administration of election law, we recommend approval of the administration's proposal.



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.