

● **Board of Directors**  
**Communications, Outreach and Legislation Committee**

March 12, 2002 Board Meeting

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**9-10**

**Subject**

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Express support, in concept, for AB 2734 (Pavley) relating to urban water conservation

**Description**

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On February 22, Assemblywoman Fran Pavley from Agoura Hills introduced Assembly Bill No. 2734 (AB 2734), which addresses several areas of the law related to urban water conservation. (see [Attachment 1](#))

AB 2734 contains provisions to expand current laws and best management practices in the following areas:

- Retrofit of plumbing fixtures at time of resale;
- Sales tax exemption for energy-efficient washers;
- Update and expansion of the Water Conservation Landscaping Act of 1990; and
- State Water Resources Control Board (SWRCB) report to the Legislature on certification of urban conservation.

A workgroup comprised of Metropolitan, other urban water agencies and environmental organizations has been working with Assemblywoman Pavley's office to insure the legislation is consistent with existing programs and policies. The bill, as introduced, will serve as a starting point for further negotiations with impacted stakeholder groups.

**Retrofit on Resale**

AB 2734 would require replacement of non-conserving sanitary fixtures (water closets, urinals and showerheads) upon sale or transfer of real property. This provision is consistent with the Board's legislative policy principle "to support the eventual passage of a bill that would mandate the replacement of all non-low-flow plumbing fixtures upon transfer or resale of any real property." Several municipalities, including San Diego and Los Angeles, have already adopted similar ordinances that require plumbing fixture retrofits on resale.

**Sales Tax Exemption for Energy-Efficient Clothes Washers**

AB 2734 includes an exemption from state sales tax on purchases of energy-efficient clothes washers. Energy-efficient clothes washers conserve water, and this provision would provide a water conservation benefit. A sales tax exemption, in effect, would augment the financial incentives that are currently offered by Metropolitan and its member agencies to encourage consumers to purchase water-efficient clothes washers.

The Board has taken actions indicative of support for this legislative provision. In November 1999, the Board supported the allocation of financial resources to fund water-use efficiency projects required as part of the CALFED solution. The Board also supported AB 952 (Kelley), chaptered into law in 2001, to repeal the income tax for conservation rebates.

**Water-Efficient Landscape Model Ordinance**

AB 2734 would update and expand the current Water Conservation Landscaping Act (AB 325 by Assemblyman Steve Clute) that became law in 1991. Acting under the auspices of AB 325, the Department of Water Resources (DWR) developed a model ordinance, which established baseline water consumption for commercial landscapes.

AB 2734 would establish a more rigorous standard of landscape water-use efficiency based on recent technological developments.

The Board approved inclusion of the 1993 model landscape ordinance as an element of Metropolitan's Conservation Credits Program. The revised Memorandum of Understanding for Urban Conservation Best Management Practices (adopted by the Board in 1997) recognized most of the technologies and practices specified in AB 2734.

The Pavley bill would authorize enforcement of water-efficient landscape ordinances, using either or both dedicated irrigation water meters and an inspection and monitoring program. The bill extends beyond the Board's adopted policies by requiring local agencies to monitor water-use and enforce a "water allowance." The model ordinance presently in effect allows water agencies broad discretion for implementation and enforcement. Local agencies have expressed concern that they do not have the resources to enforce landscape water-use. Staff recommends that the bill be amended to allow discretion by the local agencies for implementation and enforcement of the model ordinance.

### **SWRCB Report on Urban Conservation Certification**

AB 2734 delegates responsibility to the SWRCB to report to the Legislature on the progress of certification of urban conservation best management practices pursuant to the CALFED Record of Decision.

The Board's adopted policy principles on the CALFED Bay-Delta Process include support for the water-use efficiency "certification framework" as part of an agreed upon CALFED solution and anticipates equivalent "water-use efficiency strategies for all water-use sectors including urban, agricultural and environmental." By focusing solely on certification of urban agencies' conservation efforts, AB 2734 could circumvent the equity of the certification framework element within the overall CALFED solution. Metropolitan staff has raised concern with Assemblywoman Pavley's staff, and the author has agreed to delete this provision from the bill at the first opportunity for amendments.

### **Policy**

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Legislative Policy Principle on Water Conservation adopted on November 10, 1992 (Minute Item No. 39936)

Action Principles for CalFed Action Program adopted on January 11, 2002 (Minute Item No. 43858)

### **California Environmental Quality Act (CEQA)**

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CEQA determination for Options #1 and #2:

The proposed action is not defined as a project under CEQA because the proposed action involves continuing administrative activities such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination for Options #1 and #2 is: Determine that the proposed action is not subject to the provisions of CEQA per Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #3:

None required.

**Board Options/Fiscal Impacts**

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**Option #1**

Adopt the CEQA determination and support AB 2734 (Pavley) if amended consistent with Board's adopted Legislative Policy Principles on the CALFED Bay-Delta Process.

**Fiscal Impact:** None

**Option #2**

Adopt the CEQA determination and support AB 2734 (Pavley) without amendment.

**Fiscal Impact:** None

**Option #3**

Take no position on AB 2734.

**Fiscal Impact:** None

**Staff Recommendation**

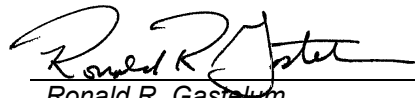
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Option #1



Adán Ortega, Jr.  
Vice President, External Affairs

3/5/2002  
Date



Ronald R. Gastelum  
Chief Executive Officer

3/5/2002  
Date

**Attachment 1 – Bill Number: AB 2734 Introduced by Assembly Member Pavley**

BLA #1648

**BILL NUMBER: AB 2734 INTRODUCED  
BILL TEXT**

**INTRODUCED BY: Assembly Member Pavley**

**FEBRUARY 22, 2002**

An act to amend Section 1102.6 of the Civil Code, to amend Section 65592 of, and to add Sections 65600.1, 65600.2, 65600.3, 65600.4, and 65600.5 to, the Government Code, to add Chapter 2.5 (commencing with Section 17929) to Part 1.5 of Division 13 of the Health and Safety Code, and to add Section 6356.4 to the Revenue and Taxation Code, relating to conservation.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2734, as introduced, Pavley. Conservation.  
(1) Existing law requires sellers of real property to disclose the existence of various items to the buyer, but does not require disclosure with respect to, and does not require the installation of, water conservation devices in connection with the transfer of real property.

This bill would require those disclosures to include information with respect to water conservation devices.

The bill would require commencing on and after July 1, 2004, that transferors of commercial or industrial property and, on and after July 1, 2005, every transfer of residential property using water in urinals, water closets, or showerheads, or any combination of these devices, deliver to the transferee, as soon as practicable prior to the transfer of title, a written statement that conservation devices are installed in all fixtures in the property, with specified exceptions.

The bill would make a violation of that requirement, or the provision of confirmation of compliance if the devices have not been so installed, an infraction. The bill would thereby impose a state-mandated local program by creating a new crime.

The bill would make any transferor who fails to comply with these requirements subject to civil damages.

The bill would require any real estate agent, broker, or salesperson involved in the transfer of title to give written notice to the transferor and the transferee of the requirements of the bill prior to the transfer of title.

The bill would provide that a transfer is not invalidated on the basis of a failure to comply with the described provisions.

(2) Under the Water Conservation in Landscaping Act, the Department of Water Resources was required to adopt a model local water efficient landscape ordinance that each city and county was authorized to adopt.

This bill would require the department, not later than January 1, 2004, to adopt an update to the model local water efficient landscape ordinance with described revisions and to adopt related guidelines and, not later than January 31, 2004, to distribute these documents.

The bill would provide for each city or county by January 1, 2005, to adopt and enforce this model ordinance or adopt its own updated ordinance that has been determined by the department to be consistent with and equivalent to the updated model ordinance, the bill would make cities or counties that fail to comply with these requirements by January 1, 2005, ineligible to receive specific state funds.

Because this requirement would increase the level of service imposed on cities and counties, this bill would impose a state-mandated local program.

(3) The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax.

This bill would additionally exempt from that tax clothes washers that are energy efficient, as defined. The bill would provide that, notwithstanding an existing provision of law, the state may not reimburse any local agency for sales and use taxes lost pursuant to the exemption.

(4) The bill would require the State Water Resources Control Board by February 28, 2003, to submit to the Legislature a progress report regarding the development of a framework and process to certify the implementation of best management practices for urban water conservation by urban water agencies.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

SECTION 1. The Legislature finds and declares all of the following:

(a) Adequate water supply reliability for all uses is essential to the future economic and environmental health of California.

(b) Developing environmentally sound strategies to meet future water supply and wastewater treatment needs is key to protecting and restoring aquatic resources in California.

(c) There is a pressing need to address water supply reliability issues raised by growing urban areas.

(d) Economic analysis by urban water agencies and the goals and objectives of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, have identified urban water conservation as a cost-effective approach to addressing water supply needs.

(e) The CALFED Record of Decision calls for an ambitious statewide urban water use efficiency program, above and beyond the implementation of current best management practices for water use efficiency, and includes linkages that ensure balanced implementation of the 12 CALFED program elements in the four problem areas.

(f) There are many water conservation practices that produce significant energy and other resource savings that should be encouraged as a matter of state policy.

(g) During the 10 years since the signing of the "Memorandum of Understanding Regarding Urban Water Conservation in California," many urban water and wastewater treatment agencies have gained valuable experience that can be applied to produce significant statewide savings of water, energy, and associated infrastructure costs. This experience indicates a need to regularly revise and update water conservation methodologies and practices.

SEC. 2. Section 1102.6 of the Civil Code is amended to read:

1102.6. The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

SEC. 3. Section 65592 of the Government Code is amended to read:

65592. Unless the context requires otherwise, the definitions used in this section govern the construction of this article:

(a) "Department" means the Department of Water Resources.

(b) *"Estimated total water use" means the annual total amount of water estimated to be needed to keep the plants in the landscaped areas healthy, and is based upon factors that include, but are not limited to, the local evapotranspiration rate, the size of the landscaped area, the types of plants, and the efficiency of the irrigation system.*

(c) *"Evapotranspiration" means the quantity of water evaporated from adjacent soil surfaces and transpired by plants during a specific time.*

(d) *"Evapotranspiration adjustment factor" means the mathematical calculation, involving measures of evaporation, types of plants, and irrigation efficiency that is used to determine the amount of water that needs to be applied to the landscape.*

(e) "Local agency" means any city, county, or city and county.

~~(e)~~

(f) *"Maximum applied water allowance" means the upper limit of annual applied water for the established landscaped area, based upon evapotranspiration, the evapotranspiration adjustment factor, and the size of the landscaped area.*

(g) *"Updated water efficient landscape ordinance" means an ordinance or resolution adopted by a local agency to address the efficient use of water in landscaping that revises or updates the existing water efficient landscape ordinance, adopted by local agencies pursuant to Section 65595, that includes the provisions contained within the department's updated model water efficient landscape ordinance adopted pursuant to Section 65600.1.*

(h) "Water efficient landscape ordinance" means an ordinance or resolution adopted by a local agency to address the efficient use of water in landscaping.

SEC. 4. Section 65600.1 is added to the Government Code, to read:

65600.1. (a) Not later than January 1, 2004, the department, after holding a public hearing, shall adopt an update to the model local water efficient landscape ordinance that it developed pursuant to Section 65594, and shall adopt guidelines for the evaluation by the department of updated water efficient landscape ordinances adopted by local agencies.

(b) In updating the model ordinance, the department shall recognize and promote the benefits of consistent local ordinances in areas having similar climatic, geological, or topographical conditions.

(c) Not later than January 31, 2004, the department shall distribute the updated model ordinance and the guidelines for the department's evaluation of updated water efficient landscape ordinances that are adopted by local agencies, to all local agencies and other interested parties.

SEC. 5. Section 65600.2 is added to the Government Code, to read;

65600.2. The model ordinance, adopted pursuant to Section 65594, shall be updated as follows:

(a) Revise the evapotranspiration adjustment factor to 0.7 after five years and 0.6 after 10 years, except that the department is directed to review the science and technology of ornamental landscape irrigation prior to each of these statutory revisions, and, after appropriate public involvement of, at a minimum, the landscape industry, water agencies, and nonprofit environmental groups, may adopt a different evapotranspiration adjustment factor that is not lesser than the existing 0.8 factor if the department finds that it is not feasible to achieve the statutory revisions, and 1.0 for irrigation with reclaimed water.

(b) Clarify that estimated total water use and maximum applied water allowance include any replacement water for evaporation from landscape features that use ornamental or recreational water, including, but not limited to, ponds, fountains, pools, and spas, within the landscaped area.

SEC. 6. Section 65600.3 is added to the Government Code, to read:

65600.3. (a) Except as provided in subdivision (b), by January 1, 2005, a local agency shall adopt an updated water efficient landscape ordinance that, at a minimum, meets the standards set forth in the updated model water efficient landscape ordinance adopted by the department pursuant to Section 65600.1.

(b) If by January 1, 2005, a local agency has not updated its water efficient landscape ordinance, the updated model water efficient landscape ordinance adopted by the department pursuant to subdivision (a) of Section 65600.1 shall take effect for that local agency on January 1, 2005, and shall be enforced by the local agency and have the same force and effect as if adopted by that local agency.

(c) For local agencies that update their own water efficient landscape ordinances prior to January 1, 2005, the ordinance shall be submitted to the department, within 15 days of adoption by the local agency, for an evaluation of the updated water efficient landscape ordinance for consistency with, and equivalency to, the updated model water efficient landscape ordinance, pursuant to the guidelines established under subdivision (a) of Section 65600.1.

(d) Compliance with the requirements of a local updated water efficient landscape ordinance may be undertaken pursuant to paragraph (1) or (2), as follows:

(1) Local agencies and water service providers shall verify that the installation of landscapes comply with the updated ordinance. If the local agency or water service provider determines that the landscaped area does not comply with the updated ordinance, it may specify a compliance plan for conformance with the applicable updated ordinance. If the owner fails to implement the compliance plan within 90 days, the local agency or water service provider may assess a surcharge to that water service account until the landscape complies with the updated ordinance. Local agencies and water service providers shall conduct periodic monitoring of landscapes to ensure compliance with the updated ordinance.

(2) Local agencies and water service providers shall verify that an irrigation meter used exclusively for outdoor irrigation has been installed in landscapes as a condition of certification. The water service provider for that landscape may determine a water budget for that landscape based on the updated ordinance. In order to ensure compliance with the water budget, the water service provider may take appropriate actions, including but not limited to, imposition of surcharges, incentives, education, site visits, and provision of technical assistance.

SEC. 7. Section 65600.4 is added to the Government Code, to read:

65600.4. The department shall establish by January 1, 2006, and update not less frequently than every five years thereafter, the following documents:

(a) A directory of the updated water efficient landscape ordinances adopted by local agencies prior to January 1, 2005, pursuant to subdivision (c) of Section 65600.3.

(b) A directory of the updated water efficient landscape ordinances of local agencies adopted pursuant to subdivision (b) of Section 65600.3.

(c) The department shall retain all local updated water efficient landscape ordinances adopted by local agencies and submitted to the department pursuant to subdivision (c) of Section 65600.3.

SEC. 8. Section 65600.5 is added to the Government Code, to read:

65600.5. (a) If, by January 1, 2005, any local agency is not either enforcing the updated model water efficient landscape ordinance adopted pursuant to subdivision (b) of Section 65600.3 or has not adopted its own updated ordinance that has been determined by the department, pursuant to subdivision (c) of Section 65600.3, to be consistent with, and equivalent to the updated model ordinance, the local agency shall be ineligible to receive funding pursuant to Division 24 (commencing with Section 78500) of the Water Code, Division 26 (commencing with Section 79000) of the Water Code, or Chapter 1.692 (commencing with Section 5096.300) of Division 5 of the Public Resources Code, until an updated ordinance is submitted and approved by the department pursuant to this article or the updated model ordinance is being enforced by the local agency.

(b) If the local agency, or any department or agency thereof, is a provider of water service and the local agency is not either enforcing the updated model water efficient landscape ordinance adopted pursuant to subdivision (b) of Section 65600.3 or has not



adopted its own updated ordinance which has been determined by the department, pursuant to subdivision (c) of Section 65600.3, to be consistent with and equivalent to the updated model ordinance, the local agency shall be ineligible to receive funding pursuant to Division 24 (commencing with Section 78500) of the Water Code, Division 26 (commencing with Section 79000) of the Water Code, Chapter 1.692 (commencing with Section 5096.300) of Division 5 of the Public Resources Code, or receive drought assistance from the state, until an updated ordinance is submitted and approved by the department pursuant to this article or the updated model ordinance is being enforced by the local agency.

SEC. 9. Chapter 2.5 (commencing with Section 17929) is added to Part 1.5 of Division 13 of the Health and Safety Code, to read:

**CHAPTER 2.5. WATER-EFFICIENT PLUMBING FIXTURE RETROFIT PROGRAM**

17929. (a) On and after July 1, 2004, every transferor of commercial or industrial property, and on and after July 1, 2005, every transferor of residential property using water in urinals, water closets, or showerheads, or any combination of these devices, shall deliver to the transferee, as soon as practicable prior to the transfer of title, a written statement that conservation devices, as prescribed in subdivision (b) of Section 17929.1, are installed in all fixtures in the property, in compliance with this chapter. The statement shall be either included in the receipt for deposit in a real estate transaction, an addendum attached thereto included in the form for disclosure prescribed by Section 1102.6 of the Civil Code, or a separate document. At the discretion of the transferor, compliance with this chapter may be included as a condition of the close of escrow, and the costs of compliance may be paid from the proceeds of sale for completion of the work required. In no event shall the transferor be relieved of the obligation of providing a written statement that the fixtures comply with this chapter.

(b) Any violation of this section or Section 17929.1 is an infraction punishable by a maximum fine of two hundred fifty dollars (\$250) for each offense.

(c) This section does not apply to any of the following:

(1) Transfers that are required to be preceded by the furnishing to a prospective transferee of a copy of a public report pursuant to Section 11018.1 of the Business and Professions Code and transfers which can be made without a public report pursuant to Section 11010.4 of the Business and Professions Code.

(2) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

(3) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, transfers by any foreclosure sale after default, in an obligation secured by a mortgage, and transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation.

(4) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(5) Transfers from one coowner to one or more other coowners.

(6) Transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(7) Transfers between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to a decree.

17929.1. (a) No transferor of residential, commercial, or industrial property subject to this chapter shall provide the transferee with confirmation of compliance with the requirements of this chapter unless the conservation devices described in subdivision (b) have been installed.

(b) Low consumption water closets and associated flushometer valves, if any, that use no more than an average of 1.6 gallons per flush, urinals and associated flushometer valves, if any, that use no more than an average of one gallon per flush, and showerheads, if any, that use no more than an average of 2.5 gallons per minute at 80 psi. This requirement, however, does not apply to blow-out water closets and associated flushometer valves.

17929.2. If the transferor fails to comply with subdivision (a) of Section 17929, the transferee shall install the conservation devices, as prescribed in subdivision (b) of Section 17929.1, within 90 days. Any transferor who fails to comply with the requirements of this chapter is liable to the transferee in the amount of five hundred dollars (\$500) for each water device listed in subdivision (b) of Section 17929.1 that does not comply with this chapter at the time of transfer, or the actual costs of the transferee to comply with this chapter, whichever amounts are greater.

(b) No liability shall arise, nor any action be brought or maintained against, any agent of any party to a transfer of title, including any person or entity acting in the capacity of an escrow, for any error, inaccuracy, or omission relating to the disclosure required to be made by a transferor pursuant to this chapter. However, this subdivision does not apply to a licensee, as defined in Section 10011 of the Business and Professions Code, where the licensee participates in the making of the disclosure required to be made pursuant to this chapter with actual knowledge of the falsity of the disclosure. Except as otherwise provided in this section, this section shall not be deemed to create or imply a duty upon a licensee or upon any agent of any party to a transfer of title, including any person or entity acting in the capacity of an escrow, to monitor or ensure compliance with this chapter.

17929.3. This chapter does not preempt any actions of cities, counties, or districts that prescribe water conservation requirements that will result in greater savings of water than those provided for in this chapter.

17929.4. Any real estate agent, real estate broker, or real estate salesperson, whether representing a transferor or transferee, or both, involved in the transfer of title to property subject to this chapter, shall give written notice to the transferee and transferor of the requirements of this chapter prior to the transfer of title to the property.

17929.5. A transfer of title is not invalidated on the basis of a failure to comply with this chapter.

SEC. 10. Section 6356.4 is added to the Revenue and Taxation Code, to read:

6356.4. (a) There are exempted from the taxes imposed by this part that gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, energy efficient clothes washers.

(b) For purposes of this section, "energy efficient" means that the appliance meets or exceeds the applicable ENERGY STAR efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy.

SEC. 11. By February 28, 2003, the State Water Resources Control Board shall submit to the Legislature a progress report regarding the development of a framework and process to certify the implementation of best management practices for urban water conservation by urban water agencies. This report shall also contain recommendations regarding the implementation of a certification program and an analysis of its budget implications. This report shall rely upon existing data and information, to the greatest extent possible, and shall be prepared in consultation with CALFED agencies, the California Urban Water Conservation Council, and other interested parties. The report shall be consistent with the CALFED Bay-Delta Program Record of Decision dated August 28, 2000, and shall recognize the linkages between the water use-efficiency program and the other 11 CALFED program elements within the four CALFED problem areas.

SEC. 12. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by Section 10 of the act adding this section and the state may not reimburse any local agency for any sales and use tax revenues lost by it under Section 10 of the act adding this section.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.