

Assembly Constitutional Amendment

No. 17

Introduced by Assembly Member Logue

February 15, 2011

Assembly Constitutional Amendment No. 17—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 17, 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 certain mandates imposed on a city, county, city and county, or special district that have been determine to be payable, 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 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 2011–12 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 reimbursed for the costs of that new program or higher level of service.

The measure would provide that if, on or after July 1, 2012, 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 of funds to reimburse 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.

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 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 authorize a local government to file an action in superior court to challenge the adequacy of the actions taken by the Legislature to reimburse local governments if the Legislature or a state agency mandates a 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 identifying the amount the court determines is reasonably necessary to reimburse 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 2011–12 Regular
3 Session, commencing on the sixth day of December 2010,
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:

9 SEC. 6. (a) ~~Whenever the Legislature or any state agency~~
10 ~~mandates a new program or higher level of service on any local~~
11 ~~government, the State shall provide a subvention of funds to~~

1 ~~reimburse that local government for the costs of the program or~~
2 ~~increased level of service, except that the~~ *The Legislature or a*
3 *state agency shall not mandate a new program or higher level of*
4 *service on any local government, other than a mandate described*
5 *in subdivision (c), unless the local government is reimbursed for*
6 *the costs of that new program or higher level of service in*
7 *accordance with this section.*

8 *(b) (1) On or after July 1, 2012, if the Legislature adopts a*
9 *statute that mandates a new program or higher level of service on*
10 *any local government, the mandate shall not become operative*
11 *until the operative date of an appropriation of funds in an amount*
12 *not less than the amount necessary to reimburse all affected local*
13 *governments for the costs of the new program or higher level of*
14 *service for the remaining period of the fiscal year in which the*
15 *mandate becomes operative.*

16 *(2) On or after July 1, 2012, if a state agency adopts a*
17 *regulation that mandates a new program or higher level of service*
18 *on any local government, the mandate shall not become operative*
19 *until the operative date of an appropriation of funds in an amount*
20 *not less than the amount necessary to reimburse all affected local*
21 *governments for the costs of the new program or higher level of*
22 *service for the remaining period of the fiscal year in which the*
23 *regulation becomes operative.*

24 *(3) On and after July 1, 2013, for any mandate that became*
25 *operative in a prior fiscal year, if the Legislature fails to*
26 *appropriate funds to reimburse all affected local governments for*
27 *the cost of the mandate for the current fiscal year, the mandate*
28 *shall become inoperative on January 1 of that fiscal year. The*
29 *mandate shall remain inoperative until the operative date of an*
30 *appropriation in the amount necessary to reimburse all affected*
31 *local governments for the costs of the program or higher level of*
32 *service for the remaining period of the fiscal year.*

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

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

36 *(2) Legislation defining a new crime or changing an existing*
37 *definition of a crime.*

38 *(3) Legislative mandates enacted prior to January 1, 1975, or*
39 *executive orders or regulations initially implementing legislation*
40 *enacted prior to January 1, 1975.*

1 (4) Legislation for which the governing body of the affected
2 local government has statutory authority to impose a fee,
3 assessment, or other charge that pays for the full costs of the new
4 program or increased level of service and that is to be paid to the
5 local government by the person or entity that is subject to, is
6 regulated by, or otherwise benefits from, the new program or
7 increased level of service.

8 ~~(b)~~

9 (d) (1) Except as provided in paragraph (2), for the 2005–06
10 fiscal year ~~and every subsequent fiscal year~~ to the 2011–12 fiscal
11 year, inclusive, for a mandate for which the costs of a local
12 government claimant have been determined in a preceding fiscal
13 year to be payable by the State pursuant to law, the Legislature
14 shall either appropriate, in the annual Budget Act, the full payable
15 amount that has not been previously paid, or suspend the operation
16 of the mandate for the fiscal year for which the annual Budget Act
17 is applicable in a manner prescribed by law.

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

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

24 ~~(4)~~

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

27 ~~(5)~~

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

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

38 ~~(e)~~

39 (f) A mandated new program or higher level of service includes
40 a transfer by the Legislature from the State to cities, counties, cities

1 and counties, or special districts of complete or partial financial
2 responsibility for a required program for which the State previously
3 had complete or partial financial responsibility.

4 Second—That Section 6.5 is added to Article XIII B thereof, to
5 read:

6 SEC. 6.5. (a) As an alternative to any other procedure provided
7 by law, a local government may bring an action against the State
8 in the superior court to challenge the adequacy of the actions taken
9 by the Legislature to reimburse the local government in an amount
10 necessary to pay for the costs of a new program or higher level of
11 service, as required by Section 6.

12 (b) If, based on the pleadings, the superior court determines that
13 there is a reasonable likelihood that the local government will
14 prevail in an action brought pursuant to this section, the superior
15 court shall appoint a special master or other neutral evaluator to
16 recommend to the court the amount of funds necessary to reimburse
17 the local government for the costs of the new program or higher
18 level of service, as required by Section 6.

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

23 (2) The superior court shall include, within an order upholding
24 a challenge brought by a local government, an order identifying
25 the amount the court determines is necessary to reimburse the local
26 government for the costs of the new program or higher level of
27 service, as required by Section 6.

28 (c) The superior court may enjoin the operation of the mandate
29 during the pendency of an action filed pursuant to this section,
30 and, subsequently, upon a holding of the court that a local
31 government is not required to implement a mandate because the
32 Legislature has failed to appropriate funds in the amount
33 determined by the court pursuant to subdivision (b).