

Assembly Constitutional Amendment

No. 27

Introduced by Assembly Member Logue

September 11, 2009

Assembly Constitutional Amendment No. 27—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 6 of, and adding Section 6.5 to, Article XIII B thereof, relating to state finances.

LEGISLATIVE COUNSEL'S DIGEST

ACA 27, as introduced, Logue. State-mandated local programs.

Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, the state is required to provide a subvention of funds to reimburse the local government. With regard to a mandate imposed on a city, county, city and county, or special district, the Legislature is required either to appropriate, in the annual Budget Act, the full payable amount of the mandate, determined as specified, or to suspend the operation of the mandate for the fiscal year. The California Constitution provides that the Legislature is not required to appropriate funds for certain specified mandates.

This measure would apply the existing requirement that the Legislature either appropriate the full payable amount of a mandate or suspend the mandate only through the 2010–11 fiscal year.

The measure would instead prohibit the Legislature or a state agency from mandating a new program or higher level of service on any local government, except as specified, unless the local government is paid for the costs of that new program or higher level of service. The measure would require, on or after July 1, 2010, that if the Legislature adopts a

statute that mandates a new program or higher level of service on any local government, the mandate would not become operative until the operative date of an appropriation, for that purpose, of funds to pay all affected local governments for the costs of the new program or higher level of service for the remainder of the fiscal year in which the mandate becomes operative. The measure would impose parallel requirements with regard to a regulation mandating a new program or higher level of service.

On and after July 1, 2011, for a mandate that became operative in a prior fiscal year, the measure would render the mandate inoperative if the Legislature fails to fund the mandate in the current fiscal year.

The measure would add, as an additional exemption from the mandates for which the Legislature is required to appropriate funds, a mandate for which the governing body of the local government has express statutory authority to impose a fee, assessment, or other charge that pays for the costs of the program or increased level of service and that is paid to the local government by the person or entity that is subject to, is regulated by, or otherwise benefits from, the new program or higher level of service.

The measure would allow a local government to file an action in superior court if the Legislature or a state agency mandates a new program or higher level of service and the amount of the funds appropriated to the local government for that new program or higher level of service does not meet the costs of that new program or higher level of service. The measure would require the superior court to include, within an order upholding a challenge brought by the local government, an order setting the amount the court determines is reasonably necessary to pay the local government for the costs of the new program or higher level of service.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 *Resolved by the Assembly, the Senate concurring, That the*
2 *Legislature of the State of California at its 2009–10 Regular*
3 *Session, commencing on the first day of December 2008,*
4 *two-thirds of the membership of each house concurring, hereby*
5 *proposes to the people of the State of California, that the*
6 *Constitution of the State be amended as follows:*

7 First—That Section 6 of Article XIII B thereof is amended to
8 read:

1 SEC. 6. (a) ~~Whenever the Legislature or any state agency~~
2 ~~mandates a new program or higher level of service on any local~~
3 ~~government, the State shall provide a subvention of funds to~~
4 ~~reimburse that local government for the costs of the program or~~
5 ~~increased level of service, except that the~~ *The Legislature or a*
6 *state agency shall not mandate a new program or higher level of*
7 *service on any local government, except as provided in subdivision*
8 *(c), unless the local government is paid for the costs of that new*
9 *program or higher level of service in accordance with the*
10 *procedures specified in this section.*

11 (b) (1) *On or after July 1, 2010, if the Legislature adopts a*
12 *statute that mandates a new program or higher level of service on*
13 *any local government, the mandate shall not become operative*
14 *until the operative date of an appropriation, for that purpose, of*
15 *funds in an amount not less than the cost that the Legislature*
16 *reasonably determines is necessary to pay all affected local*
17 *governments for the costs of the new program or higher level of*
18 *service for the remaining period of the fiscal year in which the*
19 *mandate becomes operative.*

20 (2) *On or after July 1, 2010, if a state agency adopts a*
21 *regulation that mandates a new program or higher level of service*
22 *on any local government, the mandate shall not become operative*
23 *until the operative date of an appropriation, for that purpose, of*
24 *funds in an amount not less than the cost that the Legislature*
25 *reasonably determines is necessary to pay all affected local*
26 *governments for the costs of the new program or higher level of*
27 *service for the remaining period of the fiscal year in which the*
28 *regulation becomes operative.*

29 (3) *On and after July 1, 2011, for any mandate that became*
30 *operative in a prior fiscal year, if the Legislature fails to*
31 *appropriate funds to pay all affected local governments for the*
32 *cost, in the amount the Legislature reasonably determines to be*
33 *necessary for this purpose, of the mandate for the current fiscal*
34 *year, the mandate shall become inoperative on January 1 of that*
35 *fiscal year. The mandate shall remain inoperative until the*
36 *operative date of an appropriation for that purpose in an amount*
37 *equal to the cost, for the remainder of the fiscal year in which the*
38 *appropriation becomes operative, that the Legislature reasonably*
39 *determines is necessary to pay all affected local governments for*
40 *the costs of the program or higher level of service.*

1 (c) *The Legislature may, but need not, provide a subvention of*
 2 *appropriate funds for the following mandates:*

3 (1) Legislative mandates requested by the local agency affected.

4 (2) Legislation defining a new crime or changing an existing
 5 definition of a crime.

6 (3) Legislative mandates enacted prior to January 1, 1975, or
 7 executive orders or regulations initially implementing legislation
 8 enacted prior to January 1, 1975.

9 (4) *Legislation for which the governing body of the local*
 10 *government has express statutory authority to impose a fee,*
 11 *assessment, or other charge that pays for the full costs of the new*
 12 *program or increased level of service and that is to be paid to the*
 13 *local government by the person or entity that is subject to, is*
 14 *regulated by, or otherwise benefits from, the new program or*
 15 *increased level of service.*

16 (b)

17 (d) (1) Except as provided in paragraph (2), for the 2005–06
 18 fiscal year ~~and every subsequent fiscal year to the 2010–11 fiscal~~
 19 *year, inclusive,* for a mandate for which the costs of a local
 20 government claimant have been determined in a preceding fiscal
 21 year to be payable by the State pursuant to law, the Legislature
 22 shall either appropriate, in the annual Budget Act, the full payable
 23 amount that has not been previously paid, or suspend the operation
 24 of the mandate for the fiscal year for which the annual Budget Act
 25 is applicable in a manner prescribed by law.

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

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

32 (4)

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

35 (5)

36 (4) This subdivision shall not apply to a requirement to provide
 37 or recognize any procedural or substantive protection, right, benefit,
 38 or employment status of any local government employee or retiree,
 39 or of any local government employee organization, that arises
 40 from, affects, or directly relates to future, current, or past local

1 government employment and that constitutes a mandate subject
2 to this section.

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

6 ~~(e)~~

7 *(f) A mandated new program or higher level of service includes*
8 *a transfer by the Legislature from the State to cities, counties, cities*
9 *and counties, or special districts of complete or partial financial*
10 *responsibility for a required program for which the State previously*
11 *had complete or partial financial responsibility.*

12 *(g) If the Legislature or a state agency mandates a new program*
13 *or higher level of service and the amount of the funds appropriated*
14 *to the local government for that new program or higher level of*
15 *service is not equal to or greater than the costs of that new*
16 *program or higher level of service, as required by subdivision (a),*
17 *a local government may file an action pursuant to Section 6.5.*

18 Second—That Section 6.5 is added to Article XIII B thereof, to
19 read:

20 SEC. 6.5. (a) As an alternative to any other procedure provided
21 by law, a local government may bring an action in superior court
22 to challenge the failure of the Legislature to appropriate funds in
23 an amount equal to or greater than the annual cost reasonably
24 necessary to pay the local government for the costs of a new
25 program or higher level of service, as required by subdivision (a)
26 of Section 6.

27 (b) If the superior court upholds the challenge brought by the
28 local government pursuant to this section, the superior court shall
29 appoint a special master or other neutral evaluator to recommend
30 to the court the amount of funds required to be appropriated to the
31 local government to pay the cost reasonably necessary for the new
32 program or higher level of service, as required by subdivision (a)
33 of Section 6.

34 (1) The special master or other neutral evaluator shall consult
35 with persons and entities familiar with the statute or regulation
36 and the costs of its implementation, including, but not limited to,
37 representatives of the State and representatives of local government.

38 (2) The superior court shall include, within its order upholding
39 a challenge brought by a local government, an order setting the
40 amount the court determines is reasonably necessary to pay the

1 local government for the costs of the new program or higher level
2 of service, as required by subdivision (a) of Section 6, and which,
3 if appropriated, would meet the requirements of subdivision (b)
4 of Section 6.

5 (c) During the pendency of an action filed pursuant to this
6 section, and, if the superior court holds that a local government is
7 not required to implement a mandate because the Legislature has
8 declined to appropriate funds in an amount required by subdivision
9 (b), the superior court may enjoin the operation of the mandate.