



Government Finance and Operations Policy Committee
CSAC Annual Meeting
Wednesday, November 20, 2013 — 2 p.m. till 4 p.m.
San Jose Convention Center, Ballroom A1
Santa Clara County, California

Supervisor Bruce Gibson, San Luis Obispo County, Chair
Supervisor Bruce McPherson, Santa Cruz County, Vice Chair

- 2:30 **I. Welcome and Introductions**
Supervisor Bruce Gibson, San Luis Obispo County, Chair
Supervisor Bruce McPherson, Santa Cruz County, Vice Chair
- 2:35 **II. Overview of the GFO Policy Committee**
Jean Kinney Hurst, Senior Legislative Representative, CSAC
Faith Conley, Associate Legislative Representative, CSAC
- 2:45 **III. The Year in Review, the Year Ahead**
Jean Kinney Hurst, Senior Legislative Representative, CSAC
Faith Conley, Associate Legislative Representative, CSAC
Geoff Neill, Senior Legislative Analyst, CSAC
- 2:55 **IV. SCA 3 (Leno) — ACTION ITEM**
Faith Conley, Associate Legislative Representative, CSAC
- 3:15 **V. Mandate Reform: Is It Finally Time?**
Geoff Neill, Senior Legislative Analyst, CSAC
- 3:30 **VI. California's Fiscal Forecast**
Brian Uhler, Local Government, Legislative Analyst's Office
- 10:00 **VII. Closing Comments and Adjournment**
Supervisor Bruce Gibson, San Luis Obispo County, Chair
Supervisor Bruce McPherson, Santa Cruz County, Vice Chair

ATTACHMENTS

Attachment One..... Overview of the GFO Policy Committee

- *Revenue and Taxation Summary*

- *Employee Relations Summary*

Attachment Two..... SCA 3 (Leno) — ACTION ITEM

- *SCA 3 text*

Attachment One
Overview of the GFO Policy Committee



Revenue and Taxation

The Revenue and Taxation policy unit, along with the Employee Relations policy unit, supports the CSAC Government Finance and Operations Policy Committee. Staff in the Revenue and Taxation policy unit review state/federal legislative proposals, state budget items, ballot measures, and regulatory changes associated with a wide range of fiscal matters.

CHAIR:

Supervisor Bruce Gibson,
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Primary Legislative Policy Committees

Senate and Assembly Appropriations Committees
Senate Elections and Constitutional Amendments Committee
Senate Governance and Finance Committee
Assembly Elections and Redistricting Committee
Assembly Local Government Committee
Assembly Revenue and Taxation Committee

Primary Budget Committees/Subcommittees

Senate Budget and Fiscal Review Committee
Senate Budget and Fiscal Review Committee and Subcommittee No. 4
on State Administration and General Government
Assembly Budget Committee
Assembly Budget Subcommittee No. 4 on State Administration
Assembly Budget Subcommittee No. 6 on Budget Process Oversight and
Program Evaluation

Key State Agencies

Department of Finance
State Controller's Office
State Board of Equalization
Secretary of State
State Treasurer's Office
Governor's Office of Business and Economic Development
Commission on State Mandates

Key CSAC Affiliates

California Assessors Association
California Association of Clerks and Elections Officials
California Association of County Treasurers and Tax Collectors
California County Librarians Association
County Administrative Officers Association of California
County Counsels Association of California
California State Association of County Auditors

Legislative Responsibilities

- Taxation: local property tax, sales and use tax, other state and local taxes, administration, constitutional protections
- Local revenues: Vehicle License Fees, bonded indebtedness, investments, constitutional protections, fees, reorganization and incorporation

Legislative Responsibilities (continued)

- **State finance: state budget, school finance, general obligation bonds**
- **Mandates: claiming process, reimbursement, constitutional protections**
- **Elections: administration and funding**
- **Economic development: redevelopment dissolution, eminent domain, financing tools, job training programs**



Employee Relations

The Employee Relations policy unit, along with the Revenue and Taxation policy unit, supports the CSAC Government Finance and Operations Policy Committee. Staff in the Employee Relations policy unit review state/federal legislative proposals, state budget items, ballot measure, and regulatory changes.

CHAIR:

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Primary Legislative Policy Committees

Senate and Assembly Appropriations Committees
Senate and Assembly Insurance Committees
Senate and Assembly Judiciary Committees
Senate and Assembly Public Safety Committees
Senate Governance and Finance Committee
Senate Labor and Industrial Relations Committee
Senate Public Employment and Retirement Committee
Senate Veterans' Affairs Committee
Assembly Governmental Organization Committee
Assembly Labor and Employment Committee
Assembly Local Government Committee
Assembly Public Employees, Retirement and Social Security Committee
Assembly Veterans' Affairs Committee

Primary Budget Subcommittees

Senate Budget and Fiscal Review Subcommittee No. 4 on State
Administration and General Government
Assembly Budget Subcommittee No. 4 on State Administration

Key State Agencies

California Department of Industrial Relations
Department of Finance
California Division of Workers' Compensation
California Public Employment Relations Board
California Public Employees' Retirement System
California Labor and Workforce Development Agency
California Department of Human Resources
California Department of Veterans' Affairs
State Controller's Office

Key CSAC Affiliates

County Personnel Administrators Association of California
State Association of County Retirement Systems
California Workforce Association
California State Sheriffs' Association
California Association of Clerks and Elections Officials
California Association of County Veterans Services Officers

CSAC Internal Working Groups/Task Forces

CSAC Pension Reform Working Group

CSAC Compensation Transparency Working Group

Legislative Responsibilities

- **Public Retirement: 1937 Act law, Public Employees' Retirement System (PERS) law, Public Employees Medical and Hospital Care Act (PEMHCA) law**
- **Personnel Management: Family issues, Fair Employment and Housing Act (FEHA), California Family Rights Act (CFRA), pregnancy disability leave (PDL), labor relations/collective bargaining, personal records/programs/practices, public safety officers and firefighters, merit systems, employee training and development, wagers (terms and conditions), licensure and regulations**
- **Risk Management: Unemployment insurance, State Disability Insurance (SDI), health and dental insurance, Occupational Safety and Health Administration (OSHA), other insurance**
- **Workers' Compensation**
- **General Government: State governance, state employee issues, Brown Act, Public Records Act, privacy/identity theft issues**
- **Veterans' Issues: County veterans' service officers funding, benefits, compensation, waivers**
- **Public Works: Americans with Disabilities Act, prevailing wage, labor compliance**



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November 6, 2013

To: Supervisor Bruce Gibson, San Luis Obispo County, Chair
Supervisor Bruce McPherson, Santa Cruz County, Vice-Chair
Members, Government Finance and Operations Policy Committee

From: Jean Kinney Hurst, Senior Legislative Representative
Geoffrey Neill, Senior Legislative Analyst

Re: **Revenue and Taxation: The Year in Review and the Year Ahead**

As we wind down the 2013 legislative year, your Revenue and Taxation policy unit staff has summarized the highlights of our efforts on behalf of California counties during the last ten months.

Implementation of the Affordable Care Act (ACA): A cornerstone proposal in the Governor's 2013-14 proposed state budget included the shift of \$2.3 billion in new human services responsibilities from existing health realignment funds as a result of the changes associated with the Affordable Care Act. Revenue and Taxation staff supported our colleagues in Health and Human Services on the related fiscal and constitutional issues associated with that proposal. Eventually, CSAC and the Administration compromised on a package that allowed counties to continue to utilize 1991 Realignment funds to assist in funding public health obligations and health care safety net services for the residual population. We anticipate that implementation of this agreement, codified in AB 85 and SB 98, will continue through 2014, as we work with the Department of Finance and State Controller's Office to ensure accurate and timely distribution of funds.

Property Tax Allocation: CSAC led efforts to secure nearly \$2 million in state funds to reimburse three counties (Alpine, Amador, and San Mateo) that experienced insufficient ERAF to fully offset their Triple Flip and VLF swap amounts in 2011-12. This funding was successfully included in the final 2013-14 state budget and we received a verbal commitment from the Administration to continue this funding as long as it is needed.

2014 is likely to be an equally challenging year, particularly when considering the gubernatorial election in November. Governor Brown is likely to run for reelection and we may see some changes in legislative leadership, as well.

Vote Thresholds for Locally Approved Taxes: While CSAC supported most legislative vehicles that sought to lower vote thresholds for locally approved taxes and bonds, these bills did not significantly move in 2013, presumably since there was enough time to have a more thorough policy debate about what voters should consider at that time. Recall that the Legislature has the authority to place constitutional amendments on the ballot with a 2/3 majority vote and the signature of the governor is not required. The Legislature has until late summer to consider ballot measures for the November 2014 ballot.

Property Taxes: CSAC tracked and engaged on a number of bills that would have modified the laws associated with property taxes. These include AB 920, by Assembly Member Phil Ting, which would have required county tax collectors to include information on each county tax bill that described the percentage allocation of the ad valorem property tax to local jurisdictions, as well as a comprehensive list of the local programs and services that were funded by those property taxes. CSAC had concerns about the efficacy of such a proposal and expressed concerns to the author. AB 920 was held in the Assembly Appropriations Committee. Early in the year, CSAC strongly opposed AB 741 by Assembly Member Cheryl Brown. AB 741 would establish minimum property tax shares for certain cities to be funded with county property taxes. After communicating our significant concerns with the author, AB 741 did not receive a policy committee hearing. CSAC supported SB 636 by Senator Jerry Hill, a measure that would have ensured that "excess ERAF" continued to flow in the same manner it did prior to redevelopment dissolution. This bill primarily affected three counties: Marin, Napa, and San Mateo. CSAC also supported AB 701, by Assembly Member Sharon Quirk-Silva, which will implement an adjustment to Orange County's Vehicle License Fee Adjustment Amount (VLFAA), as well as intent language that directs the parties involved in *Department of Finance v. Grimes* to reach a settlement agreement in that case. Governor Brown signed AB 741.

Local Revenues: CSAC spent nearly three years working with the sponsors of AB 300, Assembly Member Henry Perea's measure to ensure that local agencies can collect Utility Users Taxes (UUT) on prepaid wireless services. Regrettably, Governor Brown vetoed this bill, finding the method contemplated by the bill "duplicative, complex," and unnecessarily costly to

the state. The Governor's veto message stated that "there is no question that the state needs an effective system for capturing local taxes related to the sale of prepaid phones." He encouraged the author to work together with local agencies and affected state agencies to design "a more cost effective solution."

New City Incorporations/Annexations: CSAC worked diligently with Senator Richard Roth on SB 56, a measure that would assist newly incorporated cities and cities that had recently annexed land by providing them with a portion of property taxes shifted to ERAF. CSAC supported this measure, as it would have provided immediate financial assistance to the four newly incorporated cities in Riverside County.

SB 56 was held in the Senate Appropriations Committee; however, on the last day of the legislative session, the contents of SB 56 were amended into SB 69, also by Senator Roth, which remains in Assembly Rules Committee awaiting referral.

Redevelopment/Economic Development: A number of measures were introduced this year to address redevelopment dissolution or recast the tools formerly associated with redevelopment as economic development options for local agencies. Upon request of the Governor's office, most measures were held on the Inactive Files. However, AB 662 by Assembly Member Toni Atkins, did make it to the Governor's desk. This measure, conceived as a clean-up to the original dissolution bills, included a number of items that would have provided flexibility to successor agencies during the dissolution process. The Governor vetoed the measure, citing concerns about potential impacts to the state General Fund, but indicated a willingness to consider a similar bill next year without the potential costs.

Campaign Finance: CSAC Revenue and Taxation staff took the lead on SB 594, Senator Jerry Hill's measure that would have placed significant new restrictions on nonprofit organizations that receive public funds and participate in campaign activities. CSAC, of course, has in the past utilized our non-public funds to participate financially in ballot measure campaigns. We hired a public relations firm to help with coalition-building and media campaign and worked collaboratively with a variety of organizations representing local governments, schools, business and the environment in opposition to the bill. Eventually, CSAC negotiated a reasonable agreement with the sponsors of the bill and supported the final version that was signed by Governor Brown.

2014 Issues on the Horizon

As mentioned above, we anticipate a number of unresolved legislative matters to be revisited in 2014. Likely, the Legislature will discuss a potential constitutional amendment to lower voter approval thresholds for local taxes and bonds for the November 2014 ballot. Given the interest in securing new economic development tools for local agencies, we expect that bills involving infrastructure financing districts, as well as attempts to remedy issues associated with redevelopment dissolution, will move forward.

2014 will be another year of adjustment and change. The largest class of freshman legislators should have their bearings by now and could begin to influence legislative outcomes. Assembly Speaker John Perez and Senate President Pro Tem Darrell Steinberg will reach the end of their terms in 2014, necessitating a leadership change at some point during the year. Both houses should have their 2/3 majorities solidified in January, potentially opening the door to tax measures, constitutional amendments, or other urgency measures that could be approved without Republican support. Finally, 2014 is an election year when we will likely see Governor Brown run for reelection and a potential slew of ballot measures, serving as the political backdrop for our legislative advocacy work.



November 6, 2013

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To: Supervisor Bruce Gibson, San Luis Obispo County, Chair
Supervisor Bruce McPherson, Santa Cruz County, Vice-Chair
Members, Government Finance and Operations Policy Committee

From: Faith Conley, Associate Legislative Representative

Re: **Employee Relations: The Year in Review and the Year Ahead**

We are nearing the end of the first year of the 2013-14 two-year legislative session. The following summary is a glimpse of efforts taken by CSAC staff focused on labor relations issues, as well as what may be coming down the line in 2014.

Implementation of the Affordable Care Act (ACA)

Employee Relations staff has aided counties in the implementation of the Affordable Care Act (ACA) by representing them as employers and ensuring that, while efforts are concentrated on providing health care to their residents through ACA, the county as an employer is represented and protected. Efforts by CSAC have been ongoing to educate counties, including a partnership with the League of California Cities in April to host a workshop regarding ACA compliance.

CSAC led a coalition of support for Senate Bill 215 by Senator Jim Beall after concerns were raised regarding compliance with the ACA by counties contracting with the California Public Employees' Retirement System (CalPERS) for health benefits under the Public Employees Medical and Hospital Care Act (PEMHCA). PEMHCA defined "employee" as one employed by a contracting agency and participates in a publicly funded retirement system. SB 215, as signed by the Governor in September, allows the state and local employers who contract with CalPERS for health care under the PEMHCA to comply with requirements of the ACA by expanding the definition of "employee" in PEMHCA to include fulltime employees as defined by Section 4980(H) of Title 26 of the United States Code.

The coming year will see a continuation of efforts related to helping counties meet the employer requirements of ACA as the impending compliance date approaches in 2015.

Labor Issues

CSAC Employee Relations staff worked diligently this year on maintaining fairness in employer-employee contract negotiations. AB 616, by Assembly Member Raul Bocanegra, would allow either an employer or an employee to seek a determination from the Public Employment Relations Board (PERB) as to whether the parties have reached impasse during labor negotiations. CSAC opposed AB 616 as it would add an unnecessary administrative layer to the collective bargaining process – which CSAC believes should be governed by local rules – and delay the adoption of a fairly negotiated labor contract. AB 537, by Assembly Member Rob Bonta, was extremely problematic for counties in its original form – requiring bargaining over local ground rules, prohibiting employers from restricting communication between local agency representatives and employee representatives and making mediation after impasse mandatory if either party requests it. Realizing that AB 537 was the culmination of work by three separate labor union advocacy groups, Employee Relations staff actively communicated CSAC's concerns to legislative staff and the Administration and negotiated amendments with the sponsors and author to substantially lessen the negative effects of the bill on counties.

SB 556, by Senator Ellen Corbett, was held on the Assembly Floor after a major lobbying effort by CSAC. The bill would prohibit those entities contracting to perform public health or safety services for public agencies from displaying the logo of a public agency on a uniform or vehicle unless a disclosure statement is also displayed identifying the identity of the uniform wearer or vehicle operator providing services for the public agency. The bill was part of a continuing attack on the ability of a public agency to contract out for services in an effort to best utilize its resources.

It can be expected that in 2014, along with the usual mélange of labor-sponsored legislation, SB 556 and AB 616, as well as aspects of AB 537 that were removed at CSAC's request, will return in some form.

Retirement Issues

The passage of the Public Employee's Pension Reform Act (PEPRA) behind us, 2013 has been the year of implementation. Several bills were introduced and passed for technical and cleanup purposes, with CSAC ensuring that the language in those bills did not erode the original intent of PEPRA.

The coming year will most likely revolve around responding to issues arising out of PEPRAs implementation and working with the Legislature, CalPERS and counties on the interpretation of the law. Additionally, PEPRAs tasked CalPERS with defining and determining the effects of and penalties for employers providing "excessive compensation." CSAC will be involved in conversations regarding this policy and calling upon counties that contract with CalPERS to aid in its development. Counties should also note that CSAC will closely follow the effort to place a proposition on the 2014 ballot that, among other things, would allow public employers to prospectively modify retirement benefits for current employees.

Lastly, Employee Relations staff in the coming year will follow the outcomes of CalPERS' review of current actuarial assumptions and subsequent approval of new assumptions in February 2014. Those approved assumptions would take effect in June 2014 actuarial valuations, and will impact local agencies' 2016-17 employer contribution rates.

Veterans

CSAC this year supported an effort to increase by \$9 million the amount of state assistance provided to counties to fund the activities of county veterans service officers. That bill was held in the Senate Appropriations Committee; however, a state budget trailer included \$2.6 million as pro-rata shares based on 2012-13 audited workload units to counties for the purposes of implementing best practices and in a manner that best meets local needs.

Next year, CSAC will work to develop much-needed veterans policy to be included in the CSAC Platform.

Workers' Compensation

Workers' compensation policy has concentrated on the implementation of Senate Bill 863 (Chapter 363, Statutes of 2013). CSAC has worked with other stakeholders (including other public agencies and the California Chamber of Commerce to collaborate with the California Department of Industrial Relations on regulations to implement the law, in an effort to ensure that the original intent of SB 863 (to lower frictional costs for employers while providing fair benefits to injured workers) is maintained.

Implementation of SB 863 will continue in 2014; efforts to erode the reform's intent are no doubt on the horizon. Additionally, next year will almost certainly see a return of Assembly Bill 1373,

by Assembly Speaker John A. Pérez. Strongly opposed by CSAC, AB 1373 would have extended from 240 weeks to 480 weeks the statute of limitations for when a claim can be filed for death benefits for dependents of a firefighter or peace officer who dies of certain occupational injuries (cancer, blood-borne infections diseases and tuberculosis).

Public Records

The focus this year with regard to public access to open government was Senate Constitutional Amendment 3, jointly authored by Senate Pro tem Darrell Steinberg and Senator Mark Leno. SCA 3 places a measure on the June 2014 ballot that will enshrine the provisions of the Ralph M. Brown Act and the California Public Records Act in the Constitution and expressly provide an exception to the constitutional provisions requiring mandate reimbursement. CSAC expressed grave concerns about costs associated with the measure and will closely monitor the effects of the proposition's passage should it occur.

Attachment Two
SCA 3 (Leno) — ACTION ITEM



November 6, 2013

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To: Supervisor Bruce Gibson, San Luis Obispo County, Chair
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Members, Government Finance and Operations Policy Committee

From: Faith Conley, Associate Legislative Representative, CSAC
Jean Kinney Hurst, Senior Legislative Representative, CSAC

Re: **SCA 3 (Leno) – ACTION ITEM**

Recommendation. CSAC staff recommend that the Government Finance and Operations Committee recommend to the CSAC Board of Directors a position of “neutral” on SCA 3, a June 2014 ballot measure that would amend the California Constitution to enshrine provisions of both the California Public Records Act and the Ralph M. Brown Act within it and exclude from reimbursement those statutory changes to the Acts that constitute mandates.

Background.

Open Government and Transparency. The Ralph M. Brown Act (Brown Act) governs open meetings for local government bodies to ensure the protection of public access and participation. Provisions of the Brown Act apply to all local legislative bodies, obligating them to abide by those requirements to safeguard open access to local government. The California Public Records Act (CPRA) applies to all state and local government agencies – excluding the Legislature – and provides certain requirements for those governing bodies that further the Act’s intent that public access to information regarding the conduct of the public’s business is a right, and to ensure that governmental records are disclosed to the public upon request. The Brown Act explicitly allows for reimbursement of the costs that “are clearly and unequivocally incurred as the direct and necessary result of compliance with” it (California Government Code §54954.4); in 2011, the Commission on State Mandates determined that specific provisions of CPRA constitute state-reimbursable mandates.

Mandates. The California Constitution requires the state to reimburse local agencies when it mandates a new program or a higher level of service. This requirement was added to the

Constitution in 1979 via Proposition 4, which imposed spending limits on the state and local governments, commonly referred to as the “Gann limit”. Proposition 1A (2004) placed additional mandate protections for local agencies for changes in sharing ratios for state/local programs.

The Constitution allows the Legislature to suspend any mandate for a given fiscal year, which allows them to not fund the mandate and makes the mandate optional for all local agencies. Once a mandate is suspended, that suspension is never rescinded (at least, we have yet to see a suspended mandate be un-suspended), and some mandates have been suspended in every fiscal year for as long as 22 years. The list of suspended mandates in the state budget stretches for several pages and is filled with statutes that appear to require local agencies to perform a certain action, but are in fact optional.

How did we get here? This summer, the Legislature approved Assembly Bill 76, a budget trailer bill that included statutory provisions to make compliance by local public agencies with certain provisions of the CPRA “best practices” rather than requirements. (This approach was recommended by the Legislative Analyst’s Office as an alternative to the Governor’s original budget proposal to suspend the CPRA provisions outright.) In the wake of that bill’s passage, widespread opposition to the statutory change caused the Legislature to reverse its action by approving (and Governor Brown subsequently signing) an alternate bill that reinstated the mandate.

The criticism of the Legislature’s attempt to sever the State’s financial commitment to reimbursement for compliance with CPRA (thereby making adherence to it optional as the state is prohibited from imposing mandates upon local governments without reimbursing that cost) led to the introduction and passage of Senate Constitutional Amendment 3. SCA 3 places a measure on the June 2014 ballot that would amend the State Constitution to enshrine provisions of both CPRA and the Ralph M. Brown Act (Brown Act) within it and exclude any future statutory changes to the Acts from reimbursement.

Voters’ approval of the measure would essentially require local agencies to comply with provisions and any future amendments to both CPRA and the Brown Act without the requirement of reimbursement by the State.

CSAC maintained a position of “Concerns” on SCA 3, communicating our support for access to open government while advocating for an amendment that would require any future amendments to the Acts by the Legislature to be subject to a fiscal review with a focus on the financial ramifications to local governments. SCA 3, however, was approved in its original form after the author maintained that all legislation with any fiscal impact to public agencies is subject to fiscal review by the Legislature, a debatable assertion.

Policy Considerations. Counties have always abided by the requirements of both the Brown and Public Records Acts since their inception and have done so without required reimbursement by the State. In fact, the State currently owes public agencies approximately \$120 million for costs associated with the Brown Act mandates alone. The Legislature has further added new, costly requirements to existing law governing the Acts in the early part of last decade. Due to the State costs associated with a new mandate that would be imposed by the further requirements, the legislation containing them has received fiscal scrutiny by legislative fiscal committees, specifically review by the Appropriations Committees in each house. It is important to note that all current and future provisions of open meetings and public records act would be exempt from state reimbursement with voter approval of SCA 3, so long as the enacting measures “further the purpose of” the Brown Act and CPRA – accordingly, without the consequence of higher state costs due to the removal of its requirement to reimburse public agencies, the Legislature will have fewer hindrances when voting on new, expansive requirements. Consideration should also be given to the concern that SCA 3 represents a shift in course by the Legislature and Governor, whereby mandates that are politically popular may be put before the voters in order to relieve the state from reimbursement. Such policy sets a troubling precedent which leads to an additional concern about future costs.

While concerns over costs and precedent setting are both valid and in line with the CSAC platform (which explicitly states that constitutional amendments should not exempt mandates from cost reimbursement), it should be noted that CSAC has long supported the public’s right to transparent government and open meetings; accordingly, on legislation expanding both the Brown Act and CPRA, CSAC has tempered any opposition to such cost-increasing statutory changes with the acknowledgement of counties’ commitment to that access.

Additionally, regardless of any change in fiscal support from the state, counties have and will continue to meet the requirements associated with the requirements contained in Proposition 59 (2004) including the right of public access to meetings of government bodies and writings of government officials.

Action Requested. Staff recommends the Government Finance and Operations Policy Committee forward to the CSAC Board of Directors a recommendation of a neutral position on the ballot initiative that would amend the California State Constitution to enshrine provisions of both CPRA and the Ralph M. Brown Act (Brown Act) within it and exclude from reimbursement those statutory changes to the Acts that constitute mandates.

Staff Contact. Please contact Faith Conley (fconley@counties.org or 916/650-8117) or Jean Kinney Hurst (jhurst@counties.org or 916/650-8133) for additional information.

Senate Constitutional Amendment No. 3

RESOLUTION CHAPTER 123

Senate Constitutional Amendment No. 3—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 3 of Article I and Section 6 of Article XIII B thereof, relating to public information.

[Filed with Secretary of State September 20, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SCA 3, Leno. Public information.

The California Constitution provides that the people have the right of access to information concerning the conduct of the people's business. The California Constitution requires that the meetings of public bodies and the writings of public officials and agencies be open to public scrutiny. The California Constitution requires that whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse the local government for the costs of the program or increased level of service. The California Constitution exempts certain mandates from the requirement to provide a subvention of funds including local agency compliance with the Ralph M. Brown Act (Brown Act).

The California Public Records Act (CPRA) provides that public records are open to inspection at all times during the office hours of the state or local agency that retains those records, and that every person has a right to inspect any public record, except as provided. The Brown Act requires each legislative body of a local agency to provide notice of the time and place for holding regular meetings and requires that all meetings of a legislative body be open and public. Under the act, all persons are permitted to attend any meeting of the legislative body of a local agency, unless a closed session is authorized.

This measure would require each local agency to comply with the CPRA and the Brown Act, and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act which contains findings demonstrating that the statutory enactment furthers the purposes of the people's right of access to information concerning the conduct of the people's business. The measure would specifically exempt mandates contained within the scope of those acts, and certain subsequent statutory enactments that contain findings demonstrating that the statutory enactment furthers those same purposes, from the requirement to provide a subvention of funds.

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 2013–14 Regular Session commencing on the third day of December 2012, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California, that the Constitution of the State be amended as follows:

First—That Section 3 of Article I thereof is amended to read:

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

(7) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7

of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

Second—That Section 6 of Article XIII B thereof is amended to read:

SEC. 6. (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

- (1) Legislative mandates requested by the local agency affected.
- (2) Legislation defining a new crime or changing an existing definition of a crime.
- (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.
- (4) Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.

(b) (1) Except as provided in paragraph (2), for the 2005–06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2004–05 fiscal year that have not been paid prior to the 2005–06 fiscal year may be paid over a term of years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required

program for which the State previously had complete or partial financial responsibility.

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Attachment Three
Mandate Reform: Is It Finally Time?



November 6, 2013

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To: Supervisor Bruce Gibson, San Luis Obispo County, Chair
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Members, Government Finance and Operations Policy Committee

From: Geoff Neill, Senior Legislative Analyst, CSAC
Jean Kinney Hurst, Senior Legislative Representative, CSAC

Re: **Mandate Reform: Is It Finally Time?**

Recommendation. Staff recommends that the committee authorize the chair to appoint and convene an ad hoc task force of supervisors, county administrators, county counsels, and county auditor-controllers to study mandate reform and guide policy development on the issue.

Background. The mandate reimbursement process, and mandate issues generally, have long bedeviled counties. While statute contemplated a scheme beginning in 1976, the constitutional authority of counties, school districts, and other local entities to demand reimbursement from the state for newly required programs began with voter approval of Proposition 4 in 1979. The idea was twofold: first that the state couldn't circumvent the tax-and-spend limit the measure instituted by pushing programs onto local agencies, and second that in the wake of Proposition 13, with locals having no revenue authority, the state could not burden them with new, unfunded programs. The constitutional provision was strengthened by Proposition 1A (2004).

Staking a Claim

Despite the constitutional burden on the state to reimburse counties, the statutory scheme for pursuing reimbursement is tilted against local entities at every turn. For a program to be determined a reimbursable mandate, one local agency must file a petition with the Commission on State Mandates, similar to a class action suit where one acts on behalf of all. This initial claim must be filed within one year. After allowing other interested parties—such as the Department of Finance, affected state agencies, and other local entities—to comment on the petition, Commission staff prepares a detailed analysis based on their understanding and the matter goes to a hearing before the Commission.

The Commissioners are four state finance officials, two local officials appointed by the Governor, and one public member chosen by the other six members. Despite the fact that matters before the Commission essentially always are a fight between a local agency pursuing reimbursement and the Department of Finance arguing against, the Commission is permanently chaired by the Director of Finance. The other state representatives are the State Treasurer, the State Controller, and the director of the Governor's Office of Planning and Research. In practice, those officials assign someone from their office to act as their alternate at Commission hearings.

The two local officials do not have the benefit of alternates. Currently, and in line with past practice, the two local seats are filled by one county supervisor and one city councilmember. These two members are appointed by the Governor.

If the Commission determines certain actions to be reimbursable, they later approve a more detailed list of the required activities, then the State Controller's office prepares a form for local entities to use when claiming reimbursement.

The process above consistently takes about seven years to complete, sometimes longer. The Commission is currently working hard to reduce this backlog. Statute requires them to hear a claim within one year of it being filed.

Once the Controller's office prepares their claiming instructions, each local entity has three months to prepare its initial claim, which is for the entire period from the beginning of the new program through the most recent fiscal year.

The State Controller audits claims for reimbursement, with a sharp eye for reducing claims. Claims are commonly reduced by half or three-quarters, even 90 percent. If a local entity believes a claim has been reduced incorrectly, they can file a complaint with the Commission on State Mandates. The Commission essentially never hears these matters, despite their importance for future claims, so the Commission has built up a significant backlog.

Pay or Quit

Proposition 1A added to the Constitution a requirement that, for mandates found to be reimbursable, the Legislature must either fund all previously unpaid claims or else suspend the mandate. When a mandate is suspended, the reimbursable activities become optional. Once a

mandate is suspended, it is essentially never un-suspended. Some mandates have been suspended every year since 1991.

Almost all mandates are now suspended and therefore optional. We can analyze the psychology of the Legislature to determine why this is. In a given year, the Legislature decides that a certain program must be enacted on a statewide basis and passes a law to that effect. Seven to ten years later, after the claim has wound through the Commission process, the bill comes due for the program's requirements. The next time the state faces a budget difficulty, the Legislature decides that either the program isn't quite as important as previous legislators seemed to think it was or else local entities will continue providing the service whether the state reimburses them or not. And they're right; the vast majority of the time, counties continue providing "optional" mandates after they have been suspended.

Before Proposition 1A instituted this requirement, the Legislature had taken to regularly appropriating a token \$1,000 to avoid suspending a mandate, knowing that the remaining liability would remain on the books accruing interest.

One More Time, With Interest

The accumulated debt described above now totals about \$1.5 billion. In recent years, the Legislature has taken a pass on making annual payments on this debt, which statute requires to be paid off by 2020-21. Deferring the payments makes all future year payments that much higher.

But that's not all. The Legislature doesn't pay a claim until two fiscal years later, but when they suspend a mandate they expect the savings to begin immediately. So for most suspended mandates there are two years of claims that remain to be paid. The state has put forward no legal opinion for why they can avoid reimbursing locals for these claims, especially in cases where the underlying mandate is not only suspended, but repealed entirely. If the Constitution requires payment or suspension, and there isn't a mandate there to suspend, an unsophisticated person might expect that payment is the only option. These deferrals now total roughly \$0.5 billion.

Redetermination: Now You See It...

Recently, the Legislature devised a new method for getting out of mandate payments. State law now allows the Department of Finance to file a claim with the Commission if there has been a “subsequent change in law” that changes their liability for a previously determined mandate.

This new law followed a very similar attempt just a couple years earlier where the Legislature directed the Commission to re-hear a mandate that they thought should no longer be reimbursable. The Commission did so, and in fact decided in the state’s favor, but the California School Boards Association (CSBA) sued and won. The courts set that Commission decision aside because the separation of powers doctrine does not allow the Legislature to direct the activities of a quasi-judicial body such as the Commission. In response, the Legislature simply passed a law allowing the Department of Finance to file these sorts of actions with the Commission at their discretion.

The first major test of this new process was just decided by the Commission in September, and related to the Sexually Violent Predators program the state imposed last decade. In 2008, voters approved Proposition 83, which slightly amended the Sexually Violent Predators program. While all parties agree that the amendments did not affect the reimbursable activities, in amending it the ballot measure restated some existing statute. The Department of Finance argued, successfully, that because voters had reenacted the language giving rise to reimbursement, the state no longer had to pay locals for their costs.

The argument hinged on the fact that the state only has to reimburse locals for programs imposed by the Legislature or a state agency. The statute exempting programs imposed by voters also includes statute passed by the Legislature that is necessary to implement the voter-approved program. The law deems irrelevant whether the voter-approved program comes before the “implementing” statutes or not. It strains credulity to argue that a law passed in one year becomes “necessary to implement” a ballot measure not passed until years later.

The Sexually Violent Predator program is expensive, costing counties tens of millions of dollars every year. The Commission’s decision in favor of Finance on the matter was questionable, and the statute underpinning the process is suspect. Several counties have expressed an interest in suing to have the decision overturned and the underlying law invalidated. This issue would figure prominently in the work of the proposed task force.

The Mandate Process Mandate Has Been Suspended

All of the statutes that require local entities to go through the Commission process are, in fact, also a mandate. But, like almost every other mandate, the Legislature has suspended the mandate process mandate.

This seems to mean that the entire Commission process is now optional. What this means for counties seeking reimbursement for new mandates is a matter of some debate. If the process is optional, that implies that there are other options. Could counties file suit in a regular court? Could counties simply send invoices to the State Controller? Exploring these issues would be a critical component of the work of the proposed task force.

We Are Not Alone

While counties perform many more state mandates than either cities or special districts, those agencies also have beef with the current process and recent outcomes. Likewise, school districts, whose mandate protections are not constitutional, have a strong interest in the mandate process, and have proven much more eager to litigate mandate issues, with some success.

Likewise, the Governor, the Department of Finance, legislative budget committee members, and the Legislative Analyst's Office have all expressed an interest in reforming the mandate system, though not all for the same reasons. The Administration thinks that the process is cumbersome and unnecessarily expensive, and often winds up reimbursing locals for activities they were already performing. The Legislative Analyst's Office has questioned the uneven levels of reimbursement provided to counties who are seemingly in similar situations.

Action Requested. Staff recommends the Government Finance and Operations Policy Committee authorize the chair to appoint and convene an ad hoc task force comprised of supervisors, county administrators, county counsels, and county auditor-controllers to examine mandate reform and provide policy guidance on the issue.

Staff Contact. Please contact Geoff Neill (gneill@counties.org or 916/650-8117) or Jean Kinney Hurst (jhurst@counties.org or 916/650-8133) for additional information.