STATE REIMBURSEMENT OF MANDATED LOCAL COSTS: A REVIEW OF STATUTES FUNDED DURING JUNE 1981 THROUGH SEPTEMBER 1982

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PREFACE

Chapter 1256, Statutes of 1980, requires the Legislative Analyst to report annually on any previously unfunded mandates for which funding was provided by the Legislature in a claims bill during the prior fiscal year.

This report reviews those mandates funded initially in one of the following three claims bills: (1) Ch 1090/81 (SB 1261), (2) Ch 28/82 (AB 171), and (3) Ch 1586/82 (AB 2675). These measures were enacted during the period June 30, 1981, through September 30, 1982. The specific mandates funded in these bills and reviewed in this report are listed below:

Mandates Funded by Claims Bills Enacted in 1981 and 1982 and Reviewed by Legislative Analyst

Mandate Authority	Description
Ch 842/78	Tuberculosis Examinations for Contract School Bus Drivers
Ch 876/76	Sentencing Transcripts
Ch 984/77	State Hospital Commitment Procedures
Ch 1139/76	Determinate Sentencing
Ch 1143/80	Regional Housing Needs Determination by Councils of Governments
Ch 1242/77	Senior Citizens' Property Tax Postponement Program

The three claims bills identified above contain funding for several other mandates which we have reviewed in previous reports.

This report was prepared by Vincent Brown and other members of the Legislative Analyst's staff under the supervision of Peter Schaafsma and Phyllis Cadei.

SUMMARY OF MAJOR FINDINGS AND RECOMMENDATIONS

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

CHAPTER II: TUBERCULOSIS EXAMINATIONS FOR CONTRACT SCHOOL BUS DRIVERS

1. Chapter 842, Statutes of 1978, results in a true mandate because it requires (a) school districts and county offices of education to make tuberculosis (TB) examinations a condition of employment for contract school bus drivers and (b) local health officers to provide free TB examinations to contract school bus drivers free of charge.

2. The portion of the mandate which requires TB examinations for contract school bus drivers serves both local and statewide interests. That portion of the mandate, however, which requires local health officers to provide TB examinations free of charge for contract school bus drivers serves neither a state nor local interest.

3. We have no basis for determining if the public health benefits from this mandate outweigh the costs of complying with it.

4. The Legislature's objectives in establishing the mandate have been achieved only in part because the mandate has not been implemented on a uniform basis by all districts. The extent of implementation varies widely among districts, partly because Chapter 842 does not require any state agency to enforce compliance with the mandate.

5. State law requires local health officers to provide free TB examinations for contract school bus drivers, but not for district-employed

bus drivers. Requiring local health officers to provide free TB examinations for contract school bus drivers is not necessary to achieve the public health goals of Chapter 842 and is inconsistent with state policy toward district-employed drivers. A more consistent approach to achieving the Legislature's objectives would be to continue the requirement that those seeking contracts as school bus drivers successfully pass TB examinations prior to receiving contracts, but to delete the requirement that local health officers provide the examinations free of charge.

6. Currently, counties receive $4,000 in state reimbursements to cover their cost in providing TB examinations to contract school bus drivers. Given the administrative costs to the state of holding hearings, amending parameters and guidelines, appropriating funds, developing claim instructions, and reviewing and paying claims, reimbursing counties in this manner is not cost-effective. A more cost-effective approach to achieving the Legislature's objectives would be to pay for increased district costs associated with TB examinations through the pupil transportation program, rather than through the local mandate claims process.

Accordingly, we recommend that existing law relating to TB examinations for school district employees be amended to: (1) require the Department of Education to monitor compliance with the law and (2) eliminate the requirement that local health officers provide the examinations at no charge.

Implementation of this recommendation would result in (1) a minor cost to the State Department of Education to supervise school districts' compliance with the requirement that school bus drivers undergo TB examinations and (2) minor savings to various state agencies by eliminating the

cost of processing local claims for reimbursement. Finally, it would transfer local mandated costs from counties to school districts which would be reimbursed through the school transportation program.

CHAPTER III: SENTENCING TRANSCRIPTS

1. Chapter 876, Statutes of 1976, constitutes a true mandate by requiring counties to prepare and mail sentencing transcripts. Chapter 1586, Statutes of 1982, however, stated that the mandate would not be enforced until funds become available to pay the claims.

2. The mandate serves a statewide interest by assuring that prisoners serve uniform, legal sentences, and by assuring that the state pays only for the appropriate amount of prisoner maintenance costs.

3. It is not possible to cost out all the benefits resulting from this mandate. Available evidence, however, indicates that state transcript review may result in savings in prisoner maintenance costs by identifying sentencing errors and reducing prison sentences. These savings may offset, in whole or in part, the mandated costs. Minimum reimbursement costs of this mandate are estimated to be $257,000 in 1981-82.

4. Available evidence indicates that local reimbursement claims are excessive and should be audited more closely by the Controller. The number of transcripts reported by counties as having been sent to the Department of Corrections exceeds the number of felons sentenced to state prison from those counties. In addition, our analysis indicates that the local and state administrative tasks associated with providing reimbursement for costs attributable to this mandate could be reduced substantially.

Accordingly, we recommend that the language in Chapter 1586, Statutes of 1982, which suspends the operation of this mandate, be repealed. We further recommend that legislation be enacted which directs the State Controller to (1) conduct field audits of selected county claims to determine the number of transcripts which are not mandated and/or have not been sent and (2) reimburse counties based on a list of prison commitments by county and the estimated ratio of appealed cases to total commitments.

Implementation of this recommendation would result in annual state costs of $257,000. These costs would be offset, in whole or in part, by savings to the Department of Corrections resulting from reduced prison sentences and associated maintenance costs at state prison facilities. It also would result in a minor-to-moderate savings (up to $100,000) to the state due to reduction in state reimbursements for unjustified or inappropriate local claims.

CHAPTER IV: STATE HOSPITAL COMMITMENT PROCEDURES

1. Chapter 984, Statutes of 1977, required counties to provide an increased level of service between January 1, 1978, and January 1, 1979, by requiring the district attorney or county counsel to act as the sole and exclusive petitioner for state hospital commitments for the developmentally disabled.

2. Mandate provisions contained in Chapter 984, Statutes of 1977, subsequently were replaced by provisions included in Chapter 1319, Statutes of 1978, and Chapter 644, Statutes of 1980. The mandated costs relating to Chapter 644 have been funded annually in the Budget Act beginning in 1980-81.

CHAPTER V: DETERMINATE SENTENCING

1. Chapter 1139, Statutes of 1976, has resulted in a true mandate by requiring more sophisticated sentencing hearings. This act requires judges, defense counsels, prosecutors, probation officers, and court clerks to spend more time in connection with these hearings.

2. The Legislature approved funds for this mandate in Chapter 28, Statutes of 1982, but deleted funds for this mandate from Chapter 1090, Statutes of 1981 and Chapter 1586, Statutes of 1982.

3. The mandate serves a statewide interest by imposing a uniform set of laws for the entire state and assuring that convicted persons are dealt with in a consistent manner.

4. We have no analytical basis for comparing the benefits and costs of this mandate.

5. In addition to increasing local costs, Chapter 1139 also may result in substantial local savings by shortening judicial proceedings. These savings are not recognized in the Board of Control's parameters and guidelines for reimbursing state-mandated costs.

Accordingly, we recommend that the Legislature recognize that Chapter 1139, Statutes of 1976, imposes state-mandated costs on local governments. We further recommend that the Legislature consider alternative methods for reimbursing counties for net costs incurred as a result of Ch 1139/76.

Implementation of this recommendation would result in a maximum annual state cost of $2 million offset by unknown savings. The amount of

the savings would depend on the extent to which the state is credited for savings to counties resulting from fewer and shorter trials.

CHAPTER VI: REGIONAL HOUSING NEEDS DETERMINATION BY COUNCILS OF GOVERNMENTS

1. Chapter 1143, Statutes of 1980, imposes a true mandate in that it requires regional councils of governments (COGs) to prepare regional housing assessments and allocation plans. Chapter 1143 also requires each local government to conform its housing element and general plan with the provisions of Chapter 1143, and to review and revise its housing element at least every five years, with the first review to be completed July 1, 1984. (We will review this portion of the mandate in a later report.)

2. This mandate serves a statewide interest to the extent it maximizes the statewide availability of housing.

3. The mandate is not achieving the intent of the Legislature. Only 54 percent of the COGs have prepared and adopted the regional housing allocation plans required by Chapter 1143, and only 23 percent of all localities have adopted a housing element that complies with Chapter 1143.

4. We have no analytical basis to determine if the benefits realized as a result of this mandate outweigh the costs. The benefits of having all COGs comply with the mandate are not measurable because the preparation of the regional plans and housing elements does not guarantee increased availability of housing. In addition, the COG allocations do not necessarily reflect each locality's "fair share" of housing because state law permits the locality to revise its assigned allocation after review by the COG. As a result, the COG assessments may not alter significantly locally determined housing assessments.

For these reasons, we recommend that this mandate be repealed and that legislation be enacted requiring the Department of Housing and Community Development to assume full responsibililty for providing localities with "fair share" housing allocation, on an advisory basis.

Implementation of this recommendation would result in a significant annual savings to the state (probably less than $265,000). These savings would be partially offset by moderate costs (up to $100,000) to the Department of Housing and Community Development.

CHAPTER VII: SENIOR CITIZENS' PROPERTY TAX POSTPONEMENT PROGRAM

1. Chapter 1242, Statutes of 1977, has resulted in a true mandate by requiring counties to process and forward to the Controller's office certificates of eligibility, notices of lien, and releases of lien for senior citizens participating in the property tax postponement program.

2. The mandate serves a statewide interest by ensuring that program participants are treated equitably. The state also has a fiscal interest in ensuring the repayment of funds loaned on behalf of property owners when a property is sold.

3. The related costs and benefits associated with the mandate appear to be consistent with the Legislature's expectations. The mandated procedure for processing certificates of eligibility ensures that no more than one claim is filed per eligible claimant. In addition, the mandated procedure for processing lien documents ensures the repayment of taxes to the state.

CHAPTER I

INTRODUCTION

HISTORY OF THE SB 90 PROCESS

Original Legislative Provisions

The original "SB 90" (Ch 1046/72), known as the Property Tax Relief Act of 1972, established the principle of reimbursing local agencies for certain mandated local costs and revenue losses. SB 90 did not require the state to provide reimbursement for all increased local costs, all mandated local costs, or even all state-mandated local costs. For instance, costs mandated by the courts, the federal government or the voters, as well as costs resulting from any changes in the definition of a crime or infraction, need not be reimbursed by the state. Generally, what is required is that the state provide reimbursement in cases where state legislation or executive regulations mandate local agencies to provide a new program, or higher level of service in an existing program. Even under these circumstances, however, any one of several exceptions may apply.

The reimbursement requirements, which are found in the Revenue and Taxation Code, have been amended many times since 1972, and the SB 90 reimbursement principle was added to Article XIII B of the State Constitution in 1979.

Chapter 1256, Statutes of 1980

Chapter 1256, Statutes of 1980, made several substantive changes to the SB 90 process. This legislation expanded and clarified the definition of mandated costs, and required the Office of Administrative Law to identify

any regulations that could result in a mandate. Chapter 1256 also implemented a new process for reimbursing unfunded mandates. Essentially, the new process requires the Board of Control (BOC) to present to the Legislature an estimate of the statewide costs relating to each mandate the BOC recommends for payment. Statewide estimates, identified by fiscal year, are to be provided for the period beginning with the first year for which local agencies are eligible for reimbursement, up to the year in which the mandate is funded in the budget.

These statewide estimates are used as the basis for appropriating funds to the Controller. The Controller then notifies affected local governments of the right to file claims based on the parameters and guidelines issued by the BOC and approved by the Legislature. Local agencies must file their claims within 120 days after being notified of their right to do so. Claims received are audited by the Controller and paid from the funds appropriated. Under this new process, the Legislature need deal with any particular mandate in only one claims bill. Under the old process, claims against the same mandate were heard in several claims bills. This unnecessarily lengthened the time and effort required of both the BOC and the Legislature to resolve these claims.

Budget Act of 1981

In order to expedite the transition to the new reimbursement process, the Legislature included language in the Budget Act of 1981 (Item 871-001-001). This language required the BOC to identify all mandates for which (1) parameters and guidelines were adopted prior to January 1, 1981, and (2) the board expected to receive a significant number of claims in the

1981-82 fiscal year. The language further directed the board to include, in the claims bill to be introduced in July 1981, statewide estimates for all such mandates.

The purpose of the Budget Act language was twofold. First, it was intended to speed the phase-in of the new SB 90 process, thus eliminating the backlog of claims which otherwise would be handled under the old process. The language essentially required the BOC to speed up its identification of old pre-1981 individual claims and include them in the development of statewide estimates for the next claims bill. Second, it also limited the period of time local agencies had to file claims for costs incurred in prior years. Once funding for a statewide estimate is enacted, Ch 1256/80 requires local agencies to submit their claims for reimbursement against these appropriations within 120 days. If claims are submitted after 120 days, the Controller is required to pay them at 80 percent of the amount otherwise allowable. If they are submitted more than one year after the date of enactment, they must be returned unpaid.

Statewide estimates were developed for certain mandates included in the two 1981 claims bills, SB 1261 (Ch 1090/81) and AB 171 (Ch 28/82). Nevertheless, the old reimbursement process was still utilized for certain mandates included in these two bills.

Chapter 1090, Statutes of 1980

Chapter 1090 directed the BOC to review all mandates for which parameters and guidelines had been adopted prior to January 1, 1981. It further required the BOC to amend these parameters and guidelines to include a filing deadline for reimbursement claims of January 28, 1982, even though the BOC

had not yet adopted statewide cost estimates. This was done to eliminate the possibility that delays in board action would further extend the period for filing claims. Chapter 1090 also eliminated the grace period during which these specific pre-1981 claims could be filed for 80 percent of the amount.

The most recent claims bill, Ch 1586/82, utilized both the old process and the new estimate procedure. Future claims bills, however, should include only statewide cost estimates.

RECENT CHANGES TO THE SB 90 PROCESS

The most recent amendments to the SB 90 process were made by Ch 734/82 (SB 90), Ch 1586/82 (AB 2675), and Ch 327/82 (SB 1326). Language contained in Ch 1586/82, however, is identical to language contained in Chapter 734.

Chapter 734, Statutes of 1982

Chapter 734 made a number of changes to the Revenue and Taxation Code. Specifically, it:

- Changed the deadline for filing estimated claims and reimbursement claims for actual costs. A local agency or school district may file an estimated claim by November 30 of the fiscal year in which costs are to be incurred. The agency or district, however, must file a reimbursement claim which details the actual cost incurred for that fiscal year by the following November 30. Under previous law, the deadline was October 31.
- Clarified the deadline for submitting reimbursement claims to the Controller without imposition of the 20 percent late claims penalty. Previously, local agencies and the Controller disagreed

over what was legislative intent regarding the reimbursement claim deadline. Under Chapter 734, the Controller must pay 80 percent of a reimbursement claim received up to one year after the November 30 deadline. For example. if a reimbursement claim is filed after the November 30 deadline following the fiscal year in which actual costs were incurred, the Controller is obligated to pay 80 percent of the approved reimbursement claim. Any claim filed more than one year following the November 30 reimbursement claim deadline is ineligible for funding.

- Requires the two local government members of the Board of Control to be elected local government officials.
- Requires the Governor to appoint an alternate member to the Board of Control to serve and vote in place of any absent local government member.
- Directs the Legislative Counsel to describe the basis for determining whether state reimbursement to a local agency is required.
- Directs the Department of Finance to review all statutes which mandate local costs, but do not contain a six-year sunset provision.

Chapter 327, Statutes of 1982

Additional changes to the SB 90 process were made by the 1982 Budget Act trailer bill, Ch 327/82. This statute provides the Legislature with several options in explaining its actions on individual items contained in a claims bill. As a result, local agencies and other parties involved in the process will be provided with specific reasons for legislative action.

If the Legislature deletes from a claims bill funding for a mandate imposed either by legislation or by a regulation, it may include one of the following findings to explain its actions:

- The legislation or regulation does not contain a mandate.
- The legislation or regulation contains a mandate, but the mandate is not reimbursable.
- The regulation contains a reimbursable mandate and, therefore, the Office of Administrative Law shall order the repeal of the regulation in accordance with Section 11349.11 of the Government Code.
- The legislation or regulation contains a reimbursable mandate and therefore the legislation or regulation shall not be enforced against local agencies or school districts until funds otherwise become available.
- The Legislature cannot determine if the legislation or regulation contains a reimbursable mandate and that the regulation or legislation shall remain in effect and enforceable against local agencies and school districts unless a court determines that the legislation or regulation contains a reimbursable mandate. If the court determines there is a mandate, the legislation or regulation would be suspended and the legislation or regulation shall not be enforced against local agencies and school districts until funding becomes available.
- The Legislature cannot determine if the legislation or regulation contains a reimbursable mandate and the legislation or regulation shall be suspended and shall not be enforced against local agencies

and school districts until a court determines whether the legislation or regulation contains a reimbursable mandate.

REVIEW OF UNFUNDED MANDATES

Chapter 1256, Statutes of 1980, requires the Legislative Analyst to prepare annually a report which evaluates 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 this office to make recommendations as to whether each of these mandates should be modified, repealed, or made permissive.

In enacting Chapter 1256, the Legislature recognized that state mandated programs, like 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 way possible.

In April 1982, our office issued its first annual report under the provisions of Chapter 1286. In that report, we reviewed mandates funded during the period January 1978 to June 1981. This report is the second issued pursuant to Chapter 1286.

The criteria used in both the earlier report and this one to evaluate the mandates funded in claims bills 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?

- What benefits have been achieved as a result of the mandate and are they worth the cost?
- Are the costs and benefits consistent with the Legislature's intent and expectations?
- Are less costly alternatives available?
- Does the mandate or the provision for reimbursing compliance costs result in adverse consequences?
- Is the funding adequate?

CHAPTER II

TUBERCULOSIS EXAMINATIONS FOR CONTRACT SCHOOL BUS DRIVERS

DESCRIPTION

Chapter 842, Statutes of 1978, requires school districts, county superintendents of schools, and community college districts who contract for pupil transportation services to require, as a condition of the contract, that all drivers regularly transporting pupils be examined for active tuberculosis (TB). In addition, Chapter 842 requires local health officers to make the examination available at no cost. Generally, the examination must be provided by an appropriately licensed surgeon or physician and consists of an intradermal tuberculin test. If the test is positive, it must be followed by an X-ray of the lungs.

Previous law required TB examinations only for regular district employees at the time they were hired and every four years thereafter. Previous law did not require local health officers to provide the examinations free of charge.

At the time Chapter 842 was being considered by the Legislature, the Legislative Counsel's digest stated that the bill would establish a state-mandated local program. Chapter 842, however, disclaimed reimbursement on the basis that the costs imposed on local governments were minor and would not impose a financial burden on them.

BOARD OF CONTROL ACTION

San Bernardino County filed a "claim of first impression" on October 19, 1979, alleging that Chapter 842 mandated an increased level of

service. The basis of this allegation was that prior to this legislation, local entities were not required to give free TB examinations for bus drivers. San Bernardino County alleged that it had incurred a cost of $1,245 in 1978-79 as a direct result of Chapter 842.

On February 21, 1980, the Board of Control determined that a reimbursable mandate existed in Chapter 842.

Subsequently, on September 17, 1980, the board adopted parameters and guidelines which specified that the state would reimburse counties for TB exams at the same rate used by the Department of Health Services for Medi-Cal providers. The board amended the parameters and guidelines on October 22, 1980, to make cities and health districts eligible for reimbursement, in addition to counties.

Specifically, the following are reimbursable activities:

1. Intradermal tuberculin tests.
2. X-ray examinations of the lungs, if necessary.
3. Issuance of a certificate from the examining physician showing that the employee was found free of active tuberculosis.

FUNDING HISTORY

Chapter 1586, Statutes of 1982 (AB 2675), provided $16,724 for costs incurred in 1978-79 through 1981-82 and for estimated 1982-83 costs. The appropriation provided funding for examination of approximately 1,980 contract school bus drivers in four counties for the five-year period. Table 1 displays the years for which funding was provided.

Table 1

Funding for TB Examinations for Contract School Bus Drivers

Funding Authority	Years for Which Funding was Provided				
	1978-79	1979-80	1980-81	1981-82	1982-83
Ch 1586/82	$3,776	$2,311	$2,719	$3,798	$4,120

Our office recommended approval of the $16,724 requested in Chapter 1586. Because the reimbursement amounts are based on the maximum rates the Medi-Cal program pays for TB examinations, we believe the appropriation is sufficient to cover actual costs.

FINDINGS AND CONCLUSIONS

1. Chapter 842, Statutes of 1978, results in a true mandate because it requires (a) school districts and county offices of education to make TB examinations a condition of employment for contract school bus drivers and (b) local health officers to provide free TB examinations to contract school bus drivers free of charge.

Prior law required TB examinations only for regular school district employees, including bus drivers employed by the district, as a condition of initial employment and every four years thereafter. These examinations were administered by local health services providers, including some local health officers. The local health officer, however, was not required to provide these examinations free of charge. Instead, the cost of these examinations was paid from the general funds of the school district.

2. That portion of the mandate which requires TB examinations as a condition of employment for contract school bus drivers serves both local and statewide interests. That portion of the mandate which requires local

health officers to provide TB examinations free of charge serves neither a state nor local interest.

The public health portion of the mandate is intended to prevent TB outbreaks by reducing the likelihood of school-age children coming into contact with carriers of TB. In addition to government's obvious interest in protecting the health of school children, both the state and local governments have a financial stake in detecting carriers of TB. An outbreak of TB could (a) increase the workload of local public health agencies, which are responsible for case finding and follow-up of active cases and (b) increase state Medi-Cal expenditures for treatment of TB. As a result, the program serves both local and state interests.

We cannot identify any particular benefit either to the state or to local agencies by requiring local health officers to provide TB examinations to contract school bus drivers. Use of local health officers is not necessary to achieve the public health goal of the mandate and is not required for bus drivers employed directly by school districts.

3. We have no basis for determining if the public health benefits resulting from this mandate outweigh the costs of complying with it.

The potential benefit from this mandate is the reduced likelihood that one or more pupils will be exposed to a carrier of infectious TB. It is not possible, however, to determine to what extent this benefit is being realized. The available data do not indicate how many, if any, of the drivers tested were carriers of infectious TB and the extent to which TB testing reduced pupil exposure to the disease. In addition, we have no basis for putting a value on the additional protection that may result from this screening or comparing these benefits to costs of achieving them.

4. The Legislature's objectives in establishing the mandate have been achieved only in part, because the mandate has not been implemented on a uniform basis by local agencies.

Some school districts have complied with the mandate and require TB examinations before they will issue a contract for pupil transportation. In these districts, the transportation providers use the services of the local health officer who is reimbursed by the state. Other school districts that contract for pupil transportation, however, do not require TB examinations. In some of these districts, drivers simply do not receive TB examinations. In other districts, transportation providers require TB examinations as a part of their drivers' annual physical examination, even though their contracts do not require it. In these districts, the transportation provider, rather than the state, pays for the cost of the examinations.

The extent to which this mandate has been implemented varies widely among districts, partly because Chapter 842 does not require any state agency to enforce compliance with the mandate. Greater compliance could be achieved if the Department of Education were required to supervise the implementation of the mandate.

5. Requiring local health officers to provide free TB examinations for contract school bus drivers is not necessary to achieve the public health goals of Chapter 842 and is inconsistent with state policy toward district-employed drivers.

State law requires TB examinations for all school bus drivers, regardless of whether they are employed by school districts or contracted with districts. State law, however, requires local health officers to

provide free TB examinations only for contract school bus drivers. We can find no compelling reason to treat these two groups of school bus drivers differently. A more consistent approach would be to continue the requirement that all school bus drivers undergo TB examinations, but delete the requirement that local health officers provide the examinations to contract school bus drivers at no charge. This approach, moreover, would in no way jeapardize the achievement of the Legislature's public health objective in enacting Chapter 842.

6. The process for providing reimbursement to county health officers for the cost of TB examinations is costly to administer.

Currently, only 4 out of 58 counties receive reimbursement for TB examinations, which cost approximately $4,000 annually. To administer the reimbursement process for this program, the Board of Control must hold hearings and amend parameters and guidelines, when amendments are requested. The Legislature annually must consider funding for the program in the claims bill, or Budget Bill. The State Controller annually must develop claiming instructions, review claims, and make payments.

We believe that this process requires an excessive amount of time and expense relative to the $4,000 in reimbursements provided annually.

A more cost-effective approach to achieving the Legislature's objectives would be to continue the requirement for TB examinations but delete the mandate that local health officers offer the examinations at no charge. Although this change would cause a minor increase in costs to school districts, the additional costs could be reimbursed by the state through the pupil transportation program, rather than through the local mandate process. Reimbursing TB examinations through the pupil transpor-

tation program would not increase the administrative costs of that program, but would allow savings to be achieved under the local mandate process.

RECOMMENDATIONS

1. We recommend the Legislature require the Department of Education to monitor compliance with TB examination requirements set forth in Education Code Sections 49406 and 76406. This would provide for more widespread compliance with the requirement at the local level, and thereby promote the achievement of the Legislature's objectives.

2. We recommend that Education Code Sections 49406 and 76406 be amended to eliminate the requirement that local health officers provide TB examinations at no charge. This amendment would establish consistent program requirements regarding mandated TB examinations. It also would eliminate a costly method of providing reimbursment for costs incurred by local health officers.

CHAPTER III

SENTENCING TRANSCRIPTS

DESCRIPTION

Chapter 876, Statutes of 1976, requires counties to mail to the appropriate Department of Corrections (CDC) institution a copy of the transcript of sentencing proceedings for any person sentenced to a state correctional institution. Chapter 1117, Statutes of 1980, amended this act to require that the transcript be sent within 30 days of sentencing.

Prior law required court reporters to prepare a record (that is, take down the discussions in shorthand) of all court proceedings, including sentencing hearings in felony cases. However, reporters were required to transcribe those proceedings only if an appeal from the court's decision was filed. Counties also were required to prepare several other documents, including a Judicial Council report form called the "Abstract of Judgment," noting the defendant, the crimes for which the defendant was convicted, and the time to be served. Although the sentencing transcript is considered to be the official record of the conviction and the sentence pronounced by the judge, the abstract is the official document necessary to commit a person to a correctional institution. Usually, the abstract is prepared from notes taken by a county clerk present at the proceedings, and accompanies the prisoner to the institution.

Among other things, the Determinant Sentencing Law (Ch 139/76) requires the Board of Prison Terms (BPT) to compare individual sentences with those given for similar crimes throughout the state. The purpose of

this comparison is to determine if some sentences are unusually long or short. In cases where the sentence is found to be unusually high, the board may notify the sentencing judge of its findings, and the judge may adjust the sentence accordingly. The courts have ruled that a judge may decrease, but may not increase, a legal sentence once it is pronounced, in the absence of specified misconduct or illegal acts by the defendant.

The BPT reviews the sentencing transcripts to identify sentencing disparities. In addition, both the CDC and the BPT review the transcripts to determine whether the Abstract of Judgment is accurate and legal. Both agencies indicate they have discovered errors in approximately one-third of all abstracts. Errors are of two general types--clerical and judicial. In the first type, the sentence to be served, as reported in the abstract, differs from that recorded in the transcript. Because the transcript is considered to be the official record, the abstract takes precedence only when the transcript obviously is in error. The second type of error occurs when the sentence imposed by the judge is illegal. An example would be imposing a four-month enhancement when the term prescribed by law is one year. Often these errors are the result of a plea agreement. When such an error is discovered, it is referred to the judge to be corrected. In some cases, the sentencing hearing may have to be reopened in order to modify the sentence.

Chapter 876 disclaimed reimbursement for any costs resulting from the mandate based on the declaration that the duty imposed by the act was minor in nature, and would not cause any financial burden on local government.

BOARD OF CONTROL ACTION

The Counties of San Bernardino and Santa Cruz filed a test claim on April 17, 1979, alleging that Ch 876/76 mandated an "increased level of service" by requiring that transcripts be sent to state prisons or other institutions.

On October 22, 1980, the Board of Control found that Ch 876/76 imposed a reimbursable mandate, and issued parameters and guidelines for claims filed under the act. These rules specified reimbursement rates for appealed and nonappealed cases of $4.30 and $14.70 per transcript, respectively. This difference stems from the fact that prior law already requires counties to prepare, but not copy, transcripts in all appealed cases. Therefore, the state reimburses costs incurred by counties in preparing, copying, and mailing transcripts in nonappealed cases, and copying and mailing transcripts in appealed cases. The rates were based on a cost study performed in Los Angeles, San Bernardino, and Santa Cruz Counties. By 1981-82, the reimbursement rates had risen to $5.82 and $22.71, as a result of inflation.

FUNDING HISTORY

Chapter 1586, Statutes of 1982, provided funding for costs incurred by counties in connection with sentencing transcripts, as displayed in Table 2.

Table 2

Funding for Sentencing Transcripts

Funding Authority	Year in Which Costs Were Incurred[a] 1978-79	1979-80	1980-81	1981-82	Total
Ch 1586/82	$71,546	$175,538	$271,891	$257,000	$775,975

a. Costs include unaudited claims of $224,000 and statewide estimates prepared by the Department of Finance. Actual payments may be lower.

As introduced, Chapter 1586 also provided funding for 1982-83 claims. The Legislature, however, deleted the funds for these claims and added language stating that the mandate would not be enforced until funds become available to pay the claims.

FINDINGS AND CONCLUSIONS

1. Chapter 876, Statutes of 1976, has required counties to incur costs in providing documents not previously required, and it therefore constitutes a true mandate.

Although it appears that several counties prepared sentencing transcripts prior to Ch 876/76, counties have incurred costs in preparing and mailing transcripts. Furthermore, Ch 876/76 removed the option of discontinuing transcript preparation for those counties previously doing so. Consequently, it imposes mandated costs on the counties of the type that warrant reimbursement by the state.

2. This mandate appears to serve a statewide interest by assuring that the Department of Corrections will receive the documents necessary to ensure legal and appropriate commitments for convicted felons.

Many counties have indicated that they find it useful to maintain a copy of the sentencing transcript in case the defendant returns to the court for one reason or another.

The primary beneficiary of this mandate, however, is the state. Specifically, the state has an interest in assuring that prisoners serve uniform, legal sentences. To the extent the BPT transcript review identifies sentencing disparities and errors, this mandate contributes to the achievement of that objective. Our review indicates that many of the errors uncovered by the BPT transcript review otherwise would go undetected. For example, the BPT identified sentencing errors in 32 cases tried by the Superior Court within the Third District Court of Appeal. Errors previously had been corrected by the court of appeal in only nine (or 28 percent) of these cases. In seven of these nine cases, the defendant identified the error and appealed the case based on that error. In the remaining two, the cases were being appealed for different reasons and the court of appeal discovered the error on its own and revised the sentence accordingly.

In addition, the BPT advises that any sentencing modifications resulting from state review are likely to shorten rather than lengthen sentences. This results in a state General Fund savings by reducing the length of time for which prisoners must be maintained at state expense. The state also realizes savings to the extent that the mandate helps prevent prisoners from being held beyond their legal sentence and thereby allows the state to avoid paying for legal defense and restitution in cases where prisoners would otherwise be able to sue the state for lost wages.

3. It is not possible to cost out all the benefits resulting from this mandate. Available evidence, however, indicates that the mandate may

result in savings in prisoner maintenance costs which offset, in whole or in part, the mandated costs.

The minimum cost to the state of reimbursing counties for complying with this mandate is estimated to be $257,000 in 1981-82. In addition, the cost to the state of reviewing sentencing transcripts exceeds $500,000 per year.

We have no basis for assigning a dollar amount to the benefits achieved by precluding persons from serving more or less time than their legal sentences. The available evidence, however, indicates that state transcript review results in some offsetting savings by reducing sentences and associated maintenance costs at state prison facilities. The BPT indicates that those errors that it discovered from 1978 to 1981 and that have been corrected by the courts will result in a net reduction of 117 prisoner-years. Using the CDC's current average maintenance cost of $13,000 per prisoner, this represents a savings to the state of $1.5 million during the four-year period. If 28 percent of these errors would have been corrected in the absence of state-level review (as experience in the Third District Court of Appeal indicates), the savings attributable to the review amounts to $1.1 million. (It also is possible that some of the remaining 72 percent of these errors would have been discovered through other means.) In addition, the board reports that errors have been discovered during the four-year period which have not been corrected as yet by the courts could result in an additional net reduction of 204 prisoner-years, permitting a $2.7 million savings in maintenance costs.

4. It appears that local reimbursement claims may be excessive, and should be audited more closely by the Controller.

Based on a comparison of data from the Controller's office and from the BPT, it appears that the number of transcripts reported by counties as having been sent to the CDC greatly exceeds the number of felons sentenced to state prison from those counties.

As Table 3 indicates, 27 counties filed claims in 1979-80 for preparing and/or copying and mailing 13,279 transcripts. The number of transcripts exceeded the number of commitments made from these counties by 4,531 and exceeded the total number of statewide commitments by 751.

Table 3

A Comparison of County Transcript Claims
With Prison Commitments

	1979-80	1980-81
Transcripts Claimed by Counties[a]	13,279	10,065
Commitments from Counties Filing Claims	8,748	4,811
Total Statewide Commitments[b]	12,528	14,704

a. Several counties filed in only one of the two years displayed.
b. Because one prisoner may be sentenced to multiple commitments, the number of commitments exceeds the actual number of felons sentenced to prisons. For the two years involved, only 10,485 and 12,380 prisoners were actually committed.

In 1979-80, Los Angeles County made 4,121 felony commitments to state institutions. The county claimed reimbursement, however, for 6,060 transcripts. Los Angeles County staff were not able to confirm the cause of the discrepancy. They indicated, however, that the inclusion of probation transcripts was the most likely explanation. According to the CDC, other counties besides Los Angeles often send transcripts for felons sentenced to probation rather than prison. Because these transcripts are of

no value to the CDC, they are discarded immediately. It therefore is impossible to estimate how many probation transcripts are received and whether they account for some or all of the discrepancy.

In addition, it should be noted that both the CDC and the BPT indicate that they often do not receive transcripts and must write the county one or more times before the transcripts are sent. A sampling of BPT files revealed that BPT had not received 36 percent of the transcripts six months after the prisoner was sentenced and still had not received 7 percent three months later. Thus, it appears that many counties may not be complying with the 30-day time limit imposed by Ch 1117/80. Sacramento and Los Angeles Counties, however, both indicated that a substantial number of the transcripts requested by the BPT already had been sent to the CDC and apparently had been lost somewhere in the process.

Finally, our analysis indicates that the local and state administrative tasks associated with providing reimbursement for the costs of complying with this mandate could be reduced substantially. Rather than pay on the basis of claims submitted by the counties, the Controller's office could obtain a list of prison commitments by county from the BPT at the close of each fiscal year. The state could then reimburse each county for appealed and nonappealed case transcripts, based on the statewide distribution of appealed/nonappealed cases, as estimated by the Department of Finance.

RECOMMENDATIONS

1. We recommend that the Legislature repeal the language in Ch 1586/82, which suspended the operation of this mandate. Our analysis indicates that the mandate serves a statewide interest in ensuring that felons

serve their appropriate, legal sentence. While we cannot assign a dollar value to the benefits resulting from this mandate so that these benefits may be compared with the program's costs, the benefits appear to be significant.

2. We recommend that the Legislature direct the State Controller to conduct field audits of selected past claims in order to determine whether counties are seeking reimbursement for transcripts which are not mandated by Chapter 1586--for example, probation transcripts--or transcripts which have not been sent.

3. We recommend that legislation be enacted to require the State Controller to reimburse counties for the costs of complying with this mandate based on (a) a list of prison commitments by county provided by the Board of Prison Terms after the close of each fiscal year and (b) the ratio of appealed cases to total commitments, as estimated annually by the Department of Finance.

CHAPTER IV

STATE HOSPITAL COMMITMENT PROCEDURES

DESCRIPTION

State law specifies procedures for committing a developmentally disabled person to a state hospital. First, a state-funded regional center for the developmentally disabled must assess the person's disability to determine if state hospital care is appropriate. Second, a petition for commitment must be filed. Subsequently, the court holds judicial proceedings to determine if the developmentally disabled person is (1) a danger to self, (2) a danger to others, or (3) unable to provide for his or her basic needs of food, shelter, and clothing.

Chapter 984, Statutes of 1977, amended the statutory procedures for committing developmentally disabled people to the state hospitals. Specifically, Chapter 984 designated the district attorney, or the county counsel under specified circumstances, as the exclusive agent for filing state hospital commitment petitions. Previous law authorized five categories of persons to file directly a petition for commitment. These included the parent, guardian, conservator, any district attorney, any probation officer, the Youth Authority, any person designated for that purpose by the judge of the court, or the Director of Corrections. In addition, Chapter 984 required the district attorney, or county counsel as appropriate, to be the exclusive agent for presenting the petition in court.

Thus, Ch 984/77 conferred upon the district attorney, or county

counsel under specified circumstances, the additional duty to be the sole and exclusive petitioner for all state hospital commitments.

At the time this measure was being considered by the Legislature, the Legislative Counsel's bill digest stated that the bill would not establish a state-mandated local program.

Chapter 984 contained a self-repealer that made the substantive provisions of the measure, including the mandate, inoperative on January 1, 1979. In its place, the Legislature enacted Ch 1319/78. Chapter 1319 expanded the procedures included in Chapter 984 and required counties to provide court hearings for persons who have been judicially committed after being found to be mentally retarded and a danger to themselves or others.

Chapter 644, Statutes of 1980, subsequently appropriated funds for the mandated costs associated with Ch 1319/78 and further refined and amended the requirements contained in Chapter 1319. Thus, Chapter 644 has superceded the requirements in Chapter 1319, and the Legislature has provided funds for the mandate through the budget process each year beginning with the 1980 Budget Act.

BOARD OF CONTROL ACTION

San Bernardino County filed a "claim of first impression" on May 22, 1979. The county alleged that Chapter 984 mandated an increased level of service by requiring counties to implement new commitment procedures for developmentally disabled persons. San Bernardino County alleged that it had incurred a cost of $1,367 in 1977-78.

The Board of Control determined on September 19, 1979, that a reimbursable mandate did exist. The board's determination was based on the fact that Chapter 984 required district attorneys, and in some cases county

counsels, to be the sole and exclusive petitioner for state hospital commitments, whereas prior to Chapter 984 their involvement was voluntary. On October 22, 1980, the Board of Control adopted parameters and guidelines that specified a reimbursement period of January 1, 1978, to December 31, 1978, and specified reimbursable activities as follows:

1. Increased workload of district attorneys and county counsels for commitment and recommitment proceedings.

2. Legal counsel costs.

3. Clerical support for preparation and filing of required correspondence and documents.

4. Travel, depositions, and other direct support needed for case preparation and presentation.

5. Administrative overhead.

FUNDING HISTORY

Chapter 1586, Statutes of 1982 (AB 2675), provided $6,290 for reimbursement of county costs incurred in fiscal years 1977-78 and 1978-79 as indicated in Table 4.

Table 4

Funding for State Hospital Commitment Petitions

Funding Authority	Years for Which Funding was Provided 1977-78	1978-79
Ch 1586/82	$3,914	$2,376

Our office recommended approval of the funding required in AB 2675. Because Ch 984/77 was repealed on January 1, 1979, no additional funding requirements are anticipated.

FINDINGS AND CONCLUSIONS

1. Chapter 984, Statutes of 1977, required counties to provide an increased level of service between January 1, 1978, and January 1, 1979.

Chapter 984 designated the district attorney or county counsel as the sole and exclusive petitioner for state hospital commitments, whereas prior to this measure, five categories of persons were authorized to be petitioner. By requiring the district attorney or county counsel to handle all petitions previously submitted directly by other parties, Chapter 984 increased the responsibility and workload for the district attorney and county counsels.

2. Mandate provisions contained in Ch 984/77 subsequently were replaced by provision in Ch 1319/78 and Ch 644/80. This legislation established alternative requirements for judicial proceedings for dangerous mentally retarded state hospital residents. The requirements of the new legislation have been funded in each Budget Act since 1980.

RECOMMENDATION

The mandate provisions of Ch 984/77 were repealed on January 1, 1979, and replaced with alternative provisions of law. We have no recommendation regarding the mandate.

CHAPTER V

DETERMINATE SENTENCING

DESCRIPTION

Chapter 1139, Statutes of 1976, replaced a system of indeterminate sentencing with a determinate sentencing process for most persons convicted of felonies. (Persons may still receive an indeterminate term of life imprisonment for certain crimes, such as murder.) Under the determinate sentencing law, a judge generally must choose the specific sentence from a range of three alternative sentences for each crime. For example, robbery is punishable by a prison sentence of two, three, or five years. The upper or lower terms may be given when there are aggravating or mitigating circumstances. In addition, extra terms may be added in specific instances, such as when the defendant has served prior prison terms or inflicted great bodily injury during the commission of the crime. The new law also revised the state's parole program and the duties of the paroling authorities.

Under prior law, judges sentenced persons to indeterminate terms. Robbery, for example, was punishable by a sentence of five years to life. The state parole authorities then established the specific term.

The original bill digest prepared by the Legislative Counsel indicated that the bill did not establish a mandated local program. The bill itself, however, stated that it would result in state-mandated local costs requiring reimbursement under the Revenue and Taxation Code.

BOARD OF CONTROL ACTION

On August 18, 1978, Orange County filed a claim with the Board of

Control seeking reimbursement for mandated costs associated with the more complex and time-consuming sentencing decisions resulting from Ch 1139/76. The board ruled on November 20, 1978, that Ch 1139/76 mandated an increased level of service.

The parameters and guidelines subsequently adopted by the board allow reimbursement for the higher costs incurred by the county clerk, probation department, public defender, district attorney, and the superior court in preparing for and conducting sentencing hearings.

FUNDING HISTORY

In Ch 28/82 (AB 171), the Legislature approved funding for the claims submitted by three counties in connection with the costs mandated by Chapter 1139. These claims totaled $10,283 and covered costs incurred in 1977-78 and 1978-79. The Legislature, however, deleted funding for such claims from two other local government claims bills. The Legislature deleted $92,134 from Ch 1090/81 (SB 1261) and directed the Board of Control to identify savings occurring at the state and local levels as a result of the determinate sentencing law. In addition, the Legislature deleted $10.6 million from Ch 1586/82 (AB 2675) on the grounds that the determinate sentencing law does not mandate costs that are reimbursable under SB 90. In our analyses of these two bills, we recommended payment of the claims. Table 5 displays the years for which funding was provided.

Table 5

Funding for Determinate Sentencing Law

Funding Authority	Years for Which Funding was Provided 1977-78	1978-79
Ch 28/82	$4,092	$6,191

The Department of Finance estimates that the amount of local costs incurred in 1981-82 and 1982-83 that are reimbursable under the Board of Control's current standards is about $2 million annually. Our analysis indicates that the department's estimate is reasonable.

FINDINGS AND CONCLUSIONS

1. Chapter 1139, Statutes of 1976, has resulted in a true mandate by requiring local governments to provide an increased level of service.

For sentencing hearings under the Determinate Sentencing Law, prosecutors and defense counsel often prepare and present statements supporting one of the sentence choices; and judges must consider the statements, calculate the sentence lengths, and state reasons for imposing the specific sentences. As a result, the more sophisticated sentencing hearings require more time of judges, defense counsel, prosecutors, and other court personnel. In addition, probation officers must prepare more detailed reports on the defendant's background and criminal history and the circumstances of the crime, and the court clerk must prepare a more complicated report on the sentencing decisions.

2. The mandate serves a statewide interest by imposing a uniform set of laws for the entire state.

The Determinate Sentencing Law is intended to provide prison terms that are proportionate to the seriousness of the offense and that result in similar sentences for persons who commit the same crimes under similar circumstances. Under prior law, state parole authorities, which determined sentence lengths, often imposed disparate and uncertain prison terms. The state has an interest in assuring that convicted persons are dealt with in a consistent manner throughout the state.

3. We have no analytical basis for comparing the benefits resulting from the mandate with the costs of complying with it.

The Determinate Sentencing Law made fundamental changes in the state's system of punishing persons convicted of felonies. We have no way of valuing these benefits or of comparing them to the resulting costs.

4. The Determinate Sentencing Law, in addition to increasing local costs, may also result in substantial savings to local governments that are not reflected in the Board of Control's parameters and guidelines for reimbursing state-mandated costs.

As mentioned earlier, Ch 1090/81 required the Board of Control to identify state and local savings resulting from the Determinate Sentencing Law. In April 1982, the board reported that it could identify no savings to the counties as a result of Ch 1139/76. In our analysis of Ch 1586/82, we also indicated that we were unable to identify any significant savings resulting from the measure. Recent information compiled by the Judicial Council, however, indicates that the Determinate Sentencing Law may, in fact, result in substantial local savings.

The Judicial Council reported to the Legislature in 1982 that for cases decided in superior court since Ch 1139/76 became effective, the rate of guilty pleas has increased and the rate of dispositions by trial has declined. Guilty pleas accounted for 77.3 percent of all dispositions in 1980-81, compared to 71.5 percent in 1976-77, the year before determinate sentencing. This change results in reduced local costs because guilty pleas substantially shorten judicial proceedings, thereby reducing court, prosecutor, and defense counsel costs. In fact, the Judicial Council indicates that the shift from dispositions by trial to dispositions by guilty

plea is reducing the overall length of criminal cases in the superior courts. Savings from this shift may offset the cost of longer sentencing proceedings under Ch 1139/76. In addition, a 1980 report by the Rand Corporation indicated that guilty pleas now may be coming earlier in the judicial process than they were prior to determinate sentencing. This also reduces the length and cost of criminal proceedings.

Some observers believe these trends are at least partially due to the Determinate Sentencing Law, for at least two reasons. First, the certainty of prison sentence lengths improves information available during the plea bargaining process. Defendants, they argue, now are more likely to negotiate pleas because the likely alternative is a determinate rather than an indeterminate sentence. Second, the many sentencing options (the choice of three terms and the additional enhancements that may be imposed) improve the district attorney's ability to negotiate pleas with defendants.

To the extent savings can be attributed to Ch 1139/76, counties should not be reimbursed for the full costs resulting from more complex sentencing hearings. Rather, they should only be reimbursed for costs exceeding the savings resulting from generally shorter judicial proceedings. To date, the Board of Control has not required counties to calculate such savings.

RECOMMENDATIONS

1. We recommend that the Legislature acknowledge that Ch 1139/76 imposes state-mandated costs on local governments. As discussed above, we conclude that the Determinate Sentencing Law requires an increased level of service on the part of counties. It is possible, however, that the higher costs may be offset, in part or in whole, by savings resulting from fewer and shorter trials.

2. We recommend that the Legislature consider alternative methods for reimbursing counties for net costs incurred due to Ch 1139/76. While it probably is impossible for the state or local governments to calculate the specific savings that has resulted from this measure, the current reimbursement methodology fails to take any savings into account. Therefore, it potentially overstates the net fiscal impact of the Determinate Sentencing Law on local governments. Other funding mechanisms could be developed to acknowledge some level of offsetting savings without imposing complex administrative procedures and costs on local governments.

CHAPTER VI

REGIONAL HOUSING NEEDS DETERMINATION BY COUNCILS OF GOVERNMENTS

DESCRIPTION

State law requires each city and county to include, as part of its local general plan, a "housing element" that addresses that community's "appropriate share of the regional demand for housing." Chapter 1143, Statutes of 1980, requires that each council of governments (COG) calculate this "appropriate share" for each city and county within its jurisdiction, based on a statewide housing need determination made by the state Department of Housing and Community Development (HCD). (A council of governments is a nonprofit association of local governments organized for the purpose of addressing and coordinating regional activity affecting several counties and localities.) Prior to the enactment of Chapter 1143, HCD regulations permitted, but did not require, each COG to prepare regional fair share housing allocation plans.

The COG-determined housing allocation is incorporated into the housing element of each city and county. A local government may revise the COG assessment of its share of the regional housing needs, subject to subsequent review by the regional COG.

Chapter 1143 further requires that localities adopt their housing elements on or before October 1, 1981.

BOARD OF CONTROL ACTION

On October 30, 1980, the Association of Bay Area Governments (ABAG)

and 13 other COGs filed a test claim with the Board of Control alleging that Chapter 1143 resulted in a reimbursable mandate, due to the additional responsibilities it imposed on the COGs. The board ruled, however, on January 21, 1981, and again on June 16, 1981, that it lacked jurisdiction to consider the claims of the COGs because these entities were not among the local entities statutorily authorized to file claims with the board.

Subsequent to these rulings, the Legislature enacted Chapter 242, Statutes of 1981. Chapter 242 redefined "local agency" in Section 2211 of the Revenue and Taxation Code for the purposes of filing claims for reimbursement of state-mandated programs. The revised definition includes "any city, county, special district, authority, or other political subdivision of the state." Based on this change, ABAG refiled its claim on July 22, 1981. On reconsideration, the Board of Control determined, on August 19, 1981, that Chapter 1143 constituted a mandate requiring the COGs to undertake a "new program" in order to meet the prescribed requirements of the legislation.

Accordingly, the board established parameters and guidelines for the COGs' claims on October 21, 1981, limiting reimbursement to costs incurred on or after January 1, 1981, for the following activities:

1. Adjusting of regional housing data prepared by HCD for the COGs;

2. Preparing of a draft plan meeting specified criteria that distributes regional housing allocations among the cities and counties within each COG.

3. Conducting public hearings to review and approve the draft plan.

4. Reviewing adjustment to the draft plan resulting from revisions to the housing allocations made by local governments.

The board instructed claimants to submit separate claims for reimbursable costs incurred during three periods: (a) January 1 through June 30, 1981, (b) July 1981 to June 1982, and (c) July 1982 to June 1983. The costs to be incurred in 1983-84 are funded in the Governor's Budget for 1983-84.

FUNDING HISTORY

Senate Bill 1261, a local government claims bill, included funds for claims submitted by three COGs. When the bill was being considered by the Legislature, we recommended that $46,123 be deleted and that the three COGs be directed to submit claims for reimbursement in conformance with the SB 90 process established by Ch 1256/80. Chapter 1256 requires the Board of Control to submit statewide, rather than individual, estimates of local costs. The Legislature concurred with our recommendation and deleted the appropriation. Upon subsequent review and analysis by the Department of Finance, the board approved a schedule of reimbursements for specific COG activities performed in 1980-81, 1981-82, and 1982-83. Subsequently, the COGs submitted revised claims, and the Legislature provided funding in Ch 2675/82, as summarized in Table 6.

Table 6

Funding for Regional Housing Need Determinations
by Councils of Governments

Funding Authority	Years for Which Funding is Provided 1980-81	1981-82	1982-83
Ch 2675/82	$88,335	$303,626	$332,679

The Governor's Budget requests $264,827 to reimburse COGs for mandated costs in 1983-84.

The $724,640 appropriated by Ch 2675/82 and the $264,827 proposed in the 1983 Budget Bill do not represent the full state cost of securing compliance with Chapter 1143. We estimate the state may incur additional costs of $1.5 million to reimburse local governments for (1) periodically reviewing and revising housing elements and (2) conforming their housing element and general plans with the provisions of Chapter 1143.

First, Chapter 1143 requires each local government to review and revise its housing element to ensure its accuracy and effectiveness. This review must be conducted at least once every five years, with the first review to be completed by July 1, 1984. To the extent these reviews generate additional workload, the COGs will incur additional reimbursable costs. The Department of Finance has estimated that COGs will incur significant increased costs in conducting this activity.

Second, the board currently is considering claims that Chapter 1143 requires localities to undertake an "increased level of service" to conform their housing elements and general plans with the provisions of Chapter 1143. On August 19, 1981, the board found that a reimbursable mandate exists. Parameters and guidelines for these claims were approved on March 25, 1982. The Department of Finance estimated $188,000 in statewide costs for these activities between 1980-81 and 1983-84. The board, however, adopted the $1.5 million estimate of costs proposed by the County Supervisors Association of California (CSAC). Currently, AB 504 (Vasconcellos) includes this amount to reimburse localities for their mandated costs. (In the event the Legislature approves legislation to

appropriate funds, we will review this portion of the mandated local costs resulting from Chapter 1143 in a later report.)

FINDINGS AND CONCLUSIONS

1. Chapter 1143 imposes a "true mandate" in that it requires regional COGs to establish a "new program"--that is, it requires them to prepare regional housing assessments and allocation plans.

Under HCD regulations that preceded Chapter 1143, each COG had the option of preparing a "fair share housing allocation plan" for the communities within its boundaries. Chapter 1143 converted this option into a statutory requirement.

Section 2234 of the Revenue and Taxation Code provides that the state shall reimburse a local agency when it incurs costs for programs that previously were optional and subsequently are mandated by the state.

2. This mandate serves a statewide interest.

The state has an interest in maximizing the availability of housing on a statewide basis. To the extent this mandate results in a coordinated and efficient means of assessing and allocating the demand for housing among localities in an equitable fashion, a statewide interest is served.

3. This mandate is not achieving the intent of the legislation.

The stated intent of Chapter 1143 was "to assure that cities and counties will prepare and implement housing elements which...will move toward attainment of the state housing goal."

As of November 1982, 13, or 54 percent, of the COGs had prepared and adopted the regional housing allocation plans required by Chapter 1143. In addition, 113, or 23 percent, of all localities in the state had adopted a housing element that fully complied with Chapter 1143. This compares to 8

percent of localities that HCD determined met the statutory provisions incorporated in Chapter 1143 prior to its enactment. Most of the delays experienced by localities in adopting adequate housing elements are attributable to delays by COGs in adopting regional plans.

Given the delays in adopting conforming housing elements, we conclude that the Legislature's objective in enacting this mandate is not being met.

4. We have no analytical basis on which to determine if the benefits realized from this mandate outweigh the known and potential costs of complying with it.

The benefits of having all COGs comply with the provisions of Chapter 1143 are not measurable because the preparation of the regional plans and housing elements does not guarantee increased availability of housing. In addition, the COG allocations do not necessarily reflect each locality's "fair share" of housing because state law permits the locality to revise its assigned allocation after the revision has been reviewed by the COG. As a result, the COG assessments may not alter significantly locality-determined housing assessments.

Chapter 1143 also requires periodic review and amendment of housing elements at least every five years. The potential benefits from these ongoing reviews also are not measurable.

RECOMMENDATION

We recommend that this mandate be repealed and that legislation be enacted requiring HCD to assume full responsibility for providing localities with "fair share" housing allocations, on an advisory basis. The HCD staff

currently prepares housing allocation plans for regions without a COG and provides preliminary data used by COGs in making their regional allocations. As a result, the department and its staff have the technical capability of assessing statewide housing needs and goals and of preparing and revising statewide information on an ongoing basis. Our analysis indicates that making funds available to the COGs to allocate local housing needs (1) has not provided sufficient incentive to some COGs to complete the task, (2) has not achieved the express legislative intent of Chapter 1143 to assure that local housing elements reflect state housing goals, and (3) will result in increased, ongoing costs to the state without a clear identification of statewide benefits.

The Legislature could achieve an efficient and equitable allocation of housing needs by making HCD, rather than the COGs, responsible for providing housing allocation data directly to localities. Elimination of this mandate would result in a future significant cost savings to the state (probably less than $265,000). These savings would be partially offset by moderate costs (up to $100,000) incurred by HCD in providing housing allocation data to localities.

CHAPTER VII

SENIOR CITIZENS' PROPERTY TAX POSTPONEMENT PROGRAM

DESCRIPTION

Chapter 1242, Statutes of 1977 (as amended by Ch 43/78), requires county assessors, tax collectors, and recorders to adopt specified procedures to implement a Senior Citizens' Property Tax Postponement program. This program allows persons 62 years of age or older with low or moderate incomes to defer payment for all or a portion of the property taxes on their residences. The state pays the deferred taxes to local governments and places a lien on the property to assure that the taxes are paid when the property is transferred. Thus, the program provides state loans to the eligible property owners, with repayment being made when the property is sold.

In order to ensure repayment of taxes to the state, certain county officials, such as the assessor, tax collector, and recorder, are required to file certificates of eligibility with the State Controller. These documents establish liens to ensure payment of deferred taxes, record tax postponement information, and provide that information to interested parties. In addition, county officials are required to notify the State Controller immediately of any changes in the ownership of all properties upon which tax postponement liens have been granted.

At the time Ch 1242/77 was enacted, the Legislature appropriated funds to the Controller and the Franchise Tax Board to administer the new program. The Legislature also authorized county auditors to report to the

Controller claims for reimbursement of state-mandated county administrative costs incurred under the program. The Legislature further agreed to reimburse these costs through the SB 90 process, provided that the unit cost per applicant did not exceed 50 cents each. Section 47 of Ch 43/78, however, subsequently repealed this section of law, thereby eliminating the statutory provision for reimbursement of administrative costs mandated by Ch 1242/77. Counties instead would have to submit claims for reimbursement through the SB 90 process.

BOARD OF CONTROL ACTION

On March 30, 1979, the Board of Control (BOC) received a claim from the City and County of San Francisco alleging that Ch 1242/77 established a state-mandated local program. On June 20, 1977, the BOC ruled that Chapter 1242 did indeed establish such a program.

The parameters and guidelines adopted by the BOC on May 21, 1980, allow reimbursement only for the following types of costs incurred by counties (including the City and County of San Francisco):

1. Counties may claim $6 for each certificate of eligibility processed and deposited with the Controller for payment.

2. Counties may claim $6 for each notice of lien processed and sent to the Controller during the fiscal year claimed. The notice of lien is exclusively for senior citizens who obtain a senior citizen tax postponement lien on a particular parcel for the first time.

3. Counties may claim $6 for each release of lien document that is processed in order to remove a Senior Citizen Tax Postponement program lien. The claim must be filed and sent to the Controller during the fiscal year in which the cost is incurred.

FUNDING HISTORY

Table 7 summarizes the funding that has been provided by the Legislature to reimburse counties for their costs in complying with this mandate.

Table 7

Funding for the Senior Citizens' Property Tax Postponement Program

Funding Authority	Year[a] 1977-78	1978-79	1979-80	1980-81	1981-82	1982-83
Ch 1090/81	--	$16,152	$30,018	--	--	--
Ch 28/82	--	57,552	26,796	--	--	--
Ch 326/82	--	--	--	--	--	$93,000
Ch 1586/82	$3,642	19,176	27,242	$103,193	$120,000	51,000
Totals	$3,642	$92,880	$84,051	$103,193	$120,000	$144,000

a. Indicates year in which costs were incurred.

The Budget Act of 1982 (Ch 326/82) appropriated $93,000 to reimburse counties the costs they were expected to incur during 1982-83. This amount, however, is not sufficient to cover the costs now expected to result from this mandate for fiscal year 1982-83. Therefore, an additional $51,000 was added to the most recent claims bill (Ch 1586/82) to cover any shortfall. Our analysis indicates that the combined amount should be sufficient to cover the costs associated with this mandate during the 1982-83 fiscal year.

FINDINGS AND CONCLUSIONS

1. Chapter 1242, Statutes of 1982, has resulted in a "true mandate" by establishing a new program that requires an increased level of service by local governments.

The new program specifically requires counties to process and forward to the Controller's office certificates of eligibility, notices of lien, and releases of lien. Under prior law, counties were not required to incur these costs.

2. The mandate serves a statewide interest.

The state has an interest in ensuring that participants in the Senior Citizens' Property Tax Postponement program are treated equitably. In addition, the state has a fiscal interest in ensuring the repayment of taxes to the state when a property is sold.

3. The costs and benefits associated with the mandate appear to be consistent with the Legislature's expectations.

The procedure established for processing certificates of eligibility ensures that no more than one claim is filed per eligible claimant. In addition, the mandated procedure for processing lien documents ensures the repayment of taxes when a property is sold.

RECOMMENDATION

We have no recommendations to offer with regard to this mandate.