



New Mandates: Analysis of Measures Requiring Reimbursement

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In 2002 and 2003, the Commission on State Mandates determined that 23 sets of state laws impose state-reimbursable mandates on local governments. The commission estimated the state's cost to reimburse local agencies for these mandates is about \$400 million.

This report reviews the newly identified mandates, and offers recommendations as to whether each mandate should be repealed, funded, suspended, or modified. ■

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Many analysts in the office contributed to this report. It was coordinated by Marianne O'Malley. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the Legislature.

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INTRODUCTION

This report, submitted in fulfillment of Chapter 1123, Statutes of 2002 (AB 3000, Budget Committee), reviews 23 sets of state requirements that the Commission on State Mandates (CSM) identified as state-reimbursable “mandates” in their 2002 and 2003 reports to the Legislature. These newly identified mandates are *in addition* to over 100 ongoing state requirements that the CSM (or its predecessor agency) previously determined to be state-reimbursable mandates.

The Legislature’s intent in requiring the Legislative Analyst’s Office (LAO) to prepare an annual analysis of newly identified mandates was to ensure that it had information regarding each new mandate at the time the Legislature considered the annual mandate “claims bill.” Pursuant to Government Code Section 17612, the claims bill (1) usually provides the initial state reimbursement for newly identified mandates and (2) gives the Legislature some opportunity to review commission actions. After a mandate receives its initial reimbursement through the claims bill, the Legislature traditionally funds a mandate’s ongoing costs in the annual state budget.

Given the mounting costs of state mandates, the Assembly held hearings to review mandates and the mandate reimbursement process. Because of the state’s fiscal difficulties, however, the Legislature:

- Did not introduce a claims bill to reimburse local agencies for newly identified mandates.
- Provided no funding for ongoing mandates in the 2003-04 budget.

- Declared its intent in Chapter 228, Statutes of 2003 (AB 1756, Budget Committee), to continue deferring mandate reimbursements through 2004-05.
- Acted to reduce local agency mandate responsibilities and associated state liabilities by suspending local agency requirements to implement 39 mandates in 2003-04, including eight newly identified mandates.

This report reviews the newly identified mandates and offers recommendations as to whether they should be repealed, funded, suspended, or modified. In addition, in some cases, we recommend the Legislature request the CSM to reconsider its quasi-judicial “Statement of Decision” regarding a mandate, or modify the mandate’s reimbursement methodology (referred to as the measure’s parameters and guidelines, or “Ps&Gs”).

Figure 1 displays the newly identified education and noneducation mandates that are the subject of this report, along with the CSM’s estimate of each mandate’s costs. In reviewing Figure 1, readers should note that it includes one mandate (school site councils) listed in the CSM’s 2002 report, but subsequently invalidated by the court. Because the state has no responsibility to reimburse school districts for this mandate, its costs are excluded from the figure’s revised total. Readers also should note that the CSM reports as *two* mandates any set of state requirements that apply to local agencies and K-14 districts. Because four mandates reported by the CSM have such a dual applica-

Figure 1**Mandates Identified by Commission on State Mandates in 2002 and 2003***(In Thousands)*

	Estimated Costs ^a		
	Education	Non-Education	Total
Mandates in Commission's 2002 Report			
Child abuse treatment services authorization and case management	—	\$542	\$542
County treasury oversight committees	\$95	1,539	1,634
Elder abuse: Law enforcement training	—	1,594	1,594
Extended commitment—Youth Authority	—	183	183
Financial and compliance audits	7,890	—	7,890
Health benefits for survivors of peace officers and firefighters	—	745	745
Law enforcement sexual harassment training	—	2,471	2,471
Mentally disordered offenders' extended commitment proceedings	—	11,651	11,651
Physical education reports	48	—	48
School site councils ^b	(45,768)	—	(45,768)
Mandates in Commission's 2003 Report			
Animal adoption	—	\$79,153	\$79,153
Brown Act reform	\$3,013	5,820	8,834
County Office of Education fiscal accountability reporting	2,129	—	2,129
Employee benefits disclosure	2,328	—	2,328
Law enforcement college jurisdiction agreements	21	—	21
Photographic record of evidence	233	2,366	2,598
School district fiscal accountability reporting	13,695	—	13,695
Sex crime confidentiality	—	4,829	4,829
Sex offenders: Disclosure by law enforcement officers	6	32,701	32,707
Standardized testing and reporting	184,135	—	184,135
Totals Reported by CSM	\$259,361	\$143,595	\$402,956
Totals Excluding School Site Councils Mandate	\$213,593	\$143,595	\$357,188

^a Includes prior-year costs for each mandate. Ongoing annual costs would be significantly less.

^b Mandate decision overturned by California Supreme Court.

tion, the list of *unduplicated* state requirements imposing a mandate totals 19.

Figure 2 categorizes these 19 mandates by their primary policy area, summarizes our recommendations, and denotes whether the

2003-04 budget suspends the state requirement to implement the mandate in the budget year or whether local agencies must carry out the activity with state reimbursement deferred to the future.

Figure 2
Newly Identified Mandates—LAO Recommendations

General Government	Recommendation	2003-04 Budget
Animal control	Revise law to reduce local responsibilities	Suspended
Brown Act reform	Make future compliance optional	Deferred funding
County treasury oversight committees	Make future compliance optional	Suspended
Public Safety and Criminal Justice	Recommendation	2003-04 Budget
Child abuse treatment services authorization and case management	Suspend mandate, pending review	Suspended
Elder abuse: Law enforcement training	Repeal mandate prospectively	Suspended
Extended Commitment—Youth Authority	Request commission review its decision	Suspended
Health benefits for survivors of peace officers and firefighters	Repeal mandate and modify parameters and guidelines	Deferred funding
Law enforcement sexual harassment training	Repeal mandate prospectively	Suspended
Mentally disordered offenders' extended commitment proceedings	Fund mandate	Deferred funding
Photographic record of evidence	Request commission review its decision	Deferred funding
Sex crime confidentiality	Amend Public Records Act and repeal mandate	Suspended
Sex offenders: Disclosure by law enforcement officers	Request commission revise its parameters and guidelines	Suspended
Education Mandates	Recommendation	2003-04 Budget
Employee benefits disclosure	Repeal mandate prospectively	Deferred funding
Financial and compliance audits	Fund mandate	Deferred funding
Law enforcement college jurisdiction agreements	Request commission review its decision	Deferred funding
Physical education reports	Repeal mandate prospectively	Deferred funding
School district fiscal accountability reporting	Fund mandate	Deferred funding
County Office of Education fiscal accountability reporting	Request commission review its decision	Deferred funding
Standardized testing and reporting	Request commission review its decision	Deferred funding

GENERAL GOVERNMENT

ANIMAL CONTROL

We recommend the Legislature revise current law to reduce local agency obligations regarding animal control because the cost of the resulting mandate greatly exceeds legislative expectations.

Local government animal control agencies care for stray and surrendered animals in California communities. Such care includes housing, medical care, and vaccinations. These agencies also pursue the successful adoptions of the animals in their care and euthanize those animals that are not placed.

Seeking to reduce the euthanization of adoptable stray animals, the Legislature enacted Chapter 752, Statutes of 1998 (SB 1785, Hayden). Prior law provided that no dog or cat impounded by a public pound or specified shelter could be euthanized before three days after the time of impounding. Chapter 752 requires the following:

- An increase from three days to four to six business days, as specified, in the holding period for stray and abandoned dogs and cats.
- A holding period of four to six business days for other specified animals.
- The verification of the temperament of feral cats.
- The posting of lost and found lists.
- The maintenance of records for impounded animals.
- The release of animals to nonprofit rescue or adoption organizations.
- “Necessary prompt veterinary care” for impounded animals.

In 2001, the commission determined that Chapter 752 imposed a reimbursable mandate by requiring, among other activities, that certain animals be cared for longer than the three days previously required by law.

Analysis

Costs Exceed Legislative Expectations. The Legislature did not anticipate incurring significant, if any, state-reimbursable mandate costs

when it enacted Chapter 752. Instead, the Legislature expected that much, or all, local agency increased costs to care for animals longer than three days would be offset by (1) increased adoption and pet recovery fees and (2) savings from avoided euthanizations. As we discuss more fully in the *2003-04 Analysis* (see page F-133), however, the commission determined that Chapter 752 imposed a broad mandate and local agency claims for mandate reimbursements likely will total \$10 million annually.

Parameters and Guidelines Lack Clarity.

Both our office’s and the Bureau of State Audits’ (BSA) review of this mandate’s Ps&Gs found areas of ambiguity that allow local agencies to claim some costs that appear to exceed the range of activities mandated by Chapter 752. For example, the BSA reviews notes that the Ps&Gs allow local agencies to receive reimbursement for capital costs not associated with Chapter 752. In addition, our review found that the Ps&Gs are not sufficiently explicit regarding the requirement that offsetting savings and revenues be deducted from reimbursement claims.

Recommendation

Because the measure’s costs greatly exceed the Legislature’s expectations, we recommend that the Legislature reconsider Chapter 752 and make modifications as necessary to reduce the scope of the requirements imposed upon local agencies. While we acknowledge the importance of the humane treatment of animals, such a reconsideration of Chapter 752 is appropriate given the mandate’s higher-than-anticipated costs and the fiscal constraints of the state. Accordingly, we recommend that the Legislature

revise Chapter 752 to reduce the overall requirements imposed on local agencies and the associated state mandate costs. Until such a revision is enacted, we recommend that the Legislature continue to suspend this mandate in the annual budget bill.

In the alternative, should the Legislature wish to maintain all the requirements of Chapter 752, we recommend the Legislature direct the commission to revise the Ps&Gs to make changes to address the issues identified in the BSA's report and the *2003-04 Analysis*. The following language, included in a future claims bill or other legislation, would provide the commission this direction:

The Commission on State Mandates shall review the parameters and guidelines for the Animal Control mandate and make revisions consistent with the findings of the Bureau of State Audits and the *2003-04 Analysis* by the Legislative Analyst's Office.

BROWN ACT REFORM

We recommend the Legislature change certain requirements of the Brown Act imposed in 1993 (requiring agenda postings by local advisory bodies and disclosure of matters discussed in executive sessions) into advisory guidelines, because detailed rules governing advisory bodies do not necessitate a statewide mandate. Should the Legislature, in the alternative, wish to maintain these requirements, we recommend that the Legislature direct the commission to reconsider its mandate determination in light of a recent California Supreme Court decision.

In 1953, the Legislature enacted the Brown Act, declaring, "all meetings of the legislative body of a local agency shall be open and public,

and all persons shall be permitted to attend any meeting of the legislative body." Since 1953, the Brown Act has been amended many times to expand or clarify its requirements—and to delineate the legislative bodies to which the act applies.

Article XIII B of the California Constitution generally requires the state to reimburse local governments for the cost of complying with "new programs" or "higher levels of service." Article XIII B specifies, however, that the state need not reimburse local governments for costs to comply with state mandates enacted *before* 1975. The original requirements of the Brown Act, and its pre-1975 amendments, therefore are *not* state-reimbursable mandates.

Chapter 641, Statutes of 1986 (AB 2674, Connelly), modified the Brown Act to require local agencies to prepare and post agendas for public meetings at least 72 hours before the meeting. In 1988, the commission found that local costs to implement this Chapter 641 requirement constituted a state-reimbursable mandate. Since this date, local agencies have been reimbursed for agenda preparation and posting, at a rate of about \$100 per agenda. This mandate is commonly referred to as the "Open Meetings Act" mandate.

In 1993, the Legislature enacted measures to further clarify and modify Brown Act requirements (Chapter 1136, Statutes of 1993—AB 1426, Burton; Chapter 1137, Statutes of 1993—SB 36, Kopp.) Local agencies, in turn, filed a test claim with the CSM, contending that these changes constituted a state-reimbursable mandate. On April 27, 2000, the commission ruled that the Legislature created a state-reimbursable mandate by enacting these two measures because they (1) subject some *additional*

legislative bodies to the Brown Act (specifically, local bodies created by state or federal statute and committees with less than a quorum of legislative members) and (2) place new requirements on local agencies regarding the disclosure of matters discussed during executive sessions. These additional Brown Act requirements are commonly referred to as the “Brown Act Reform” mandate.

Earlier this year, the commission reported to the Legislature that reimbursing noneducation local agencies for the Brown Act Reform mandate would total \$8.8 million, with annual ongoing costs of about \$1 million. Because the commission’s cost estimate is based on information reported by fewer than *half* of the local agencies eligible for claiming reimbursement, the actual ongoing costs of this mandate may be considerably greater than the commission’s estimate.

Analysis and Recommendation

The public policy goals of the Brown Act are indisputable. Representative government depends on an informed and involved electorate and open meetings are a vital part of this process. The key question for the Legislature regarding the Brown Act Reform mandate, however, is not whether the state should require local agencies to hold open governing board meetings. Rather, this mandate raises the issue of whether the state should detail all the rules regarding all public hearings—or whether some matters could be determined locally. In our view, the manner in which local agencies provide for public participation in local *advisory body* hearings and the disclosure of matters

discussed in executive session do not reach the level of importance necessitating a statewide mandate. Moreover, we observe that there is significant local interest in open hearings and matters discussed in executive sessions and thus, even in the absence of a mandate, local agencies would continue to perceive pressure from their constituencies to follow these procedures. Accordingly, we recommend that the Legislature revise the Brown Act Reform Act to make these requirements advisory guidelines.

Alternative Recommendation

The California Supreme Court’s recent decision in *Department of Finance versus Commission on State Mandates* suggests that the commission’s findings regarding the Brown Act Reform mandate were overly broad in their interpretation as to the types of legislative bodies eligible for mandate reimbursement. Should the Legislature wish to *maintain* the Brown Act Reform mandate, we recommend the Legislature direct the commission to reconsider its Brown Act Reform mandate Statement of Decision in light of the California Supreme Court’s decision. The following language, included in a future claims bill or other legislation, would give the commission the authority and responsibility to complete such a review:

The Commission on State Mandates shall review its Statement of Decision regarding the Brown Act Reform test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court 2002 decision in *Department of Finance versus Commission on State Mandates*.

COUNTY TREASURY OVERSIGHT COMMITTEE

Because the oversight committee’s responsibilities are largely duplicative of the responsibilities of county boards of supervisors, we recommend the Legislature enact legislation making these advisory committees optional.

Chapter 784, Statutes of 1995 (SB 866, Craven), requires counties that invest surplus funds to establish a County Treasury Oversight Committee to review and monitor the investment policies of the county treasurer. The commission estimates the cost of this mandate to be \$1,634,000 (prior-year and 2002-03 claims) and \$299,000 annually thereafter.

The provisions creating these oversight committees were part of numerous legislative reforms enacted in the aftermath of the Orange County bankruptcy to (1) increase accountability for local officials involved in investment decisionmaking, (2) restrict the types and maturities of financial instruments that local governments use for investment purposes, and (3) increase reporting regarding local investment policies and holdings. In addition to these legislative reforms, counties experienced increased requirements from the financial community—involving new accounting and financial reporting standards for funds held in county investment pools.

The public and private reforms enacted in the mid-1990s have created multiple safeguards against the kind of errors that led to the Orange

County bankruptcy. Taken together, these reforms have increased standards governing local government investment practices. In view of these increased standards, we believe it is appropriate for the Legislature to consider whether *this* mandate—dictating the specific form of local investment oversight committee—is needed to serve a statewide interest.

Findings and Recommendation

Our review indicates that the advisory oversight committee’s functions are largely duplicative of the more stringent requirements imposed on county boards of supervisors. For example, the advisory committee is required only to “review and monitor” the treasurer’s annual investment policy, whereas the county boards of supervisors (1) must approve or reject proposed changes to the treasurer’s investment policy, (2) receive quarterly investment reports, and (3) face legal and fiduciary responsibilities relating to the safekeeping and management of public funds. While it may well be in the interest of a local board of supervisors to maintain their advisory oversight committee to assist them in monitoring county investments, we believe that such a decision regarding the form of an advisory committee could be left to counties without materially affecting the level of oversight or public scrutiny of treasurer’s investments.

Accordingly, we recommend the Legislature adopt legislation to make the mandate optional, for an annual savings of about \$300,000.

PUBLIC SAFETY AND CRIMINAL JUSTICE

CHILD ABUSE TREATMENT SERVICES AUTHORIZATION AND CASE MANAGEMENT

We recommend that the Legislature suspend the requirement that counties “approve” treatment facilities attended by child abuse probationers, pending a review of the efficacy of such treatment services.

Chapter 1090, Statutes of 1996 (AB 3215, Hawkins), requires that certain individuals convicted of child abuse enroll in a one-year counseling program as a condition of their probation. The probationer is required to pay for the counseling. The county probation offices are required to approve the treatment facilities and review progress reports provided by the facilities for individuals in treatment. The commission found that county costs to approve the treatment programs and provide case management for individuals in treatment constitutes a reimbursable mandate, estimated to cost \$542,000 through the 2002-03 year.

Our review found that fewer than ten counties have submitted reimbursement claims for carrying out this new requirement. Discussions with both claiming and nonclaiming counties revealed that the difference between the two groups centered on their interpretations of “a counseling program approved by the probation department.” Contacted counties that had not submitted claims interpreted the requirement to approve counseling facilities to mean that they needed to provide a list of acceptable facilities to the clients. Accordingly, these counties did not incur costs that they considered significant enough to warrant reim-

bursement. Those few counties that have claimed costs appear to have interpreted “approve” to mean that the county probation office needed to visit the programs in their county, review their treatment protocols, and certify that those were acceptable facilities. In other words, these claiming counties believed they faced a mandate to “certify” treatment facilities, rather than simply make referrals, as is the case in the nonclaiming counties we contacted.

Recommendation

We recommend that the Legislature suspend this mandate and direct the Department of Social Services to conduct a study of the efficacy of this program. The purpose of the study is to determine whether this treatment reduces incidents of re-abuse. If the treatment is not having the desired effect, the Legislature should eliminate both the requirement for treatment and associated case management requirements. Conversely, if the treatment is deemed effective, then the Legislature should consider retaining the child abuse treatment requirement for probationers and clarifying that “approved” in this context means “referral” rather than “certification.” This would substantially limit future mandate claims.

ELDER ABUSE: LAW ENFORCEMENT TRAINING

We recommend approval of \$1,594,000 proposed for this mandate because the costs appear consistent with the Commission on State Mandates’ determination. We further recommend repeal of the mandate since the

statutory date for completion of the training (January 1999) has passed.

Chapter 444, Statutes of 1997 (AB 870, Hertzberg), required every city police officer or deputy sheriff at a supervisory level and below to complete, before January 1, 1999, an elder abuse training course certified by the Commission on Peace Officer Standards and Training (POST).

The commission found that the statute imposed a reimbursable mandate when this training occurred:

- During the employee's regular working hours.
- When the local agency had entered into a contracted obligation to provide for employee continuing education training.

Recommendation

We recommend the Legislature approve the proposed funding for this mandate because the costs of \$1,594,000 appear consistent with CSM's determination of the mandate and its costs. We further recommend repeal of the mandate. This is because the statutory date for completion of the training for then existing law enforcement officers has passed (January 1999). In addition, such training for new officers is likely to continue even in the absence of the mandate because it has become part of the ongoing training of peace officers.

EXTENDED COMMITMENT— YOUTH AUTHORITY

We recommend the Legislature request the commission review its Statement of Decision for the Youth Authority Extended Commitment mandate, because the commission's decision

does not clearly identify a state-reimbursable mandate.

Chapter 546, Statutes of 1984 (AB 2760, Areias), directs the Youthful Offender Parole Board (YOPB) to *request* the prosecuting county district attorney to petition the committing court for an extension of a ward's stay at the Youth Authority for an additional two years if the ward is determined to be physically dangerous to the community. The commission found that the costs incurred by district attorneys during these proceedings constitute a state-reimbursable mandate. The commission estimates the mandate costs to be \$183,000 (prior years and 2002-03 claims), and \$24,000 annually thereafter.

Findings and Recommendation

The commission's decision does not identify any provision of Chapter 546 that increases a district attorney's obligation, responsibility, or authority regarding these extended commitments. Instead, the record and the decision indicate that prosecuting district attorneys have had the authority to petition the court in these civil cases since the process to extend the commitment of wards was instituted in 1963 (Welfare and Institutions Code Section 1800). Throughout this period, counties have used this authority to fulfill their duty to protect local public safety. The commission's decision does not identify any provision of Chapter 546 that changes county district attorney discretion or responsibility regarding these cases. Thus, the commission's decision fails in its responsibility to identify a mandate necessitating legislative appropriation.

Accordingly, we recommend the Legislature request the commission to reconsider its Statement of Decision and make any changes neces-

sary to clarify which, if any, activities impose a state-reimbursable mandate. We suggest the following language:

The commission shall reconsider its Statement of Decision regarding the Youth Authority Extended Commitment mandate and make any changes necessary to clarify which, if any, activities relating to petitioning for an extension of a ward's stay at the Youth Authority impose a state-reimbursable mandate.

HEALTH BENEFITS FOR SURVIVORS OF PEACE OFFICERS AND FIREFIGHTERS

We recommend the Legislature enact legislation to repeal the requirement to provide health benefits for survivors of local public safety personnel because providing this benefit is more appropriately determined through the local collective bargaining process. We further recommend the Legislature request the commission to review its Statement of Decision to consider whether the administrative costs related to collective bargaining for survivor health benefits constitute a state-reimbursable mandate.

Chapter 1120, Statutes of 1996 (AB 3478, Aguiar), and Chapter 193, Statutes of 1997 (SB 563, Brulte), require local governments to continue providing health benefits to the survivors of firefighters and peace officers killed in the line of duty. Chapter 1120 also removed the provision exempting survivor benefits (including pension, health, and dental benefits) from local collective bargaining. The commission found that the costs of survivor health benefits and the administrative costs related to negotiating survivor health benefits constitute a state-reimbursable mandate. The commission estimates the mandate costs to be about \$745,000

(1997-98 through 2002-03) and about \$150,000 annually thereafter.

Our review indicates that the requirement that local agencies pay for survivor's health benefits is an issue related to the terms of employment and working conditions. As such, the benefit is a matter for local collective bargaining.

In addition, our review indicates that Chapter 1120's removal of the statutory provision exempting survivor benefits from local collective bargaining does not appear to constitute a new governmental program or higher level of service that requires state reimbursement. Instead, Chapter 1120 simply aligns local public sector collective bargaining duties more closely with collective bargaining duties in the private sector. As we discuss more extensively in the *2002-03 Analysis* (please see page E-33), in two landmark California Supreme Court rulings, the court found that state laws that make local government employer obligations comparable to private employer obligations do not constitute a mandate.

Recommendation

Based on the above, we recommend the Legislature enact legislation to repeal the requirement to provide health benefits to survivors of local public safety personnel. This repeal would reduce future state costs by \$150,000 annually. We further recommend that the Legislature request that the commission review its decision to determine whether collective bargaining costs constitute a state-reimbursable activity. The following language, included in a future claims bill or other legislation, would give the commission the authority and responsibility to complete such a review:

The commission shall review its Statement of Decision for Chapter 1120, Statutes of 1996 (AB 3478, Aguiar), and Chapter 193, Statutes of 1997 (SB 563, Brulte)—Health Benefits for Survivors of Peace Officers and Firefighters—and make any modifications necessary to clarify whether collective bargaining duties constitute a state-reimbursable mandate or whether these duties simply reflect broad-based collective bargaining duties of employers in general.

LAW ENFORCEMENT SEXUAL HARASSMENT TRAINING

We recommend approval of \$2,471,000 proposed for this mandate because the costs appear to reasonably reflect the Commission on State Mandates' determination. We further recommend repeal of the underlying law because the statutory date for completion of the training (January 1997) has passed.

Chapter 126, Statutes of 1993 (SB 459, Boatwright), required the commission on Peace Officer Standards and Training (POST) to develop complaint guidelines for peace officers who are victims of sexual harassment in the workplace and to include instruction on sexual harassment in the basic training for peace officers. Additionally, all peace officers who had received their basic training before January 1, 1995 were to receive supplementary training by January 1, 1997.

At the time the Legislature enacted Chapter 126, it expected that any peace officer training costs would be absorbable by POST. The Legislature did not anticipate that the statute imposed a reimbursable mandate. In reviewing this mandate, however, the commis-

sion found that the following local agency expenses constitute a mandate:

- Developing a local law enforcement sexual harassment policy.
- Training employees regarding the policy when the required training occurred during regular employee working hours—or when the local agency had entered into a contractual agreement requiring it to pay the cost of continuing education.

Recommendation

We recommend the Legislature fund this mandate because its costs of \$2,471,000 appear to reasonably reflect the CSM determination of the mandate and its costs. We further recommend repeal of the mandate. This is because the statutory date for completion of the training for the existing law enforcement officers has passed (January 1999). In addition, such training for new officers is likely to continue, even in the absence of the mandate, because it has become part of the ongoing training of the peace officers.

MENTALLY DISORDERED OFFENDERS' EXTENDED COMMITMENT PROCEEDINGS

We recommend the Legislature approve funds to reimburse counties for the cost of recommitting mentally disordered offenders to a state hospital because the mandated activities are necessary to ensure public safety.

Chapter 1418, Statutes of 1985 (SB 1418, Lockyer), and subsequent related statutory changes, modified the procedures for the commitment by the courts of criminal offenders nearing their release from state prison to inpa-

tient treatment in state mental hospitals. These statutes also established for the first time procedures for the *recommitment* of so-called Mentally Disordered Offenders (MDOs) who had been placed in state hospitals but who, after a initial period of commitment to a state hospital, required a further period of treatment. State law specified that the recommitment process could include civil trials to determine whether individual offenders continued to meet the criteria for an MDO commitment. This legal process by law involves activities by district attorneys, indigent defense counsel, and other county government officials.

Our review indicates that the Legislature recognized it was potentially creating a reimbursable mandate for counties when it enacted the MDO statutes. Chapter 1418 specified that any claims for reimbursement of mandated costs should be reimbursed through the customary process established in state law for this purpose.

Our review also indicates that payment of these claims is necessary to ensure the continued safety of the public. Absent the performance of the legal procedures mandated by this state law, it is unlikely the courts would permit the involuntary recommitment of MDOs to state hospitals for continued treatment. The release of such individuals without further treatment could pose a risk to public safety.

Recommendation

We recommend the Legislature approve the amount proposed in the claims bill, which includes reimbursement to counties for these activities over a six-year period, because the Legislature recognized it was potentially creating a reimbursable mandate when it enacted the MDO statutes and because the mandated activities are necessary to ensure public safety.

PHOTOGRAPHIC RECORD OF EVIDENCE

We recommend the Legislature request the commission to review its Statement of Decision regarding the Photographic Record of Evidence mandate and make any changes necessary to ensure that its decision is consistent with the Court of Appeal's ruling in City of San Jose versus State of California and Government Code Section 17556(e).

In 1985, a time when *counties* were responsible for most trial court operation and facility costs, the County Clerk's Association sponsored legislation (Chapter 875, Statutes of 1985, [AB 556, Frazee]), to establish alternate procedures for handling and storing dangerous or bulky court exhibits. Specifically, Chapter 875 required local law enforcement agencies to:

- Provide a photographic record for evidence that the court determined poses a health, safety, security, or storage problem.
- Provide a certified chemical analysis of evidence that poses a health hazard.
- Store certain evidence that poses a health or safety risk.

In 1986 and 1990, apparently at the request of the County Clerk's Association, the Legislature enacted modest changes to these alternate exhibit-handling procedures.

In the late 1990s, the Legislature began a process of transferring responsibility for trial court costs from counties to the state. Specifically, in 1997, the Legislature placed a cap on county expenditures for trial court operations, effectively making the state responsible for increases in trial court costs. In 2000, the Legis-

lature established a new trial court employee personnel system, transferring responsibility for court employment from counties to the courts. Finally, in 2002, the Legislature created a process for transferring trial court facilities from counties to the state.

In 1998, one year after the Legislature imposed a cap on county trial court costs, the City of Los Angeles' Police Department filed a claim with the commission alleging that Chapter 875 and its later amendments (Chapter 734, Statutes of 1986 [AB 2715, Frazee] and Chapter 382, Statutes of 1990 [AB 3408, Frazee]) imposed a state-reimbursable mandate. In 2000, the commission agreed with the test claimant and found that city, county, special district, and school law enforcement costs associated with the alternate court exhibit procedures constituted a state-reimbursable mandate.

Analysis

We recognize that determining whether the state has imposed a mandate is exceedingly difficult when state-local duties change over time. We also recognize that details regarding trial court funding restructuring were not required to be placed into the record because the claimants did not allege that these funding shifts affected their claim. Nevertheless, when state-local duties regarding a program change over time, a review of the history of state and local program duties is vital to accurately determine whether the state has imposed a new program or higher level of service on local government.

Our review of the commission's Statement of Decision indicates that the commission did not consider the subject legislation in its historic context and thus may have erred in its mandate

determination. Specifically, we note that the commission did not examine two critical factors regarding the subject legislation at the time of its enactment.

- Did the Legislature simply shift costs and duties associated with handling exhibits from one local agency (courts) to another (local law enforcement agencies)? Under the Court of Appeal's ruling in *City of San Jose versus State of California*, such cost shifts among local agencies are not state-reimbursable mandates.
- Was the subject legislation "cost neutral" to counties, as suggested by the testimony of the County Clerk's association? Under Government Code Section 17556(e), a measure that does not impose *net* costs is not a mandate on that group of local governments.

Recommendation

Given the shortcomings in the commission's mandate determination, we recommend the Legislature request the commission to review its Statement of Decision regarding the Photographic Record of Evidence mandate and make any changes necessary to ensure that the decision is consistent with the *City of San Jose versus State of California* case and Government Code Section 17556(e).

The following language, included in a future claims bill or other legislation, would give the commission the authority and responsibility to complete such a review.

The commission shall review its Statement of Decision regarding the Photographic Record of Evidence test claim and make any modifications necessary to this decision to clarify

whether the subject legislation imposed a mandate consistent with the Court of Appeal's ruling in *City of San Jose versus State of California* and Government Code Section 17556(e).

SEX CRIME CONFIDENTIALITY

We recommend the Legislature amend the California Public Records Act to prohibit the release by local law enforcement of information on victims of sex crimes.

Under the California Public Records Act, records of state and local law enforcement agencies generally are required to be open to public inspection. However, the law requires that the addresses of victims of certain sex crimes remain confidential and therefore not be released by law enforcement. While the Public Records Act also allows law enforcement agencies to withhold the name(s) of victims of certain sex crimes at the request of the victim, or his or her parent or guardian, it does not require law enforcement to notify such individuals of this fact.

In an effort to further protect the privacy of victims of sex crimes, Chapter 502, Statutes of 1992 (SB 296, Torres), was enacted. It requires any law enforcement agency employee, who receives a report from a person alleging that he or she was the victim of specified sex crimes, to inform the person that his or her name will become a matter of public record unless he or she requests confidentiality. Statute also requires that the person's response be included in any written report of the alleged sex offense. Finally, if the person has requested confidentiality, the law enforcement agency may not disclose the person's name or address except to specified persons.

In June 1999, the City of Hayward filed a claim with the CSM. The commission adopted the statement of decision on September 28, 2001, affirming that Penal Code Section 293 imposed new activities on local law enforcement, requiring a higher level of service, and that such activities are reimbursable under the State Constitution. Based on information provided by the State Controller's Office (SCO), the commission adopted a statewide cost estimate of \$4.8 million. This includes \$4.1 million for prior fiscal years 1997-98 through 2002-03, and about \$700,000 for 2003-04. The ongoing cost of the program is estimated to be approximately \$700,000.

Findings and Recommendations

The objective of Chapter 502 was to protect the privacy of victims of certain sex crimes, thereby allowing such individuals to avoid the public humiliation and stigma that is often associated with such crimes. Our discussions with law enforcement officers, as well as with representatives of victim organizations, suggest that the law effectively accomplishes that goal. However, in light of the fiscal impact of the commission's ruling, we recommend that the Legislature repeal the underlying law (Penal Code Sections 293 and 293.5), but amend the Public Records Act to prohibit release of the names of victims of sex crimes. This would achieve the objective of the current law—to protect the privacy of victims of sex crimes—without imposing additional duties on local law enforcement, and at no cost to the state.

SEX OFFENDERS: DISCLOSURE BY LAW ENFORCEMENT OFFICERS

We recommend that the Legislature request the commission to review the parameters and guidelines of the sex offender disclosure mandate to ensure that state reimbursement for the development of internal policies, procedures, and manuals is limited to only those aspects of the program determined by the commission to represent state-reimbursable activities.

Background

Federal Law. Since 1947, certain types of offenders, including sex offenders, have been required upon release from probation, jail, or prison, to register with the local law enforcement agency in the jurisdiction to which they are released. The federal Megan's Law, enacted in 1996, required states, and authorized local entities, to release sex offender registration information to the public. Chapter 908 (AB 1562, Alby) and Chapter 909 (SB 1378, Peace), Statutes of 1996, as well as several other laws were enacted to implement Megan's Law in California.

Under the law, information collected by local law enforcement as part of the registration of sex offenders is forwarded to the state Department of Justice (DOJ), and compiled centrally in the Violent Crime Information Network. Information on registered sex offenders is disclosed to the public either through a proactive notification by local law enforcement (reserved for high-risk sex offenders), or by way of dedicated computer terminals available through local law enforcement. In order to access the information through local computer terminals, an individual must provide specified personal information, which is retained for five years.

Commission Decision. In 1999, Tuolumne County filed a claim with the commission alleging that many of the state-enacted local requirements relating to registration of sex offenders and disclosure were state-reimbursable mandates. In July 2001, the commission approved part of the claim, affirming that some of the activities required of local law enforcement do in fact constitute a state-reimbursable mandate. For the most part, the activities determined to be reimbursable were those that the commission found went beyond the requirements of the federal Megan's Law. Figure 3 (see next page) shows the provisions determined by the commission to be a state mandate.

Potential Statewide Cost. Based on unaudited claims for prior years filed with the SCO by cities and counties, the commission adopted a statewide cost of \$32.7 million. Of this amount, approximately \$28 million is for prior fiscal year 1996-97 through 2002-03. The remaining \$5 million is the projected cost in 2003-04. The projected ongoing cost of the mandate is approximately \$5 million. It should be noted that several relatively large local jurisdictions have not yet submitted claims, including the City of San Diego, the City and County of San Francisco, and the Counties of San Bernardino and San Diego. As such, the estimate may understate the statewide cost of the mandate.

Findings and Recommendations

Direct the Commission to Modify the Ps&Gs. In its statement of decision, the commission ruled that some of the activities related to the test claim were *federally* mandated and therefore not state reimbursable. For the most part, the activities determined to be reimburs-

Figure 3**Megan's Law Provisions Found To Be Reimbursable Mandates****Submit Data to DOJ**

Requires local law enforcement to submit registration information and annual changes directly to the DOJ Violent Crime Information Network.

Removal of Registration for Decriminalized Conduct

Requires local law enforcement agencies to remove from list of sex offenders those individuals who are no longer classified as such due to decriminalization of act.

Preregister

Requires local law enforcement to preregister the individual before incarceration or release to probation.

Contents of Registration

Requires additional information to be collected, such as proof of residence, name and address of employer, and vehicle license plate number of any vehicle regularly driven by the individual.

Notice of Reduction of Registration Period

Requires local law enforcement agencies to notify sex offenders of the change in the registration period from 14 days to 5 days.

High-Risk Sex Offenders

Permits individuals classified as high-risk to be reevaluated by the DOJ and removed from this classification. Local agencies provide individuals with the evaluation form.

CD-ROM

Requires municipalities with more than 200,000 residents to make information available through CD-ROM or some other form of electronic medium.

Records Retention

Requires law enforcement to retain information on persons requesting to view the CD-ROM for a minimum of five years.

able were those that the commission found went beyond the requirements of the federal Megan's Law. The Ps&Gs, which provide guidance to local governments on state-reimbursable activities, are largely consistent with the ruling in that most activities required of the federal Megan's Law are excluded.

However, based upon our review, one provision of the Ps&Gs appears to be inconsistent with the statement of decision. Specifically, the Ps&Gs would allow local law enforcement agencies to claim state reimbursement for "the

development of internal policies, procedures, and manuals to implement Megan's Law." This provision appears to allow localities to seek state reimbursement for *all* policies, procedures, and manuals related to Megan's Law, including those which relate to federally mandated aspects of the state law. For this reason, we recommend the Legislature request the commission to review the Ps&Gs to ensure that local governments seek reimbursement for only the development of the internal policies, procedures, and manuals that relate to state-reimbursable activities. The following language,

inserted in a future claims bill or other legislation would require this review:

The Commission on State Mandates shall review the parameters and guidelines for the Sex Offenders: Disclosure by Law Enforcement Officers mandate and make all modifications necessary to ensure that local governments seek reimbursement for only the development of internal policies, procedures, and manuals mandated by the state.

EDUCATION

EMPLOYEE BENEFITS DISCLOSURE

We recommend the Legislature eliminate the requirement that districts assess and report on future liabilities for retiree health benefits. This recommendation assumes that the national Governmental Accounting Standards Board adopts a new accounting requirement within a year regarding the accounting of retiree health benefits.

In this mandate decision, the commission considered several compensation-related mandated local programs that were enacted at different times in the mid-1990s. Specifically, the mandates under review require districts and County Offices of Education (COEs) to disclose current and future liabilities for specific programs, as follows:

- ***Health and Welfare Benefits for School District and COE Retirees.*** Statutes require local educational agencies (LEAs) that provide these benefits to retirees to conduct specific activities to estimate current and future costs of these benefits and ensure that the Superintendent of Public Instruction, county superintendent, local governing boards, and interested members of the public are aware of these costs.
- ***Changes in Collective Bargaining Agreements.*** Districts must report to county superintendents budget revisions that occur during the school year as a result of adopting a collective bargaining agreement.

The commission estimates local costs for these mandates of \$2.5 million for the period from 1994-95 through 2002-03. Costs for 2003-04 are estimated at about \$500,000.

Need for State-Mandated Actuarial Reports. Under this mandate, school districts that provide health benefits to retirees must produce every three years an actuarial report of the future costs of those benefits. This report must be completed by an actuary with membership in the American Academy of Actuaries. Periodically revising the cost of retiree benefits is good accounting and financial policy. The cost of these benefits changes over time as current employees retire and the cost of health care coverage escalates. To adequately assess a district's multiyear fiscal condition, the costs of retiree benefits must be included in the district's planning estimates.

In fact, the federal Governmental Accounting Standards Board (GASB) is currently considering whether to require all government agencies to recognize future liabilities for employee health costs in their financial statements. The GASB establishes standards of accounting and financial reporting used by state and local governments.

The GASB proposal would go further than the Education Code by requiring districts each year to treat retiree health benefits in a manner similar to pension benefits. That is, districts would be required to identify and include retiree costs as an annual cost of employment—one that must be covered by specific current revenues. In essence, each year districts would have to place in a separate account the amount of revenues needed to pay for retiree benefits of

each existing employee when he or she retires. As proposed, larger school districts would have to implement this policy beginning in 2006-07, with smaller districts implementing during the succeeding two years.

Recommendation

A representative of GASB advises that the board will likely approve the policy on postretirement benefits within a year. We believe this policy will eliminate the need for the mandated actuarial reports on retiree health benefits. Under the GASB proposal, actuarial reports would be required every two or three years. The proposal goes further by requiring districts to *set-aside funds for these costs each year*. In addition, the GASB policy requires districts to follow generally accepted actuarial practices. Therefore, if GASB approves the new policy, we recommend the Legislature eliminate the requirement that districts assess and report on future liabilities for retiree health benefits.

FINANCIAL AND COMPLIANCE AUDITS

We recommend the Legislature approve funds to reimburse LEAs for additional audit requirements because the costs appear reasonable and consistent with the Legislature's intent.

In a series of legislation enacted between 1977 and 1995, the Legislature imposed new requirements on LEAs related to financial and compliance audits. In addition, revisions to the SCO audit guide imposed new duties on LEAs. These requirements include such duties as changing language in audit contracts and responding to inquiries regarding prior corrective action plans. The commission found that the

costs to comply with these new requirements constitute a state-reimbursable mandate. The commission estimates the mandate costs to be \$7.9 million (prior-year and 2002-03 claims), and \$900,000 annually thereafter.

Our review indicates that the requirements of this mandate serve a statewide interest because they help to assure fiscal oversight and district solvency. The Legislature anticipated this level of mandated costs when it enacted the requirements.

Recommendation

We recommend the Legislature approve the proposed funding because the mandate helps strengthen fiscal oversight of district solvency and the costs are consistent with the Legislature's expectations.

LAW ENFORCEMENT COLLEGE JURISDICTION AGREEMENTS

We recommend the Legislature request the commission to review its Statement of Decision regarding the Law Enforcement College Jurisdiction Agreements mandate in light of a recent California Supreme Court decision.

In 1990, the Legislature enacted Chapter 1638 (AB 3918, Nolan), which required that the governing boards of all community college districts (as well as the boards of the University of California, California State University, and Hastings College of the Law) do the following: (1) compile records of crimes reported on campus; (2) make these records available at the request of any applicant, student, or employee; and (3) develop and distribute a campus safety plan, as defined. Chapter 1638 exempted community colleges from this provision unless

and until the Legislature provides funding for this purpose.

In 1998, the Legislature enacted Chapter 284 (SB 1729, Thompson), known as the “Kristin Smart Campus Safety Act.” The act requires community college district governing boards (and others) to adopt rules requiring local and campus law enforcement agencies to: (1) enter into written agreements that define respective areas of authority; (2) make the agreements available for public viewing by July 1, 1999; and (3) transmit them to the LAO by September 1, 1999.

In June 1999, the Contra Costa Community College District filed a test claim on both laws, alleging that they imposed a state-reimbursable mandate. In April 2001, the commission rejected the claim on Chapter 1638, citing the exemption for community colleges. However, as regards Chapter 284, the commission agreed that costs of preparing, reviewing, modifying, promulgating, and transmitting the jurisdiction agreements are reimbursable. The commission denied the test claim concerning record keeping and investigation because these activities were already required by prior law.

Findings and Recommendation

The California Supreme Court’s May 2003 decision in *Department of Finance versus Commission on State Mandates* held that the costs of certain activities related to education programs were not reimbursable if those programs were voluntarily established. We believe this opinion may have application to the issue of jurisdiction agreements. Specifically, such agreements are required only in cases where colleges have voluntarily chosen to establish campus police

departments. (Education Code Section 72330(a) permits, but does not require, community college districts to establish their own police departments.) We recommend, therefore, that the Legislature direct the commission to reconsider its Law Enforcement College Jurisdiction Agreement mandate Statement of Decision in light of the California Supreme Court’s Decision in *Department of Finance versus Commission on State Mandates*. The following language, included in a future claims bill or other legislation would give the commission the authority and responsibility to complete such a review:

The Commission on State Mandates shall review its Statement of Decision regarding the Law Enforcement College Jurisdiction Agreement test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court decision in *Department of Finance versus Commission on State Mandates*.

PHYSICAL EDUCATION REPORTS

We recommend the Legislature enact legislation to repeal the physical education reporting and compliance requirements as the state already receives similar information as part of an existing mandate.

Chapter 640, Statutes of 1997 (AB 727, Martinez), stated the Legislature’s intent that all children have access to high-quality physical education programs. It also added new reporting and compliance requirements to help determine whether elementary and middle schools are providing the statutory minimum of 200 minutes of physical education every ten school days for students in grades 1 through 8. The commission found that the costs to comply

with these new duties constitute a mandate, with state-reimbursable costs of \$40,000 (prior-year and 2002-03 claims), and \$8,000 annually thereafter.

Our review indicates that the costs of this mandate will be higher than the commission's estimate. Actual claims data from the SCO show state-reimbursable costs of over \$100,000 for the prior years. Moreover, these claims represent a small fraction of the school districts potentially eligible for reimbursement, indicating that the ongoing costs of this mandate also will be higher than estimated.

Our review indicates that school districts are already eligible to receive reimbursement under another mandate for physical fitness reports. Chapter 975, Statutes of 1995 (AB 265, Alpert), requires school districts to annually administer to each student in grades 5, 7, and 9 a physical performance test. Upon request by the Superintendent of Public Instruction, districts are required to submit the test results every two years to the Department of Education. The annual budget act provides approximately \$1.2 million for this purpose. The testing and reports required by Chapter 975 provide the Legislature with outcome information regarding the physical fitness of pupils in the three grades, making the additional physical education reports of Chapter 640 somewhat duplicative.

Recommendation

We recommend the Legislature enact legislation to repeal the reporting requirements of this mandate because the state already receives information on physical education that serves a similar purpose to this mandate.

SCHOOL DISTRICT AND COUNTY OFFICE OF EDUCATION FISCAL ACCOUNTABILITY REPORTING

We recommend the Legislature fund the School District Fiscal Accountability mandate because its costs appear reasonable. We recommend the Legislature direct the commission to revisit its Statement of Decision regarding the County Office mandate and include in this decision a discussion of the extent to which revenues appropriated in the annual budget for this purpose should offset county offices of education mandate costs.

After the bankruptcy of the Richmond Unified School District in 1992, the Legislature passed and the Governor signed Chapter 1213 (AB 1200, Eastin). The bill strengthened the existing school district budgeting process and county office of education oversight of that process. In two mandate decisions, the commission reviewed the AB 1200 process as well as other Education Code statutes that affect (1) district budgeting practices and (2) county office oversight responsibilities.

The commission identified the following school district and county office activities as reimbursable state mandates:

School Districts

- Providing the county superintendent of schools with various fiscal reports each year.
- Altering the timing of the budget process and making the final budget available to the public within certain timelines.
- Certifying the district's budget condition each year. Districts that are unable or may be unable to meet financial obliga-

tions in the current or future budget years are required to submit additional reports to the county superintendent.

County Office of Education

- Altering the timing of the budget process and providing the state Superintendent of Public Instruction with various reports on districts' fiscal condition each year.
- Verifying the accuracy of district financial statements and notifying the appropriate district official when the county superintendent will not approve warrants issued by a district.
- Taking various actions when a district—or the county superintendent—determines that a district is unable or may be unable to meet financial obligations in the current or future budget years.

The commission estimates the cost of the mandates on school districts at \$11.7 million from 1996-97 through 2002-03. The ongoing cost is estimated at \$2 million annually beginning in 2003-04. For the county office mandates, the commission estimates prior-year costs of \$1.8 million (1996-97 through 2002-03) and ongoing costs of \$300,000 annually beginning in 2003-04.

Findings and Recommendation

The school district costs appear reasonable. The fact there are any mandated local costs claimed by county offices of education, however, is surprising given that the Legislature makes an annual appropriation to counties to cover their AB 1200 costs. The *1996-97 Budget Act*, for instance, contained \$1.65 million for

COE oversight and interim reporting activities. This appropriation has increased over the years, with a 2003-04 appropriation of \$6.1 million for these activities. The commission's Statement of Decision does not address the issue of these appropriations nor do the Ps&Gs require county offices to reduce claims in recognition of available funding. According to the SCO, county office claims used by the commission to develop the statewide cost estimate appear to be "gross" costs—that is, they represent the total costs of complying with the mandated activities and are not reduced to reflect the budget act funds.

In this case, the Legislature has attempted to pay for county office costs in a direct manner by providing funds in the annual budget act. In fact, it has provided significantly more funding to county offices than the estimated cost of the mandated activities. The commission's statement of decision makes no acknowledgement of this appropriation. Therefore, we recommend the Legislature direct the commission to reconsider its Statement of Decision and determine whether county offices of education mandate claims should be offset by revenues appropriated in the annual budget act. The following language, included in a future claims bill or other legislation, would accomplish our recommendation.

The commission shall review its Statement of Decision regarding the *County Office Oversight* mandate and make any modifications necessary to clarify the extent to which budget act appropriations to county offices of education should be considered offsetting revenues to any state-mandated local costs of the program.

STANDARDIZED TESTING AND REPORTING (STAR)

We recommend the Legislature request the commission to review its Statement of Decision regarding the STAR program mandate and make any changes necessary to ensure that its decision reflects federal mandates in place at the time the program was enacted.

In 1997, Chapter 828 (SB 376, Alpert), created the STAR program. This program requires districts to test every student in grades 2 through 11 using a test selected by the State Board of Education. In addition, the program requires districts to test specified English Learner (EL) students (students whose primary language is not English and who are not yet proficient in English) in mathematics and language skills in their primary language. The board selected the Stanford-9 (SAT-9) test as the assessment taken by all students and the Spanish Assessment of Basic Education (SABE) as the test for Spanish-speaking EL students. Similar tests in other languages were not available.

Costs of the STAR Mandate. The commission determined that the STAR program imposed a wide array of local-mandated activities on school districts and county offices of education. Activities approved for reimbursement include:

- ***Test Materials, Supplies, and Equipment.*** In the first two years of the program, state law required districts to purchase the SAT-9 and SABE from the publishers using a standard contract developed by the state. The costs of these contracts and of negotiating the contracts are reimbursable.
- ***Administration of the Test.*** Costs associated with duties required of the district and school testing coordinator and other costs created by administering the tests are reimbursable. Time spent by classroom teachers during normal school hours, however, is not reimbursable.
- ***Reporting and Record Keeping.*** Maintaining STAR scores in pupils' records and notifying parents, the school district governing board, and the state Department of Education of STAR results are reimbursable activities.
- ***Developing Policies and Procedures, Training.*** Costs of training district staff and developing district policies and procedures needed to implement the STAR tests are reimbursable. Time spent by classroom teachers during normal work hours is not reimbursable, although costs of substitute teachers to permit the training of teachers taking place during the school day are reimbursable.

The commission estimates costs of \$152.3 million over the period from 1997-98 through 2002-03. Annual costs beginning in 2003-04 are estimated at \$31.8 million, or about \$6.75 per student tested.

Analysis

Estimate Based on Faulty District Claims. The statewide estimates are based on district-mandated cost claims as submitted to the SCO. As with all new mandate claims, they were not subject to a thorough review or audit *before* the development of the statewide estimate. Our review of five district STAR claims revealed

significant problems with the claims. Most significantly, districts often failed to recognize state apportionments for local STAR costs. Since the beginning of the program, SDE provided a per-student payment to districts to pay for local STAR costs. In 1997-98, for instance, the state board approved \$6.65 per student for local costs—\$4.10 to pay for printing, shipping, and scoring of the SAT-9 tests, and \$2.55 for local administrative costs. Four of the five districts we reviewed failed, in full or in part, to recognize these apportionments as an offsetting revenue. If these five districts are representative of all K-12 districts, the statewide estimate greatly overstates actual net costs experienced by districts.

In part, this problem may have been caused by the commission's Ps&Gs, which, in our view, inappropriately narrow the activities against which state funds should apply as offsetting revenues. Most glaringly, the guidelines omit the cost of printing, shipping, and scoring the tests from the list of costs that districts must offset with state funds.

Federal Testing Mandates. The Government Code provisions guiding the mandate process direct the commission to deny reimbursement when the state creates local mandates in implementing a federal law—unless the state law exceeds the federal requirements. The state's decision to enact the STAR program was, at least in part, designed to bring California into compliance with the federal Title 1 program requirements under the Improving America's Schools Act (IASA) of 1994. In the act, the federal government requires statewide systems of assessment and accountability for schools and districts participating in the Title 1 program.

Assessment requirements contained in the IASA that could affect STAR mandates include:

- **Grades Assessed.** Tests must be administered to all students in one grade in each of three grade spans (grades 3 through 5, 6 through 9, and 10 through 12). This assessment must be administered to *all students*, not just students attending Title 1 schools. Assessments must cover at least mathematics and reading/language arts.
- **Special Education.** Reasonable adaptations and accommodations for students with special learning needs must be provided. This includes special education students.
- **Parental Notification.** Federal law required certain Title 1 schools (known as "schoolwide" Title 1 schools) to provide individual student assessment results to parents.

In 2002, the federal No Child Left Behind (NCLB) Act replaced the IASA. The assessment requirements contained in the new law mirror the STAR requirements even more closely. Under NCLB, annual testing in mathematics and reading is required in grades 3 through 8 and once in grades 9 through 12. In addition, the state must begin to assess students in science beginning in 2005-06 (although not as frequently as in mathematics and reading/language arts).

Commission Fails to Recognize Federal Mandates. The commission uses several tests to determine whether local costs are due to a federal mandate. First, federal law must require the action. State courts have interpreted this to mean that, without state conformity, significant

consequences to the state would occur (such as a significant loss of federal funds). In addition, if specific funding is provided by the federal government in support of the requirement, the mandate is not reimbursable.

The commission's approval of the STAR mandate makes no mention of the IASA testing requirements. According to commission staff, IASA requirements were never discussed as a factor in determining the STAR mandate. Commission staff advises that issues of federal mandates are normally raised by the Department of Finance (DOF). The record shows that DOF identified mandates contained in federal *special education* statutes that it believed would reduce STAR mandates for testing special education students. The DOF did not raise IASA mandates, however, and the commission found that the federal special education statutes did not constitute a federal mandate.

Findings and Recommendation

Our review suggests the federal assessment mandates contained in IASA and NCLB should render a significant portion of the STAR mandate costs ineligible for reimbursement. Because the three IASA-mandated tests constitute about one-third of the state-mandated STAR tests, mandated costs should fall by at least that proportion. We would expect the proportion to be higher than that, however, because a number of the activities identified as reimbursable must be done by local agencies regardless of the number of grades tested. For instance, each district would need a test coordinator regardless of whether three grades or ten grades were tested.

Our review also indicates that some costs

identified by the commission as state reimbursable, such as testing procedures for special education students and providing student test results to parents in certain Title 1 schools, are the result of federal requirements and therefore not state reimbursable. In addition, because NCLB testing mandates more closely mirror the STAR program, the number of reimbursable activities related to STAR mandates would be even fewer.

The Government Code establishes a three-year time limit for parties involved in the test claim to challenge the commission's Statement of Decision. This three-year period expired on August 24, 2003, without the DOF commencing a challenge to the mandate determination. As a result, the Legislature's only recourse is to request the commission revisit the issue of federal mandates for student assessment and modify the mandate's Statement of Decision as appropriate to reflect the requirements of federal law. To accomplish this, we recommend the Legislature adopt the following language in a future claims bill or other legislation:

The commission shall review its Statement of Decision regarding the *Standardized Testing and Reporting* test claim and make any modifications necessary to this decision to clarify whether federal testing requirements in place at the time the program was enacted should reduce the scope of the state-mandated costs.

While the commission is revisiting this issue, we also suggest it review the directions to districts regarding offsetting revenues that are contained in the Ps&Gs to ensure that all STAR activities are offset by state per-pupil apportionments.