

**California Association of Clerks and Election Officials (CACEO)
Clerk of the Board of Supervisors Legislative Committee**

Analysis of SCA 3 (Leno), Resolution Chapter 123 of 2013

Existing Law

Existing law in Section 6 of Article XIII B of the California Constitution, which was added in 1979 by Proposition 4, provides that when the Legislature or any state agency mandates a new program or a higher level of service on a local government agency, the State of California must provide a subvention of funds to reimburse local government for the costs of implementing and administering that program or providing the higher level of service. Section 6 lists exceptions to that requirement to include legislative mandates requested by local government, legislation defining a new crime or changing an existing definition of crime, legislative mandates enacted prior to January 1, 1975, and regulations and executive orders implementing legislation enacted prior to that date. An amendment to the constitution approved by the voters is not addressed in the Section and, thus, the costs associated with a voter-approved measure are not reimbursable.

Section 6 was amended in 2004 by Proposition 1A to provide that, beginning in 2005-06 and in every subsequent fiscal year, for a mandate for which costs of a city, county, city and county, or special district have been determined in a preceding fiscal year to be payable by the state, the Legislature must either appropriate in the annual Budget Act the full payable amount not previously paid or suspend the operation of the mandate for the year covered by the Budget Act, with exceptions specified in Section 6.

Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code provides, in detail, the methods the state follows in implementing Section 6 of Article XIII B of the Constitution, including establishment of the Commission on State Mandates, which is tasked with reviewing and approving reimbursement claims filed by local governments with the Office of the State Controller.

Existing law contained in the Ralph M. Brown Act (Government Code Section 54950, *et seq.*) statutorily guarantees the right of the public to attend and participate in the meetings of all local legislative bodies, as defined in the act. Among its many provisions are some that set forth in detail the matters that a legislative body may consider and act upon in closed session, the information concerning the required content of all meeting agendas, particularly with respect to matters scheduled for closed session, and the information and announcements that must be made after a closed session. Provisions dealing with these subjects enacted after the enactment of Section 6 of Article XIII B (Prop 4 of 1979) are fully reimbursable.

Existing law contained in the California Public Records Act (CPRA) (Government Code Section 6250, *et seq.*) statutorily guarantees the right of public access to the records and information held by state and local public agencies in California. The act details those records that are not publicly disclosable and sets forth the procedures that public

agencies must follow in providing access to records maintained by public agencies. In 2002 the courts ruled that the State of California was responsible for reimbursing local governments for implementing portions of the CPRA. Test claims filed by Los Angeles County and the Riverside School District were approved by the State Mandates Commission in a May 26, 2011 Statement of Decision. On October 13, 2013, the Commission issued Claiming Instructions (No. 2013-24) regarding local agency claims for reimbursement for compliance with those portions of the CPRA set forth in the Commission's Parameters and Guidelines.

Reimbursable Activities Under Existing Law in the Brown Act and CPRA

Under Claiming Instructions adopted by the Commission on State Mandates, the following local government activities performed pursuant to the Brown Act are reimbursable under Article XIII B, Section 6:

Brown Act

- Prepare a single agenda of a legislative body containing a brief description of each item of business to be transacted or discussed at a regular or special meeting, including items discussed in closed session, and citing the time and location of the regular or special meeting.
- Post a single agenda for the full statutorily required time (72 hours before a regular meeting; 24 hours before a special meeting) in a location freely accessible to the public (i.e., 24-hours a day, seven days a week). The agenda must state that the public will have an opportunity to comment on each agenda item and, at a regular meeting, on all matters that are within the subject matter jurisdiction of the legislative body, with specified exceptions.
- Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session.
- Reconvene in an open meeting prior to adjournment to disclose reportable actions taken in the closed session including:
 - Approval of an agreement concluding real estate negotiations, as specified;
 - Approval given to legal counsel to defend, or seek or not seek appellate review or relief, or to enter a suit as a friend of the court in any litigation as the result of the closed session;
 - Approval given to legal counsel of a settlement of pending litigation at any stage prior to or during a judicial or quasi-judicial proceeding after the settlement is final, as specified;
 - Disposition reached regarding claims discussed in closed session in a manner that identifies the name of the claimant, the name of the local agency against which the claim was filed, the substance of the claim, and amount approved for payment and agreed upon by the claimant;
 - Approval of an agreement concluding labor negotiations with represented employees after the agreement is final and has been accepted or ratified by the employee group.

- Provide copies of contracts, settlement agreements, or other documents approved or adopted in the closed session to a person who has submitted a timely written request or to a person who has made a standing request for such reports.
- Train members of those legislative bodies that hold closed sessions on the closed session requirements of the Brown Act Reform, as specified in the claiming instructions.

California Public Records Act

- If a person requests a copy of an electronic record in a specific format, provide a copy of the disclosable electronic record in the electronic format requested if the format is one that has been used by the agency to create copies for its own use or for other agencies.
- Within 10 days of receipt of a request for a copy of a record, notify the person making the request of the determination of whether the record is disclosable and the reasons for the determination.
- If the 10-day time limit contained in the act is extended by the agency due to unusual circumstances, as defined by the act, provide a written notice to the requester describing the reasons for the extension and the date on which a determination will be sent to the requester.
- If a request is denied, in whole or in part, respond in writing to the written request for inspection or copies of records and provide the requester with the reasons, names and titles or positions of each person responsible for the denial.
- When a member of the public asks to inspect a public record or obtain a copy of a public record: (1) assist the requester in identifying records and information responsive to the request or any stated purpose of the request; (2) describe the information technology and physical location where the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information.

What SCA 3 Would Do

If approved by the voters, SCA 3 would add paragraph (7) to subdivision (b) of Section 3 of Article 1 of the California Constitution to require each local agency to comply with the California Public Records Act and Ralph M. Brown Act, and to comply with any statutory enactment amending those bodies of law, enacting any successor act, or amending any successor act, provided that each enactment contains findings demonstrating that the statutory enactment furthers the purpose of Section 3.

The measure also would add paragraph (4) to subdivision (a) of Section 6 of Article XIII B to specifically exempt the state from providing a subvention of funds to reimburse local government for the costs of complying with legislative mandates contained in the CPRA and Brown Act.

Thus, SCA 3 would discontinue the ability of eligible local governments to claim and receive reimbursement from the State of California for all of the activities described earlier in the section of this analysis dealing with reimbursable activities.

Impact on Local Government

Approval by the voters of SCA 3 would have a significant impact on local governments that have, heretofore, made claims for reimbursement relating to the Brown Act and CPRA.

Brown Act

Data available with respect to Brown Act reimbursement from the State Controller indicates that reimbursable local government program costs for the last three years were as follows:

2009-10	\$16,481,785
2010-11	16,005,068
2011-12	14,985,506

It is our belief that the declining amounts reflected in this data are due to local government reluctance to go to the trouble of putting together claims, since the Legislature has failed to fund reimbursement for open meeting law costs after 2004-05. According to LAO figures presented to the Legislature in connection with the 2011-12 State Budget, the state owed local governments more than \$63,000,000 for back claims. However, we are certain that this figure has grown since 2011. We are unsure whether even these outstanding claims would be honored if SCA 3 were to be approved by the voters.

We are unable to determine what portion of the total statewide reimbursement goes to counties, as opposed to other local agencies. However, when looked at in the context of the total state budget, even the total statewide Brown Act reimbursement figures are quite small.

However, we know that these reimbursement amounts are of critical importance to many clerk of the board of supervisors offices. Most county reimbursement claims relating to the Brown Act stem from activities in the office of the clerk of the board. These are small offices with very few staff, yet the lion's share of responsibility for implementing Brown Act and Brown Act Reform mandates rests with that office. This revenue source is often critical to ensuring that the clerk of the board has sufficient funding to continue to adequately meet his/her duties in this regard. And the duties of the clerk in this regard often extend to many more legislative bodies than simply the meetings of the board of supervisors. Clerks, and sometimes other county staff, support numerous other committees and commissions whose meetings are governed by the Brown Act. In Los Angeles County, for example, the clerk of the board staffs some 30 legislative bodies, in addition to the board of supervisors.

California Public Records Act

Because test claims under the CPRA were only recently approved by the Commission on State Mandates, CACEO has no data on potential lost reimbursement revenue relating to that body of law if SCA 3 were to be approved by the voters. The two claimants (Los Angeles County and the Riverside School District) are only now gathering data to determine the amount of their actual reimbursement claims, thus no data yet exists as to the amount that these local government agencies might receive annually relating to the reimbursable portions of the CPRA. Moreover, other local agencies are only now becoming aware of the Commission's decision that certain activities under the CPRA are reimbursable and have not yet compiled the necessary data and submitted claims to the State Controller, so there is no way to estimate the statewide impact, at this point.

However, like reimbursement for Brown Act activities, the clerk of the board of supervisors would, if given the opportunity, receive a significant portion of CPRA reimbursement if SCA 3 were to fail at the polls. The clerk of the board is the custodian of records for boards of supervisors in all 58 counties. The volume of records maintained by the clerk, which date back to the creation of the county, and the volume of requests to inspect or receive copies of those records have a significant impact on the workload of the office of the clerk of the board.

Other Reasons for Opposition to SCA 3 by the California Association of Clerks and Election Officials

The proponents of SCA 3 claim that the bill is about transparency. It's not. It's about money. It's about shifting the cost of implementing state legislation to local governments and nothing more.

SCA 3 is completely unnecessary in relation to its stated goal of ensuring transparency in government. The right of access to the meetings and records of local government agencies already has been guaranteed to the people of California for decades by the Brown Act and the CPRA. More importantly, the California Constitution already specifically requires that the meetings of public bodies and the writings of public officials and agencies be open to public scrutiny. It is unnecessary to amend the constitution to accomplish what already has been guaranteed to the people – successfully – by existing law. Placing the language of SCA 3 in the Constitution accomplishes one thing, and one thing only: to make local compliance with current and future legislation amending those acts a free ride for the state.

It is very important that voters realize that SCA 3 is the Legislature's method of circumventing the will of the people expressed in Proposition 4 of 1979, which was overwhelmingly approved by California voters (74.3%). This is the voter-approved

initiative that added Article XIII B to the Constitution requiring the state to provide a subvention of funds to reimburse local governments for the costs of implementing new and enhanced program mandates on local governments. The skyrocketing cost to local government of implementing programs mandated by the Legislature, year in and year out, was a serious problem. The voters made their wishes clear in Prop 4.

The effects of Section 6 of Article XIII B have been made clear over the years. Under current law, the state now reimburses local governments for scores of mandated programs and the Legislature does, now, seriously consider whether imposing a mandate on local governments is a good idea, as it should. Important and deserving programs are enacted and the state assumes responsibility for the costs imposed on local governments, as the voters intended in conformance with Prop 4.

Legislation creating less worthy new programs and increased levels of service – oftentimes contained in bills introduced in the Legislature as knee-jerk reactions to media headlines – fail passage because of the price tag associated with them. Again, it's the way the voters intended it to be. This statement is borne out by recent research conducted by the California State Association of Counties that showed that more than 70 pieces of legislation affecting the Brown Act and the CPRA have died, usually in an Appropriations Committee, because of the high cost of the legislation's impact on local agencies. Many of these bills were introduced or gutted and amended late in the legislative session in response to newspaper headlines concerning matters for which there already were adequate remedies contained in the two acts.

Members of the California Association of Clerks and Election Officials support open government and access to the meetings and records of public bodies. It's what we do every day, whether assisting citizens seeking copies of local government records pursuant to the CPRA, or preparing the meeting agendas of local legislative bodies, and clerking those meetings in accordance with the Brown Act. However, those services come at a cost. SCA 3 would do nothing more than make it more difficult for local governments to provide the public with the level of service quality that they demand and deserve.

3/25/14