Senate Budget and Fiscal Review—Mark Leno, Chair

SUBCOMMITTEE NO. 1 Agenda

Senator Marty Block, Chair
Senator Carol Liu
Senator Mark Wyland

Thursday, May 8, 2014
9:30 a.m. or Upon Adjournment of Floor Session
Room 3191

Consultants: Farra Bracht, Erin Gabel, Joe Stephenshaw, Mark Ibele and Jen Troia

Proposed Vote Only

Proposed Discussion / Vote Calendar

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling (916) 651-1505. Requests should be made one week in advance whenever possible.

Items Proposed for Vote Only

6110 DEPARTMENT OF EDUCATION

Issue 1: Categorical Programs Consolidation—Specialized Secondary Education Programs and Agricultural Education Grants (Budget Proposal)

Proposal: The Governor's budget provides for Specialized Secondary Programs (SSP) and Agricultural Education Grants (AEG) within the Local Control Funding Formula (LCFF). Under the Governor's proposal, school districts receiving funding for these two programs in 2013-14 would have those funds count toward their LCFF targets beginning in 2014-15, with no change made to the LCFF target rates. The currently required categorical activities would be left to each district's discretion. The 2013-14 budget consolidated approximately two-thirds of all categorical programs with the discretionary revenue limit funding to create the LCFF. Currently, 13 categorical programs continue to be funded outside of the LCFF, including SSP and AEG.

Prior Subcommittee Action: At its April 29 hearing, the Subcommittee voted to explicitly reject the Governor's proposal to place the designated SSP and AEG programs under the LCFF. Apparently, there was some confusion expressed as to whether the intent was to continue actually funding these programs as separate categorical programs.

Staff Comment: Staff suggests that Subcommittee affirm their action taken on April 29th to continue funding SSP and AEG as separate categorical programs outside the LCFF.

Staff Recommendation: Affirm the rejection of the Governor's proposal to include Agricultural Education Grants and Specialized Secondary Programs funds within the LCFF and approve these as separate categorical programs and maintain their current funding.

Vote:

Items Proposed for Discussion/Vote

6110 DEPARTMENT OF EDUCATION
6870 CALIFORNIA COMMUNITY COLLEGES

Issue 1: K-14 Mandates

Overview: The California Constitution requires the state to reimburse local governments for new programs or requirements for higher levels of service that the state imposes on them. In the area of education, local governments that qualify for reimbursement include school districts, county offices of education (COEs), and community colleges—collectively referred to as local educational agencies (LEAs).

The state currently owes $4.5 billion in prior year mandate costs, a “backlog” that accumulated due to the state’s earlier deferrals of those payments. The Governor's multi-year plan for paying off all outstanding education obligations includes the payment of outstanding mandate costs (part of the "wall of debt"). However, the Governor does not include funding for paying down the mandate backlog in 2014-15. Instead, the Governor proposes to pay off these obligations in the 2015-16 through 2017-18 fiscal years.

The Commission on State Mandates (CSM) recently approved statewide cost estimates for seven new education mandates. The Governor's budget addresses four of these mandates. Specifically, the Governor proposes to add the following education mandates to the mandates block grants for schools and community colleges: 1) Uniform Complaint Procedures (K-12 schools only), 2) Charter Schools IV (K-12 schools only), and 3) Public Contracts (K-12 schools and community colleges). The Governor's budget also proposes to repeal the Community College Construction Mandate. The Administration acknowledges that they inadvertently omitted one new mandate, and intentionally left out the remaining two because the CSM had not yet finished their cost estimates when the Governor's budget was released. The Administration indicates that proposals related to these three remaining new mandates will likely be included in the May Revision.

In a recent analysis of education mandates (available online here: http://www.lao.ca.gov/Publications/Detail/2956), the Legislative Analyst’s Office (LAO) made additional recommendations related to changing the state’s mandate funding process, which are described below.

Background:

Brief Summary of the History of Mandates
The concept of state reimbursement to local agencies and school districts for state-mandated activities originated with the Property Tax Relief Act of 1972 (Senate Bill 90, Chapter 1406, Statutes of 1972), known as SB 90. The primary purpose of the Act was to limit the ability of local agencies and school districts to levy taxes. In 1979, Proposition 4 was passed by voters, which required local governments to be reimbursed for new programs or higher levels

of services imposed by the state. Local educational agencies (LEAs) can seek reimbursement for these mandated activities. In response to Proposition 4, the Legislature created the CSM to hear and decide upon claims requesting reimbursement for costs mandated by the state.

Proposition 1A, approved by the state's voters in 2004, required the Legislature to appropriate funds in the annual budget to pay a mandate's outstanding claims, "suspend" the mandate (render it inoperative for one year), or "repeal" the mandate (permanently eliminate it or make it optional). The provisions in Proposition 1A, however, do not apply to K-14 education.

Over the years, as the cost and number of education mandates grew, the state began to defer the full cost of education mandates. Prior to the 2010-11 Budget Act, the state had deferred the cost of roughly 50 education mandates but still required LEAs to perform the mandated activity by providing a nominal amount of money ($1,000) for each activity. An exception was made 2006, when the state provided more than $900 million in one-time funds for state mandates. This funding retired almost all district and college mandate claims (plus interest) through the 2004-05 fiscal year. Though a superior court in 2008 found the state's practice of deferring mandate payments unconstitutional, constitutional separation of powers means the courts cannot force the Legislature to make appropriations for mandates.

<u>Mandate Reimbursement Processes</u>

Under the traditional mandate reimbursement process, the CSM first determines whether an activity is a mandate. Next, LEAs are required to document in detail how much they spent on a particular mandate. The LEAs then submit this information on an ongoing basis to the State Controller's Office (SCO) for review and approval. This process has been criticized because reimbursements are based on actual costs, and LEAs may therefore lack an incentive to perform required activities as efficiently as possible. This process also does not consider how well an activity is performed. As a result, the state may pay some LEAs more than others, regardless of their performance.

In recent years, the state created two alternative reimbursement systems. First, in 2004, the state created the Reasonable Reimbursement Methodology (RRM). Rather than requiring LEAs to submit detailed documentation of actual costs, RRM uses general allocation formulas or other approximations of costs approved by the CSM. Only three school mandates currently have approved RRMs.

Then, as part of the 2012-13 budget, the state created two block grants for education mandates: one for school districts, COEs, and charter schools (for which some mandated activities apply) and another for community colleges. Instead of submitting detailed claims that track the time and money spent on each mandated activity on an ongoing basis, LEAs can choose to receive block grant funding for all mandated activities included in the block grant.

<u>Block Grant Participation</u>

The 2013-14 budget included a total of $250 million for the mandates block grants ($217 million for schools and $33 million for community colleges). Block grant funding is allocated to participating LEAs on a per-pupil basis, based on average daily attendance (ADA) or full-time equivalent students. The rate varies by type of LEA and by grade span, due to the fact that some mandates only apply to high schools. The per-pupil rates are as follows:

- School districts receive $28 per student in grades K-8 and $56 per student in grades 9-12.

- Charter schools receive $14 per student in grades K-8 and $42 per student in grades 9-12.

- County offices of education (COEs) receive $28 for each student they serve directly, plus an additional $1 for each student within the county. (The $1 add–on for COEs is intended to cover mandated costs largely associated with oversight activities, such as reviewing district budgets.)

- Community colleges receive $28 per student.

Most school districts and COEs, and virtually all charter schools and community college districts, have opted to participate in the block grant. Specifically, the LEAs participating in the block grant serve 95 percent of K-12 students and 97 percent of community college students.

New Education Mandates: The chart below shows the seven mandates for which the CSM recently adopted cost estimates for and the Governor's January budget proposal.

Mandates With Cost Estimates Adopted by CSM as of February 1, 2014	Reimbursement Start Date	CSM Estimated Annual Cost Statewide	Governor's January Proposal	Governor's Proposed Change in Block Grant Funding
Parental Involvement Program	7/1/2002	$125,268	None	NA
Williams Case Implementation	9/29/2004	106,183	None	NA
Uniform Complaint Procedures	7/1/2002	34,751	Add to block grant	$0
Developer Fees	7/1/2001	34,209	None	NA
Public Contracts	7/1/2001	32,932	Add to block grant	0
Community College Construction	7/1/2001	22,519	Repeal	NA
Charter Schools IV	1/1/2003	$4,261	Add to block grant	$0
*Community College Construction applies only to community colleges. Public Contracts applies to both schools and community colleges. All other mandates apply only to schools.				

Source: LAO

Governor's Budget Proposals and LAO Comments: As mentioned earlier, the Governor's January budget addresses four of the seven new mandates, which are described in more detail below.

Uniform Complaint Procedures Mandate (UCP) (K-12)

The state requires schools to respond to certain types of complaints, such as those regarding certain educational programs, discrimination, harassment, facilities, teacher misassignments, and instructional materials. Parents, students, employees, and community members can file complaints on behalf of themselves or on behalf of another individual. For certain types of complaints, the state requires schools to use its UCP to resolve the complaint. Most procedural activities required under the state's UCP have been found to be reimbursable mandates. However, reimbursement is only required when the complaint relates to 1) free and reduced-price school meals; 2) adult education programs in citizenship and English; 3) most special education activities; and 4) discrimination, with the exception of discrimination relating to age, sex, and disability. The specific UCP reimbursable activities are:

- Adopting complaint procedures and notifying the public;
- Providing notice of civil remedies;
- Referring certain complaints; and
- Forwarding information for appeals.

In addition, under state and federal law, schools are required to perform specified activities related to antidiscrimination laws, as they pertain to education programs. These activities include providing a statement of their intent to comply with antidiscrimination laws to the California Department of Education (CDE), as well as describing how they will comply with these laws. Because the state requirements go beyond the federal law, the CSM deemed these activities a state mandate. Specifically, the state requires schools to report on antidiscrimination compliance related to religion and sexual orientation. The corresponding statement of intent requires minimal additional workload, since this information is included in a single, one-page document, and CDE has not yet required districts to report on how they are complying with antidiscrimination laws.

LAO Comment. For addressing the UCP as it relates to handling complaints, the LAO recommends a mixed approach that is shown in the figure below. The LAO believes that making these changes will result in minimal costs and thus does not recommend increasing block grant funding.

Activity	Claimants	Assessment	Recommendation
Adopt and publish complaint procedures	School districts, COEs	Requirement helps hold schools accountable.	Retain
Provide notice of civil remedies to complainants	School districts, COEs	Requirement helps hold schools accountable.	Retain
Refer certain complaints to other state and federal agencies	School districts, COEs	Complainant better suited to work directly with other agencies.	Amend regulations to refer complainant (rather than complaint itself) to other agencies
Forward information for appeals to CDE	School districts, COEs	Stronger incentive needed to ensure districts and COEs provide requested information.	Amend regulations to indicate that withholding requested information will be viewed as a finding in favor of the complainant

COEs = county offices of education
CDE = California Department of Education.

For addressing the UCP as it relates to antidiscrimination laws, the LAO recommends approving the Governor's proposal to add this mandate to the block grant without increasing block grant funding. The LAO also recommends that the Legislature require schools to submit compliance reports to CDE if evidence of discrimination emerges.

<u>Charter Schools IV (K-12)</u>
AB 1994 (Reyes), Chapter 1058, Statutes of 2002, made several changes to the way the state establishes and operates charter schools, which resulted in a number of reimbursable state mandates. The Charter Schools IV mandate includes the following activities for charter school authorizers:

- Reviewing proposed countywide charter schools (similar to the review of non-countywide charter schools).
- Receiving financial information from the charter schools they authorize.
- Reviewing other information related to the charter schools they authorize, including procedures for closure, where the charter will be located, and the process for notifying parents about accreditation and status of A-G approved courses.
- Holding open meetings for reviewing whether an existing charter can open an additional site.
- Verifying the accuracy of data reported by the charter school.

Related Charter Schools I-III mandates reimburse charter authorizers for reviewing proposed charters, holding public hearings, and monitoring charters after approval. These mandates are already included in the mandates block grant.

LAO Comment. The LAO recommends retaining most activities related to this mandate and adding these activities to the mandates block grant without providing additional funding. The LAO also recommends repealing three mandated activities, including reviewing proposed parental notification procedures, holding open meetings to consider additional school sites, and verifying the accuracy of financial data. The LAO argues that the parental notification procedure is redundant due to the recent enactment of Local Control Accountability Plan (LCAP) requirements, which are tied to the Local Control Funding Formula. The LAO also argues that open meetings would occur even without this mandate and that verifying financial data is unnecessary due to computerized accounting systems.

Public Contracts (K-12 and Community Colleges)
State law generally allows school districts and community colleges discretion to undertake repair and maintenance projects through the work of staff, or by contracting out for the work. Public Contract Code does, however, require school districts and colleges to contract out for repair and paint jobs under certain circumstances. In 2012, the CSM identified more than a dozen reimbursable activities that are triggered when districts are required to contract out for repairs and maintenance, including specifying in bid notices any type of specific license a contractor must have, or including clauses in contracts regarding the identification of hazardous waste discovered during a project. The Governor's budget proposes shifting this new mandate into the mandates block grant for school districts and community college districts.

LAO Comment. The LAO recommends repealing the mandate and amending statute to allow schools and community colleges more discretion as to how they handle repair and painting projects.

Community College Construction (Community Colleges)
Each community college district submits a five-year infrastructure plan to the Board of Governors, and provides annual updates. Statute identifies six specific areas that must be addressed in these plans, including enrollment capacity at the district, an inventory of facilities, and an estimate of district funds available for construction. In 2011, the CSM found that four of the six required subject areas constitute state-reimbursable mandates. The Governor's budget proposes trailer bill language that would eliminate the mandate by allowing districts more flexibility regarding the information they present in their infrastructure plan.

LAO Comment. The LAO supports this proposal, noting that the information would likely be included in the plans regardless of whether it was required by these laws, because districts would need to present the information to justify proposed projects for approval by the Chancellor's Office.

Other LAO Recommendations: The LAO recommends the Legislature repeal the RRM process because the Legislature can adjust funding through the budget process based on expected costs for education mandates. The LAO also recommends considering a variety of factors when adding new mandates and adjusting funding for the mandates block grant. Additionally, the LAO recommends providing a cost-of-living adjustment (COLA) to the block grants, similar to other education programs. The cost to provide a 0.86 percent COLA to the block grants would be $1.9 million for K-12 schools and $300,000 for community colleges.

Staff Comment: The Governor's proposal to include the Uniform Complaint Procedures Mandate, Charter Schools IV Mandate, and Public Contracts Mandate into the mandates block grant without additional funding seems reasonable because the additional workload appears to be minimal. Regarding the Community College Construction Mandate, there is a general consensus among stakeholders that these mandated activities would be included in the community college's five-year infrastructure plan, therefore repealing this mandate, as the Governor proposal seems reasonable.

Subcommittee Questions:

1) Why does the Governor propose paying down other outstanding obligations such as deferrals and the Emergency Repair Program (discussed later in this agenda), but not the mandate backlog in 2014-15?

2) Given that most LEAs and community colleges participate in the mandates block grant, is it necessary for the Legislature to provide a COLA for this program?

Staff Recommendation: Adopt the Governor’s proposal to add the Uniform Complaint Procedures Mandate, Charter Schools IV Mandate, and Public Contracts Mandate into the mandates block grant without additional funding. In addition, adopt the Governor’s proposal to repeal the Community College Construction Mandate.

<u>Vote:</u>

Issue 2: Proposition 39

Governor's Budget Proposal. The Governor's budget estimates $726 million in Proposition 39 revenue. Of this amount, one-half ($363 million) is dedicated, primarily to schools and community colleges, as follows:

- $316 million and $39 million to K‑12 school and community college districts, respectively, for energy efficiency project grants.
- $5 million to the California Conservation Corps (CCC) for continued technical assistance to K‑12 school districts.
- $3 million to the California Workforce Investment Board (CWIB) for continued implementation of the job‑training program.

The Governor's budget includes a reduction, from the current-year funding level, of $101 million for Proposition 39 energy projects due to lower projected tax revenues than assumed in the 2013-14 budget. These revenue projections are based on the Franchise Tax Board's estimates.

Background. The California Clean Energy Jobs Act was created with the approval of Proposition 39 in the November 6, 2012 statewide general election. Proposition 39 changed the corporate income tax code to require most multistate businesses to determine their California taxable income using a single sales factor method. The increase in the state's corporate tax revenue, resulting from Proposition 39, is allocated to the General Fund and the Clean Energy Job Creation Fund for five fiscal years, beginning with fiscal year 2013-14. Under the initiative, roughly $550 million annually was projected to be available for appropriation by the Legislature for eligible projects to improve energy efficiency and expand clean energy generation. For fiscal year 2013-14, $464 million in Proposition 39 revenue was appropriated as follows:

- $381 million in awards to local educational agencies (LEAs), which include county offices of education, school districts, charter schools, and state special schools for energy efficiency and clean energy projects.
- $47 million in awards to California community college districts for energy efficiency and clean energy projects.
- $28 million for low-interest and no-interest revolving loans and technical assistance to the California Energy Commission (CEC).
- $3 million to the CWIB to develop and implement a competitive grant program for eligible workforce training organizations to prepare disadvantaged youth, veterans, and others for employment in clean energy fields.

- $5 million to the CCC to perform energy surveys and other energy conservation-related activities.

Following is a further description and/or update of the five program elements:

- **K-12 - Local Educational Agency Proposition 39 Award Program.** SB 73 (Committee on Budget and Fiscal Review), Chapter 29, Statues of 2013, establishes that 89 percent of the funds deposited annually into the Clean Energy Job Creation Fund, and remaining after any transfers or other appropriations, be allocated by the State Superintendent of Public Instruction for awards and made available to LEAs for energy efficiency and clean energy projects. Minimum grant amounts were established for LEAs within the following average daily attendance (ADA) thresholds:

    - $15,000 for LEAs with ADA of 100 students or less.
    - $50,000 for LEAs with ADA of 100 to 1,000 students.
    - $100,000 for LEAs with ADA of 1,000 to 2,000 students.

    The CEC, in consultation with the CDE, Chancellor's Office and the Public Utilities Commission, was required to develop guidelines for contracts with LEAs. The CEC released these guidelines in December 2013.

    In order to receive an energy efficiency project grant, LEAs must submit an expenditure plan to the CEC outlining the energy projects to be funded. The CEC will review these plans to ensure they meet the criteria set forth in the guidelines. The CDE will distribute funding to LEAs with approved expenditure plans. LEAs can also request funding for planning prior to submission of the plan.

    As of last month, the CDE had granted planning funding for approximately 1,500 LEAs and four LEAs were approved for energy efficient project grants. Approximately 480 LEAs had not yet applied for planning or project grants. The Administration has indicated that they are considering changes in the May Revision to allow for these LEAs to access this funding in future years.

- **California Community College Chancellor’s Office.** SB 73 established that 11 percent of the funds deposited annually into the Clean Energy Job Creation Fund be allocated to the California Community College Chancellor’s Office to be made available to community college districts for energy efficiency and clean energy projects.

    In conjunction with the CEC, the Chancellor's office developed guidelines for districts as they plan to use Proposition 39 funds. The guidelines sought to leverage existing energy efficiency programs, including partnerships most districts had with investor owned utilities. These partnerships had been in existence since 2006 and had already reduced system-wide energy costs by $12 million. Thus, most college districts did not need to use Proposition 39 for planning; the planning was complete.

According to the Chancellor's office, 276 projects had been approved for funding by March 2014, and $36 million had been distributed. Another $3 million was distributed in April for an additional 35 projects. About half of the projects will be complete by the end of the fiscal year, and the Chancellor's office estimates annual system wide cost savings of about $4.5 million. About 55 percent of the projects were related to upgrading lighting systems to make them more energy efficient.

In addition, the Chancellor's office allocated $6 million of the Proposition 39 funding, in the current-year, to provide for job training and workforce development and public-private partnerships for eligible projects. The majority of this funding is being distributed through a request-for-application process designed to align with the CCC's Doing What Matters for Jobs and the Economy framework already in place. About $5 million is being used to redesign curricula regarding green energy and energy efficiency classes to ensure more standardized training across the system. Another $1 million is being used for professional development for green energy faculty.

The Chancellor's office notes that it anticipates about 500 project requests for 2014-15, with an estimated total cost of $150 million. This need will continue to outpace funding well into the future. It will be reviewing the workforce development portion of this funding to determine an appropriate amount for 2014-15.

- **California Energy Commission Energy Conservation Assistance Act − Education Subaccount: Loan and Technical Assistance Grant Program.** As noted above, $28 million in the current fiscal year was appropriated to the CEC for the Energy Conservation Assistance Act − Education Subaccount. Of this amount, about 90 percent was to be made available for low-interest or no-interest loans. The remaining 10 percent was to be transferred to the CEC's Bright Schools Program to provide technical assistance grants to LEAs and community colleges. The Bright Schools Program technical assistance can provide American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Level Two energy audits to identify cost-effective energy efficiency measures.

  The Governor's budget does not include funding for the CEC revolving loan program. This is the only Proposition 39 program element that the Administration is not planning to provide additional funding for in the budget year. The CEC has received over $50 million in applications for funding in the current year.

- **California Workforce Investment Board.** SB 73 appropriated Proposition 39 funding to the CWIB to develop and implement a competitive grant program for eligible workforce training organizations, which prepares disadvantaged youth, veterans, or others for employment.

- **California Conservation Corps.** The 2013-14 California Budget Act allocated $5 million in fiscal year 2013-14 to the CCC for energy surveys and other energy conservation-related activities for public schools.

Staff Comment. Due primarily to efforts already underway to address energy sustainability prior to Proposition 39, the community colleges were well positioned to begin taking advantage of the opportunities provided by Proposition 39 to immediately undertake projects. On the other-hand, the K-12 system was not as well prepared and faces additional challenges driven by the number, size and diverseness of facilities, resulting in a greater need to undertake planning activities. Despite these challenges, overall, Proposition 39 efforts appear to be progressing consistent with the initiatives intent. As we move forward, the Legislature should continue to assess not only the progress that is being made by the state's K-14 system in completing energy efficiency projects, but, also how funding is being utilized in each of the program elements and whether certain efforts are more effective or efficient than others.

Subcommittee Questions.

1) Are there specific roadblocks that are hindering K-12 efforts to undertake projects or are we truly just facing a need to adequately plan?

2) Why have some LEAs not yet applied for planning or project grants?

Staff Recommendation. Hold open.

Issue 3: School Facilities Program (Budget Proposal)

Budget Proposal: The Governor's 2014-15 budget proposes the transfer of a total of $211.0 million in bond authority from four specialized school facility programs to the new construction and modernization programs. The impacted programs are the Overcrowded Relief Grant, Seismic Mitigation, Career Technical Education, and High Performance Schools programs. Under the proposal, half of any remaining bond authority on June 30, 2014, would be equally redirected to new construction and modernization. Any funds that revert to these programs from rescinded projects or project savings in the future would also be equally redirected.

Background: The School Facilities Aid Program provides financing to local educational agencies for K-12 school facility-related activities such as school construction, modernization, and emergency repairs. The Leroy F. Greene School Facilities Act of 1998, SB 50 (Greene), Chapter 407, Statutes of 1998, created the School Facility Program (SFP) to streamline school construction funding. AB 127 (Núñez and Perata), Chapter 35, Statutes of 2006, created the Kindergarten-University Public Education Facilities Bond Act of 2006, authorized Proposition 1D, a statewide general obligation bond proposal for $10.4 billion. Proposition 1D, approved in November 2006, provided a total of $7.3 billion in State General Obligation Bonds for K-12 facilities, of which $5.2 billion was for new construction and modernization projects. Further, Proposition 1D provided targeted funds for the Career Technical Education Facilities Program, the High Performance Incentive Grant Program, Charter Schools, Overcrowding Relief, Critically Overcrowded Schools, Joint-Use, and the Seismic Mitigation Program. The major programs are described below:

- <u>Seismic Mitigation Program</u>. AB 300 (Corbett), Chapter 622, Statutes of 1999, required the Department of General Services (DGS) to conduct a seismic safety inventory of California's K-12 school buildings. In 2002, Department of General Services and the Division of the State Architect released the report "Seismic Safety Inventory of California Schools." The report identified 7,537 buildings that were of 12 construction types, collectively known as Category 2 construction that would not perform well in an earthquake. Proposition 1D, as part of new construction funding, provided up to $199.5 million for seismic mitigation of school facilities that are the most vulnerable Category 2 buildings and that pose an unacceptable risk of injury to students during a seismic event. Up to $199.5 million (10 percent) of Proposition 1D's new construction funding was originally approved by the voters for the purpose of seismic mitigation. Eligibility for the program is determined by the Division of the State Architect (DSA).

  The program requires an initial application to DSA in order to determine eligibility of the project before application for funding. Only certain buildings are eligible (Category 2 building type, as defined in SFP regulations), and these must be located on a site where there is a potential for collapse due to ground shaking, to be verified through a geological professional report and a letter of concurrence with the report from the California Geological Survey. Project approval requires that the DSA concur with a report by a structural engineer identifying the structural deficiencies that pose an unacceptable risk of collapse. In 2011, the California Seismic Commission provided a

$200,000 grant to the SAB to be used to assist school districts in conducting these engineering studies.

After the project has been reviewed and approved by the DSA, the district may choose to submit an application for conceptual approval to the Office of Public School Construction (OPSC). Once the proposed project has final plan approval from the DSA, the district may submit an application for funding to the OPSC. For a project that has been granted conceptual approval, the district has 18 months to submit an approved application for funding, and 24 months if the project includes site acquisition.

- High Performance Incentive Grant Program. Proposition 1D provided $100 million for high performance incentive grants to promote the use of designs and materials in school facility new construction and modernization projects that include the attributes of high performance schools, pursuant to regulations adopted by the State Allocation Board. The High Performance Incentive (HPI) is a supplemental grant available for new construction and modernization projects with high performance attributes. Current law defines high performance attributes as including the use of designs and materials that promote energy and water efficiency, maximize the use of natural lighting, improve indoor air quality, utilize recycled materials and materials that emit a minimum of toxic substances, and employ acoustics conducive to teaching and learning.

- Overcrowding Relief Grant. Proposition ID provided $1 billion for the Overcrowding Relief Grant. The Overcrowding Relief Grant (ORG) program enables districts to reduce the number of portable classrooms on overcrowded school sites and replace them with permanent classrooms. In order to participate in the ORG Program, districts must have school sites deemed eligible by the California Department of Education (CDE) based on population density equal to, or greater than, 175 percent of CDE's recommended population density. This program does not require new construction eligibility.

- Career Technical Education. Proposition ID provided $500 million for the Career Technical Education Facilities Program (CTEFP), which provides funding to qualifying school districts and joint powers authorities for the construction of new facilities or reconfiguration of existing facilities to integrate Career Technical Education (CTE) programs into comprehensive high schools. Applicants are eligible to receive funding without requiring eligibility in either the School Facility Program (SFP), New Construction Program, or the Modernization Program. A CTEFP project can include CTE equipment or consist solely of equipment with an average useful life expectancy of 10 years.

- Charter Schools Facility Program (CSFP). Propositions 47, 55, and 1D, have made $900 million available for the new construction of charter school facilities or the rehabilitation of existing school district facilities for charter school use. This program allows charter schools that provide site-based instruction to access State facility funding directly or through the school district where the project will be physically located. To qualify for funding, a charter school must be deemed financially sound by the California School Finance Authority (CSFA).

According to the Office of Public School Construction (OPSC), as of March 26, 2014, approximately $351.1 million remained in bond authority in the SFP. At its March 2014 meeting, the State Allocation Board (SAB) took action to reserve $52.7 million of existing bond authority for the ongoing administration of the program over the next five years, reducing the remaining bond authority to $298.4 million. The majority of this bond authority exists for the Seismic Mitigation and Charter School programs (about $259 million). Bond authority for new construction and modernization programs has essentially been depleted, respectively, since July 2012 and May 2012.

The SAB maintains a list of LEA projects whose applications were fully processed for approval by the OPSC just prior to the exhaustion of bond authority but could not be funded due to the lack of bond authority. This list of LEA projects is referred to as the "Truly Unfunded" list. Applications on the Truly Unfunded list have a final grant determination but are unable to be funded unless projects are rescinded or monies revert back to the fund. There is a total of $185 million in projects on the new construction Truly Unfunded list, and a total of $207 million in projects on the modernization Truly Unfunded list.

In addition, since November 1, 2012, the SAB has maintained an "Applications Received Beyond Bond Authority" list. This list is presented to the SAB for acknowledgement, but not approval. Because the applications are not fully processed for final grant determination, the project funding amounts on the list are only estimates. As of March 31, 2014, the list indicated new construction applications totaling $237 million and modernization applications of $198 million. These applications are currently unable to be funded unless projects are rescinded or monies revert back to the fund.

The chart below outlines the status of each of the programs contained within the SFP, including those impacted by the Governor's budget proposal:

Governor's Proposal for School Facilities Program

(In Millions)

	Original Bond Authority[a]	Remaining Bond Authority[b]	Governor's Proposal	Program Status
Modernization	$3,300	—	Receive half of bond authority transferred from other programs.	$405 million in applications submitted beyond bond authority.
New construction	1,700	—	Receive half of bond authority transferred from other programs.	$422 million in applications submitted beyond bond authority.
Overcrowded schools	1,000	$16	Transfer remaining bond authority to new construction and modernization.	Applications on file with OPSC for most of remaining bond authority but funding not yet disbursed. OPSC adopting new regulations that likely would speed up disbursements.
Career technical education	500	4	Transfer remaining bond authority to new construction and modernization.	Applications on file with OPSC for most of remaining bond authority but funding not yet disbursed. OPSC adopting new regulations that likely would speed up disbursements.
Charter facilities	500	95	None.	OPSC currently accepting new applications from April 1, 2014 to May 30, 2014.
Seismic mitigation[c]	200	151	Transfer remaining bond authority to new construction and modernization.	Applications pending at OPSC totaling about $32 million. An additional $104 million in applications pending at DSA.
Energy efficient facilities	100	33	Transfer remaining bond authority to new construction and modernization.	This program is a supplemental grant, to be used with other programs.
Joint use	30	—	None.	
Totals	**$7,330**	**$298**		

[a] From Proposition 1D (2006).
[b] As of March 26, 2014.
[c] Seismic mitigation is a subprogram of the new construction program.
OPSC = Office of Public School Construction and DSA = Division of State Architect.

There appears to be great demand for the Seismic Mitigation Program (SMP) despite the bond authority balance, and a backlog in project approvals. In July 2013, OPSC staff indicated that there were approximately $100 million in eligible buildings going through the DSA initial approval process. At that time, OPSC staff estimated a potential need of approximately $120.9 million in SMP funding for those buildings that moved beyond the preliminary DSA review. Of this amount, about $15 million was for applications for funding of projects that included DSA approved plans already submitted to the OPSC. According to the OPSC, the SAB has approved conceptual approval of four projects under the SMP. A conceptual approval does not constitute a reservation of funds or bond authority.

Although prior adjustments to the regulations have been made, concerns continue to be raised that the limited use of these funds is due to narrowly-constructed eligibility requirements, rather than the need for, and interest in, seismic mitigation of school facilities. The SAB has requested an update on the current status of these funds.

At its March 2014 meeting, the State Allocation Board took action to include the Overcrowded Relief Grant (ORG), Career Technical Education (CTE), and Charter School Programs (CSFP) in the priority funding process. The priority funding process was created to allow projects that receive unfunded approval by the SAB to receive an apportionment with accelerated timelines. A district that participates must be able to enter into 50 percent of the contracts for the project within 90 days of the apportionment. Any project that is unable to do so or opts not to participate in the funding round, twice, is removed from the Unfunded List, and the priority funding apportionment is rescinded, allowing other construction-ready projects to move forward on the list.

SB 1157 (Hancock), would prohibit the shift of funds from the SMP and High Performance Incentive Grant Program, as proposed in the Governor's budget. AB 2235 (Buchanan) would authorize a new construction and modernization bond for K-12 school facilities. Both of these bills are under consideration in the current session.

Staff Comments: The problem that the Governor's proposal seeks to address is two-fold: 1) the exhaustion of the new construction and modernization programs, which have a combined unfunded demand of $827 million and an enormous unknown need in the field due to class size reduction pressures, enrollment growth in certain regions, and aging or lacking facilities; and 2) the need to spend down remainders in each of the specialized programs. In the January budget, the Governor noted the need for a renewed conversation about the state's role in the financing of K-12 school facilities:

"As part of the 2014 Five-Year Infrastructure Plan, the Administration proposes to continue a dialogue on the future of school facilities funding, including consideration of what role, if any, the state should play in the future of school facilities funding. This infrastructure discussion should also include the growing debt service costs associated with the state's increased reliance on debt financing."

According to the DOF, this dialogue has begun with K-12 stakeholders, however, no May Revise proposal or engagement with the Legislature in the near future is intended. In the absence of a more robust dialogue about changes, to and funding, for the School Facilities Program, the Legislature is left with the short-term proposal to shift funds from four specialized programs in order to fund a small number of additional projects on the new construction and modernization unfunded lists.

The LAO recommends approving the Governor's proposal with two modifications. First, the LAO recommends delaying the transfer of remaining bond authority from the four targeted school facility programs by six months. This would allow OPSC to award more funding for pending projects. Second, the LAO recommends the Legislature also transfer the remaining bond authority in the Charter School Facility program to the New Construction and Modernization programs. This would be consistent with the Governor's approach.

SAB staff has suggested that the intent of the LAO's recommendation would be best achieved with an extension of the date to March 31, 2015.

Subcommittee Questions:

1. Why does the Governor's proposal not include shifting bond authority from the Charter School Facility program, which also has remaining bond authority?

2. Why is it a higher policy priority for the Administration to fund new construction and modernization projects than pending Seismic Mitigation Grant projects?

Staff Recommendation: Pending a comprehensive conversation regarding the future of the entire School Facilities Program and the state's role in local school facility funding and planning, staff recommends an alternative to the Governor's proposal:

1) Accept the Governor's proposal to redirect funds that remain in the Career Technical Education and High Performance Impact Grant programs as of June 30, 2014.

2) For the Overcrowded Relief Grant and charter school facility program, allow funds that remain unspent in each program after March 31, 2015, to be redirected, thus allowing current pending applications to finish the review and SAB approval process.

3) Due to ongoing need for the Seismic Mitigation Program, encourage the Administration to continue working with the DSA, the OPSC, and the SAB on streamlining and speeding up awards from the Seismic Mitigation Program for eligible projects and request a progress report back to the SAB and Legislature on or before March 1, 2015.

Vote:

Issue 4: Emergency Repair Program (Budget Proposal)

Budget Proposal: The Governor's budget proposes a one-time appropriation of $188.1 million in Prop 98 funds for the Emergency Repair Program (ERP), which was created in response to the *Williams v California* settlement in 2004. New funding would be disbursed to districts in the order in which they were originally submitted and approved.

Background: As a part of the *Williams v California* settlement, SB 6 (Alpert), Chapter 899, Statutes of 2004, established the Emergency Repair Program (ERP). To help meet emergency repair costs, the School Facilities Emergency Repair Account is funded from the Proposition 98 Reversion Account until a total of $800 million has been disbursed for the purpose of addressing emergency facilities needs at school sites in deciles 1 through 3 based on the 2006 Academic Performance Index. As a continuation of the provisions of the settlement, AB 607 (Goldberg), Chapter 704, Statutes of 2006, adopts and encourages participation in the ERP by providing grant funding as well as funding to reimburse applicants for emergency repairs, and provides for a permanent state standard of good repair.

The *Williams v. California* lawsuit, originally filed in 2000, charged that the state had failed to give thousands of children the basic tools necessary for their education, in part due to "inadequate, unsafe, and unhealthful facilities." The 2004 settlement included increased accountability measures, extra financial support, and other help for low-performing schools. The state agreed to provide $800 million for critical repair of facilities in future years for the state's lowest-performing schools. These low-performing schools were defined as those that were in the bottom three deciles of the 2006 Base Academic Performance Index (API) rankings. Thus far, the state has contributed a total of $338 million for the ERP, and has not provided any new funding since 2008-09.

The Governor proposes to provide $188.1 million in one-time Proposition 98 General Fund to the ERP in 2014-15. The funds would be made available for districts that submitted applications and were approved for ERP funding in 2008. New funding is disbursed to districts in the order in which projects were originally submitted and approved. Over 100 districts have approved ERP projects, at over 700 school sites on file. These projects include emergency repairs such as replacing heating and air conditioning systems, plumbing, electrical and repairing roofs. The Office of Public School Construction does not have the authority to survey districts about the status of their projects and whether they have completed these projects since the time the applications were approved.

As part of his plan to pay down the "wall of debt," the Governor proposes providing $188 million in 2014-15 and $274 million in 2015-16 in order to retire the state's remaining ERP obligation.

Staff Comments: The LAO has raised concerns with the Governor's ERP proposal. Because ERP projects are focused on emergencies, and the list dates from 2008, the LAO points out that most projects have likely already been addressed. Therefore, this funding may not have much impact on improving school facilities. Instead the funding would likely function as general purpose funding for those districts that receive ERP funding. The LAO also believes that some districts may no longer meet the program's eligibility criteria of being among the lowest performing schools. Additionally, the LAO highlights that the proposal runs counter to the state's more recent decision to eliminate categorical programs and require schools to address their facility maintenance using LCFF funds.

The LAO recommends three options for addressing the ERP:

1) Approve the Governor's proposal and honor the state's commitment from many years ago to pay these districts.

2) Open up a second round of ERP applications for either low-performing schools or all schools.

3) Adopt statutory language indicating the state has met its obligation for ERP since it provided billions of dollars in new LCFF funding in 2013-14 and requires that districts use a portion of this funding to maintain their facilities.

Subcommittee Questions:

1. Why does the LAO suggest opening up another round of ERP applications to low-performing or all schools? Is this policy in conflict with the *Williams v California* settlement?

Staff Recommendation: Hold item open until May Revision for further Proposition 98 impact considerations.

Issue 5: Home-to-School Transportation (Informational Item)

Overview: Under the Local Control Funding Formula (LCFF), enacted by the Legislature and Governor in 2013-14 (discussed in greater detail during the March 6, 2014 Subcommittee hearing), local education agencies (LEAs) receive the bulk of their funding based on average daily attendance (ADA) in four grade spans and specified demographics of their student bodies. The LCFF eliminated most K-12 categorical programs (programs with defined purposes and set-aside funding, with corresponding restrictions on the use of those funds for those purposes) and rolled their funding into the LCFF. The Home-to-School Transportation (HTST) categorical program was, however, one of a few exceptions. This program was continued as an "add-on" to the LCFF. Districts that receive this add-on must spend the same amount of state HTST funds as they spent in 2012-13. Districts that did not receive HTST funding in 2012-13 are not eligible for the add-on moving forward. The Governor's budget does not propose any further changes to the HTST program.

In 2013-14, the Legislature also requested that the Legislative Analyst's Office (LAO) assess, and report back with recommendations, for how to improve the state's approach to funding school transportation going forward. The LAO released its resulting report on February 25, 2014 (available online at http://www.lao.ca.gov/reports/2014/education/school-transportation/school-transportation-022514.pdf). The report identifies three potential alternatives for transportation funding moving forward: 1) funding transportation within LCFF, 2) creating a targeted program that reimburses a share of extraordinary transportation costs, or 3) creating a broad-based program that reimburses a share of all transportation costs.

Background on HTST:[1] Most school districts in the state operate school bus programs to transport a portion of their students to and from school. Statewide data from 2011-12 (the most recent available) show that about 700,000, or about 12 percent, of California students ride the school bus on a daily basis. Most of the remaining students get to school via private automobile, or by walking or biking. In contrast to some other states, California does not require districts to transport students who live far from school. At the same time, however, federal law does require LEAs to transport three groups of students: 1) students with disabilities for whom transportation is necessary in order to receive a "free and appropriate public education," 2) students attending schools which are sanctioned under the federal No Child Left Behind (NCLB) Act of 2001, and 3) homeless students. Although a relatively small percentage of students ride the bus to school statewide, most districts transport at least some, and a few districts transport most, of their students. Districts transporting larger shares of pupils tend to have smaller enrollments, be located in rural areas, and enroll larger proportions of students from low-income families, although these trends do not apply in all cases.

<u>Expenditures and Allocations</u>

In 2011-12, districts reported $1.4 billion in expenditures on pupil transportation. The two largest funding sources are contributions from local unrestricted revenues (roughly

[1] The background information in this section is largely excerpted and adapted from the LAO report.

$860 million or 62 percent) and the state HTST program (approximately $491 million or 35 percent). In addition, two other sources of revenue—federal grants and local fees—account for a small share of funding. The state has also historically funded a small program for certain districts to make one-time purchases of school buses.

A total of 890 school districts receive HTST funding, along with 38 county offices of education (COEs). According to California Department of Education (CDE), the largest recipients of funding in 2012-13 included:

LEA	2012-13 Total HTST Entitlement after Control Section 12.42 Reduction	2012-13 P-2 ADA (per "School District ADA" Funding Exhibit)	HTST Apportionment Per ADA
Los Angeles Unified	$77,587,829	548,762.90	$141.4
San Diego Unified	9,559,456	107,478.86	88.9
Long Beach Unified	5,029,976	79,087.89	63.6
Oakland Unified	5,724,962	37,062.50	154.5
San Juan Unified	5,230,781	38,314.25	136.5
Stockton Unified	4,457,353	33,537.28	132.9
San Francisco COE*	4,405,904	51,104.99	86.2
Fresno Unified	4,401,557	66,072.30	66.6
Lodi Unified	4,196,630	26,950.87	155.7
Sacramento City Unified	$4,115,457	41,353.44	$99.5

*Chart displays ADA for San Francisco Unified School District (SFUSD), but HTST funding only for SF COE.

History and Criticism of the HTST Program

The HTST program began in 1947 by reimbursing districts for a share of transportation expenditures. However, since the early 1980s, districts' funding levels have been locked in, with no adjustment for changes in costs, enrollment, or any other factor, apart from uniform cost-of-living adjustments (COLAs) in some years. Additionally, each district's HTST allocation was reduced by 20 percent in 2008-09. Among a few other changes the Legislature and Governor made to the program in 2013-14, HTST allocations are no longer given COLAs.

Because HTST allocations were locked in during the early 1980s, they fail to reflect districts' current characteristics or level of transportation services. Available data indicate that one-quarter of districts receive an HTST allocation sufficient to cover less than 30 percent of their costs, whereas another one-quarter of districts receive an HTST allocation that covers more than 60 percent of their costs. Additionally, some LEAs, including all of the state's approximately 1,100 charter schools, are excluded entirely from receiving any allocation.

LAO Recommendations

The LAO recommends three options for reforming the state's HTST expenditures:

1) Fund transportation costs within LCFF, similar to most former categorical programs.

Under this option, the state no longer would provide additional funding for a discrete pupil transportation program. Instead, LEAs would determine what level of transportation service to provide, and pay for its costs using their LCFF allocations. Funding transportation costs through the LCFF would decrease future funding for those districts currently receiving HTST funds as an add-on to the LCFF (and correspondingly increase levels for those not currently benefiting as much from HTST funds). The LAO notes, however, that the change could be implemented gradually and/or designed to ensure no district receives less total funding than it did in 2012-13.

2) Create a targeted program that reimburses a share of extraordinary costs (while funding other transportation costs within LCFF).

Under an extraordinary cost model, the state would phase out HTST allocations for the majority of districts—as described under the option above—while maintaining a small amount of funding for districts with exceptionally high transportation costs. Specifically, the state could define allowable costs and establish a threshold at which costs exceed what an ordinary district pays for pupil transportation, and then fund a share of those costs.

3) Create a broad-based program that reimburses a fixed share of all allowable costs.

   Under this approach, the state would develop a set of allowable transportation expenditures and cover a uniform, set percentage of those expenditures for all LEAs. The LAO recommends a state share of between 35 and 50 percent. Because the degree to which the existing state HTST allocation covers district transportation costs varies across the state, “equalizing” the state’s share of costs across LEAs would require a shift in how funds are allocated and/or an overall increase in state funding for transportation. At the low end, if the state were to fund 35 percent of expenditures and to hold districts harmless from funding decreases, state costs would increase by roughly $120 million beyond current HTST funding. At the high end, the LAO estimates that a 50 percent share of expenditures would increase state costs by roughly $260 million (not accounting for changes due to inflation or service changes).

Proposed legislation currently on the Suspense File in the Senate Appropriations Committee, SB 1137 (Torres), is similar to the third recommendation by the LAO. In its present form, SB 1137 would provide for school districts to be funded at a minimum of 50 percent of approved transportation costs, thereby equalizing funding for those districts that are currently reimbursed at less than 50 percent. This equalization would occur over a seven-year period beginning in 2014-15.

Staff Comment: The allocation formula for the existing HTST program is outdated and inequitable. All of the options recommended by the LAO would phase out the use of allocations linked to historical factors that have since changed and apply more equitable funding rules across LEAs. In addition, all of the options would encourage efficiency by requiring local agencies to cover a notable share of total costs. Finally, all three options would be more transparent than the existing HTST allocation formula. In order to ensure that no individual districts lose overall funding as a result of any changes, however, reforming this program would require additional state resources. Staff recommends that the Subcommittee consider this potential use of state funds and weigh it against other priorities when additional information on the state’s revenues is available at the May Revision.

Subcommittee Questions:

1. **For the LAO:**
   a. Please summarize the recommendations contained in your report.
   b. What are the advantages and disadvantages of each approach?
   c. Would districts retain incentives to provide transportation if transportation was funded within LCFF, instead of as a separate program?

2. **For DOF and CDE:**
   a. What are your reactions to the LAO’s recommendations?

Staff Recommendation: This is an informational item and no action is required at this time.