State Reimbursement of Mandated Costs

A Review of Statutes Funded in 1987

Office of the Legislative Analyst

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Preface

Preface

Chapter 1256, Statutes of 1980, requires the Legislative Analyst to report each year on any previously unfunded state mandates for which the Legislature appropriated funds in a claims bill during the prior fiscal year.

This report reviews those mandates initially funded by Chapter 1270, Statutes of 1987. The specific mandates are listed below.

Mandate Authority	*Description*
1. Ch 1131/75	Mineral Resources Policies
2. Ch 743/78	Judicial Arbitration
3. Ch 1018/79	Superior Court Judgeship
4. Ch 48/80	Marriage Mediator Programs
5. Ch 1568/82	Firefighters' Cancer Presumption
6. Ch 1603/82 and Ch 1166/83	Democratic Presidential Delegates
7. Ch 1051/83	Mobilehome Property Tax Postponement
8. Title 40, Code of Federal Regulations (CFR)	Friable Asbestos

Executive Summary

Executive Summary

This section summarizes the major findings and recommendations resulting from our review of the eight mandates which are the subject of this report.

Chapter II: Mineral Resource Policies

1. Chapter 1131, Statutes of 1975, established the Surface Mining and Reclamation Act (SMARA). This act imposed a mandate by requiring affected local entities to prepare mineral resource management policies and include them in their general plans. ("General plans" provide a comprehensive statement of a city or county's plans for future development.)

2. The mandate appears to serve a statewide interest. The state has an interest in ensuring a known supply of mineral resources. Toward that end, SMARA requires local governments to provide mineral resource information in their general plans.

3. We have no analytical basis, at this time, for comparing the benefits of the mandate with the costs of compliance. However, the program does further the goal of responsible local management of mineral resources.

4. ***We recommend that the Legislature continue to fund this mandate.*** Chapter 1131, Statutes of 1975, appears to be consistent with legislative intent and the costs of the mandate appear to be reasonable.

Chapter III: Juducial Arbitration

1. Chapter 743, Statutes of 1978, resulted in a mandate by requiring superior, municipal, and justice courts to submit specified civil cases to arbitration.

2. The mandate serves primarily a local interest that can be met through local action. To the extent that benefits result from the program, they accrue largely to litigants or the courts themselves in the form of improved calendar management. For these reasons, some municipal courts and superior courts in less-populated counties voluntarily adopted arbitration programs prior to 1985 and financed the full costs of those programs.

3. The benefits produced by the mandate are not worth the cost to the state. The state funded the arbitration program as an experiment to determine whether the program could lower state and local court costs by reducing the number of cases requiring trials. Using Judicial Council data, we determined that the program did *not* have an observable effect on the rate at which cases were settled prior to trial.

4. The available evidence indicates that the program has not achieved the Legislature's goal. The costs of the trial courts borne by the state have consisted largely of judicially related expenses (for example, judges' salaries). Therefore, only a program that reduced the need for judges by reducing the number of cases going to trial would produce savings to the state. Counties that elect to receive state funding under the Trial Court Funding Program, effective July 1, 1988, thereby waive all claims for reimbursement for mandated programs related to the trial courts, including the judicial arbitration program. These counties will be able to fund the program through their judicial block grants.

5. ***We recommend that the judicial arbitration program be made optional beginning in 1988-89.*** Because it has not been demonstrated that the judicial arbitration program is cost-beneficial on a statewide basis, we recommend that the program be made optional beginning in 1988-89. If a board of supervisors determines that the program is not beneficial to the county, the board could discontinue the program. If, on the other hand, the board concludes that the program is cost-effective or otherwise beneficial, it could continue the program.

Chapter IV: Superior Court Judgeship

1. Based on an Attorney General's opinion, we conclude that authorization of an additional superior court judgeship does not increase the level of service and, hence, does not constitute a mandate requiring state reimbursement.

2. ***Although our analysis indicates that the addition of the 27th judgeship in San Francisco does not constitute a state-reimbursable mandate, we recommend that the Legislature continue to fund the judgeship's costs,*** because (a) the San Francisco Superior Court ruled that the addition of this judgeship did result in a higher level of service and (b) the state did not appeal the decision. If San Francisco decides to participate in the Trial Court Funding Program, effective July 1, 1988, it must waive reimbursement for this mandate. The judgeship would then be funded through a judicial block grant.

3. ***We further recommend that the Legislature, as a condition for authorizing future judgeships, require that the county board of supervisors pass a resolution requesting the additional judgeship(s).***

Chapter V: Marriage Mediator Program

1. Chapter 48, Statutes of 1980, resulted in a mandate by requiring superior courts to provide a mediator for disputing parties in specified child custody and/or visitation rights hearings.

2. The mandate appears to serve a statewide interest. The state has an interest in ensuring that cases are resolved in a timely manner. To the extent that mediation promotes agreements, disputes are diverted from the judicial

system. This helps to reduce the number of "backlogged" cases to be adjudicated, thus expediting access to the judicial system.

3. The benefits resulting from this mandate are not measured in terms of lower court costs, although the cost of mediation services for child custody, and visitation disputes generally, should be significantly *less* than the costs associated with a traditional court hearing involving the same issues. The use of mediation services reduces the need for additional judgeships and reduces the number of "backlogged" cases. However, continued backlogs mean that the use of mediation services does not produce cost savings for the courts. The court resources "freed-up" by the use of mediation services are redirected to other backlogged cases.

4. The cost of this measure exceeds the Legislature's expectations. The legislation which established this program stated that the program would be self-financed through increases in various filing fees and in the marriage license fee. Despite this provision, the measure has resulted in increased costs of approximately $4 million annually, due to both the high cost of employing mediators and the large number of "In Forma Pauperis" filings (filing fees which are waived due to income limitations).

5. ***We recommend that the Legislature continue to fund this mandate.*** Given that the program provides a cost-effective means of resolving disputes, thus reducing backlogs and promoting the goal of timely access of citizens to the judicial system, we recommend its continuation. Counties which elect to receive state funding under the Trial Court Funding Program, effective July 1, 1988, will waive their claims for reimbursement of this mandate. These counties will be able to fund the program through their judicial block grants.

Chapter VI: Firefighters' Cancer Presumption

1. Chapter 1568, Statutes of 1982, imposed a mandate by requiring local agencies to pay workers' compensation benefits to firefighters whose cancer may not have otherwise been found to be employment-related.

2. The mandate could serve a statewide interest. The cancer presumption for firefighters is *conceptually* reasonable, as these employees are exposed to cancer-causing agents in the course of their work. *Empirically*, however, it has not been documented that there is a strong or direct linkage between firefighting and cancer.

3. We have no analytical basis for justifying the current 50 percent state reimbursement ratio adopted by the Commission on State Mandates for these claims. Our review indicates that there is currently no reliable method to determine how many firefighter cancer claims have been or will be approved solely as a result of this mandate. Consequently, there is no analytical basis to justify a 50-50 cost-sharing ratio or any other specific reimbursement ratio for firefighters' cancer claims.

4. We cannot measure the benefits of this mandate. The benefit of the cancer presumption accrues to the local agencies and individuals affected in the form of reduced administrative costs and immediate benefit payments. However, the use of presumptions is appropriate only in cases where there is a strong link between the illness/injury and employment. Given the fact that this linkage has not been empirically demonstrated, we cannot measure the benefits of the presumption.

5. The costs of this measure could exceed the Legislature's expectations. Because only three

fire districts responded to the Commission on State Mandates' cost survey, the statewide cost estimate for this mandate may be based on an inaccurate sample. If the sample is not accurate, there is the potential for much *greater* General Fund costs.

6. ***We recommend that the Department of Industrial Relations conduct a study on the incidence of cancer among firefighters.*** In order to evaluate the appropriateness of the cancer presumption, the Legislature should have empirical evidence demonstrating a link between firefighting and cancer. Accordingly, we recommend that the Legislature adopt supplemental report language in the 1988 Budget Bill directing the Department of Industrial Relations to prepare a study which focuses on the extent to which the incidence of cancer among firefighters varies from that of the general population.

Chapter VII: Democratic Presidential Delegates

1. Chapter 1603, Statutes of 1982, and Chapter 1166, Statutes of 1983, imposed a mandate by requiring counties to print the names of presidential convention delegates directly on the presidential primary election ballot.

2. For the 1988 presidential primaries, the Democratic National Committee has decided to revert to the old procedure of *not* printing the names of delegates on the ballot. In response to this decision, the Legislature enacted Ch 8/88, which repeals Ch 1603/82 and Ch 1166/83.

3. The statewide annual cost imposed by this mandate appears to be reasonable and consistent with legislative intent. Most of the costs imposed by the mandate occurred during the implementation of the new process in the 1983-84 fiscal year. The amounts provided for subsequent years, which consisted of reimbursement for election planning and preparation costs, were relatively small on a statewide basis.

4. Because the mandate has been repealed, the state will not be liable for future reimbursement.

Chapter VIII Mobilehome Property Tax Postponement

1. Chapter 1051, Statutes of 1983, imposes a mandate because it requires counties to process certificates of eligibility, and file them with the State Controller's Office (SCO), notify the SCO of changes in ownership, and conduct various other activities related to the Mobilehome Property Tax Postponement Program.

2. The mandated costs of the Mobilehome Property Tax Postponement Program could be funded by charging user fees to program participants. In our view, there is no state interest in funding the mandated costs of this program. The program does not provide low-income assistance per se, but instead allows elderly persons greater flexibility in paying taxes. Furthermore, user fees would be minor relative to the benefits under the program, and thus should not create a significant barrier to program participation.

3. ***We recommend the enactment of legislation to authorize an administrative cost recovery fee for this program.***

Chapter IX: Friable Asbestos

1. Title 40, Part 763, Code of Federal Regulations imposed a *federal* mandate by requiring school districts to inspect, on a one-time basis, school facilities for the presence of asbestos and to notify parents and employers of their findings. Although the state has no legal obligation to reimburse the costs of a federal mandate, Education Code Section 42243.6 *permits* it to do so in cases affecting school districts.

2. This federal mandate appears to serve a statewide interest. The state has an interest in promoting the health and welfare of public school students and employees. Exposure to friable asbestos has been linked with a number of serious illnesses, including cancer, which primarily affect the lungs and digestive system. To the extent that this inspection and notification program prompted school districts to abate hazardous asbestos materials, the federal mandate may also be consistent with state objectives.

3. The one-time statewide cost to reimburse districts for complying with this federal mandate appears to be reasonable. The Department of Finance estimated this cost to be $1.9 million, which was the amount the Legislature approved in Ch 1270/87. The Governor, however, reduced that appropriation to $950,000, which approximates the funding provisions of the State Asbestos Abatement program. Under this program, districts are eligible to receive only matching funds, generally on a dollar-for-dollar basis.

4. ***Because Title 40, Part 763, CFR, resulted in one-time only costs, we make no recommendation regarding the future funding of this federal mandate. However, should the Legislature wish to provide funding for this type of program in the future pursuant to new federal requirements, we recommend that it do so by amending provisions of the existing State Asbestos Abatement program to specify (1) the types of inspection and related activities for which reimbursement will be provided from the Asbestos Abatement Fund and (2) an appropriate local matching requirement.*** ❖

Chapter I

Chapter I
Introduction

The Mandate Reimbursement Process

Article XIII B, Section 6, of the State Constitution requires the state to reimburse local governments and school districts for all costs mandated by the state. Such costs are defined as those arising from legislation or executive orders which require the provision of a *new program* or an *increased level of service* in an existing program. The Constitution provides, however, that the state *need not* reimburse local governments for mandates: (1) specifically requested by the local agency affected, (2) defining a new crime or changing an existing definition of a crime, or (3) enacted prior to January 1, 1975 or executive orders or regulations affecting legislation enacted prior to January 1, 1975.

Local agencies may obtain reimbursement for the costs of a state-mandated local program in one of two ways. First, the legislation initially imposing the state-mandated local program may contain an appropriation to provide the reimbursement, and local agencies may file claims against these funds. Second, if the legislation does not contain an appropriation, or if the costs are imposed by executive order, the local agency may file a claim with the Commission on State Mandates. The first claim filed against a particular statute or executive order initiates a fact-finding process which culminates in a decision by the commission as to the merits of the claim. If the commission determines that a particular statute or executive order contains a reimbursable state mandate, it notifies the Legislature of that finding and requests an appropriation sufficient to reimburse all potential claimants for the costs they have incurred since the time the mandate became operative.

Appropriations necessary to reimburse the claims recommended for payment by the commission are provided in a local government claims bill. Following enactment of such a bill, the State Controller notifies local agencies that funds for reimbursement are available and provides them with guidelines for preparing reimbursement claims. Local agencies then file their claims, based on the costs they actually incurred, and are paid from the appropriation in the local government claims bill. In subsequent years, an amount is included in the state budget act to provide for reimbursement of the *ongoing* costs of each statute or executive order.

Chapter 1534, Statutes of 1985 (AB 1791—Cortese), provides an alternative to this reimbursement process for ongoing mandates. Under the terms of Chapter 1534, reimbursement for certain mandates is provided on a

block grant basis, with the amount of the grant equal to the average amount of reimbursement received during a three-year base period for the mandates covered by the process. This amount is adjusted for inflation and any one-time costs, and automatically subvened to local governments.

Review of Unfunded Mandates

Chapter 1256, Statutes of 1980, requires the Legislative Analyst to prepare annually a report containing an evaluation of any previously unfunded mandated programs for which the Legislature appropriated reimbursement funds in a claims bill during the preceding fiscal year. The measure also requires the Analyst to make recommendations as to whether each of these mandates should be modified, repealed or made permissive.

In enacting this provision, the Legislature recognized that state-mandated programs, like other state programs funded in the budget, need to be reviewed periodically in order to determine whether they are achieving their intended goals in the most cost-effective manner.

The criteria we used in evaluating the mandates reviewed in the report are as follows:

- Has the statute resulted in a "true" mandate by requiring local governments to establish a new program or provide an increased level of service?
- Does the mandate serve a statewide interest, as opposed to a primarily local interest that can be served through local action?
- Has compliance with the mandate achieved results consistent with the Legislature's intent and expectations?
- Are the benefits produced by the mandate worth the cost?
- Can the goal of the mandate be achieved through less costly alternatives? ❖

Chapter II

Chapter II
Mineral Resources Policies

Description

Chapter 1131, Statutes of 1975 — the Surface Mining and Reclamation Act (SMARA) — requires cities and counties to establish a mineral resource management policy within their general plans, if the State Mining and Geology Board (1) designates an area within their jurisdiction to be of regional or statewide significance or (2) provides classification information on minerals within their region. Prior to the passage of this statute, local entities were required only to have a conservation element in their general plans.

Commission on State Mandates Action

The initial reimbursement claims were for costs incurred in 1983-84. In May 1985, the Commission on State Mandates (COSM) determined that Chapter 1131 imposed mandated costs on local entities by requiring them to prepare mineral resource management policies. In February 1986, the COSM developed parameters and guidelines allowing cities and counties to claim reimbursement, and adopted a statewide cost estimate of $685,000 to reimburse local entities for the costs incurred in preparing mineral management policies after July 1, 1983.

Funding History

Chapter 1270, Statutes of 1987, provided $685,000 to reimburse local entities for their costs of complying with Chapter 1131 from 1983-84 through 1987-88. As shown in Table 1, this amount is based on local reported costs of $487,058 through 1986-87, plus an estimated cost of about $200,000 for 1987-88.

Table 1
Funding for Mineral Resource Management Policies
1983-84 through 1987-88

Funding Authority	*Mandate Authority*	*Year for Which Funding Was Provided*				
		1983-84	*1984-85*	*1985-86*	*1986-87*	*1987-88*
Ch 1270/87	Ch 1131/75	$76,637	$43,388	$49,917	$317,116	$200,000

Our office recommended approval of the $685,000 funding level requested by the COSM for the period from July 1, 1983 through the 1987-88 fiscal year.

Findings and Conclusions

1. ***Chapter 1131, Statutes of 1975, imposed a mandate by requiring affected local entities to prepare mineral resource management policies and include them in their general plans.***

2. ***The mandate appears to serve a statewide interest.*** The state has an interest in ensuring a supply of mineral resources. Toward that end, SMARA requires local governments to provide mineral resource information in their general plans.

3. ***We have no analytical basis, at this time, for comparing the benefits of the mandate with the costs of compliance.*** At present, neither data on the actual costs of preparing mineral resource policies nor data on the extent of mineral deposits within local jurisdictions are available. Therefore, we are unable to compare the costs of preparing the mineral resource policies against the value of having information on the mineral resources.

Recommendation

We recommend that the Legislature continue to fund this mandate. Chapter 1131, Statutes of 1975, appears to be consistent with legislative intent and the costs of the mandate appear to be reasonable. ❖

Chapter III

Chapter III
Judicial Arbitration

Description

Chapter 743, Statutes of 1978 (SB 1362, Smith, as modified by subsequent statutes), established an arbitration program in order to provide a cost-effective and expedited method of resolving small civil suits. The program requires certain litigants to present their case to an arbitrator (generally an attorney) in an attempt to resolve it without proceeding to trial.

Specifically, the program requires superior courts with 10 or more judges to submit to arbitration all civil cases in which the amount in question is $25,000 ($50,000 as of January 1, 1988) or less for each plaintiff. In addition, it requires such courts to submit any case to arbitration upon agreement of the parties to the case. The chapter also requires the Judicial Council to provide a uniform system of arbitration for any case upon agreement of the parties or upon the request of the plaintiff, as specified, in all courts not participating under the above provisions.

Funding for a *portion* of the arbitration was included in Chapter 743 and has been provided through subsequent Budget Act appropriations. County expenditures financed in this manner include costs for mandatory arbitration programs in superior courts with 10 or more judges, and arbitration conducted in those courts upon agreement of the parties. We estimate that the state incurs annual General Fund costs of about $4 million to reimburse counties for these costs.

Funding for a *second and third portion* of the arbitration program was initially provided in Ch 1270/87 (SB 1310, Presley). The second portion consists of arbitration proceedings in superior courts with fewer than 10 judges upon agreement of the parties or at the request of the plaintiff when the amount contested is less than the program ceiling. The third portion consists of arbitration programs in municipal and justice courts upon agreement of the parties or at the request of the plaintiff. We estimate that the state incurs annual General Fund cost of about $1.4 million to reimburse counties for these portions of the judicial arbitration program.

Chapter 134, Statutes of 1987 (AB 439, Vasconcellos — the 1987 Trailer Bill), revised the judicial arbitration program to make it optional for counties, thereby eliminating the mandate. However, subsequent legislation, Ch 238/87 (AB 846, Stirling), extended the mandate through 1987 and Ch 1270/87 provides funding for these costs. Judicial arbitration was reinstated as a mandatory program, beginning July 1, 1988, by Ch 1211/87 (SB 709,

Lockyer). Thus, the program will not be mandatory from January 1 to June 30, 1988, and the costs counties incur for judicial arbitration proceedings during that period *will not be state-reimbursable.*

Impact of the Trial Court Funding Program. The Trial Court Funding Program established by Ch 1607/85 (AB 19, Robinson), and Ch 1211/87 (SB 709, Lockyer), becomes operative July 1, 1988. According to that legislation, counties that elect to receive state funding under the Trial Court Funding Program thereby waive all claims for reimbursement for mandated local programs related to the trial courts, including the judicial arbitration program.

Commission on State Mandates Action

The County of San Bernardino filed a test claim with the Commission on State Mandates (COSM) on June 17, 1985 alleging that the state should reimburse additional costs mandated under Chapter 743. These costs represented both the second and third portions of the arbitration program: procedures in all superior courts with fewer than 10 judges upon agreement of the parties or at the request of the plaintiff, and in municipal and justice courts upon agreement of the parties or at the request of the plaintiff. The COSM determined on September 26, 1985 that a reimbursable mandate existed for only the second portion of the arbitration program. The COSM rejected the claim concerning judicial arbitration programs in the municipal and justice courts.

The County of San Bernardino filed a second test claim with the COSM on November 17, 1985, again alleging that the state should also reimburse mandated costs for the third portion of the arbitration program: proceedings in municipal and justice courts upon agreement of the parties or at the request of the plaintiff. The COSM determined on March 27, 1986 that this additional mandate existed and adopted parameters and guidelines on April 24, 1986 for reimbursement of costs identified by both of San Bernardino's successful test claims.

Funding History

From 1978-79 through 1986-87, funding for the judicial arbitration program was provided in the annual Budget Act. In 1987-88, funding was provided in the claims bill. Table 2 illustrates the funding history for the judicial arbitration program.

Table 2
Funding for Judicial Arbitration
1978-79 through 1987-88

Year for Which Funding Was Provided	*Amount*	*Funding Authority*	*Mandate Authority*
1978-79	$ 128,290	Ch 743/78	Ch 743/78
1979-80	$2,500,000	Ch 743/78	Ch 743/78
1980-81	$2,498,000	Ch 743/78	Ch 743/78
1981-82	$2,500,000	Ch 743/78	Ch 743/78
1982-83	$3,235,000	Ch 743/78	Ch 743/78
1983-84	$2,118,000	Ch 743/78	Ch 743/78
1984-85	$6,243,000	Ch 743/78	Ch 743/78
1985-86	$3,765,000	Ch 743/78	Ch 743/78
1986-87	$4,000,000	Ch 743/78	Ch 743/78
1987-88	$6,273,000	Ch 1270/87	Ch 743/78

Findings and Conclusions

1. ***Chapter 743, Statutes of 1978, resulted in a mandate by requiring superior, municipal, and justice courts to submit to arbitration specified civil cases.*** Under prior law, (Ch 1006/75 - SB 983, Moscone), the Judicial Council provided a voluntary system of arbitration in superior courts. Until 1985, the mandate created by Chapter 743 was interpreted to apply only to arbitration required in superior courts with 10 or more judges and arbitration required in those courts upon agreement of the parties. Arbitration in the remaining superior courts and in municipal and justice courts was provided under local rule. In 1985 and 1986, the COSM expanded the parameters and guidelines to include arbitration in the smaller superior and lower courts.

2. ***The mandate serves a primarily local interest that can be served through local action.*** To the extent that benefits result from the program, they accrue largely to litigants or the courts themselves in the form of improved calendar management. For these reasons, some municipal courts and superior courts in less-populated counties voluntarily adopted arbitration programs prior to 1985 and financed the full costs of those programs.

3. ***The benefits produced by the mandate are not worth the cost to the state.*** The state funded the arbitration program as an experiment to determine whether the arbitration program could reduce state and local court costs by reducing the number of cases requiring trials. Using Judicial Council data, we determined that the program did *not* have an observable effect on the rate at which cases were settled prior to trial. The Department of Finance performed an extensive review of court data and determined that the arbitration program had no significant impact on the settlement rate between all participating and nonparticipating courts or among participating courts before and after commencing the program.

4. ***Compliance with the mandate has not achieved results consistent with the Legislature's intent.*** As described above, the available evidence indicates that the program has not achieved the Legislature's goal. The cost of the trial courts borne by the state has consisted largely of judicially related expenses (for example, judges' salaries). Therefore, only a program that reduced the need for judges by reducing the number of cases going to trial would produce savings to the state. Counties that elect to receive estate funding under the Trial Court Funding Program, effective July 1, 1988, thereby waive all claims for reimbursement for mandated programs related to the trial courts, including the judicial arbitration program. These counties will be able to fund the program through their judicial block grants.

5. ***We recommend that the judicial arbitration program be made optional, beginning in 1988-89.*** Because it has not been demonstrated that the judicial arbitration program is cost-beneficial on a statewide basis, we recommend that the program be made optional, beginning in 1988-89. If a board of supervisors determines that the program is not beneficial to the county, the board could discontinue the program. If, on the other hand, the board concludes that the program is cost-effective or otherwise beneficial, it could continue the program. ❖

Chapter IV

Chapter IV
Superior Court Judgeship

Description

Chapter 1018, Statutes of 1979, added a number of municipal and superior court judgeships in various counties, including a 27th superior court judgeship in San Francisco. The legislation appropriated approximately $100,000 for costs associated with the San Francisco judgeship, including the state's share of salary and retirement costs and a block grant for other related costs.

Commission on State Mandates Action

In 1980, San Francisco filed a claim with the Board of Control (BOC) contending that Chapter 1018 mandated an increased level of service and did not adequately fund the costs. The BOC denied the claim on the grounds that the Legislature had already provided funding for the additional judgeship. Subsequently, a taxpayer suit *(Kopp v. State of California)* was filed in San Francisco Superior Court seeking reimbursement for the costs of the judgeship. The court ruled that the addition of the 27th judgeship resulted in a higher level of service, but also determined that San Francisco had not yet incurred costs above the level of state funding provided.

In September 1984, San Francisco filed a second claim with the BOC alleging that its costs now exceeded state grants. The BOC sent the claim to an administrative law judge who found that the addition of the 27th judge resulted in a higher level of service and therefore was reimbursable as a state-mandated local program. The Commission on State Mandates adopted the decision of the administrative law judge on April 24, 1986 and adopted guidelines for reimbursement in August 1986. Under these guidelines, reimbursement is provided for county costs associated with the judgeship including the judge, the court reporter, the court clerk, and other related operating expenses, such as the rental of a court room. These costs must be offset by the amount of other state assistance provided for the judgeship.

Funding History

The state routinely pays a fixed share of the costs of salary and benefits associated with this and other judgeships through appropriations in the annual Budget Act. Chapter 1270, Statutes of 1987 (SB 1310), provided $299,000 to the City and County of San Francisco for *additional* costs incurred under Chapter 1018 from 1979-80 through 1987-88, as shown in Table 3.

Table 3
Funding for Superior Court Judgeship
1979-80 through 1987-88

Fiscal Year	*Costs*	*Block Grant Received*	*Net Claim*
1979-80	—	$60,000	$(60,000)
1980-81	$53,200	60,000	(6,800)
1981-82	94,641	60,000	34,641
1982-83	104,239	60,000	44,239
1983-84	104,958	60,000	44,958
1984-85	110,862	60,000	50,862
1985-86	117,435	60,000	57,435
1986-87	123,307	60,000	63,307
1987-88	129,472	60,000	69,472
Total	$838,114	$540,000	$298,114

Findings and Conclusions

Based on an Attorney General's opinion, we conclude that authorization of an additional superior court judgeship does not result in an increased level of service and, hence, does not constitute a mandate requiring state reimbursement. In an opinion dated August 28, 1980 (Opinion Number 80-509), the Attorney General states that the California Constitution and state law require state reimbursement for local costs resulting from state-mandated new services or *increases* in existing levels of service. The opinion further states that an increase in the number of *municipal* court judges does not impose a new duty on counties or increase the level of services they must provide but, instead, merely maintains existing constitutional standards of justice. According to the Attorney General, the term "level of service" in this instance relates to these constitutional standards, rather than to the number of personnel.

In our judgment, the same reasoning would apply to the addition of the 27th superior court judgeship in San Francisco.

Recommendation

Although our analysis indicates that the addition of the 27th judgeship in San Francisco does not constitute a state-reimbursable mandate, we recommend that the Legislature continue to fund the judgeship's costs, because (1) the San Francisco Superior Court

ruled that the addition of this judgeship did result in a higher level of service and (2) the state did not appeal the decision. If San Francisco decides to participate in the Trial Court Funding Program, effective July 1, 1988, it must waive reimbursement for this mandate. The judgeship would then be funded through a judicial block grant.

We further recommend that the Legislature, as a condition for authorizing future judgeships, require that the county board of supervisors pass a resolution requesting the additional judgeship(s). ❖

Chapter V

Chapter V

Marriage Mediator Programs

Description

Chapter 48, Statutes of 1980, requires superior courts to provide a mediator to disputing parties in specified child custody and/or visitation rights hearings. The legislation also established minimum qualifications for these mediators and created a financing mechanism for the program. Specifically, the law authorizes explicit increases in various filing and marriage license fees for support of the family conciliation court and the specified mediation services. The measure disclaimed state liability to reimburse local costs on the basis that the program would be self-financing through the collection of fees.

Commission on State Mandates Action

Mendocino County filed a test claim with the Commission on State Mandates (COSM) on October 18, 1985 alleging mandated costs under Chapter 48. On January 23, 1986 the COSM determined that Ch 48/80 contains a reimbursable mandate due to the higher level of service required for counties providing the marriage mediator program. The COSM further determined that the financing mechanism established by the chapter generally does not fund the entire cost of the program.

This shortfall in fee revenue was attributed both to the relatively high cost of employing mediators who meet the required minimum standards and the large number of "In Forma Pauperis" filings. Individuals requesting "In Forma Pauperis" status may have their filing fees waived if they meet certain criteria indicating that their ability to pay is limited. In the test claim heard by the COSM, fees were waived in approximately 40 percent of the affected family law cases.

In March 1986, the COSM adopted the parameters and guidelines under which claims may be filed pursuant to this chapter. These parameters and guidelines allow reimbursement of expenses incurred in providing mediation services to the extent that they are not offset by fees.

Funding History

Based on parameters and guidelines set in March 1986, the COSM adopted a cost estimate of $7.7 million for the years 1984-85 and 1985-86. Chapter 1270, Statutes of 1987 (SB 1310), included a General Fund appropriation for the $7.7 million related to the COSM's cost estimate, and an additional $8.8 million to fund claims for 1986-87 and 1987-88 (Table 4).

Table 4
Funding for Marriage Mediator Program
1984-85 through 1987-88

Funding Authority	*Mandate Authority*	*Funding Provided (in millions)*			
		1984-85	*1985-86*	*1986-87*	*1987-88*
Ch 1270/87	Ch 48/80	$3.4	$4.3	$4.4	$4.4

Our office recommended approval of the $16.5 million requested to reimburse counties for the costs of Ch 48/80.

Findings and Conclusions

1. ***Chapter 48, Statutes of 1980, resulted in a mandate by imposing a new program through the requirement that superior courts provide a mediator to disputing parties in specified child custody and/or visitation rights hearings.***

2. ***The mandate appears to serve a statewide interest.*** The state has an interest in ensuring that cases are resolved in a timely manner, to promote the goal of timely access of citizens to the judicial system. To the extent that mediation promotes agreements by the parties of custody and/or visitation rights cases, disputes are diverted from the judicial system. The effect of this process is to reduce the number of "backlogged" cases to be adjudicated.

3. ***The benefits resulting from the mandate are not realized in terms of lower court costs.*** The cost of mediation services for child custody, and visitation disputes generally should be significantly *less* than the costs associated with a traditional court hearing involving the same issues. Thus, the use of mediation services produces benefits in the from of reduced need for additional judgeships and a reduction in the number of "backlogged" cases. However, continued backlogs mean that the use of mediation services does not produce cost savings for the courts. The court resources "freed-up" by the use of mediation services are redirected to other backlogged cases. As a result, the counties do not experience cost savings in the form of reduced court personnel or operating expenses.

4. ***This measure has failed to be self-financing, contrary to the Legislature's expectations.*** The legislation which established this program contained a self-financing disclaimer based on the measure's revenue-generating mechanism. Specifically, the law authorizes explicit increases in various filing and marriage license fees for the support of the family conciliation court and the specified mediation services. The new fees include, for example, an additional $5 for marriage licenses and certificates and $15 for filings related to marriage dissolutions, legal separations, nullifications of marriages, and specified child custody matters. Despite these pro-

visions, the measure has resulted in increased costs of approximately $4 million annually, due to both the high cost of employing mediators and the large number of "In Forma Pauperis" filings.

From a policy standpoint, legislative intent appears to have been fulfilled to the extent that mediation has developed agreements which have reduced acrimony between parties and assured children close and continuing contact with both parents. According to participants in the mediation process, the program has been successful in facilitating an understanding that a child needs both parents and in aiding parents to interact with each other.

Recommendation

We recommend that the Legislature continue to fund this mandate. Given that the program provides a cost-effective means of resolving disputes, thus reducing backlogs and promoting the goal of timely access of citizens to the judicial system, we recommend continuation of this program. Counties which elect to receive state funding under the Trial Court Funding Program, effective July 1, 1988, will waive their claims for reimbursement of this mandate. These counties will be able to fund the program through their judicial block grants. ❖

Chapter VI

Chapter VI

Firefighters' Cancer Presumption

Description

Chapter 1568, Statutes of 1982, established the presumption that cancer contracted by a firefighter is work-related, provided the firefighter demonstrates (1) exposure to a known carcinogen in the course of employment, and (2) that the carcinogen is reasonably linked to the disabling cancer. Unless the presumption is controverted by other evidence, the affected firefighter is entitled to workers' compensation benefits. The presumption lasts for up to five years following termination of service, depending on the length of employment.

Chapter 1568 had a sunset date of January 1, 1989. Chapter 1501, Statutes of 1987, subsequently made permanent the firefighters' cancer presumption.

Commission on State Mandates Action

The Cities of Cloverdale and Sacramento filed test claims with the Board of Control (BOC) on March 7, 1983 alleging mandated costs under Chapter 1568. In February 1984, the BOC determined that Chapter 1568 imposed mandated costs on local agencies by requiring them to extend workers' compensation benefits to firefighters whose cancer may not have otherwise been found to be employment-related. In May 1985, the matter was transferred to the Commission on State Mandates (COSM). Five months later, the COSM adopted parameters and guidelines allowing all insured local agencies and fire districts, and self-insured local agencies to claim 65 percent reimbursement for costs incurred after January 1, 1983. In March 1987, the COSM amended the parameters and guidelines to provide for 50 percent reimbursement, and adopted a statewide cost estimate of $1,448,000 to reimburse local agencies. For purposes of estimating the statewide cost, the COSM conducted a random sample of 142 of the 1,331 local fire protection agencies. However, only three agencies responded to the COSM's cost survey.

Funding History

Table 5 indicates that the Legislature provided $1,448,000 in Ch 1270/87 to reimburse claimants for their costs of complying with the mandate in Chapter 1568.

Table 5
Firefighters' Cancer Presumption
1982-83 through 1987-88

Funding Authority	*Mandate Authority*	*Year for Which Funding Was Provided*					
		1982-83	*1983-84*	*1984-85*	*1985-86*	*1986-87*	*1987-88*
Ch 1270/87	Ch 1568/82	$156,500	$53,000	$794,769	$34,624	$259,643	$150,000

Although our office recommended approval of the $1,448,000 funding level requested by the COSM for the period from January 1, 1983 through the 1987-88 fiscal year, we noted two concerns. First, the COSM, in effect, has ruled that half of the firefighters' cancer claims would have existed without Chapter 1568, and that the other half of the claims exist only because of Chapter 1568. Our review indicated that there is currently no reliable way to determine how many workers' compensation firefighter cancer claims would have been approved without Chapter 1568 and, consequently, there is no analytical basis to justify a 50-50 reimbursement ratio or any other specific reimbursement ratio for firefighter-cancer claims. Second, we expressed concern that the three fire districts which responded to the COSM's cost survey may not be representative of other fire districts throughout the state. If the sample is not accurate, there is the potential for much *greater* costs to be claimed once the availability of reimbursement funds is publicized.

Findings and Conclusions

1. ***Chapter 1568, Statutes of 1982, imposed a mandate on local governments.*** This is because local agencies are required to pay workers' compensation benefits to firefighters whose cancer may not have otherwise been found to be employment-related.

2. ***The mandate could serve a statewide interest.*** California's workers' compensation program, a statewide system, is designed to provide cash benefits, medical care, and rehabilitation services to employees for injury or illness arising out of and in the course of employment. Under current law, hernias, pneumonia, and heart trouble are *presumed* to be injuries for purposes of workers' compensation benefits for most firefighters and peace officer employees in California.

Presumptions may be appropriate in those cases where there is a strong relationship between the illness/injury and employment. In the case of Chapter 1568, the cancer presumption for firefighters is *conceptually* reasonable, as these employees are exposed to cancer-causing agents (such as "friable" asbestos) in the course of their work. *Empirically*, however, it has not been documented that there is a strong or direct linkage between firefighting and cancer. Thus, while this presumption *may* serve a statewide interest, we cannot conclude that it does, in fact, serve a statewide interest.

3. ***We have no analytical basis for justifying a 50-50 reimbursement ratio.*** Our review indicates that there is currently no reliable method to determine how many firefighter

cancer claims have been or will be approved solely as a result of this mandate. Consequently, there is no analytical basis to justify the 50-50 reimbursement ratio adopted by the commission or any other specific reimbursement ratio for firefighters' cancer claims.

4. ***We cannot measure the benefits of this mandate*** The benefit of the cancer presumption accrues to the local agencies and the individuals affected in the form of reduced administrative costs and immediate benefit payments. As mentioned above, however, the use of presumptions is appropriate only in cases where there is a strong link between the illness/injury and employment. Given the fact that linkage between cancer and firefighting has not been empirically demonstrated, we cannot measure the validity of the presumption.

5. ***The costs of this measure could exceed the Legislature's expectations.*** Because only three fire districts responded to the COSM's cost survey, the appropriation for this mandate may be based on an inaccurate sample. If the sample is not accurate, there is the potential for much *greater* General Fund costs.

Recommendation

We recommend that the Department of Industrial Relations conduct a study on the incidence of cancer among firefighters. In order for the Legislature to evaluate the appropriateness of this presumption, it should have empirical evidence concerning the linkage between firefighting and cancer. Accordingly, we recommend that the Legislature adopt supplemental report language to the 1988 Budget Bill directing the Department of Industrial Relations (Item 8350-001-001) to conduct a study to determine the extent to which the incidence of cancer among firefighters varies from that of the general population. ❖

Chapter VII

Chapter VII

Democratic Presidential Delegates

Description

Chapter 1603, Statutes of 1982, and Chapter 1166, Statutes of 1983, reformed the delegate selection process for Democratic national conventions by requiring that delegates and alternates be *selected by direct vote* on the presidential primary ballot. Under prior law, delegates were *apportioned* on the basis of the number of votes cast for each Democratic presidential candidate at a presidential primary election.

Commission on State Mandates Action

The Counties of Contra Costa and San Bernardino filed test claims with the Board of Control on August 27, 1984 alleging increased costs as a result of implementing Chapters 1603 and 1166. The Commission on State Mandates (COSM) determined in February 1985 that these statutes imposed a mandate by increasing the number of delegates to be placed on the presidential primary election ballot, thereby increasing election-related costs. In October 1985, the COSM adopted parameters and guidelines which provided that counties shall be reimbursed for increased costs associated with the following items: (1) election planning and preparation; (2) sample and official ballot printing and postage; (3) voting format conversion; (4) election tabulation; and (5) administrative overhead. Based on a survey of county clerks, the COSM adopted a statewide cost estimate of $1,025,000 to reimburse counties for complying with this mandate during the period 1983-84 through 1987-88.

Funding History

Table 6 indicates that the Legislature provided $1,025,000 in Ch 1270/87 to reimburse claimants for their costs of complying with the mandate imposed by Chapters 1603 and 1166.

Table 6
Democratic Presidential Delegate Selection Process
1983-84 through 1987-88

Funding Authority	*Mandate Authority*	*Year for Which Funding Was Provided*				
		1983-84	*1984-85*	*1985-86*	*1986-87*	*1987-88*
Ch 1270/87	Ch 1603/82 Ch 1166/83	$795,000	$5,000	$75,000	$75,000	$75,000

Our office recommended approval of the $1,025,000 funding level requested by the COSM for the 1983-84 through 1987-88 fiscal years.

Findings and Conclusions

1. ***Chapter 1603, Statutes of 1982 and Ch 1166/83 imposed a mandate by requiring counties to print the names of delegates directly on the presidential primary election ballot.*** This requirement resulted in increased election-related costs for activities such as ballot preparation and vote tabulation.

2. ***The mandate has been repealed.*** The Legislature has traditionally permitted the party national committees to design the delegate selection process for the presidential primaries. Chapter 1603, Statutes of 1982 and Ch 1166/83 enacted the statutory changes necessary for the Democratic National Committee to implement its preferred delegate selection process for the 1984 presidential primaries.

For the 1988 presidential primaries, the Democratic National Committee has decided to revert to the old procedure of *not* printing the names of delegates on the ballot. In response to this decision, the Legislature enacted Ch 8/88 (AB 1206 Costa) which repealed Ch 1603/82 and Ch 1166/83. As a result, the mandate is repealed.

3. ***The statewide annual cost imposed by this mandate appear to be reasonable and consistent with legislative intent.*** Most of the costs imposed by this mandate occurred during the implementation of the new process in the 1983-84 fiscal year. The mandate necessitated one-time equipment purchases in several counties whose existing voting machines could not accommodate the expanded ballot sizes. The reimbursements provided in subsequent years, which consisted of election planning and preparation costs, were relatively small on a statewide basis.

Recommendation

We make no recommendation. Because the mandate has been repealed, the state will not be liable for future reimbursement. ❖

Chapter VIII

Chapter VIII

Mobilehome Property Tax Postponement

Description

Chapter 1051, Statutes of 1983, created the Senior Citizens' Mobilehome Property Tax Postponement Program (SCMPTP). This program, which parallels the Senior Citizens' Property Tax Deferral Program (SCPTD), allows qualified elderly mobilehome residents to defer payment of their property taxes by requesting the State Controller's Office (SCO) to make these payments on their behalf. To ensure repayment, the SCO records a lien against the property which must be paid prior to any change in ownership.

Board of Control Action

Orange County filed a test claim with the Board of Control (BOC) on January 4, 1984 alleging mandated costs under Chapter 1051. On May 31, 1984 the BOC determined that Chapter 1051 imposed a state-reimbursable mandate by requiring county officials to:

- process certificates of eligibility and file these certificates with the SCO;
- record property tax postponement information;
- respond to inquiries related to mobilehome property tax postponement; and
- notify the SCO of any changes in the ownership of properties upon which tax postponement liens have been filed.

The jurisdiction for this claim was transferred to the Commission on State Mandates in January 1985.

Funding History

The SCO determined that the administrative requirements of the mobilehome program were parallel to the SCPTD program. Under the SCPTD program, the state reimburses local entities for each document processed on the basis of a uniform reimbursement rate. The COSM decided that the unit rate reimbursement allowance for mobile-

homes should equal the rate used for the larger SCPTD program. However, since the processing of liens under the mobilehome program is a state function, the COSM determined that the counties should be reimbursed only for the processing of certificates of eligibility.

Chapter 1270, Statutes of 1987, provided $19,000 to reimburse counties for costs incurred under Chapter 1051 from 1983-84 through 1987-88 as shown in Table 7.

Table 7
Funding for Mobilehome Property Tax Postponement
1983-84 through 1987-88

Funding Authority	*Mandate Authority*	*Year for Which Funding Was Provided*	
		1983-84 through 1986-87	*1987-88*
Ch 1270/87	Ch 1051/83	$13,000	$6,000

Our office recommended approval of the $19,000 funding level provided in Chapter 1270.

Findings and Conclusions

1. ***Chapter 1051 imposes a mandate by requiring counties to process certificates of eligibility, file these certificates with the SCO, notify the SCO of changes in ownership, and conduct various other activities relating to the mobilehome property tax postponement program.***

2. ***The mandated costs of the Mobilehome Property Tax Postponement Program could be funded by charging user fees to program participants.*** In our view, there is no state interest in funding the mandated costs of this program. The program does not provide low-income assistance per se, but rather allows elderly individuals greater flexibility in paying taxes. Furthermore, the fees to offset program costs would be minor (approximately $8 per participant) relative to the benefits under the program and, thus, should not create a significant barrier to program participation.

In the 1987-88 Governor's Budget, the administration made a similar proposal to fund the mandated costs of the SCPTD program with user fees of approximately $8 per participant. However, no action was taken on this proposal. We support the administration's proposal with regard to the SCPTD program, and recommend extending this funding mechanism to the Mobilehome Property Tax Postponement Program.

Recommendation

We recommend the enactment of legislation to authorize an administrative cost recovery fee for this program. ❖

Chapter IX

Chapter IX
Friable Asbestos

Description

Title 40, Part 763, Code of Federal Regulations (CFR), requires school districts to (1) *inspect* all school facilities in their district to identify building materials containing "friable"—loose, crumbling, flaking or dusting—asbestos, and (2) *notify* parents and employees of any hazardous (i.e., friable) asbestos materials found in school buildings. Title 40 became effective on May 27, 1982 and required school districts to comply with its provisions by June 28, 1983.

Board of Control Action

In April 1984, the Board of Control (BOC) determined that Title 40 imposed costs mandated by the *federal* government for the following reasons: (1) the program was required by a federal regulation, (2) the program increased service levels by requiring inspection of school buildings that otherwise would not have been subject to the same level of inspection, and (3) the program was not similar to any previously established requirement. In November 1984, the BOC adopted parameters and guidelines that allow reimbursement of the inspection, notification and record-keeping costs associated with Title 40. In January 1985, the matter was transferred to the Commission on State Mandates (COSM), which subsequently adopted a statewide cost estimate of $1.9 million, to reimburse school districts for the one-time costs incurred in the 1982-83 fiscal year.

Funding History

As passed by the Legislature, Ch 1270/87 contained $1.9 million to reimburse school districts for their one-time costs of complying with Title 40. This amount was reduced by the Governor to $950,000 with the following veto message: "I am reducing the $1,900,000 appropriation ... to $950,000. This money is for reimbursement to school districts of the costs to inspect school buildings for friable asbestos. The Education Code provides for reim-

bursement for similar activities on a dollar-for-dollar match basis. Had the districts that are provided for in in this bill applied under the Education Code for reimbursement, the maximum reimbursement received would have been an amount equal to one-half of the local funds spent for asbestos inspection activities. Therefore, it would seem reasonable and consistent that any amount appropriated for reimbursement to districts, be equivalent to the amount of reimbursement that the districts would otherwise have received under statute." Table 8 shows the funding history for this program.

Table 8
Funding for Federal Asbestos Inspections
1982-83

Funding Authority	*Mandate Authority*	*Year for Which Funding Was Provided 1982-83*
Ch 1270/87	Title 40, Part 763, CFR	$950,000

Our office recommended that state funding *not* be provided in Chapter 1270 for reimbursement of the one-time costs associated with this asbestos inspection and notification program because it was a federal, (rather than state) mandate. We further recommended that to the extent the Legislature wished to provide funding for this purpose, it do so through the existing State Asbestos Abatement program.

Findings and Conclusions

1. ***Title 40 did not result in a mandate under which the state has a legal obligation to provide reimbursement for costs incurred.*** Education Code Section 42243.6 provides that a school district *may* receive state reimbursement for costs mandated by the federal government. Current law, however, does not *require* such reimbursement. Because this inspection and notification program was mandated by the federal (rather than state) government, the state has no legal obligation to reimburse the costs incurred by school districts.

Other provisions of state law establish the State Asbestos Abatement program, under which school districts may apply for state matching funds, generally on a dollar-for-dollar matching basis, from the Asbestos Abatement Fund for the containment or removal of friable asbestos.

2. ***The federal mandate appears to serve a statewide interest.*** The state has an interest in promoting the health and welfare of public school students and employees. Exposure to friable asbestos has been linked with a number of serious illnesses, including cancer, which primarily affect the lungs and digestive system. To the extent that this inspection and notification program prompted school districts to abate hazardous asbestos materials, the federal mandate may also be consistent with state objectives.

3. ***The estimate of statewide costs prepared by the Department of Finance appears to accurately reflect the district's costs for complying with this federal mandate.*** The Department of Finance estimated the one-time statewide cost to fully reimburse schools districts for complying with this federal mandate to be $1.9 million; accordingly, this is the amount that the Legislature approved in Ch 1270/87. The Governor, however, reduced this amount by half to $950,000, so that reimbursement for this program would approximate the funding

provisions of the State Asbestos Abatement program. Under the state's program, districts are eligible to receive only matching funds, generally on a dollar-for-dollar basis.

Recommendation

Because Title 40 resulted in one-time only costs, we make no recommendation regarding the future funding of this federal mandate. However, should the Legislature wish to provide funding for this type of program in the future, we recommend that it do so by amending provisions of the existing State Asbestos Abatement program to specify (1) the types of inspection and related activities for which reimbursement will be provided from the Asbestos Abatement Fund and (2) an appropriate local matching requirement. On October 17, 1987, pursuant to the 1986 Asbestos Hazard Emergency Response Act (AHERA), the federal Environmental Protection Agency issued rules requiring school districts (and private schools) to have an accredited inspector inspect all school facilities and identify the location of all asbestos materials—both friable and non-friable. AHERA also requires school districts to (1) conduct periodic reinspections and monitoring of specified facilities, (2) develop a management plan for abating any hazardous asbestos identified, (3) submit the management plan to the state by October 12, 1988 for review and approval, and (4) implement the plan by July 9, 1989.

The potential cost for this recent federal asbestos mandate could exceed $100 million. For this reason, we recommend that any future funding for costs incurred by school districts in complying with an asbestos-related federal mandate be provided through the existing State Asbestos Abatement program because this program has a matching requirement that provides districts with an incentive to control the costs of the abatement activities, thereby resulting in more prudent expenditure of state funds. ❖