



## Senate Budget and Fiscal Review

# Subcommittee No. 1 2009 Agendas

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# SUBCOMMITTEE NO. 1 on Education



**Subcommittee No. 1**  
**Chair, Gloria Romero**  
**Member, Bob Huff**  
**Member, Carol Liu**

**Monday, March 23, 2009**  
**10 a.m.**  
**State Capitol, Room 112**

## **K-12 and Proposition 98 Special Session Overview**

<b><u>Item</u></b>	<b><u>Department</u></b>
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<b>6110</b>	<b>Department of Education</b>
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- I. K-12 Budget Highlights – Glen Thomas, Secretary of Education
- II. K-12 Budget Review – Gavin Payne, Chief Deputy Superintendent, California Department of Education
- III. Proposition 98 and K-12 Education Funding Overview – Office of the Legislative Analyst, Rachel Ehlers

Additional Issues/Comments:  
Department of Finance, Nicolas Schweizer  
Department of Education, Carol Bingham

- IV. California Department of Education, Major State Operations Issues – Department of Finance, Ryan Storm  
Department of Education, Carol Bingham

- V. Public Comment

## **ATTACHMENTS**

K-12 PROGRAMS (P-98)	GB 2008-09	Revised 2008-09	GB 2009-10	Revised 2009-10
<b>I. Flexibility &amp; Across-the-Board Reductions:</b>		15.4 %		19.8 %
Summer School Programs* (104)	420,789	356,074	419,526	336,285
ROC/Ps* (105)	482,985	408,704	479,896	384,676
Grade 7-12 Counseling (108)	209,060	176,908	208,433	167,076
Specialized Secondary Program Grants (122)	6,122	5,180	6,104	4,893
Public School Accountability Act (123)	114,209	96,644	0	0
Gifted and Talented* (124)	55,345	46,833	55,179	44,231
Prof. Development Institutes for Math and English (137)	56,728	48,003	56,728	45,472
Principal Training (144)	4,900	4,146	4,900	3,928
American Indian Early Education Programs (150)	662	560	662	531
Indian Education Centers (151)	4,540	3,842	4,540	3,639
Adult Education* (156)	772,560	653,744	791,874	634,752
Educational Technology (181)	17,611	14,903	17,558	14,074
Deferred Maintenance (188)	277,382	234,722	312,888	250,806
Instructional Materials Block Grant (189)	417,591	353,367	416,338	333,729
Community Day School* (190)	51,999	44,002	51,999	41,681
Staff Development ** (193)	32,484	27,488	32,387	25,961
National Board Certification (195)	4,000	3,385	3,000	2,405
California School Age Families Ed. Program (198)	58,091	49,157	57,917	46,425
California High School Exit Exam (204)	72,752	61,563	72,752	58,317
Civic Education (208)	250	212	250	200
Teacher Dismissal Apportionments (209)	48	41	48	38
Charter Schools Block Grant* (211)	189,812	160,620	232,448	186,326
Community Based English Tutoring (227)	50,000	42,310	50,000	40,079
School Safety Block Grant* (228)	100,030	84,646	99,730	79,942
High School Class Size Reduction (232)	101,130	85,577	98,485	78,944
Advanced Placement Grant Programs (240)	3,057	2,587	3,048	2,443
Student Leadership/CA Assoc. of Student Councils (242)	33	28	33	26
Pupil Retention Block Grant (243)	95,954	81,197	95,666	76,684
Teacher Credentialing Block Grant (244)	128,671	108,882	132,443	106,164
Professional Development Block Grant (245)	273,289	231,258	272,469	218,406
Targeted Instructional Improvement Block Grant*(246)	1,070,137	905,555	1,066,927	855,230
School and Library Improvement Block Grant (247)	463,031	391,819	461,642	370,044
School Safety Competitive Grant (248)	17,956	15,194	17,902	14,350
Physical Education Block Grant (260)	41,812	35,382	41,812	33,516
Arts and Music Block Grant (265)	109,757	92,877	109,757	87,979
County Offices of Education: Williams (266)	10,000	8,462	10,000	8,016
Certificated Staff Mentoring (267)	10,707	9,060	10,707	8,583
Oral Health Assessments (268)	4,400	3,723	4,400	3,527
Alternative Credentialing *** (6360-101)	32,671	27,646	32,671	26,188
	<b>5,762,555</b>	<b>4,876,300</b>	<b>5,733,119</b>	<b>4,595,567</b>
<b>II. Across-the-Board Reductions No Flexibility:</b>				
Adults in Correctional Facilities (158)	18,215	15,414	18,670	14,966
Apprentice Programs* (103)	19,577	16,566	19,577	15,693
County Office Oversight (FCMAT) (107)	11,438	9,679	11,438	9,168
English Language Learner Assistance Program (125)	63,263	53,533	63,073	50,558
Foster Youth Programs (119)	18,891	15,986	18,834	15,097
Partnership Academies (166)	23,490	19,877	23,490	18,829
Agricultural Vocational Education (167)	5,174	4,378	5,158	4,135
Student Assessments (113)	90,735	76,780	86,215	69,108
Charter School Facility Grants (220)	37,360	31,614	56,720	45,466
Year Round Schools (224)	77,442	65,532	58,082	46,558
K12 Internet Access (182)	8,404	7,112	10,404	8,340
Total K-12	<b>6,136,544</b>	<b>5,192,771</b>	<b>6,104,780</b>	<b>4,893,484</b>

\* Totals Include Deferral Amounts

\*\* Includes Peer Assistance and Review, Bilingual Teacher Trng., Reader Services for Blind Teachers.

\*\*\* Includes Alternative Certification Program (Intern) and Paraprofessional Teacher Training.

### III. No Reductions and No Flexibility

Child Nutrition (201/203)	125,685		134,044	
Economic Impact Aid (128)	941,459		945,779	

**K-12 PROGRAMS (P-98)**

K-3 CSR\* (234)

Special Education (161)

Subtotal

**GB  
2008-09**

1,769,291

3,116,298

**5,952,733****Revised  
2008-09****GB  
2009-10**

1,824,589

3,121,060

**6,025,472****Revised  
2009-10****IV. Exclusions**

Quality Education Investment Act (QEIA) (NBA)

450,000

450,000

After-School (NBA)

546,941

546,941

Home-to-School (Non-98) (111)

618,714

618,714

Child Development (196)

1,675,043

1,928,645

Subtotal

**3,290,698****3,544,300****Summary of Reductions by Program**

1-Cuts and Flexibility: 42 Programs

2-Cuts and No Flexibility: 11 Programs

3-No Cuts and No Flexibility: 4 Programs

4-Excluded: 4 Programs

**09/10 VETO MESSAGE - CDE STATE OPERATIONS REDUCTIONS**

Budget Act Item	Fund Name/Budget Info	Reduction per Veto Message	Total
<b>GENERAL FUND CUTS</b>			
6110-001-0001	General Fund State Operations	2,738,000	
6110-003-0001	Standardized Account Code Structure	75,000	
6110-005-0001	State Special Schools - Non P98	2,457,000	
	<b>Total General Fund Cuts</b>		<b>5,270,000</b>
<b>OTHER FUNDS CUTS</b>			
6110-001-0001	Reimbursements	1,095,000	
6110-001-0140	Environmental License Plate Fund	3,000	
6110-001-0178	Driver Training Penalty Assessment Fund	103,000	
6100-001-0231	Tobacco, Use and Prevention Ed Fund	63,000	
6110-001-0687	Donated Food Revolving Fund	475,000	
6110-001-0890	Federal Trust Fund	9,875,000	
6110-001-3085	Mental Health - Prop 63	45,000	
6110-001-6057	School Facilities - Prop 1A	176,000	
6110-008-0046	Public Transportation Account-SSS	264,000	
	<b>Total Other Funds Cuts</b>		<b>12,099,000</b>
	<b>Grand Total - Veto Message Cuts</b>		<b>17,369,000</b>

# SUBCOMMITTEE NO. 1 on Education



**Subcommittee No. 1**  
**Chair, Gloria Romero**  
**Member, Bob Huff**  
**Member, Carol Liu**

**Thursday, March 26, 2009**  
**9:30 a.m. or**  
**Upon Adjournment of Senate**  
**State Capitol, Room 113**

## **Federal Stimulus Funding for K-12 Education – Overview Hearing**

<b><u>Item</u></b>	<b><u>Department</u></b>
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<b>6110</b>	<b>Department of Education</b>
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- Overview of Federal Stimulus Funding for K-12 Education –  
Office of the Legislative Analyst, Jennifer Kuhn
- Federal Stimulus Funding – Additional Updates, Issues and Comments:
  - Department of Finance, Jeannie Oropeza & Office of the Secretary of  
Education, Kathryn Radtkey-Gaither
  - Department of Education, Carol Bingham
- Federal Program Improvement Funding Update--Office of the Legislative  
Analyst, Jaqui Guzman
- Public Comment

# SUBCOMMITTEE NO. 1 on Education

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**Subcommittee No. 1**  
**Chair, Gloria Romero**  
**Member, Bob Huff**  
**Member, Carol Liu**

**Thursday April 2, 2009**  
**9:30 a.m.**  
**State Capitol, Room 3191**

## I. Overview: 2008-09 & 2009-10 Special Session Higher Education Budgets

- A. Steve Boilard, Office of the Legislative Analyst
- B. Public Higher Education Institutions:
  - 1. Dr. Jack Scott, Chancellor, California Community Colleges
  - 2. Dr. Charles Reed, Chancellor, California State University
  - 3. Patrick Lenz, Vice President for Budget, University of California, Fiscal Services

## II. Overview: Federal American Recovery and Reinvestment Act (ARRA)

- A. Steve Boilard, Office of the Legislative Analyst
- B. Jeannie Oropeza, Department of Finance  
Lynn Podesto, Department of Finance
- C. Additional Comment:
  - 1. Patrick Lenz, Vice President for Budget, University of California
  - 2. Robert Turnage, Assistant Vice Chancellor, Budget  
California State University
  - 3. Erik Skinner, Vice Chancellor, Fiscal Services  
California Community Colleges
  - 4. Jonathan Brown, President,  
Association of Independent California Colleges and Universities
  - 5. Diana Michel, Executive Director,  
California Student Aid Commission

## III. Public Comment

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# SUBCOMMITTEE NO. 1 on Education



**Subcommittee No. 1**  
**Chair, Gloria Romero**  
**Member, Bob Huff**  
**Member, Carol Liu**

**Thursday, April 23, 2009**  
**9:30 a.m. or**  
**Upon Adjournment of Session**  
**State Capitol, Room 3191**

## **K-14 Education Mandates – Overview of Governor’s Budget Proposal**

<b><u>Item</u></b>	<b><u>Departments</u></b>
<b>6110</b>	<b>Department of Education</b>
<b>6870</b>	<b>California Community Colleges</b>

- **Legislative Analyst’s Office – Introduction to K-14 Education Issues – Challenges and Opportunities**

**Issue 1. Department of Finance – Governor’s Budget Proposal – Ongoing K-14 Mandates**

**Issue 2. Department of Finance – Governor’s Budget Proposal – New K-12 Mandate on Behavioral Intervention Plans**

**Issue 3. Legislative Analyst’s Office – Legislative Options for Mandate Reform**

- **Additional Comments/Response:**  
California Department of Education  
California Community Colleges
- **Public Comment**

### **Attachments**

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**ISSUE 1. Governor’s Budget Proposal for Ongoing K-14 Education Mandates  
(Budget Items 6110-295 & 6870-295)**

**DESCRIPTION:**

The Governor’s January 2009–10 budget proposes to “suspend” most ongoing, state mandate payments and mandate requirements for K-14 education agencies for two years. This action would result in estimated savings of \$200 million annually (\$400 million total). The Governor also proposes to appropriate \$ 13.4 million in new, ongoing funding for three remaining education mandates the Governor proposes to continue.

These proposals were prompted by a recent court decision that found the Legislature’s “deferral” of annual education mandate payments unconstitutional. The Administration also wants to increase funding flexibility and savings to local education agencies.

The 2009-10 Budget Act approved in the February Special Session did not adopt the Governor’s proposal. This decision was made “without prejudice” to the proposal to allow the Legislature more time to discuss this significant proposal.

The Department of Finance will provide background on the mandates process and present the Governor’s proposal.

The Legislative Analyst’s Office (LAO) believes that the Governor’s mandate reform proposal misses an opportunity for addressing problems with the mandates process in the long-term. The LAO suggests an alternative approach that relies on making determinations – for continuing some mandates and modifying or eliminating other mandates. The LAO will present their proposal in Issue 3 of the Subcommittee agenda.

**BACKGROUND:**

**State Mandate History.** The California Constitution requires the state to reimburse local governments, including school districts, for certain state mandates. Section 6 of Article XIII B of the Constitution – added by Proposition 4 in 1979 -- provides that, with certain exceptions, whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall reimburse the local government for the costs of the new state-mandated activity.

State statute establishes the process for determining the existence of state mandates and providing local government reimbursements. Specifically, state law authorizes the Commission on State Mandates to hear and decide local government reimbursement claims and establishes procedures for making mandate determinations.<sup>1</sup> State law also

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<sup>1</sup> The Commission on State Mandates is composed of seven members: the State Controller; State Treasurer; Director of the Department of Finance; Director of the Office of Planning and Research; and a public member and two local elected officials appointed by the Governor, subject to Senate confirmation. Members serve four year terms.

establishes procedures for the State Controller's Office to make annual payments to local governments for activities the Commission on State Mandates has deemed reimbursable state mandates.

In November 2004, state voters approved Proposition 1A, which requires the Legislature to appropriate funds in the annual budget to pay outstanding mandate claims, "suspend" the mandate, or "repeal" the mandate. However, these provisions apply to local governments only and – by definition – do not include school districts.

**Mandates Approval Process.** For K-14 education, the mandate process begins when a K-14 local education agency --K-12 school district /county office of education or community college district -- files a test claim with the Commission on State Mandates. (Attachment A provides a description of the mandate determination process prepared by the Commission on State Mandates.) Local education agencies are required to submit claims within one year of the effective date of the statute (or executive order). The Commission hears the test case and issues a "Statement of Decision" determining whether a claim is a reimbursable state mandate. If a mandate is determined, the Commission begins the process determining mandate costs based upon mandate claims. In so doing, claimants propose "Parameters and Guidelines (P's and G's)" for determining mandate costs. P's and G's identify the mandated program, eligible claimants, period of reimbursement, reimbursable activities, and other necessary claiming information. The Commission then adopts the P's and G's, which are sent to the State Controller's Office in order to develop claiming instructions for K-14 local agencies. At this point, K-14 local agencies can file claims. In the end, the Commission estimates the costs of paying claims and reports the amount to the Legislature as the "Statewide Cost Estimate," for inclusion in the annual budget.

If either the K-14 claimants or the State disagree with the Commission's decisions during the mandate process, they can seek judicial review.

**Problems with the Mandates Process:** According to the LAO, the mandates process has significant, longstanding shortcomings. Test claims can take many years to be resolved. During this time, state fiscal liabilities increase and K-14 education agencies are not reimbursed for mandated activities. Per the LAO, the State Controller's Office disallows about one-third of all local government mandate claims due to lack of compliance with the claiming guidelines. Local governments frequently appeal the Controller's decisions, causing further delays and costs at the state and local level.

Issue 3 of the Subcommittee agenda provides more detail on longstanding and continuing problems with the state education mandate process as identified by the LAO.

**Recent Reforms to Process.** Chapter 890, Statutes of 2004 (AB 2856/Laird) was enacted to simplify the mandate claiming process and reduce the number of audits. Chapter 890 authorized the Commission to adopt a "reasonable reimbursement methodology (RRM)" for state mandates. This methodology was intended to allow the

utilization of unit costs based upon a representative local sample, rather than reliance on detailed local claims.

Chapter 329, Statutes of 2007 (AB 1222/Laird) provided further reforms to the mandates process. Specifically, Chapter 329:

- Redefines RRM. Revises the definition of a RRM to remove requirements for providing evidence of actual costs for 50 percent of eligible claimants; base costs on a representative sample of eligible claimants; and require consideration of variations in local costs;
- Allows Joint Development of RRM. Allows the Department of Finance and local agencies to develop a funding methodology and statewide estimate of costs for adoption by the Commission;
- Allows Department of Finance and local agencies to jointly request the Legislature declare a statute a state mandate, approve a funding methodology, and appropriate funds based on the methodology.

**Number of Approved Mandates and Costs.** Per the LAO, the state currently requires K-14 education agencies to perform approximately 45 mandated activities. This number includes four new K-14 mandates in 2008-09; three K-12 mandates --Pupil Safety Notices, Charter Schools, Missing Children – and one Community College mandate on Enrollment Fees.

The LAO has prepared a summary of approved K-14 mandates with annual claims of \$500,000 or more. This summary lists annual claims costs and a brief description for each of these mandates. This information is included in the LAO handout, which will be provided to the Subcommittee in Issue 3 of the agenda.

The LAO has summarized the costs of for K-14 in recent years in the table below. For 2009-10, the annual costs for all K-14 education mandates total \$211.2 million.

**Annual Mandate Claims Costs**

In millions	2005-06	2006-07	2007-08	2008-09	2009-10 Estimated
K-12	\$145.9	\$152.2	\$158.9	\$163.1	\$171.2
Community Colleges	18	18	29	40	
<b>TOTAL</b>	<b>\$163.9</b>	<b>\$170.2</b>	<b>\$187.9</b>	<b>\$203.1</b>	<b>\$211.2</b>

*Source: Legislative Analyst's Office*

**Annual Budget Appropriations for Mandates.** Once approved by the Commission, ongoing and new education mandates are identified (listed) in the annual budget.

The Legislature may appropriate funding for each mandate based upon the State Controller’s Office Statewide Cost Estimate Report. Alternatively, the Legislature may choose to “suspend” a mandate by eliminating funding in the budget and adding provisional language stating the mandate is suspended. When a mandate is suspended, local responsibilities for providing the mandate and state obligations for funding the mandate are also suspended.

The Legislature may also choose to repeal a mandate by eliminating funding in the budget and repealing the underlying statute.

**2009-10 Budget Appropriation:** As enacted in the February Special Session, the 2009-10 Budget Act identifies (lists) a total of 45 ongoing K-14 education mandates – including 42 K-12 mandates and 3 community college mandates. While the Governor proposes suspension of most K-14 mandates in 2009-10, the final 2009-10 budget adopted during the February Special Session, continues the recent practice of “deferring” payments for most of these K-14 mandates. In addition, the 2009-10 budget continues to “suspend” funding and obligations for four other, ongoing K-12 mandates.

**Budget Mandate Deferrals:** The deferral practice commenced in 2002-03, as a means of achieving state budget savings. With deferral, annual appropriations are virtually eliminated (limited to \$1,000 per mandate) and full payments are deferred to future years, although local agency obligations to provide the mandated services continue. These unpaid, prior year payments have contributed to a growing state obligation that must be paid eventually, once claims are audited and approved. The state must also pay interest on overdue claims, based upon the rate established for the Pooled Money Investment Account.

Due to significant one-time funds available in 2006-07, the state was able to retire nearly \$1 billion – a substantial portion -- of prior-year K-14 mandate obligations at that time. However, even in 2006-07 the practice of deferring annual mandate payments continued.

**Outstanding Mandate Obligations:** As indicated by the table below, the state owes over **\$1 billion** in prior year, K-14 mandate payments in 2008-09. With the continued deferral of an estimated **\$190 million** in annual payments, this amount will likely grow to \$1.2 billion by the end of 2009-10.

**Total Outstanding Mandate Obligations**

In millions	2006-07	2007-08	2008-09	2009-10 Estimated
K-12	\$424	\$583	\$746	\$913
Community Colleges	120	110	140	150
<b>TOTAL</b>	<b>\$544</b>	<b>\$693</b>	<b>\$886</b>	<b>\$1,063</b>

*Source: Legislative Analyst’s Office*

The 2009-10 Budget Act also continues “suspension” of four K-12 mandates, which began in recent years. Suspended mandates include – School Bus Safety I and II, Law Enforcement Sexual Harassment Training, County Treasury Withdrawals, and Grand Jury Proceedings. Annual costs for three of these mandates – based upon 2001-02 claims – are approximately \$2.7 million. Annual costs for the remaining claim – County Treasury Withdrawals are not available at this time – but estimated to be low.

**Four Newly Approved Mandates Not Recognized in Budget Act.** The 2009-10 Budget Act does not recognize the four new K-14 mandates approved by the Commission in 2008-09. Annual costs for these mandates – K-12 Pupil Safety Notices, Charter Schools, Missing Children and Community College Enrollment Fees – are estimated at \$21.5 million. Prior-year costs (through 2007-08) are estimated at \$162.2 million.

**Mandates Pending Commission Approval and Costs.** The Commission is currently considering approval of more than a dozen additional K-14 mandate claims at various stages of review. Two of these pending mandates could carry significant prior year and ongoing costs to the state. These include:

- Graduation Requirement – Science Classes. This is the costliest mandate mandates per the LAO -- **\$196 million** per year. This mandate results from determination of a new high school graduation requirement that could result in significant prior-year and ongoing costs for the state. This is an existing mandate that was changed due to a 2004 court decision and subsequent Commission decision in 2008. (Issue 3 of the Subcommittee agenda provides additional background and cost detail for this pending mandate.)
- Behavior Intervention Services. This is the second costliest mandate per the LAO -- **\$65 million** per year. The Administration is pursuing a court settlement agreement on this pending K-12 mandate related to behavior intervention plans for students with disabilities. Specifically, the Administration is finalizing an agreement that would provide \$65 million in annual, ongoing special education appropriations to K-12 local educational agencies and \$510 million in one-time funds for prior-year payments, scheduled over a six year period. (Issue 2 of the Subcommittee agenda describes the Governor’s settlement proposal in full.)

**Newly Re-Established Mandates and Costs:** A recent State Appellate Court decision struck down a statute directing the Commission to reconsider three, previously funded mandates related to Open Meetings (Brown Act), Mandate Reimbursement (Claiming) Process, and School Accountability Report Cards. The court decision will require the Commission to reinstate these three mandates, which will result in additional costs to the state. According to the Commission on State Mandates, no appeals were filed to the State Appellate Court decision; so the decision is now final. Annual and prior year costs for these three are summarized in the table below:

<i>In Millions</i>	<b>Prior Year Costs</b>	<b>Annual Costs</b>	<b>TOTAL</b>
Open Meetings Act	\$79	\$7	\$86
Mandate Reimbursement Process	155	15	170
School Accountability Report Cards	30	3.5	33.5
<b>TOTAL</b>	<b>\$264</b>	<b>\$25.5</b>	<b>\$289.5</b>

**GOVERNOR’S BUDGET PROPOSAL:**

The Governor’s January 2009–10 budget proposes to “suspend” most ongoing state mandates for K-14 education for two years. More specifically, in 2008-09 and 2009-10 the Governor proposes to:

- **Provide zero annual funding for ongoing K-14 education mandates and “suspend” both state obligations to pay for mandated activities and local obligations for providing these mandated activities.** Per the Administration, the Governor’s proposal would save an estimated \$200 million annually (or \$400 million total) over the two year period. According to the Administration, a recent court decision requires the state to either pay or suspend all education mandates. In addition, the Administration believes that suspension of annual mandate requirements will increase funding flexibility and potential savings for K-14 education agencies.
- **Add \$13.4 million in annual funding for three education mandates, including an increase of \$6.3 million for mandated costs related to Inter-District and Intra-District transfers and \$7.1 million for mandated costs related to the California Higher School Exit Exam (CAHSEE).** According to the Department of Finance, the rationale for funding the CAHSEE mandate is that it satisfies an annual student testing requirement under No Child Left Behind (NCLB) and continued funding would ensure compliance with federal accountability requirements. Funding for Inter-District and Intra-District Transfer policies also satisfy federal requirements, specifically with regard to school choice for students who attend schools in Program Improvement, but these transfer policies are also consistent with an Administration priority to ensure school choice options for all students and parents.
- **Not recognize four new mandates approved by the Commission on State Mandates in 2008-09.** These mandates include: Pupil Safety Notices, Charter Schools, Missing Children, and Enrollment Fees. Annual claims for these four mandated activities are estimated at \$21.5 million. In addition, there are approximately \$162.2 million in claims costs through 2007-08 for these four mandates.

## **RECENT COURT DECISIONS:**

### **Mandates Deferral Decision – San Diego County Superior Court (December 2008).**

In November 2007, five school districts and the California School Boards Association sued the Department of Finance and the State Controller seeking payment of past mandate claims and an end to mandate payment deferrals.

The Court found that the practice of deferring payments for state-mandated programs is an unreasonable and unconstitutional restriction on school districts' rights.

“Accordingly”, the Court found, “the Legislature in the future is to comply with the Constitutional requirements of article XIII B section 6 by fully funding state mandated programs.”

**Reconsideration of Commission on State Mandate Decisions -- State Court of Appeal for Third District (March 2009).** This lawsuit challenges provisions of AB 138 (Chapter 72, Statutes 2005), a budget trailer bill that:

- 1) Directed the Commission to reconsider its decisions on three mandates – the Open Meetings Act, Mandate Reimbursement Process, and School Accountability Report Cards; and,
- 2) Amended state law to specify that the Commission should not find a reimbursable mandate in cases when a law or regulation is “reasonably within the scope of” a voter-approved measure.

The court ruled that the Legislature’s direction to the Commission to reconsider mandate decisions was an unconstitutional violation of the separation of powers doctrine. The court voided the three mandate reconsiderations, thereby reestablishing these measures as reimbursable mandates.

## **RELATED LEGISLATION:**

Several bills have been introduced in the current legislative session that address education mandate funding and reforms in general:

- **SB 540 (Romero).** States legislative intent to repeal or amend statutory provisions that impose reimbursable state mandates on school districts, contingent on an evaluation of each mandate based on prescribed factors. The bill would also make three existing state mandates permissive – Stull Act, Notification of Truancy, and Habitual Truant. In addition, requires state reimbursement of prior year unpaid school mandates to be paid over an unspecified period of time commencing in 2010-11, similar to an existing requirement that prior year unpaid mandates for other local agencies be paid over a 15 year period. **Status:** Senate Education Committee.
- **AB 548 (Krekorian).** Requires that audits by the State Controller’s Office be completed within three years from the time the claim was filed rather than three years

from time the reimbursements for the claim were made by the state. **Status:** Assembly Appropriations Committee.

- **AB 661 (Torlakson).** Implements a settlement agreement between the Department of Finance and local educational agencies regarding the Behavior Intervention Plans mandate. Specifically, the measure increases the General Fund appropriations for special education by \$65 million annually; provides \$85 million in one-time General Funds, allocated on a per-pupil basis for each of six years beginning in 2011-12; and appropriates \$10 million in one-time funds for administrative costs to county offices of education and special education local planning areas. **Status:** Assembly Appropriations Committee
- **AB 844 (Villines).** Removes schools districts from the existing mandates process effective January 1, 2010. The new process would require the Commission on State Mandates to issue orders authorizing local educational agencies not to comply with unfunded state mandates. **Status:** Assembly Education Committee.

**LAO ANALYSIS/RECOMMENDATION:** Although the Governor's mandate reform proposal reduces state education mandate costs in the short term, the LAO believes that it misses an opportunity for addressing problems with the mandates process in the long-term. The LAO suggests an alternative approach that relies on making determinations – for continuing some mandates and modifying or eliminating other mandates. The LAO's alternative is covered in Issue 3 of the Subcommittee agenda.

The LAO has identified the following shortcomings with the Governor's mandate reform plan:

- **Only a Short-Term Solution.** Suspending mandates only provides savings in the budget year but does not provide permanent solutions. Given the recent court ruling, pressure to fund the annual ongoing cost of mandates will persist. Moreover, the cost of many mandates can be reduced on a long-term basis with simple amendments to state law. Especially given the relative ease of creating more lasting solutions, the Governor's budget misses an opportunity to eliminate the costs of ineffective mandates altogether.
- **Treats All Currently Mandated Activities Alike Regardless of Policy Merits.** The Governor's proposal does nothing to preserve the state policies that underlie some education mandates. For instance, while the graduation requirement mandate in our view would not justify its price tag reimbursed using the existing method, we believe that the state should not weaken its high school science requirements. In the past, lawmakers have found strategies to limit the high cost of some mandates while creating strong incentives for schools to perform valuable educational activities. By suspending mandates, the administration fails to create such incentives.



## **STAFF COMMENTS:**

**Status of Governor's Proposal in Budget Act.** The Legislature did not adopt the Governor's mandate reforms as a part of either amendments to the 2008-09 budget or to 2009-10 Budget Act enacted during the February Special Session. Instead, the Legislature opted to continue actions in recent years to both "defer" most ongoing mandates and "suspend" four mandates. This action was taken "without prejudice" to the Administration's proposal, in order to allow more time for hearing these issues in Subcommittee through the regular budget process. In taking this action, the 2009-10 budget provides \$1,000 each for 41 K-14 education mandates, in order to "defer" annual claims costs to future years. In addition, the 2009-10 budget continues to "suspend" funding and obligations for four other, ongoing K-12 mandates. Lastly, the 2009-10 budget does not recognize four new mandates approved by the Commission in 2008-09.

**Audit Findings by State Controller's Office.** The Senate Office of Oversight and Outcomes has gathered information on education mandate audits of selected K-12 school districts from the State Controller's Office in prior years. This information – presented in Attachment B – covers State Controller audits for four education mandates: Habitual Truancy, Truancy Notification, Mandate Reimbursements, and Graduation Requirements. The audit period covers a several year period for each mandate and includes a small sample of school districts for each mandate. In summary, sample school districts claimed \$35.8 million for the four mandates; however, as a result of district audits, \$20.4 million (57 percent) of this amount was disallowed by the Controller's Office and returned to the state.

## **SUGGESTED QUESTIONS: (Department of Finance -- Ongoing Mandate Suspension)**

1. Can you explain more fully *why* the Administration is proposing to suspend funding and requirements most K-14 education mandates in 2008-09 and 2009-10? As we understand, the Administration's primary reasons involve: (1) a recent court decision that found the Legislature's "deferral" of annual education mandate payments unconstitutional; and (2) a desire to increase funding flexibility and savings to local education agencies and stop the clock on mounting state mandate costs in the face of budget shortfalls.
2. Is it the Administration's intent to suspend most K-14 education mandates for two years only and then resume funding for most these mandates in 2011-12?
3. Under the Administration's suspension proposal, what effect will "stopping" and "starting" mandated services have on LEAs? Do LEAs truly have flexibility intended by the Administration?

4. Would the Administration consider a longer mandated suspension period, in other words, more than two years to meet its goals for flexibility and budget savings? For example, the February Special Session budget actions enacted categorical cuts and flexibility for most state categorical programs over a five year period beginning in 2008-09.
5. The Governor's 2009-10 January Budget identifies approximately 45 mandates for suspension and funds three K-12 mandates. However, the Administration's trailer bill language lists approximately 65 K-14 mandates for suspension. What is the reason for differences in these counts? Can the Administration work with staff to reconcile these figures?
6. The Governor's 2009-10 proposal proposes full funding for three education mandates – CAHSEE, Intra-District Transfer and Intra-District Transfer. For the CAHSEE mandate, the Administration believes that additional state funding is needed to comply with the student testing requirements under the accountability provisions of the No Child Left Behind Act. For the Inter-District and Intra-District Transfer mandates, the Administration also believes funding is needed to meet federal requirements, specifically with regard to school choice for students who attend schools in Program Improvement, and to ensure school choice options for all students and parents. If these are federal requirements, why must these be state mandates?
7. As outlined in the agenda, four K-12 education mandates have been suspended annually through the budget in recent years.
  - Why were these mandates suspended?
  - Does the Administration intend to permanently suspend these mandates? If so, is the Administration essentially recommending elimination of these mandates?
  - Does the Administration have a sense about whether LEAs are continuing to provide mandated services since the state has suspended these four mandates?
  - The Government Code currently references two additional K-12 mandates for suspension that are identified in the Budget Act, why is that?
8. The Governor's suspension proposal would result in \$400 million in direct state savings over the proposed two year period (\$200 million annually). Are there other indirect savings associated with the Governor's proposal? For example, are there any audit savings for the State Controller's Office or other savings for the Commission on State Mandates?
9. Does the Department of Finance have a sense of state costs for administering the education mandates process? According to the Senate Office of Oversight and Outcomes, the State Controller's Office has one full-time staff position assigned to education mandates. The Commission on State Mandates reportedly has 10.5 positions assigned to education mandates with associated General Fund costs of \$1.59 million per year.

10. Does the Department of Finance have a sense about the backlog of mandate cases with the Commission on State Mandates? What are the general dimensions of the backlog? What is the reason for the backlog – insufficient staffing and/or volume of mandates?
11. Estimates of annual K-14 education mandate costs rely on unaudited mandate claims. Reportedly, the State Controller's Office (SCO) routinely disallows a significant portion of annual claims as a result of its audits. Some evidence of this is provided in the agenda. What is the Administration's view of this issue?
12. Does the Administration intend to appeal the recent San Diego Superior Court decision (December 2008) that found the practice of deferring education mandate payments for school districts unconstitutional?
13. Because of the constitutional separation of powers, the San Diego County Superior Court Decision cannot force the Legislature to make budgetary appropriations. However, according to the LAO, the court decision increases pressure on the state to pay the annual ongoing costs of education mandates. Does the Administration agree? If the court cannot force the state to appropriate funds, could K-14 LEAs sue directly for relief from compliance based on this decision?
14. How is the Administration treating the three mandates – Brown Act, Mandate Reimbursements, School Accountability Report Cards -- that appear to be revived by the recent State Court of Appeals decision? Does the Administration intend to suspend these mandates too?

**ISSUE 2. Governor’s Proposal for New K-12 Mandate – Behavioral Intervention Plan (6110-161-0001)**

**DESCRIPTION:**

The Governor’s January 2009-10 budget proposes to implement provisions of a settlement agreement with K-12 education agencies regarding a state mandate claim for Behavioral Intervention Plans (BIPs). Specifically, the Administration requests the following General Fund augmentations to the state budget: \$65 million in annual, ongoing funds for special education programs; \$10 million in one-time funds for administrative costs to county offices of education and special education local planning areas; and \$510 million in one-time funds allocated on a per-pupil basis over a period of six years beginning in 2011-12.

The 2009-10 Budget Act approved in the February Special Session did not adopt the Governor’s proposal. This decision was made “without prejudice” to the proposal in order allow the Legislature more time to discuss this significant proposal.

The Department of Finance will present the Governor’s proposal.

The Legislative Analyst will present an alternative proposal that would eliminate ongoing funding for the BIP mandate – for annual savings of \$65 million -- and make changes to the BIP statute to better align its requirements with existing state and federal law.

**GOVERNOR’S BUDGET PROPOSAL:**

According to the Department of Finance, the Administration and the local education agency (LEA) claimants -- San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education -- have reached a settlement in the Behavioral Intervention Plans (“BIP”) Mandated Cost Claim and lawsuit, a claim dating from 1994. The settlement provides for an ongoing increase to special education funding and retroactive reimbursement to school districts, county offices of education, and special education local plan areas (“SELPAs”) for general fund use, contingent on LEA approval.

The settlement provides for the following funding:

- \$510 million payable to school districts as general fund reimbursement, in \$85 million installments over 6 years, from 2011-12 through 2016-17, based on 2007-08 P2 ADA.
- \$10 million payable as general fund reimbursement in 2009-10 as follows:
  - \$ 1.5 million to county offices based on Dec. 2007 county special education pupil count
  - \$ 6.0 million to SELPAs based on Dec. 2007 special education pupil count

-- \$ 2.5 million to claimants and others for administrative costs incurred in pursuing the claim.

- \$65 million added in 2009-10 as a **permanent increase** to the AB 602 special education funding base. Commencing in 2010-11, this amount will be subject to COLA and growth to the extent it is added to AB 602 generally.

The settlement amounts are based on results from district and SELPA surveys conducted by the Department of Finance.

**BACKGROUND:** Federal law entitles children with disabilities to a “free and appropriate education” (FAPE) tailored to their unique needs. In order to achieve these goals, districts are responsible for providing special education and related services pursuant to an Individualized Education Program (IEP), which is developed by a team with special education expertise and knowledge of a child’s particular needs.

Chapter 959, Statutes of 1990 (AB 2586, Hughes), sought to regulate the use of behavioral interventions and encourage the use of positive behavioral strategies with special education students, as a part of the IEP process. In so doing, Chapter 959 required the State Board of Education (SBE) to adopt regulations that (1) specified the types of behavioral interventions districts could and could not use; (2) required IEPs to include, if appropriate, a description of positive interventions; and (3) established guidelines for emergency interventions.

The SBE adopted regulations that require districts to conduct a “functional” assessment and develop a Behavioral Intervention Plan (BIP) for students with disabilities exhibiting serious behavior issues. SBE regulations also require districts to train staff on these strategies.

**BIP Regulations Found to Constitute a State Mandate:** In 1994, three school districts filed a claim arguing that BIP-related requirements constituted a reimbursable mandate. In reviewing the claim, the Commission on State Mandates staff found that state statute, “on its face, does not impose any reimbursable state mandated activities,” however, regulations adopted pursuant to state law were found to constitute a state mandate.

In 2000, the Commission on State Mandates heard the BIP test claim and ruled in favor of the districts. The Administration appealed this decision; however, rather than proceeding with the court appeal, the Administration recently reached a settlement with districts outside of the legal process.

**LAO ANALYSIS/RECOMMENDATIONS:** The LAO makes the following findings and recommendations about the BIP mandate:

**Regulations Exceed Legislative Intent.** Regulations adopted by SBE go beyond what the Legislature intended—being both more extensive and more prescriptive. Regulations adopted by SBE require districts to conduct a particular type of behavioral assessment—a

“functional” assessment—followed by a particular type of behavioral intervention plan (BIP)—a systematic positive BIP—for students with disabilities exhibiting serious behavior issues that interfered with the implementation of his or her IEP. In addition, the regulations require districts to train staff on these strategies.

**Federal Law Now Largely Achieves Original Legislative Goals.** At the time BIP-related regulations were implemented, federal law was silent on the use of behavioral interventions. In 1997, however, federal law was amended to include behavioral interventions in the IEP process. Specifically, federal law now requires IEP teams to consider behavioral interventions, including positive behavioral interventions, when a student’s behavior impedes his or her learning or that of others. Additionally, if an IEP team determines that a behavioral intervention is needed to ensure a child receives a FAPE, the IEP team must include an intervention in that child’s IEP. Federal law, however, does not prescribe the type of behavioral intervention that IEP teams may include.

**LAO Recommendation (Ongoing Costs) -- Eliminate Mandate by Better Aligning Regulations to Federal Law.** Given that activities mandated by federal law are not reimbursable mandates for the state, the state could eliminate future BIP-related costs by more closely aligning state regulations with federal law. Under this approach, IEP teams would have to consider positive intervention strategies and would be obligated to include them in an IEP when teams deem them necessary for a child to meet his or her IEP goals. The state also could continue to limit the types of interventions that districts may use in an IEP and in case of emergencies. It would not, however, require a specific course of action be taken in all instances. Districts therefore would have more discretion in addressing individual behavior problems. They also would achieve savings by the repeal of current assessment, training, and procedural requirements. Any remaining costs could be covered by existing federal and state special education funding. This approach would save the state the \$65 million in estimated annual ongoing costs.

**LAO Recommendation (Prior-Year Costs) -- State Likely Liable for Retroactive Claims.** While the state can eliminate future BIP-related costs by amending regulations, it is likely still liable for past claims. Even if the Legislature takes action to amend existing regulations, districts have the right to pursue reimbursement for BIP-related costs incurred between 1993, the year regulations were implemented, and the date regulations are repealed. Since these activities occurred in the past, the state would likely be liable for the claim costs. The administration estimates retroactive claims could reach \$1 billion. They have, as mentioned above, tentatively negotiated the amount down to \$510 million, which would be paid to districts in \$85 million increments over the course of six years, beginning in the 2011–12 fiscal year.

#### **RELATED LEGISLATION:**

**AB 661 (Torlakson).** Implements a settlement agreement between the Department of Finance and local educational agencies regarding the Behavior Intervention Plans mandate. Specifically, the measure increases the General Fund appropriations for special

education by \$65 million annually; provides \$85 million in General Fund reimbursements annually for a six year period beginning in 2011-12; and appropriates \$10 million in one-time funds to county offices of education and special education local planning areas.

**Status:** Assembly Appropriations Committee.

### **STAFF COMMENTS:**

**2009-10 Budget.** The 2009-10 Budget Act adopted in the recent February Special Session does not include \$65 million in ongoing funding for special education programs for the BIP mandate, as proposed by the Governor. This decision was made “without prejudice” to the proposal in order allow the Legislature more time to discuss this significant proposal.

### **SUGGESTED QUESTIONS (Department of Finance – New Behavioral Intervention Plan Mandate)**

1. Why did the Administration drop its appeal of the Commission’s ruling on the BIP mandate and decide to settle the issue outside of the Commission mandate process?
2. The Administration estimates that the \$510 million it is requesting for prior year BIP payments included in the settlement agreement covers roughly half of the estimated, prior year claims for K-12 schools. What methodology did the Administration utilize in arriving at this level of funding?
3. If the BIP mandate is eliminated, will important protections for students with disabilities be retained? For example, do federal laws require states to develop laws, policies, and procedures for assuring positive behavioral interventions for students? Are aversive interventions allowed under federal law?
4. Has federal law changed regarding behavioral services to students with disabilities since the state BIP mandate was enacted?
5. Is it possible, per the LAO proposal, to eliminate the BIP state mandate costs without eliminating necessary behavior plans, assessments, or services for students with disabilities deemed to be appropriate by the IEP team?
6. New federal funds provided through the American Recovery and Reinvestment Act of 2009 (ARRA) will double federal special education funds to our state, as authorized under the federal Individuals with Disabilities Education Act (IDEA). While one-time funds, these IDEA funds are intended to help states provide better services and outcomes -- including behavior services -- for students with disabilities. The US Department of Education will be monitoring service improvements and related outcomes for students. If the state BIP mandate was

eliminated moving forward, can these new IDEA federal funds provide an important source of funding for behavior services and related staff training?

7. What options does the state have for funding the prior year costs of the BIP mandate? For example, at an earlier Subcommittee hearing on federal ARRA funds, the LAO recommended that new federal IDEA funds could be helpful.



### **ISSUE 3. Legislative Options for Mandate Reform**

#### **DESCRIPTION:**

Instead of suspending virtually all K-14 mandates for a two year period as proposed by the Governor, the LAO recommends that the Legislature take a longer view and review each mandate and make determinations on a case-by-case basis.

The LAO has reviewed the costliest K-14 mandates and made recommendations to continue, modify, suspend, or eliminate these mandates. The LAO's recommendations would save the state approximately \$372 million annually, beginning in 2009-10.

The LAO will review longstanding and continuing problems with education mandates and present their alternative reform proposal.

#### **BACKGROUND:**

**Existing Mandate System Has Well-Recognized, Longstanding Problems.** The LAO has identified four longstanding problems with the education mandate system in our state:

- **Costs Can Exceed Expectations.** Frequently, when an activity required by law is deemed a reimbursable mandate, the price of funding the activity exceeds anticipated costs. This mismatch can occur for several reasons. In some cases, the state can end up being required to reimburse local educational agencies (LEAs) for activities that were not intended to increase total education costs. In other cases, lawmakers do not anticipate the range of activities that eventually will be deemed reimbursable. In addition, costs can vary dramatically depending on the number of districts that file claims, the reimbursement period, the activities deemed allowable, and subsequent statutory decisions and legal rulings. Consequently, legislators cannot always predict the fiscal ramifications of their policy decisions.
- **LEAs Claim Vastly Different Reimbursement Amounts.** The mandate process also allows districts to claim widely different amounts and receive widely different reimbursement levels for performing the same activities. The variation often reflects local record keeping and claim-filing practices more than substantive cost differences in implementing policy objectives. For example, some larger districts have staffing units dedicated to processing mandate claims whereas many smaller districts have one administrator presumably expected to file mandate claims while juggling many other responsibilities. The table below provides an example of the notable variation in reimbursement amounts. As shown in the figure, reimbursements for performing collective bargaining requirements range from \$4 to \$43 per pupil—a greater than tenfold difference. Regarding the graduation requirement mandate, claims range from \$10 to \$163 per pupil.

## Mandate Reimbursement Claims Vary Widely

2002-03 Through 2006-07

School District	Average Yearly Claim Per Pupil
<b>Collective Bargaining</b>	
Colusa	\$43
Sacramento	13
Los Angeles Unified	7
Grossmont	6
Clovis	4
<b>Graduation Requirement</b>	
Clovis	\$163
Grossmont	144
Los Angeles Unified	72
Riverside	71
Sacramento	13
Chico	10

Source: LAO

- Reimbursement Process Can Reward Inefficiency.** Districts also receive more in mandate funding by claiming more activity, not by performing an activity efficiently. Many mandates are reimbursed based on the amount of time devoted to a required activity and the salary of the staff member performing it. In other words, the more time devoted to an activity and the higher the staff member's rank, the greater the reimbursement.
- No Accountability for Results.** The state also has little power to hold LEAs accountable for performing mandated activities effectively. The LEAs can claim expenses for performing an activity regardless of whether they achieve its underlying policy objectives. The state cannot avoid liabilities for ineffective implementation of a mandated activity.

### LAO ANALYSIS/RECOMMENDATIONS (Excerpts from *LAO 2009-10 Budget Series, Proposition 98 Programs, February 2009*)

**LAO Recommendations Offer Benefits to Address Continuing Problems with Mandate System.** The LAO recommendations (summarized by the Figure on following page) identify some mandated activities that the state might want to continue supporting. In these cases, the LAO searched for optional funding sources (such as a voluntary categorical program) that could be leveraged to support such activities. In addition to reducing associated state costs, the LAO believes this approach can be a better method of implementing many policy objectives. In particular, the LAO has identified three major benefits resulting from using optional funding sources:

- **Fewer Administrative Hassles.** As noted above, the existing mandate process creates significant administrative hassles for districts. In contrast, funding activities using voluntary funding streams eliminates the need for a separate reimbursement process. Under such a system, districts not only spend less time on paperwork but also have more freedom in determining how best to undertake an activity.
- **Connects With Broader Objectives.** Tying activities to an optional funding source also ties them to a broader policy objective. For example, situating teacher reviews in the context of school reform gives those reviews purpose they otherwise lack. Reorganizing mandated activities in this manner could improve coordination among education policies.
- **Majority of Districts Still Perform Activity.** Voluntary funding sources often are large enough that the majority of districts apply for them and comply with related requirements. Since many of these funding streams target at-risk students, they would help guarantee that California’s policies benefit students most in need of academic and social support.

**Summary of LAO Recommendations:** Rather than suspending virtually all K-14 mandates at once, the LAO recommends reviewing each mandate on a case-by-case basis and making determinations for each. The LAO reviewed the costliest K-14 mandates and made recommendations for each, which are summarized in the figure below. The LAO’s recommendation would save the state approximately **\$372 million** annually, beginning in 2009-10.

### Summary of LAO Mandate Recommendations

(In Millions)

Mandate	Recommended Action	Reduction in State Obligations 2009-10
<b>K-12 Mandates</b>		
Habitual Truant	Eliminate mandate but meet objective in different way	\$8
Notification of Truancy	Eliminate mandate but meet objective in different way	17
Stull Act	Eliminate mandate but meet objective using different funding source	24
Collective Bargaining	Request reconsideration given activity no longer meets mandate criteria	30
<b>Pending K-12 Mandates</b>		
Graduation Requirement	Eliminate mandate by clarifying statutory language	\$196
Behavioral Intervention Plans	Eliminate mandate by aligning state and federal requirements	65
<b>Community College Mandates</b>		
Integrated Waste Management	Eliminate mandate or meet objective using different funding source	Uncertain
Enrollment Fee Collection And Waivers	Eliminate mandate because adequate incentives already exist to fulfill objective	\$21
Health Fees/Services	Eliminate mandate but meet objective using different funding source	11
<b>Total</b>		<b>\$372</b>

The LAO provides the following background on each of their mandate recommendations. The LAO will present this information to the Subcommittee.

### **K-12 Mandates:**

**Notification of Truancy and Habitual Truant.** Both truancy mandates have a simple premise: parents should be alerted when their children do not show up for school. Such notification generally is supported by research suggesting that increased parental involvement tends to reduce truancy. Whereas the notification of truancy mandate requires LEAs to notify parents when students miss a certain number of school days, the habitual truant mandate requires notification before the student is classified as “habitually” absent.

- **Policy Objectives Appear to Have Gotten Lost in Paperwork.** Despite the laudable objective, these mandates in practice do not necessarily increase parental involvement. When a student shows up late to class or misses school a certain number of times, for example, districts typically comply with the notification of truancy mandate by sending a letter to the student’s home. Reports from several districts suggest that these letters are formalities and do not increase substantive interaction among educators, parents, and students.
- **Reimbursement Rules Create Waste.** Each time a district sends a letter to a parent, the state reimburses that action at a rate of roughly \$17 per letter. This rate was set before the state established mandate review procedures that included a more rigorous process of cost determination. Given the text of the letter changes little, if at all, from year-to-year or student-to-student, the real cost of sending letters is likely far below the \$17 rate.
- **Eliminate Mandates but Meet Overall Objective in Different Way.** We recommend that the Legislature eliminate the two truancy mandates but meet their overall policy objective in a different way. The state already has various categorical programs that can be used to support parental involvement of at-risk students. For example, the state currently funds Economic Impact Aid (EIA), a program designed to provide comprehensive support services for at-risk students. In the “Categorical Reform” piece of this section, we recommend consolidating this program, along with several other similar programs, into a large block grant for at-risk students. As a condition of receiving either EIA or block grant funding, the Legislature could require districts to engage parents of at-risk students—with the intent to improve at-risk students’ academic performance and reduce their dropout rates. Compared to mandating specific parental notification requirements, this approach still would ensure districts make good faith efforts to engage parents while giving districts much more flexibility over implementation.

**Stull Act.** Passed in 1971, the Stull Act requires school districts to evaluate their teachers on a regular basis. Changes to the law in 1983 and 1999 were eventually deemed reimbursable mandates. The 1983 change requires districts to evaluate teachers

receiving an unsatisfactory performance review on an annual basis. The 1999 law requires districts to include a review of student test scores in the evaluation process.

- **Mandate Does Little to Promote Effective Teacher Evaluations.** The Stull Act requirements raise a major policy consideration: What does mandating specific teacher evaluation practices accomplish for the state? In many organizations outside of K-12 education, employee evaluations represent an important management activity that can help improve employee performance. These evaluations typically are part of a broader set of processes and incentives for employees. Many employers link staff salary increases to evaluations. Similarly, in cases where employees fail to meet performance expectations over an extended time period, they may be terminated. In K-12 education, however, evaluations are rarely linked to teacher raises and dismissals. Given evaluations are not linked to these decisions, justifying the cost of mandating them is difficult.
- **Eliminate Newer Provisions of Stull Act.** The LAO recommends eliminating the Stull Act mandate (meaning the relevant 1983 and 1999 amendments). This would not mean eliminating the requirement that schools evaluate teachers. Rather, eliminating only the newer provisions would alleviate reimbursable costs. As mentioned earlier, these provisions relate primarily to the yearly reviews of teachers with poor performance records and using student test scores in the evaluation process. Thus, removing the mandate does not remove basic evaluation requirements like annual reviews for untenured instructors (as these were established by the original 1971 Stull Act, which predates the state's existing mandate process). It also in no way prohibits districts—at their discretion—from following good management practices and evaluating teachers for the purposes of better supporting and rewarding them.
- **Increase Value of Specific Evaluation Practices by Tying to School Improvement.** The state also could meet the general objectives of the 1983 and 1999 laws by linking yearly evaluations of struggling teachers to federal school improvement funding. Currently, schools that fail to meet certain student benchmarks can receive federal school improvement funding. As a condition of receiving these funds, schools must submit an improvement plan to the state. California could require that these plans include both annual performance reviews of teachers whose students miss benchmarks (the general intent of the 1983 law) and the analysis of student test scores to support instructional improvements (the general intent of the 1999 law). Beyond eliminating related state costs, embedding specific evaluation practices in school improvement plans would give them a clearer objective and tie them to the broader consequences of the accountability system.

**Collective Bargaining.** California's K-14 employees gained the right to bargain collectively by passage of the Rodda Act in 1975. In 1978, the Board of Control (the predecessor to CSM) found that the act imposed a state-reimbursable mandate on K-14

districts. Specifically, the board determined that the provisions of the law requiring districts to meet and negotiate constituted a higher level of service and were therefore reimbursable.

- **Subsequent Court Rulings Suggest Collective Bargaining No Longer Qualifies as a Mandate.** Since the passage of the Rodda Act, California appellate courts have decided several relevant cases that affect mandate determinations. Specifically, cases in 1987 and 1990 ruled that a state mandate is only reimbursable if it imposes a unique requirement on local governments that does not apply generally to residents and entities in the state. In other words, since public and private employees both have collective bargaining rights, the Rodda Act has not shifted responsibilities to local governments so much as extended rights available to many employees. While K-14 collective bargaining does have unique requirements, most activities associated with the K-14 collective bargaining process are, in all likelihood, no longer reimbursable under law based on these recent court decisions.
- **Request CSM to Reconsider Mandate; Would Not Impact Collective Bargaining.** The LAO recommends the Legislature request CSM to reconsider the K-14 collective bargaining mandate. Even if CSM determines the Rodda Act is no longer reimbursable, the law still would preserve all rights of K-14 employees to bargain collectively. In contrast, the Governor's proposal would suspend all activities associated with the Rodda Act that are reimbursable.

**High School Science Graduation Requirement.** As part of major education reform legislation in the early 1980s, the Legislature increased the state's high school graduation requirements. Among other changes, the law required that all students complete two high school science classes prior to receiving a diploma (the previous requirement was one science class). This change raised the total number of state-required courses from 12 to 13. The costs associated with providing an additional science class were the basis of an eventual mandate claim. In 1987, CSM determined that providing an additional science class imposes a higher level of service on districts and, therefore, constituted a reimbursable mandate.

- **Court Interpretation Has Led to Great Increase in Estimated Mandate Costs.** The primary factor contributing to high mandate costs relates to a statutory provision that provides school districts with discretion in implementing the high school science graduation requirement. This provision was interpreted differently by various parties, until a 2004 court ruling indicated that school districts had full discretion to increase their total graduation requirements and total instructional costs. Based on this ruling, CSM decided the state could not increase the number of courses it requires for graduation above 12 courses without providing reimbursement. As a result, the state could need to pay the full cost of every additional science course for most districts as far back as 1995-96.

- **Absent Action, State Will Face High Price Tag.** The LAO estimates the state would face annual ongoing mandate costs of roughly \$200 million if it were to pay the full cost of an additional science course for every applicable LEA. In addition, we estimate retroactive costs would total approximately \$2 billion (resulting in part from the formula chosen by CSM to be the basis for reimbursement).
- **Amend Statute to Avoid Prospective Costs.** The LAO recommends the Legislature avoid prospective science graduation requirement costs by clarifying how districts are to implement the graduation requirement. Specifically, the LAO recommends language clarifying that school districts shall ensure that any modification of coursework relating to the second science course requirement results neither in students needing to take a greater total number of courses for graduation nor higher district costs. Such an approach has been used in previous test claims and affirmed by a California appellate court.
- **Statutory Change Would Have Minimal Programmatic Impact on Districts, Provide Flexibility in Containing Costs.** In practical terms, this change would have minimal programmatic impact on districts. This is because districts typically require at least a dozen additional year-long courses on top of the state's requirements for 13 year-long courses. Thus, even the recommended statutory change, school districts still would have substantial discretion both to increase academic requirements beyond the state requirements and require electives. For example, a district could require four year-long courses each in math, science, English, social science, and foreign language (for a total of 20 courses) and still have room within its existing base program to require several additional year-long elective courses. The statutory change also would provide districts with substantial discretion in determining how best to offset any potentially higher costs associated with a science course within their existing base program (consistent with the intent of the original legislation).
- **Addressing Retroactive Costs Is More Complicated.** While eliminating costs prospectively is relatively straightforward, addressing retroactive costs is somewhat more complicated. This is because the Legislature generally cannot apply clarifying statutory language retroactively, even when associated mandate costs have grown far beyond legislative intent. As a result, options available for addressing the \$2 billion backlog of graduation requirement claims are limited. Given these constraints, the LAO suggests the Legislature consider three possibilities: (1) support the administration's efforts to appeal the Commission's decision, (2) request CSM to base claims on documented costs rather than a formula, or (3) pay all claims within available Proposition 98 resources.

## Community College Mandates

**Integrated Waste Management Mandate.** Chapter 764, Statutes of 1999 (AB 75, Strom-Martin), requires state agencies (including locally governed CCC districts) to divert from landfills a specified percentage of their solid waste through reduction, recycling, and composting activities. State agencies must develop an integrated waste management plan and report annually to the California Integrate Waste Management Board (CIWMB) on their ability to meet solid-waste diversion goals.

- **Districts Now Required to Offset Claims.** In March 2004, CSM determined that these activities constitute a state-reimbursable mandate for community college districts. In March 2005, CSM adopted “parameters and guidelines,” which determine the methodology for reimbursing the mandate. As discussed in the 2007-08 Analysis of the Budget Bill (E-281), CSM found that savings (avoided landfill disposal fees) and revenues (from the sale of recyclable materials) could not be used to offset districts’ cost claims. In March 2007, CIWMB and DOF sued CSM over its decision. In June 2008, the court ruled against CSM, and ordered it to amend the parameters and guidelines to require districts that are claiming reimbursable costs to identify and offset from their claims any savings and revenues realized from the mandate. The CSM revised the parameters and guidelines in September 2008. Districts have until March 2009 to submit amended claims for reimbursement by the state.
- **Recommend Legislative Action Depending on Statewide Cost Estimate.** According to CIWMB, it is possible that savings and revenues could fully offset any costs that districts incur. If so, we recommend the Legislature retain this mandate. If the statewide cost estimate shows a significant net cost to the state, however, an alternative would be for the Legislature to treat community colleges the same as K-12 school districts, which are encouraged—but not required—to comply with diversion goals. We believe most colleges, like K-12 schools, would participate in waste-diversion programs.

**Enrollment Fee Collection and Waivers Mandate.** Existing law requires CCC districts to collect enrollment fees, as well as waive fees for certain students (usually based on financial need). In April 2003, CSM determined that these requirements constitute a state-reimbursable mandate for districts. Last year, CSM concluded that total costs for the mandate (which include costs for staff to collect fees and prepare a receipt for students) reached approximately \$162 million between 1998-99 and 2007-08. This amount takes into account \$31 million in revenues over the decade that the state provided to districts for purposes of offsetting fee/financial aid administrative costs. Annual costs total about \$18 million, which includes about \$4 million in offsets. (As part of the 2008-09 budget package, the Legislature amended statute to clarify an additional state-provided revenue source is a partial offset to district costs.)



- **Recommend Elimination of Mandate.** We recommend the Legislature eliminate this mandate and instead rely on fiscal incentives for districts to perform these activities on their own. Under current law, the state budget specifies a total amount of apportionment funding (general-purpose monies) that is provided to community college districts. Apportionment funding comes from three main sources: the state General Fund, local property taxes, and student fee revenue. Local property taxes and student fee revenues are retained by community college districts and counted toward their apportionment entitlement. The General Fund provides the additional funding needed to meet each district's apportionment amount. To the extent that districts decline to collect fees, we recommend that the Legislature reduce districts' General Fund support by an equal amount. This would create a strong incentive for districts to perform these administrative functions.

**Health Fees/Services Mandate.** Community colleges provide varying levels of on-campus health care to students. Generally, CCC health centers are funded by health fees. State statute restricts the amount of the fee that colleges may charge. Currently, the highest allowable charge is \$17 per semester, which a district may increase to keep pace with inflation.

Current law also contains maintenance-of-effort (MOE) provision for community college districts related to health centers. Specifically, each district is required to provide students at least the level of health services it provided in 1986-87. Thirty-five of the system's 72 districts provided health care to students in 1986-87 and therefore must continue to offer these services. Districts subject to this requirement are eligible to claim reimbursement for these costs. The remaining 37 districts are not subject to this mandate, although many choose to provide health services even without state reimbursement. The 2008-09 Budget Act provides \$4 million for this mandate, which partially offsets claimants' total costs (roughly \$10 million annually after accounting for offsetting revenues from the collection of student health fees).

- **Recommend Elimination of Mandate.** We recommend that the Legislature eliminate this mandate by no longer requiring districts to provide a particular level of care to students. Student characteristics and access to health care off-campus (such as through one's parents) vary within the CCC system. As such, student demand for on-campus services can vary by college. We therefore believe that locally elected boards should be charged with making decisions about the type and scope of services offered to students. By eliminating the health mandate, districts that are subject to the MOE would be able to make these decisions just as non-MOE districts currently do. Alternatively, the Legislature could increase the cap on health fees so that districts can fund the full cost associated with the MOE. This, too, would eliminate the mandate costs.

**Other Existing Mandates.** The LAO has reviewed the costliest K-14 mandates, however the review is not intended to be exhaustive. During the spring budget process, the LAO recommends the Legislature continue to review remaining mandates on a case-

by-case basis to determine if each fulfills a compelling state purpose at a reasonable cost. If a currently mandated activity is determined to be of notable statewide benefit, the LAO recommends that the Legislature explore ways to both contain associated costs and improve incentives. In many cases, the LAO believes the Legislature has opportunities to link requirements with optional funding streams, thereby providing cost containment as well as a voluntary fiscal incentive to undertake critical activities.

### **SUGGESTED QUESTIONS FOR LAO (Legislative Options for Mandate Reform)**

1. The estimated cost of pending Graduation Mandate is huge -- equal to more than double all other K-12 mandates combined -- and covers more 15 years of claims.
  - Does the Governor recognize the new graduation mandate as a part of his 2009-10 budget proposal?
  - What does this mandate example say about the mandate process? For example, is it your sense that the Legislature was aware of these potential costs when it passed the change in graduation law?
  - Should there be a way for the Legislature to be informed of the costs?
2. AB 2855/Laird (Chapter 895; Statutes of 2004), eliminated eight education mandates. Are there lessons learned from this process that would be helpful in considering a more ambitious, case-by-case review for all K-14 mandates? What was the role of budget subcommittees and policy committees in this process?
3. To your knowledge, have many local government mandates been suspended since Proposition 1A was passed by state voters in 2004 and what has the effect been on mandated services? Has the new law resulted in elimination or modification of other local government mandates?
4. The recent State Appellate Court decision invalidated Legislative directives for reconsideration of decisions by the Commission on State Mandates. Is it your view that the court decision leaves open the ability of the Legislature to establish a process in law that requires some periodic review or update of mandate decisions? Would such a process be beneficial in your view?

# ATTACHMENT A

## Mandates Determination Process Prepared by the Commission on State Mandates

<http://www.csm.ca.gov/docs/brochure.pdf>

# Mandate Determination Process

## State Controller's Claiming Instructions

### Statute or Executive Order

In enacting a statute or imposing an executive order, the Legislature, Governor, or a state agency may impose a new program or higher level of service on local agencies or school districts. If the statute or executive order does not contain sufficient funding and there are increased costs as a result of the change, affected local agencies and school districts may seek reimbursement by filing a test claim with the Commission on State Mandates.

### Test Claim

"Test claim" means a claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. A test claim allows local agencies and school districts to identify prospective reimbursable costs resulting from the new statute or executive order. The Commission hears and makes a determination on each claim.

### Parameters and Guidelines

If the Commission approves a test claim, it must determine the amount to be subvented to local agencies and school districts. The test claimant develops proposed parameters and guidelines that identify the mandated program, eligible claimants, period of reimbursement, reimbursable activities, and other necessary claiming information. The Commission hears and may adopt, amend, or reject the claimant's proposed parameters and guidelines.

### Statewide Cost Estimate

Following the Commission's adoption of parameters and guidelines, a statewide cost estimate for eligible costs is adopted by the Commission. These estimates are reported to the Legislature. They form the basis for the local government claims bill, which appropriates funds to the State Controller to pay reimbursement claims.

In the final step, the State Controller issues claiming instructions, which local agencies and school districts follow when filing claims for reimbursement. The reimbursement claims must be filed by the dates specified in the claiming instructions. The Controller shall pay eligible claims within 60 days after the filing deadline or 15 days after an appropriation is effective, whichever is later.

<b>Affected State Agencies and Interested Parties</b>												Once adopted, staff reports statewide cost estimate in report to the Legislature for inclusion in the local government claims bill.		
<b>Commission</b>												COMMISSION HEARING to adopt statewide cost estimate.		
<b>Process Sequence</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>
<b>Claimant</b>														
<b>State Controller</b>	Local agency or school district files a test claim with the Commission on State Mandates.	Staff reviews submittal for completeness.	Comment period for state agencies and interested parties on complete test claim filings.	Staff issues draft staff analysis and recommendation.	Comment period for state agencies and interested parties on draft staff analysis.	Staff issues final staff analysis.	COMMISSION HEARING to approve or deny test claim. If test claim is denied, the file is closed. Staff reports decision to Legislature in annual report.	If test claim is approved, claimant files proposed parameters and guidelines with the Commission.	Claimant rebuttal period on state agency and interested party comments.	Claimant rebuttal period on state agency and interested party comments.	COMMISSION HEARING to adopt parameters and guidelines.	Once adopted, State Controller issues claiming instructions.	Eligible claimants can file claims.	

A simplified overview of the Mandate Determination Process. The color bars above and below each of the steps in the Process Sequence (1-14) show what agency or activity is involved.

## ATTACHMENT B

State Controller Claims for Selected Mandates –  
Prepared by Senate Office of Oversight and Outcomes

School district	Audit Period	District claimed	Amount allowed	Amount rejected	Amount to be returned to state*
<b>Habitual Truant</b>					
Anaheim City	7/00-6/03	\$ 312,197	\$ -	\$ 312,197	\$ 312,197
Compton Unified	7/98-6/01	\$ 686,444	\$ 616,479	\$ 69,965	\$ -
Los Angeles Unified	7/99-6/01	\$ 2,262,604	\$ 586,228	\$ 1,676,376	\$ 936,747
San Bernardino City Unified	7/00-6/03	\$ 880,881	\$ -	\$ 880,881	\$ 526,956
Stockton Unified	7/01-6/03	\$ 390,894	\$ 92,803	\$ 298,091	\$ 298,091
West Contra Costa Unified	7/99-6/02	\$ 697,851	\$ 61,511	\$ 636,340	\$ 636,340
<b>Mandate Reimbursement</b>					
Los Angeles Unified	7/99-6/01	\$ 1,179,775	\$ 1,097,893	\$ 81,882	\$ 81,882
<b>Notification of Truancy</b>					
Colton Joint Unified	7/99-6/02	\$ 438,174	\$ -	\$ 438,174	\$ 357,568
Compton Unified	7/98-6/01	\$ 615,945	\$ -	\$ 615,945	\$ 497,865
East Side Union	7/03-6/07	\$ 865,273	\$ 839,615	\$ 25,658	\$ -
Fresno Unified	7/99-6/02	\$ 943,847	\$ 525,676	\$ 418,171	\$ 234,552
Kern High School	7/00-6/03	\$ 418,643	\$ 418,643	\$ -	\$ -
Moreno Valley Unified	7/99-6/02	\$ 667,854	\$ 64,808	\$ 603,046	\$ 396,038
Oakland Unified	7/98-6/00	\$ 312,804	\$ -	\$ 312,804	\$ 312,804
Ontario-Montclair	7/01-6/04	\$ 348,851	\$ -	\$ 348,851	\$ 348,851
Riverside Unified	7/00-6/02	\$ 399,535	\$ 68,888	\$ 330,647	\$ -
San Bernardino Unified	7/00-6/03	\$ 877,640	\$ -	\$ 877,640	\$ 529,148
San Juan Unified	7/99-6/02	\$ 578,710	\$ 470,268	\$ 108,442	\$ 34,709
Santa Ana Unified	7/00-6/03	\$ 736,013	\$ 26,596	\$ 709,417	\$ 160,685
Stockton Unified	7/01-6/04	\$ 612,896	\$ 542,192	\$ 70,704	\$ 70,704
Sweetwater Union High	7/00-6/02	\$ 501,643	\$ 472,974	\$ 28,669	\$ -
<b>Graduation Requirements</b>					
Clovis Unified	7/98-6/02	\$ 8,053,465	\$ 4,116,233	\$ 3,937,232	\$ 2,498,848
Fresno Unified	7/99-6/02	\$ 1,809,941	\$ -	\$ 1,809,941	\$ 531,558
Los Angeles Unified	7/99-6/01	\$ 5,760,711	\$ -	\$ 5,760,711	\$ 1,479,636
San Diego Unified	7/99-6/02	\$ 5,492,915	\$ 5,492,915	\$ -	\$ -
<b>TOTAL</b>		\$ 35,845,506	\$ 15,493,722	\$ 20,351,784	\$ 10,245,179

\* The amount auditors direct to be returned to the state varies depending upon how much money the state has already given to school districts. An additional note: Two audits of the Stull Act mandate are under way, according to the controller's office, but have not been completed.

Source: State Controller's Office

# **SUBCOMMITTEE NO. 1 on Education**

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**Subcommittee No. 1**  
**Chair, Gloria Romero**  
**Member, Bob Huff**  
**Member, Carol Liu**

**Thursday April 30, 2009**  
**9:30 a.m. or Upon Adjournment of Session**  
**State Capitol, Room 3191**

## **I. Child Care and Development – Governor's Proposals**

- A. Background
- B. Reduction in Provider Reimbursement Rates
- C. Fee Payment by Cash Aid Recipients
- D. Increase in Family Fees

## **II. Other Child Development Issues**

- A. Mid-Year State Median Income (SMI) "Correction"
- B. CDE Proposed 2009-11 Expenditure Plan for Ongoing Federal "Quality" Dollars.
- C. DOF Proposed Plan for Recovering Overpayments in Child Care Programs (April Finance Letter)

## **III. Update on Federal Funds**

- A. Status of Federal Child Development "Stimulus" Funds

## **IV. Public Comment**

## I. CHILD CARE AND DEVELOPMENT PROPOSALS

**A. Background.** Under current law, the state makes subsidized child care services available to: (1) families on public assistance and participating in work or job readiness programs; (2) families transitioning off public assistance programs; and (3) other families with exceptional financial need.

Child care services provided within the California Work Opportunity and Responsibility to Kids (CalWORKs) program are administered by both the California Department of Social Services (DSS) and the California Department of Education (CDE), depending upon the “stage” of public assistance or transition the family is in. Stage 1 child care services are administered by the DSS for families currently receiving public assistance, while Stages 2 and 3 are administered by the CDE.

Families receiving Stage 2 child care services are either (1) receiving a cash public assistance payment (and are deemed “stabilized”) or (2) in a two-year transitional period after leaving cash assistance; child care for this population is an entitlement for twenty four months under current law. The State allows counties flexibility in determining whether a CalWORKs family has been “stabilized” for purposes of assigning the family to either Stage 1 or Stage 2 child care. Depending on the county, some families may be transitioned to Stage 2 within the first six months of their time on aid, while in other counties a family may stay in Stage 1 until they leave aid entirely.

If a family is receiving Stage 3 child care services, they have exhausted their two-year Stage 2 entitlement. The availability of Stage 3 care is discretionary and contingent upon the amount of funding appropriated for the program in the annual Budget Act.

Subsidized child care is also available on a limited basis for families who have never been on public assistance but who exhibit exceptional financial need. Under current practice, services for these two populations are supplied by the same group of child care providers; however, waiting lists, while consolidated, grant priority to the former CalWORKs recipients.

Child Care is provided through either (1) licensed child care centers or (2) the Alternative Payment Program.

- *Child Care Centers* receive direct funding from the state (at a Standard Reimbursement Rate), which pays for a fixed number of child care “slots.” Centers provide an educational component that is developmentally, culturally, and linguistically appropriate for the children served. Centers also provide nutrition education, parent education, staff development, and referrals for health and social services programs. In many areas of the State, there are no available “slots” in licensed Child Care Centers or Family Day Care Centers and families are limited to the use of license-exempt care (kith and kin).
- *Alternative Payment Programs (APs)* act as an intermediary between CDE, the child care provider, and the family, to provide care through means-tested vouchers. Vouchers provide funding for a specific child to obtain care in a licensed child care center, licensed family day care home, or license-exempt care



(kith and kin). With a voucher, the family has the choice of which type of care to utilize.

The adopted **2009-10 Budget Act** provides the CDE with approximately \$2.48 billion to support approximately 870,276 children in the state's subsidized child care, after school, and preschool systems. The proposed amount represents a decrease of approximately \$85 million from the originally enacted 2008-09 expenditure level. Of the amount proposed for all child development programs at CDE, 29 percent of the funding will be spent on current and former CalWORKs recipients.

The Governor's January budget proposal did not include any funding for either Cost-of-Living-Adjustments (COLAs) or enrollment/caseload growth in non-CalWORKs child development programs. Growth adjustments in the CalWORKs child care programs are based and funded on actual CalWORKs caseload adjustments, which are coordinated between the DSS and CDE; these caseloads will be updated at the May Revision.

<b>California Child Care and Development Programs</b> <i>2009-10 (Dollars in Millions)</i>						
Program <sup>a</sup>	2007-08	Budget Act 2008-09	Revised 2008-09	Adopted 2009-10	Change (2008-09 to 2009-10)	
					Amount	Percent
<b>CalWORKs<sup>b</sup> Child Care:</b>						
Stage 1 <sup>c</sup>	\$536	\$617	\$616	\$705	\$88	14.5%
Stage 2 <sup>d</sup>	548	532	505	443	-62	-12.3%
Stage 3	405	433	418	389	-29	-6.7%
Subtotals	(\$1,489)	(\$1,582)	(\$1,539)	(\$1,537)	(\$-2)	-0.1%
<b>Non-CalWORKs<sup>b</sup> Child Care</b>						
General child care	\$759	\$810	\$780	\$789	\$9	1.2%
Other child care programs	329	338	329	333	4	1.2%
Subtotals	(\$1,088)	(\$1,148)	(\$1,109)	(\$1,122)	(\$13)	1.2%
<b>State Preschool</b>	\$422	\$445	\$429	\$435	\$6	1.4%
<b>Support Services</b>	\$106	\$106	\$106	\$102	-\$4	-3.8%
<b>Totals – All Programs</b>	<b>\$3,104</b>	<b>\$3,281</b>	<b>\$3,182</b>	<b>\$3,196</b>	<b>\$14</b>	<b>0.4%</b>
<b>Funding Sources</b>						
Proposition 98 General Fund	\$1,736	\$1,801	\$1,718	\$1,973	\$255	14.8%
Federal Funds	\$1,162	1,140	1,126	1,221	95	8.4%
Other <sup>e</sup>	\$207	340	339	2	-337	-99.4
<sup>a</sup> Except where noted otherwise, all programs are administered by the CDE						
<sup>b</sup> California Work Opportunity and Responsibility to Kids						
<sup>c</sup> Administered by California Department of Social Services						
<sup>d</sup> Includes funding for centers run by California Community Colleges						
<sup>e</sup> Includes prior-year carryover, federal reimbursements, non Proposition 98 GF and redirected Child Care Facilities Revolving Fund monies.						

**B. Reduction in Provider Reimbursement Rates.** The 2009-10 Budget Act includes a reduction in the reimbursement rate ceiling for voucher based child care programs -- from the 85<sup>th</sup> percentile of the 2005 Regional Market Rates, to the 75<sup>th</sup> percentile of the 2007 Regional Market Rate (RMR), for a savings of \$38.7 million Proposition 98 General Fund.

The \$38.7 million in savings is the net result of: (1) an increase in reimbursement rates pursuant to the implementation of the new (2007) Regional Market Rate survey, coupled with (2) the savings derived from reducing rates off this presumably higher base.

The savings associated with this proposal are already included in the 2009-10 Budget Act, as adopted by the Legislature in February 2009. However, in order for this policy change to take effect, the Legislature needs to adopt the accompanying statutory change.

**Background.** Child Care providers, either licensed family child care home providers or license-exempt providers, are reimbursed for child care services based on the market rates of their particular region. Licensed providers are presently reimbursed at a ceiling of the 85<sup>th</sup> percentile of the 2005 Regional Market Rate and license-exempt providers are reimbursed at a maximum of the 90<sup>th</sup> percentile of the *licensed provider* ceiling. As such, reducing the licensed reimbursement rate from the 85<sup>th</sup> to the 75<sup>th</sup> percentile impacts not just licensed providers, but also license-exempt providers.

Provider rate reductions have been proposed by the Administration in prior years. During previous subcommittee hearings on this topic, child care providers testified that rate reductions could make it very difficult for licensed family child care providers and centers that accept families with subsidies (and are reimbursed through the voucher system) to stay in business and provide high quality services.

**Staff Recommends.** Staff recommends that the Department of Finance and the CDE: (1) examine the fiscal impact of retaining rates at the 85<sup>th</sup> percentile of the Regional Market Rate, but (further) delay implementation of the 2007 Regional Market Rate survey, and (2) report back to the committee at the May Revision.

**C. Fee Payment by Cash Aid Recipients.** The current family fee proposal (as discussed further in the next issue) requires families to start paying fees at the same income level as in 2006, even though the State Median Income (SMI) increased in 2007 (and was thereafter frozen). This approach has the effect of lowering the family fee floor each time the SMI is adjusted upward. As a result, as the SMI increases, families whose incomes are lower than 40 percent of SMI are now required to pay fees and share in the cost of care.

In September 2008, the Governor vetoed a provision of the final Budget Act that would have explicitly exempted families with incomes under 40 percent of SMI from

paying fees. While this language remains consistent with the Legislature's understanding of the current fee policy, the Administration's recollection of the policy discussion differs.

Last year, the Legislature codified its policy that families receiving *cash aid not pay a fee for child care services* (Education Code 8447(g)). The theory in adopting this provision was that state CalWORKs dollars that are paid to a family should be used to support the family, not pay for child care services that the state is already providing.

Contrary to current law - which has yet to be implemented by CDE - there is a relatively small population of cash aid recipients that are currently paying fees. Under current law, these families would cease fee payment (thus running contrary to the Administration's recollection of fee policy discussions, whereby families that are currently paying fees would continue to pay fees).

As such, the Administration is proposing that families in the following two categories continue to pay a family fee regardless of their cash aid status:

Delay in Reporting. This population includes CalWORKs recipients who are no longer on cash aid, but for whom that income information has yet to be reported to the child care provider. Under the CalWORKs program, individuals on cash aid are reported to child care providers quarterly. In some cases, families may be off cash aid, but the reporting system has yet to catch up. As a result, these families may be receiving child care services without paying a fee; this could occur for up to three months, until the reporting system catches up.

Differing definitions of an "assistance unit". The CalWORKs program and the child care program do not appear to use the same definition of "assistance unit" in assessing: (1) eligibility for CalWORKs and (2) when a family begins paying child care fees. As a result, if a family has income from an outside (non-CalWORKs counted) source, such as college workstudy or a non-custodial parent, that income would be included for fee assessment purposes, but not for cash aid.

**Policy Question.** The question before the committee is whether or not the two above-mentioned categories of families should pay family fees, in spite of current law exempting cash aid recipients from paying. Staff notes that the administrative burden and cost of collecting fees from these individuals may exceed the revenues derived from the fee.

Staff recommends that the Legislature deny the Administration's trailer bill request and that CDE actively adopt the same definition of an "assistance unit" for use in its family fee schedule as used by the Department of Social Services for assessing eligibility for aid.

**D. Increase in Family Fees.** Similar to the issue noted above, the 2009-10 Budget Act includes an increase in the level of fees paid by families for child care services. This proposal saves \$14.4 million in Proposition 98 General Fund by increasing fees

for families paying for subsidized child care. Fees are charged to families once they reach a set monthly income level. The savings associated with this proposal are already included in the 2009-10 Budget Act as adopted by the Legislature in February 2009. However, in order for this policy to take effect, the Legislature needs to adopt the accompanying statutory change.

**Background.** Up until 2006, California families who received child care subsidies began to pay a family fee when their incomes reached 50 percent of the SMI and fees were capped at 8 percent of a family's monthly income. In 2006-07, as part of the budget process, the threshold at which a family begins paying fees was lowered from 50 percent of SMI to 40 percent of SMI and the cap was raised to 10 percent of family monthly income.

**Governor's proposal.** The Governor's proposal starts charging fees to families whose income is a little below 40 percent of SMI (see prior agenda issue), or approximately \$23,000 for a family of three. Under the proposal, fees then increase by \$2 per day, on a sliding scale, thereby doubling the amount families with the lowest incomes will pay. The 10 percent cap referenced above remains unchanged.

Child care advocates argue that raising fees will likely harm low-income children by taking money from already scarce family resources. Further, it is important to note that if a family fails to pay the monthly fee, they can lose their child care subsidy entirely, either putting children at risk of substandard care or returning to cash aid. Lastly, it is unclear if the administrative costs and burdens associated with collecting these smaller fee amounts outweigh the actual fee revenue collected.

Staff recommends that the Department of Finance, CDE, and DSS submit a proposed family fee schedule to the committee in May/June and that this issue be held open pending the May Revision.

## **II. OTHER CHILD DEVELOPMENT ISSUES**

**A. Mid-Year State Median Income (SMI) "Correction".** Current law establishes eligibility for the state's child care programs for families who have an adjusted monthly income at or below 75 percent of the SMI. In response to budget circumstances, the Legislature and the Governor took action through the Annual Budget Act to "freeze" (at the 2007-08 level) the income level at which eligibility for child care services are determined. As a result, 75 percent of the 2007 SMI level is the threshold under which eligibility is determined. For families receiving child care services during the 2007-08 and part of the 2008-09 fiscal years, the income threshold was \$45,228 for a family of three.

On February 1, 2009, CDE issued a mid-year "correction" to the SMI calculation, which decreased the income ceiling by \$564 annually (\$44,664 for a family of three). According to the Department of Finance, a calculation error was made when the 2007 SMI numbers were originally released to CDE. As families renew their eligibility

(which happens annually), if their income **did not drop** by the "corrected" amount, the family will lose child care services.

As part of the Administration's family fee proposal, CDE would be required to *update* SMI "based on the best available data," and then submit a revised family fee schedule (based on the new SMI) to DOF for approval. Staff notes that unless the SMI is "unfrozen" or the Legislature adopts a new family fee policy, there is no reason for the family fee schedule to change on a year-to-year basis.

The Legislature has expressed its intent that income levels be frozen at 2007-08 levels thus approving the Administration's prior proposals to "freeze" eligibility levels, at the same levels in effect for the prior years. CDE's actions to adjust the SMI downward under the auspices of a "technical" correction run contrary to the Legislature's intent on this matter.

**Staff Recommends.** Staff recommends that the committee: (1) deny DOF's trailer bill proposal authorizing CDE to update the family fee schedule based on "the best available [SMI] data"; (2) direct CDE to rescind its February 1, 2009 management bulletin revising the SMI eligibility threshold; and (3) adopt Budget Act language clearly stating the income threshold as the same level in effect for families in 2007-08, as follows:

#### 6110-196-0001 Provision 8

(a) Notwithstanding any other provision of law, the income eligibility limits pursuant to Section 8263.1 of the Education Code that were ~~applicable in effect to~~ for the 2007-08 ~~and 2008-09~~ fiscal years shall remain in effect for the 2009-10 fiscal year.

(b) Notwithstanding any other provision of law, the State Department of Social Services shall, in consultation with the State department of Education, adjust the family fee schedule for child care providers to reflect a state median income of ~~\$66,166~~ \$67,008 annually for a family of four. The fee schedule shall retain a flat fee per family and begin at income levels at which families currently begin paying fees. The revised fee schedule shall increase the lowest fees by \$2 per day and continue to increase fees on a sliding scale up to a maximum of 10 percent of income at a lower point in the income eligibility spectrum when compared to the current schedule.

#### **B. CDE Proposed 2009-11 Expenditure Plan for Ongoing Federal "Quality" Dollars.**

Federal law mandates the state to submit a statewide plan outlining how California intends to spend federal Child Care Development and Block Grant Funds (CCDBG). Under federal law, California is required to spend at least four percent of the federal CCDBG it receives on programs to enhance the "quality" of child care services. As part of its larger federal expenditure plan, CDE composes a child care *quality*

expenditure plan, to be submitted to the federal government every two years. CDE is currently composing this expenditure plan.

Current state law (Education Code 8206.1(c)) requires that CDE coordinate with DSS, the California Children and Families Commission, and other stakeholders, including the Department of Finance to develop the broader CCDBG plan. CDE is currently in the midst of the mandated process, having released a draft plan and sought public testimony on the proposal. Prior to the May Revision, CDE is required to provide a revised expenditure plan to the committee for review.

As an overlay to the CDE quality plan, the Legislature earmarks dollars for high priority quality programs in the annual Budget Act. CDE will make copies of their draft expenditure plan available during the hearing.

The Committee requests that CDE present the committee with the draft quality plan and explain any changes in the plan from the prior federal fiscal year expenditure plan.

**C. Plan for Recovering Overpayments in Child Care Programs (April Finance Letter: Issue 332).** The Administration is requesting, via Budget Act language, that CDE provide a plan for reducing overpayments and recovering payments found to be in error related to fraud or overpayments, and to require that the errors be corrected. CDE presently has a unit (The Alternative Payment Monitoring Unit) which was established to conduct annual reviews of alternative payment (voucher-based) programs to address compliance monitoring and overpayments, which may contribute to the early detection of fraud.

Staff recommends that the committee approve the Administration's request to add Provision 6 to Item 6110-001-0890 with the following changes.

6. (c) The State Department of Education (SDE) shall ~~develop provide~~ a plan by October 1, 2009, for reducing overpayments and recovering payments from child care and development programs that the SDE has determined to have been made in error related either to potential fraud or overpayments. The plan shall be submitted to the Department of Finance for by October 1, 2009 for consideration and potential inclusion in the January Governor's Budget. ~~and approval for reducing overpayments and recovering payments from child care and development programs that the SDE has determined to have been made in error related either to potential fraud or overpayments.~~ The SDE plan shall provide options and recommendations for payment recovery that seek to maximize California's receipt and use of federal funds, and for implementing aggressive corrective measures to minimize payment errors. Such corrective measures may include including, ~~but not limited to,~~ rebidding contracts for contractors with high error rates, modifying the contract funding terms and conditions to require reductions to administrative allowances for contractors that exceed specified maximum error rates, and to prohibit payment to providers that continue to submit erroneous reports for reimbursement purposes. Prior to submitting recommendations, the SDE shall review options with the Department of Social Services and representatives of alternate payment providers, counties that directly administer Stage 1, and state funded centers and family day care homes. ~~When approved by the Department of Finance, the elements of the plan that can be implemented without~~

~~statutory changes shall be implemented no sooner than 30 days after notification in writing of the necessity to the chairperson of the committees in each house of the Legislature that considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the chairperson of the joint committee or designee may determine. The SDE shall promulgate emergency regulations to implement the plan by March 1, 2010.~~

### **III. UPATE ON FEDERAL STIMULUS FUNDS**

**A. Status of Federal Child Development "Stimulus" Funds.** The American Recovery and Reinvestment Act (ARRA) was passed by Congress and signed by the President in mid-February. Included in the Human Services provisions of this act are additional dollars for Child Care and Development. The approximately \$2 billion in additional funds will be dispersed to states through the existing Child Care and Development Block Grant. Of this amount, California is expected to receive approximately \$220 million over the next two federal fiscal years.

The Committee requests that CDE discuss its proposed expenditure plan for these incoming dollars and that DOF and LAO comment on both CDE's proposal as well as the process that the Legislature can expect – moving forward – with respect to the appropriation of these funds.

# SUBCOMMITTEE NO. 1 on Education



**Subcommittee No. 1**  
**Chair, Gloria Romero**  
**Member, Bob Huff**  
**Member, Carol Liu**

**Thursday, May 7, 2009**  
**9:30 a.m.**  
**State Capitol, Room 3191**

## **PART A -- K-12 EDUCATION** **OUTCOMES**

<b><u>Item</u></b>	<b><u>Departments</u></b>	<b><u>Page</u></b>
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**ISSUE 1: DOF April Letters – Various Budget Amendments and Additions (Consent Items)**

**DESCRIPTION:** The Department of Finance (DOF) proposes the following changes to the 2009-10 Budget Act for K-12 education. These revisions are proposed by the April 1<sup>st</sup> budget amendment letter (April Letter) from the Department of Finance.

**Part A. California Department of Education**

The Administration proposes the following technical adjustments to various state operations and local assistance budget items. For the most part, these issues are considered technical adjustments to update budget appropriation levels so they match the latest federal estimates and utilize funds consistent with current programs and policies.

**Federal Funds Adjustments – State Operations**

**1. Special Child Nutrition Grants (Issue 490)**—It is requested that Item 6110-001-0890 be increased by \$1.1 million Federal Trust Fund and that Item 6110-001-0001 be amended to reflect the anticipated receipt of Direct Certification, Team Nutrition, and Administrative Review and Training grants awarded by the United States Department of Agriculture. These funds would be used to develop and implement school district training needed to implement federal requirements associated with the Child Nutrition Program, which is an entitlement program that reimburses local educational agencies (LEAs) for serving meals and snacks to eligible students in the Child and Adult Care Food Program, the School Nutrition Program, and the Summer Food Service Program.

It is further requested that provisional language be added to Item 6110-001-0890 as follows to conform to this action:

X. Of the funds appropriated in this item, \$1,100,000 is provided on a one-time basis, contingent on the receipt of Direct Certification, Team Nutrition, and Administrative Review and Training grants from the United States Department of Agriculture ~~to develop and implement school district training needed to implement federal requirements associated with the Child Nutrition program.~~

**2. Federal Child Nutrition Direct Certification and Verification Carryover Funds (Issue 492)**—It is requested that Item 6110-001-0890 be increased by \$320,000 Federal Trust Fund and that Item 6110-001-0001 be amended to reflect the availability of one-time carryover funds resulting from the delay in fully spending the Federal Child Nutrition Direct Certification and Verification Grant that SDE received in 2008-09. These funds would be used to improve and expand current state-level processes for directly certifying and verifying students eligible for free and reduced-price meals

through service contracts with the California School Information Services, California Department of Social Services, and Department of Health Care Services.

It is further requested that Provision 24 of Item 6110-001-0890 be amended as follows to conform to this action:

“24. Of the funds appropriated in this item, ~~\$112,000~~432,000 is available on a one-time basis to improve and expand the direct certification and verification processes of students in child nutrition programs.”

### **Federal Funds Adjustments – Local Assistance**

**3. Item 6110-119-0890, Local Assistance, Neglected and Delinquent Children Program (Issue 248)**—It is requested that this item be increased by \$43,000 federal Title I Neglected and Delinquent Children funds to reflect the availability of one-time carryover funds. LEAs will use these funds for services to educate neglected and delinquent or incarcerated youth.

It is further requested that provisional language be added as follows to conform to this action:

X. Of the funds appropriated in Schedule (4), \$43,000 is provided in one-time carryover funds to support the existing program.

**4. Item 6110-125-0890, Local Assistance, English Language Acquisition Program (Issue 250)** - It is requested that this item be increased by \$1,683,000 federal Title III Language Acquisition funds to reflect the availability of one-time carryover funds. LEAs will use these funds for services to help students attain English proficiency and meet grade level standards.

It is further requested that provisional language be added as follows to conform to this action:

X. Of the funds appropriated in Schedule (3), \$1,683,000 is provided in one-time carryover funds to support the existing program.

**5. Item 6110-134-0890, Local Assistance, Title I Basic Program (Issue 251)**—It is requested that this item be increased by \$4.0 million federal Title I funds to reflect the availability of one-time carryover funds. LEAs will use these funds to support services that assist low achieving students enrolled in the highest poverty schools.

It is further requested that provisional language be added as follows to conform to this action:

X. Of the funds appropriated in Schedule (4), \$4,000,000 is provided in one-time carryover funds to support the existing program.

**6. Item 6110-136-0890, Local Assistance, Title I Even Start Program (Issue 249)**—It is requested that this item be increased by \$683,000 federal Title I Even Start funds to reflect the availability of one-time carryover funds. LEAs will use these funds for services to improve the educational opportunities of low-income families and for a unified literacy program that integrates early childhood education and parenting education.

It is further requested that provisional language be added as follows to conform to this action:

X. Of the funds appropriated in Schedule (2), \$683,000 is provided in one-time carryover funds to support the existing program.

**7. Item 6110-166-0890, Local Assistance, One-time Carryover for Federal Vocational Education (Issue 401)**—It is requested that this item be increased by \$10,784,000 federal Vocational Education funds to reflect one-time carryover available to support Vocational Education Programs, which develop academic, vocational, and technical skills of students in high schools, community colleges and Regional Occupational Centers and Programs.

It is further requested that provisional language be added as follows to conform to this action:

X. Of the funds appropriated in this item, \$10,784,000 is provided from one-time carryover funds for Vocational Education Programs.

**8. Item 6110-193-0890, Local Assistance, Mathematics and Science Partnership Program (Issue 086)**—It is requested that this item be increased by \$6,561,000 federal Title II funds to reflect the availability of one-time carryover funds. The Mathematics and Science Partnership Program provides competitive grant awards to partnerships of low-performing schools and institutes of higher education to provide staff development and curriculum support to mathematics and science teachers.

It is further requested that provisional language be added as follows to conform to this action:

X. Of the funds appropriated in this item, \$6,561,000 is provided in one-time carryover funds to support the California Mathematics and Science Partnership Program.

**9. Item 6110-197-0890, Local Assistance, Adjust Federal Funds for 21<sup>st</sup> Century Community Learning Centers (Issue 331)**—It is requested that this item be increased by \$40.0 million federal 21<sup>st</sup> Century funds to provide one-time carryover authority for

unspent prior-year funds for the 21<sup>st</sup> Century Community Learning Centers program to be spent in a manner consistent with the existing program. Further, it is proposed that reporting language be added to determine the reasons for carryover and how these funds are utilized. This program provides grants to support the establishment of community learning centers that offer academic enrichment opportunities during non-school hours for students, particularly those who attend high-poverty and low-performing schools.

It is further requested that provisional language be added as follows to conform to this action:

X. Of the funding provided in this item, \$40,000,000 is available from one-time carryover from prior years.

X. The State Department of Education shall provide a report to the Department of Finance and the Legislative Analyst that includes, but is not limited to, allocation and expenditure data for all programs funded in this item in the past three years, the reasons for carryover, and the planned uses of carryover funds by March 1, 2010.

### **General Fund Adjustments**

**10. Item 6110-001-0001, State Operations, Schedule Correction (Issue 012)**—It is requested that \$1,250,000 be shifted from Program 20 to Program 30 in Item 6110-001-0001 to correct a scheduling error contained in the Budget Act of 2009.

**11. Item 6110-001-0001, State Operations, Extend Limited-Term Positions for the Enhancing Education Through Technology (EETT) Grant Program (Issue 244)**—It is requested that position authority for 2.0 limited-term Education Program Consultant positions in the Education Technology Office be extended for an additional two years, to June 30, 2011. These positions will support workload associated with the EETT program, including tracking grant awards and providing technical assistance to the 58 county offices of education receiving local assistance funds.

### **Special Fund Adjustments**

**12. Item 6110-492 and 6110-001-3085, Reappropriation, Mental Health Services Act, Proposition 63 (Issue 562)**—It is requested that \$319,000 in Mental Health Services funds appropriated in Schedule (1) of Item 6110-001-3085, Budget Act of 2008, be reappropriated in 2009-10. These funds were provided to allow SDE to contract with mental health/educational professionals ~~other departments~~ to implement trainings and develop mental health best practices resources pursuant to the Mental Health Services Act. However, due to contract bid issues (non-qualified bids and appeals), the funds cannot be spent until 2009-10.

It is further requested that language be added as follows to conform to this action:

6110-492—Reappropriation, Department of Education. Notwithstanding any other provision of law, the balance of the appropriation provided in Schedule (1) of Item 6110-001-3085 of the Budget Act of 2008 (Chs. 268 and 269, Stats. 2008), is reappropriated and shall be available for encumbrance or expenditure until June 30, 2010, to contract with mental health/educational professionals to support the involvement of local educational agencies in local mental health planning and implementation efforts for the purpose of fulfilling contracting services with other departments pursuant to the Mental Health Services Act (Proposition 63).

**ACTION ITEM: STAFF RECOMMENDATION (CONSENT):** Staff recommends approval of all of the DOF April Letter proposals listed above, including staff revisions highlighted for several items. These revisions provide corrections to the April Letter requested by both CDE and DOF. No issues have been raised for any of these items.

**OUTCOME:**

**APPROVE ALL ISSUES (#1-12) WITH STAFF REVISIONS. (Vote: 3-0)**

## ISSUE 2. State Special Schools -- Capital Outlay – New Lease Revenue Bond Projects (6110-301-0660)

### DESCRIPTION:

The Governor’s January budget proposes funding for two new capital outlay projects at the State Special Schools in 2009-10. The Governor requests a total of **\$31.5 million** in lease-revenue bond funding for these projects. The Department of Finance will present the proposal.

The 2009-10 Budget Act approved in the February Special Session did not adopt the Governor’s proposal to fund these two new capital outlay projects. This decision was made “without prejudice” to the proposal to allow the Legislature more time to review new lease-revenue bond proposals, given the state’s changing fiscal environment.

The LAO suggests a modified proposal to address the health and safety issues related to these proposals.

### BACKGROUND:

**State Special Schools.** The California Department of Education administers the State Special Schools, which includes a total of six facilities under its jurisdiction: three residential schools and three diagnostic centers. The residential schools include the Schools for the Deaf in Riverside and Fremont and the School for the Blind in Fremont. The State Diagnostic Centers are regionally located in Fresno, Fremont, and Los Angeles. These state facilities comprise a total of 960,000 gross square feet on 176 acres of land.

The three Special Schools include the California Schools for the Deaf in Fremont and Riverside and the California School for the Blind in Fremont. Students attending State Special Schools are served in residential or day programs. The two Schools for the Deaf provide instructional programs to approximately 826 students who are deaf and the California School for the Blind provides instructional programs for approximately 71 students who are blind, visually-impaired, or deaf-blind in 2008-09.

<b>State Special School Enrollments</b>	<b>2004-05</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>
School for the Deaf, Riverside	484	449	430	443	412
School for the Deaf, Fremont	473	490	485	484	414
School for the Blind, Fremont	85	88	85	89	71
<b>TOTAL</b>	<b>1,042</b>	<b>1,027</b>	<b>1,000</b>	<b>1,016</b>	<b>897</b>

The three State Diagnostic Centers administer assessments to approximately 1,500 students per year and provide training to 31,000 educators annually. Of the 1,500 annual assessments, approximately 250 take place at the three centers; the remaining 1,250 are considered “field” assessments, which take place within local education agencies.

**Lease-Revenue Bond Financing.** Lease-revenue bonds allow the state to borrow money to build facilities for a variety of purposes. Lease-revenue bonds work much like general obligation bonds (GO). However, lease-revenue bonds do not require voter approval and do not have the "full faith and credit" of the state of California, like GO bonds do. As a result, lease-revenue bonds are viewed as a little bit riskier by investors and have a slightly higher interest rate. As is the case with other bond projects, the State Special School projects do not require funding up front. The General Fund pays for the debt service, which is spread over a 25-year period, with interest, once the project is completed.

**GOVERNOR’S BUDGET:** The Governor’s January 10 budget proposes two new capital outlay projects for the State Special Schools. These projects involve funds for renovation of athletic facilities at two of the State Special Schools, as follows:

**1. Athletic Complex, California School for the Deaf, Fremont.** Requests **\$14,568,000** to renovate the football field and surrounding track and to add athletic locker room space at the California School for the Deaf, Fremont. The project includes the following features:

- artificial turf football/soccer field,
- synthetic running track,
- field access,
- raised bleachers,
- press box,
- concession stand,
- restroom facilities,
- storage facilities,
- equipment,
- fencing,
- parking,
- athletic locker rooms,
- stadium field lighting,
- drinking faucets,
- sideline team benches, and
- cable for the public address system and scoreboard.

**2. Athletic Complex, California School for the Deaf, Riverside.** Requests **\$16,960,000** to design and construct an athletic complex at the California School for the Deaf, Riverside to ensure the safety of participants and spectators and

maximize the use of the fields available for interscholastic sports, physical education classes, school functions, and recreational activities for residential students. The complex will be utilized for different sporting events including soccer, baseball, softball, track and field, football, and intramural activities for all students. The complex will improve accessibility, safety, and convenience for those attending and participating by adding the following features:

- bleachers,
- lighting,
- restroom facilities,
- concession stand,
- electronic scoreboard/message boards,
- drinking fountains,
- storage facilities,
- security systems,
- fencing, and
- accessible pathways.

**LAO RECOMMENDATION:** The LAO recommends against approving the athletic complex and football field/track for the State Special Schools given that these are non-academic projects being proposed in a difficult budget year. The LAO, however, acknowledges that the existing fields are in bad shape and pose potential health and safety risks. They would suggest a modified proposal that only addresses the health and safety issues, such as replacing the grass on both football fields but not adding any bleachers or facilities.

#### **STAFF COMMENTS:**

**2008-09 Proposals.** The Governor first proposed the two athletic field renovation projects for the State Special Schools in 2008-09. The LAO had several concerns with the Governor's requests. With respect to the athletic complex and football field projects, the LAO was concerned about the high costs associated with the projects and engaged the Department of Education staff in exploring (1) lower-cost, alternative renovations that would focus on making the athletic fields a safe place for students and (2) options for developing partnerships with local schools and cities to share facilities for athletic events.

**Health and Safety Concerns:** The LAO visited the project sites at the State Special Schools to evaluate the Governor's capital outlay proposals. The LAO reports that the athletic fields at both sites are in "bad shape". As detailed in the project proposals developed by CDE, there are number of serious health and safety concerns for students and staff with continued use of the existing athletic fields. For example, at the Fremont school, the football field has become infested with ground squirrels and geese leading to unsafe conditions. According to CDE, in just half a day, Canadian geese leave 150 pounds of feces on the football field and 13,500 pounds over a 3-month period. The feces contaminate the fields with pathogenic bacterial that may pose human health risks.



There are also problems with holes made by ground squirrels which have caused 25 students and three staff to be injured in 2008-09. At the school in Riverside, inter-school sports events may be discontinued due to the unevenness of the field that is felt to be too unsafe for student athletes.

**STAFF RECOMMENDATION:**

- Staff recommends that the Subcommittee hold off on action on the Governor's new capital outlay proposals for the State Special Schools until after May Revise.
- Per the LAO's recommendation, staff also recommends that the Department of Finance and the Department of Education estimate the costs for the health and safety components of each of the projects and present these revised estimates to the Subcommittee at May Revise.

**OUTCOME:**

### **ISSUE 3. State Special Schools -- Capital Outlay – DOF April Letter Funding Reappropriations (6110-490) (Consent)**

**DESCRIPTION:** The Department of Finance April Letter requests that a new budget item be added to the 2009-10 Budget Act to reflect the reappropriation of the unencumbered balances of the bond funded appropriations for three capital outlay projects at the California School for the Deaf - Riverside.

**DOF APRIL LETTER REQUEST:** Pursuant to Budget Letter 08-33 last December, state departments were directed to suspend any projects that require cash disbursement from Pooled Money Investment Account loans. In order to comply with this budget letter, the California Department of Education (CDE) suspended project activities for three lease-revenue bond funded projects at the State Special School in Riverside. These projects were all authorized in previous state budgets. As a result of suspension, implementation of these projects was delayed in 2008-09 and it is now necessary to reappropriate the unexpended fund balances for these three projects so they can continue in 2009-10. The DOF April Letter request is included below.

**Addition of Budget Bill Item 6110-490, Capital Outlay, Department of Education** --It is requested that Item 6110-490 be added to reappropriate the unencumbered balances of the bond funded appropriations for three Department of Education projects at the California School for the Deaf Riverside. Funding for these projects was originally appropriated in the Budget Acts of 2005, 2006, 2007, and 2008. This request will increase the budget authority for the three projects as follows:

- **\$10,765,000** for Phase 1 - Career and Technical Education Complex and Service Yard Construction and Equipment.
- **\$3,729,000** for Phase 2 - Career and Technical Education Complex and Service Yard Construction.
- **\$22,567,000** for a New Gymnasium and Pool Center – Construction and Equipment.

**ACTION ITEM: STAFF RECOMMENDATION (CONSENT):** Staff recommends approval of the DOF April Letter request to allow reappropriation of funds for three capital outlay projects at the School for the Deaf –Riverside. These bond funded projects were approved in previous state budgets. No issues have been raised for any of these items.

**OUTCOME:**

**APPROVE THREE REAPPROPRIATION ITEMS. (Vote: 3-0)**

# SUBCOMMITTEE NO. 1 on Education



**Subcommittee No. 1**  
**Chair, Gloria Romero**  
**Member, Bob Huff**  
**Member, Carol Liu**

**Thursday, May 7, 2009**  
**9:30 a.m.**  
**State Capitol, Room 3191**

## **PART B – HIGER EDUCATION**

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## **I. Overall Enrollment Levels Specified in the Budget Act.**

Neither the 2008-09 nor the adopted 2009-10 Budget Act provides any augmentations to specifically support enrollment growth at the University of California (UC) or the California State University (CSU) and instead contains General Fund budget reductions.

UC and CSU were given latitude in the current year regarding the allocation of budget reductions and staff expects this practice to continue for 2009-10.

At present, the 2009-10 Budget Act, as adopted by the Legislature in February 2009, specifies that the Legislature expects the University of California to enroll 198,520 state-supported full-time equivalent students (FTES) and the California State University to enroll 342,893 FTES. These are the same enrollment levels that were budgeted for 2007-08, which, as illustrated on the following pages, are far below current-year or budget-year enrollment expectations.

Given the uncertainty about how the universities were going to address enrollment levels, the 2008-09 Budget Act included the following language:

"The University of California (and California State University) shall report to the Legislature by March 15, 2009, on whether it has met its 2008-09 academic year enrollment goal(s)."

Question for the Committee: Should the Budget Act include specific FTES "targets" or simply require the UC and CSU to report to the Legislature on whether it has met its 2009-10 academic year enrollment goals?

*Segments' Plans for Enrollment in 2009-10:*

- ***University of California.*** UC Regents adopted a plan in January to reduce enrollment of new California resident freshmen by a total of 2,300 FTES. This would represent a 6 percent reduction from the size of the 2008-09 freshman class. The plan would increase enrollment of community college transfer students by 500 FTE students (a 3 percent increase) and maintain the same number of graduate students.
- ***California State University.*** CSU Trustees adopted an enrollment plan in November with the goal of reducing enrollment in the budget year to the level budgeted in 2007-08. This would reduce the enrollment level by approximately 3 percent to 4 percent, compared to 2008-09. This would mainly affect incoming undergraduate and graduate students.

## Enrollment at University of California (UC) and California State University (CSU)

### *Full-Time Equivalent Students*

	2007-08		2008-09 Estimate	2009-10	
	Budgeted	Actual		Governor's Proposal <sup>a</sup>	Segments' Plans
UC	198,455	203,906	209,816	198,669	210,816
CSU	342,893	353,915	355,685 <sup>b</sup>	343,233	342,893

<sup>a</sup> Governor's budgeted levels reflect 2007-08 budgeted levels plus a proposed small increase in health sciences enrollment at both segments.

<sup>b</sup> Legislative Analyst's Office estimate.

### **LAO Recommendation:**

The LAO recommends that the Legislature adopt specific 2009-10 enrollment targets for UC and CSU in order to clarify the state's goals for enrollment, set expectations for the segments, and provide a clear enrollment base to work from in subsequent years. Specifically, the lack of budgeted enrollment levels in the 2008-09 budget creates confusion about how much enrollment the state funded in the current year.

### **Action Item: Staff Recommendation**

However, staff disagrees with the LAO and recommends that the committee delete all references to enrollment targets. Given the confusion that surrounds this issue, staff recommends that, once the state is in a fiscal position to provide enrollment growth funding, this issue be revisited and UC and CSU's enrollment numbers be rebenchmarked to account for the changes that have occurred. To implement this recommendation, staff recommends that the following Budget Bill Language be adopted:

Replace Provision 10 of Item 6440-001-0001, as follows:

*"The University of California shall report to the Legislature by March 15, 2010, on whether it has met its 2009-10 academic year enrollment goal(s)."*

Replace Provision 6 of Item 6610-001-0001, as follows:

*"The California State University shall report to the Legislature by March 15, 2010, on whether it has met its 2009-10 academic year enrollment goal(s)."*

## **II. Expansion of Program in Medical Education (PRIME).**

As part of the 2009-10 Budget Act adopted by the Legislature in February 2009, funding to support the enrollment of a new PRIME student cohort was deleted "without prejudice."

The Subcommittee is now considering the University of California's request for (1) \$1.46 million to support the next new cohort of 57 PRIME students at the full marginal cost of medical school instruction (\$25,624 per FTES).

Funding for this program traditionally provides an incremental "bump" of approximately \$15,000 per FTES on top of the standard rate that UC receives for each new student. Given that the 2009-10 Budget Act failed to appropriate any additional funds for enrollment growth, UC and the Department of Finance are requesting that the 2009-10 PRIME cohort be funded at the full marginal cost of medical school instruction (over \$25,000 per FTES).

The 2009-10 Budget Act already allocates \$2.025 million to continue supporting the existing PRIME cohorts (totaling 135 FTES from the prior three years.)

Background. The Governor and the Legislature supported the creation of the UC PRIME programs in an effort to address the need for culturally sensitive physician care for an increasingly diverse state. PRIME incorporates specific training and curriculum designed to prepare future practitioners to address disparities that exist in the provision of health care throughout the state, thus seeking to improve the quality of health care available for all Californians. The special training provided to PRIME students ranges from enhancing cultural sensitivities to the use of technology to overcome geographic barriers to quality care. Given that students who enter medical school with an interest in caring for underserved communities are more likely than other students to practice in such communities, the PRIME programs also help address regional health disparities. PRIME programs are operational at all five medical schools and are focused as follows:

- *PRIME-RC (Rural California) at Davis.* Program focuses on telemedicine and a commitment to outreach and rural health care.
- *PRIME-LC (Latino Community) at Irvine.* Emphasizes Latino health issues with training in Spanish language and Latino culture.
- *PRIME at Los Angeles.* Provides opportunities and training related to serving diverse medically-disadvantaged populations.
- *PRIME-HEq (Health Equity) at San Diego.* Focuses on health disparities and minority health problems to help students work toward and contribute to achieving equity in health care delivery.
- *PRIME-US (Urban Underserved) at San Francisco.* Offers students the opportunity to pursue their interests in caring for underserved populations in urban communities.

**Staff recommends** that this issue be held open pending the May Revision.

### **III. Expansion of Nursing Enrollments.**

As part of the 2009-10 Budget Act adopted by the Legislature in February 2009, funding to support the expansion of enrollments in nursing at UC and CSU was deleted "without prejudice." The subcommittee is considering whether to provide an augmentation of \$4.7 million (\$1.1 million at UC and \$3.6 million at CSU) to expand nursing enrollments.

Of the amount proposed, \$1.1 million would be appropriated to the UC for an additional 50 undergraduate (BSN) students and 32 master's level nursing students and 10 doctoral level nursing students. The CSU would use \$3.6 million to educate an additional 340 undergraduates in nursing.

**Background:** There are four types of pre-licensure educational programs: 1) Associate Degree in Nursing (ADN) programs at 2-year colleges, 2) Bachelors of Science in Nursing (BSN) programs at a 4-year university, 3) accelerated nursing programs at two-year colleges for individuals who are already licensed vocational nurses, and 4) entry-level master's (ELM) programs at a university for students that already hold a bachelor's or higher degree in a non-nursing field.

According to the Board of Registered Nursing (BRN), in 2007-08, California had a total of 131 pre-licensure nursing programs: 84 ADN programs, 32 BSN programs, and 15 ELM programs. While there has been an increase in available admission space, nursing programs continue to receive more applicants than programs can accommodate. In 2007-08, according to BRN, 20,402 qualified nursing program applicants (60.7%) were not accepted for admission.

The California Employment Development Department projects that the state will need approximately 240,000 RNs by 2014. According to 2007 estimates by the LAO, the supply of RNs in 2014 will total only about 228,000. Further, California does not appear to be keeping pace with the need for nursing faculty. According to BRN, in 2008 there were 170 vacant faculty positions within nursing education programs. In a 2009 report by the California Postsecondary Education Commission (CPEC), CPEC concluded that "in the absence of continuous legislative and institutional intervention, the demand for services provided by vocational and registered nurses over the next ten years will greatly outpace the supply of nurses anticipated to flow from postsecondary degree programs."

**Staff recommends** that this issue be held open, pending the May Revision.

#### **IV. Capital Outlay.**

As part of the 2009-10 Budget Act adopted by the Legislature in February 2009, \$774 million worth of higher education capital outlay projects funded with Lease-Revenue Bonds were deleted "without prejudice." Additional dollars (\$241 million) were appropriated from prior-year General Obligation Bonds to support 38 projects on UC, CSU and Community College campuses. In all but one case for UC/CSU, the dollars are being used to equip the buildings, thus finishing the projects. However, prior-year General Obligations bonds are being used to start 18 new projects at community colleges, though funding is not available to finish them.

Of the Lease-Revenue Bond (LRB) projects proposed, \$449 million would be appropriated to the UC and \$325 million to the CSU. Given that LRB debt service costs are repaid using General Fund appropriated directly to the university segments, the Community Colleges are excluded from the Administration's LRB proposal because their debt service payments would be deducted from their "share" of Proposition 98, thus putting their traditional education programs at risk.

The Governor's proposal relies heavily on lease-revenue bonds for funding projects at UC and CSU because, without the passage of a new general obligation bond measure, existing General Obligation (GO) bond dollars are essentially exhausted.

The questions before the subcommittee are: What are the pros and cons of using LRB to finance higher education facilities? Is this the best funding mechanism available? How do LRBs compare to General Obligation bonds?

Background. Like GO bonds, LRBs allow the state to borrow money to build facilities for a variety of purposes. The UC and CSU have the authority to issue their own LRB debt financing for projects that will generate revenue (i.e., student housing; parking). The cost of construction (including planning and equipment) is then borrowed from the marketplace using the future revenue stream of the facility as collateral. In the case of the proposal before the Legislature, the Administration proposes to borrow against the future General Fund "revenue stream" that would be appropriated to the university systems. LRB's are subject to legislative appropriation, while GO bonds must be approved first by 2/3 vote of the legislature, followed by a majority of the voting electorate. Further, financing projects with LRBs, is dependent upon the marketplace, but tends to cost slightly more than GO bonds.

#### ***Lease-Revenue Bonds Cannot Be Used for the Segments' Highest-Priority Capital Projects.***

Due to requirements for selling the bonds, lease-revenue bonds are limited to funding new buildings, replacement buildings, additions, or significant renovations. Many of the segments' top priorities—such as seismic upgrades, minor renovations of older buildings, campus infrastructure, capital renewal (upgrades to building systems), and minor capital outlay—cannot be funded with lease-revenue bonds. Older buildings and outdated infrastructure typically represent the greatest safety risks on campuses. Lease-revenue bonds can be used to demolish and replace older buildings, but cannot be used for minor renovations



of the existing structures, which is often more cost efficient. Capital renewal and minor capital outlay are also cost efficient because they maintain existing buildings, extending their useful life. The Governor's 2009-10 proposal for UC and CSU includes two replacement buildings and one extensive renovation, but otherwise proposes new buildings. Meanwhile, seismic renovations, infrastructure projects, and other priority projects in the segments' capital outlay plans remain unfunded.

***DOF Concluded Equipment Cannot Be Funded With Lease-Revenue Bonds.***

As recently as the *2007-08 Budget Act*, lease-revenue bonds were used to cover all phases of higher education projects—including equipment. However, DOF recently told state agencies that it will no longer allow lease-revenue bonds to finance the equipment phase of projects due to requirements in the underwriting process for the bonds.

The Governor proposes using lease-revenue bonds to fund the initial phases of 14 projects at UC and CSU, requiring that additional funds be made available for their equipment phases in subsequent years. The total estimated equipment costs for these 14 projects would be \$32 million. The *2008-09 Budget Act* also used lease-revenue bonds to fund 11 projects at UC and CSU that will require an additional \$18 million for equipment. The UC indicated that some campuses would use gifts or other funds to cover their equipment costs. Since UC and CSU's general obligation bonds are depleted, the state voters would most likely need to approve additional general obligation bonds in order for the state to cover these equipment costs.

The LAO believes that the state should not invest in projects that lack sufficient funding for their completion. The LAO recommends that, should the Legislature approve LRB-funded projects, it require UC and CSU to commit to using nonstate funds for the equipment phases *prior* to appropriating lease-revenue funding for these new projects.

***General Obligation Bonds Provide More Flexibility.***

Relying on lease-revenue bonds to finance higher education capital outlay limits the range of projects which the state can support. In the long run, this financing method promotes costlier growth and replacement projects as opposed to renovations. Further, it also limits the ability of the state to support essential projects including seismic upgrades, campus infrastructure projects, and capital renewal. For these reasons, the LAO believes that, over the long term, the state would need the flexibility of general obligation bonds to continue meeting higher education's capital outlay demands. However, the LAO would note that in the current economic climate, moving projects forward on a short-term basis with LRB may allow the state to take advantage of low construction costs. This shorter-term method was employed by the Legislature in the *2008-09 Budget Act*, whereby the state used LRBs for many UC and CSU projects in lieu of the Governor's original proposal to fund education projects with a new 2008 GO bond measure.

***Related Legislation.***

Related legislation includes Assembly Bill 220 (Brownley) which would place a Kindergarten through University GO bond for school facilities on the next statewide ballot, and Senate Bill 271 (Ducheny) which would place a Higher Education GO bond on the ballot.

**Staff recommends** that this issue be held open pending both the May Revision and the pending policy discussions surrounding placing a GO bond bill on the statewide ballot.

## V. Consent

**Staff recommends** that the following items be approved:

- 1) Item 6440-402 Capital Outlay, University of California. *Authorize Garamendi financing, Per April Finance Letter (Issue 001), Related to the construction of projects on the UC Santa Barbara and UC San Diego campuses.*
- 2) Item 6440-491 Capital Outlay, University of California. *Per April Finance Letter (Issue 001), Reappropriate funds for 14 capital projects (numbered 1-14) due to delay in Pooled Money Investment Board financing.*
- 3) Item 6440-492 Capital Outlay, University of California. *Per April Finance Letter (Issue 001), Extend period of liquidation for 24 capital projects (numbered 1-24) due to delay in Pooled Money Investment Board financing delays.*
- 4) Item 6610-491 Capital Outlay, California State University. *Per April Finance Letter (Issue 001), Reappropriate funds for 24 capital projects (numbered 1-24) due to delay in Pooled Money Investment Board financing.*
- 5) Item 6610-492 Capital Outlay, California State University. *Per April Finance Letter (Issue 001), Extend period of liquidation for 9 capital projects (numbered 1-9) due to delay in Pooled Money Investment Board financing delays.*
- 6) Item 6870-001-0001 State Operations, California Community Colleges. *Per April Finance Letter (Issue 001), Increase reimbursements to reflect interagency agreement with the California Emergency Management Agency. \$400,000*
- 7) Item 6870-001-0001 State Operations, California Community Colleges. *Per April Finance Letter (Issue 004), Increase reimbursements to reflect receipt of additional Workforce Investment Act (WIA) funds from the Employment Development Department (EDD). \$600,000*
- 8) Item 6870-111-0001 Local Assistance, California Community Colleges. *Per April Finance Letter (Issue 003). Increase reimbursements to reflect the receipt of additional funds from the Carl D. Perkins Vocational and Technical Education Act. \$19,546,000*
- 9) Item 6870-111-0001 Local Assistance, California Community Colleges. *Per April Finance Letter (Issue 005). Increase reimbursements to reflect the receipt of continuing WIA funds for use in the nursing program. \$6,000,000*
- 10) Item 6870-111-0001 Local Assistance, California Community Colleges. *Per April Finance Letter (Issue 006). Increase reimbursements and adopt provisional language to reflect the receipt of WIA funds for use in allied health programs. \$2,000,000*

- 11) Item 6870-111-0001 Local Assistance, California Community Colleges. *Per April Finance Letter (Issue 007). Increase reimbursements and adopt provisional language to reflect the receipt of continuing WIA funds for use in programs to train Corpsmen/Paramedics for Nursing careers. \$1,200,000*
- 12) Item 6870-301-6028 Capital Outlay, California Community Colleges. *Per April Finance Letter (Issue 301). Revert authority for preliminary plans and working drawings for the San Diego City College Child Development project at district's request. \$594,000*
- 13) Item 6870-497 Capital Outlay, California Community Colleges. *Per April Finance Letter (Issue 303). Revert project savings from 11 facilities projects. \$13,321,000*
- 14) Item 6870-497 Capital Outlay, California Community Colleges. *Per April Finance Letter (Issue 303). Revert construction and equipment authority for the Santa Barbara City College High Technology Center. \$8,150,000*
- 15) Item 6870-301-6049 Capital Outlay, California Community Colleges. *Per April Finance Letter (Issue 304). Reduce appropriation for Santa Barbara City College High Technology Center by the \$8,150,000, as noted above.. \$22,522,000*
- 16) Item 6610-490 Capital Outlay, California Community Colleges. *Per April Finance Letter (Issue 305), Reappropriate funds for 68 capital projects due to delay in Pooled Money Investment Board financing.*
- 17) Item 6610-491 Capital Outlay, California Community Colleges. *Per April Finance Letter (Issue 302), Extend liquidation period for two years for 49 capital projects due to delay in Pooled Money Investment Board financing.*
- 18) Item 6870-493 Reappropriation, California Community Colleges. *Per April Finance Letter (Issue 002). Reappropriate and adopt accompanying provisional language related to federal Department of Labor funds for the Logistics Program. \$100,000*

*Senate Budget and Fiscal Review—Denise Moreno Ducheny, Chair*  
**SUBCOMMITTEE NO. 1 on Education**



**Subcommittee No. 1**  
**Chair, Gloria Romero**  
**Member, Bob Huff**  
**Member, Carol Liu**

**Thursday, May 14 2009**

**Upon Adjournment of Senate Governmental Organization Committee**

**State Capitol, Room 3191**

**PART A – HIGHER EDUCATION**

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	• Decentralization of Cal Grant Programs.....	<b>2</b>
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	<b>Public Comment</b>	

## **I. Decentralization of Cal Grant Programs**

As part of his 2009-10 Budget, the Governor proposed decentralizing financial aid programs administered by the California Student Aid Commission (CSAC) and granting authority to the public higher education segments to administer the programs directly. Specifically, the University of California (UC), the California State University (CSU) and the California Community Colleges (CCC) would administer Cal Grant entitlement awards for students attending the respective institutions. The Chancellor's Office of the CCC would administer competitive awards for students at all segments and entitlement awards for students attending private institutions.

As part of the 2009-10 Budget Act adopted by the Legislature in February 2009, the monetary savings and statutory changes associated with this proposal were removed from the Budget Act "without prejudice". Thus, the subcommittee is now considering the proposal in its original form. The Governor estimates that decentralizing Cal Grants – coupled with consolidating the operations of the CSAC and California Postsecondary Education Commission (CPEC) – will result in monetary savings of \$2 million in the first year and approximately \$4 million annually thereafter. While these savings are minimal, the potential for increased student access and service warrants further discussion of the proposal.

### **A. Background.**

The California Student Aid Commission (CSAC) administers a variety of student financial aid grant and loan programs, including several different Cal Grant programs. Cal Grants provide for tuition and fees up a maximum of \$9,708 per year (for students attending private institutions) for four years. An additional annual stipend of \$1,551 is available for Cal Grant B recipients. The Cal Grant programs provide awards to needy and academically eligible students and include:

- 1) Cal Grant A & B 'entitlement' programs for graduating high school seniors and recent graduates.
- 2) Cal Grant A & B 'competitive' programs for students who begin college more than a year after graduating from high school.
- 3) Cal Grant C for students attending occupational or vocational programs of at least four months in duration.

For 2008-09, an estimated 277,000 Cal Grant new and renewal awards were offered to students. For 2008-09, CSAC estimates that the General Fund will provide approximately \$880 million in support for the Cal Grant programs.

The Governor's proposal does not mark the first time the issue of decentralizing state financial aid programs has come before the Legislature. In 2002, the Legislature adopted supplemental report language in the Budget Act directing the CPEC to convene a task force to examine alternative delivery systems for the state's Cal Grant programs. CPEC submitted

a report on the task force's recommendations in 2003. Among the main recommendations from the task force were:

- The state should undertake a transition toward a campus-based, decentralized model for the delivery of Cal Grant awards, one that is more consistent with the federal student aid delivery system.
- CSAC should convene a task force to develop a new definition of and methodology for calculating the Cal Grant high school grade point average that is more commonly available from high schools and more readily used by colleges.
- The state needs to obtain complete and accurate information concerning the true costs of both the current Cal Grant delivery system as well as implementing the alternative decentralized model recommended.

Following submission of the report in 2003, Assembly Bill 1323 (Jackson), was introduced to implement the recommendations. The Assembly Higher Education Committee passed the bill unanimously, but the bill failed passage in the Assembly Appropriations Committee.

## **II. Discussion**

With the exception of the CSAC, the concept of decentralizing Cal Grants has been universally embraced by the higher education systems.

CSAC believes that the decentralization proposal (A) fails to demonstrate how students benefit from a one-stop shop system of financial aid; (B) will adversely impact low-income and underrepresented students; and (C) will not save money.

**A.** The following arguments are offered by the Legislative Analyst, illustrating how students may benefit from a one-stop financial aid "shop":

### ***Current Process Is Fragmented.***

From the student's perspective, the current financial aid process is fragmented and often confusing. Students may have to submit information to the CSAC office in addition to their campus financial aid office. They receive correspondence from CSAC, which sometimes duplicates information they have already received from the campus office, and sometimes contradicts it, when the campus communication is based on new information. In addition, a student's contact with the local financial aid office is usually face-to-face, with an individual counselor, whereas communication with CSAC is through a web application, mail, e-mail, or call center.

### ***Campuses Already Provide Most Financial Aid.***

Most student financial aid is awarded to students through campus financial aid offices based on a common, web-based application form (the Free Application for Federal Student Aid, or FAFSA). The federal Department of Education uses information from

the FAFSA (including family income and assets, and number of children in college) to determine the expected family contribution (EFC). Campus financial aid officers use the EFC, in conjunction with information about the costs of attending their institutions—including books and living expenses—to determine each student’s financial need. They then “package” various types of financial aid to meet as much of the financial need as possible. Campus financial aid officers make awards for most categories of need-based gift aid. They award Pell grants based on federal eligibility criteria, and invoice the federal government for just-in-time payment through electronic funds transfer. They award institutional funds, following campus or system policies and guidelines. The main exception is Cal Grants. Financial aid officers can estimate the amount of funding students are likely to receive from the Cal Grant entitlement program, but they are not authorized to approve the awards, thus making it difficult for them to provide students with a comprehensive financial aid package. Staff notes that, shifting students from a statewide program to one that is campus-based may serve to alleviate student "sticker shock" by allowing campus financial aid officers to present a complete financial aid package to students upon admission.

**B.** The California Education Round Table (which represents all segments of higher education) offers the following argument in response to CSAC's concern that the proposal puts low-income and disadvantaged students at risk:

The higher education institutions in fact believe that these populations of students will *benefit* from a campus-based financial aid system. Specifically, under a decentralized model, students and families who traditionally have less experience navigating bureaucratic systems, would be provided a single, direct link to financial aid information. Further, allowing campuses to notify students of admission decisions and *full* financial aid information as early as January, means that students will have a complete financial aid package upon which to assess their enrollment decisions.

**C.** The following comments are offered by both the Legislative Analyst and the California Education Roundtable in response to CSAC's assertion that the proposal will not save any money:

***Annual Savings Estimated at \$2 Million.***

The decentralization component of the restructuring proposal accounts for about half the savings anticipated by the administration. The Department of Finance (DOF) estimates that approximately 20 CSAC employees are performing tasks that are largely duplicative of work performed in higher education campus financial aid offices. Eliminating these positions, and another 10 support positions (such as accounting, personnel and business services), would save an estimated \$2 million annually.

***Cost Savings Associated with Decentralization Unclear.***

Campus financial aid offices are already performing most of the tasks required to identify eligible students and make grant awards. They have systems in place to estimate Cal Grant eligibility as part of their financial aid packaging. They are also responsible for



verifying student eligibility before disbursing grants. In some areas, decentralization will reduce the workload of financial aid offices and reduce administration costs. From the campuses' perspective, the Cal Grant award process is duplicative and labor-intensive, and often creates additional work for financial aid counselors to resolve conflicting information. Thus, by reducing redundancy, decentralization of Cal Grants may result in monetary savings.

However, there are some tasks that could create new costs for the campuses. Currently, CSAC collects verification of GPA and high school graduation centrally. Many high schools transmit the required data electronically for all students. Some, however, do not have the capacity to transmit the data, and must provide it manually or leave it up to students to submit. Students are ultimately responsible for ensuring that their information is submitted. The CSAC keeps track of submissions, and notifies students of missing or incomplete information. Most campus financial aid offices (and segment offices) do not have systems in place to assume tracking of these data, and developing the systems could be costly.

***Options to Avoid the Higher Costs.***

Part of the reason it may be costly to develop these systems is that the Cal Grant requirements do not match those for other financial aid or academic programs. The LAO offers the following recommendations for achieving cost savings:

- Aligning the statutory requirements of the Cal Grant program with similar requirements for federal financial aid programs. For example, the state could eliminate the use of income and asset ceilings to determine eligibility, and instead use the federal needs methodology.
- Eliminating some of the Cal Grant requirements. For example, there is no added value in GPA verification for students attending UC, where the minimum GPA for admission (3.0) matches or exceeds the minimum GPA for Cal Grant eligibility (2.0 to 3.0, depending on the program). Likewise, Cal Grant eligibility criteria include income and asset ceilings, while most programs rely instead on the more comprehensive federal need analysis.
- Leaving some centralized functions at the state level (whether or not the Legislature consolidates CSAC with CPEC).

### **III. Implementation Challenges.**

Staff notes that, despite the above-noted arguments in favor of decentralization, the Administration's proposal is not without implementation challenges.

#### **A. Community College GPA**

Specifically, under the Governor's proposal, community colleges would be required to assess eligibility, even though there is no requirement for students to submit high school transcripts. Thus, local colleges will have no basis for fully determining student eligibility in the absence of a verified grade point average (GPA). This issue only applies to the CCC's, as all other higher education institutions collect high school GPA information.

#### **B. CCC Chancellor's Office Administration of Specified Program Components.**

As proposed by the Governor, the Community Colleges Chancellor's Office would be responsible for administering the Competitive Cal Grant proposal, as well as dispersing grants to students at private colleges and universities. The administration did not provide a rationale for its proposal to administer competitive and private college grants through the CCC Chancellor's Office, although performing these functions centrally appears to make sense. Performing these two tasks will likely present a challenge for the Community College Chancellor's Office. Furthermore, it remains unclear if "funneling" Cal Grant dollars through the CCC's to private college students is truly necessary to avoid legal issues associated with gifting public funds.

#### **C. Retaining Limited Centralized Functions.**

Some functions would need to remain centralized, presumably at the CSAC or a successor agency. Financial aid functions, such as administering specialized programs and conducting compliance audits, are best suited for a state-level entity. Another important function is tracking remaining eligibility for students. Because Cal Grants are portable, and can be moved from one institution to another, students may use a portion of their eligibility at several different institutions. Currently, CSAC tracks utilization, and campus financial aid offices—as well as grant recipients—can access this information on a web-based system. To maintain portability of Cal Grants and ensure that students do not exceed their maximum utilization periods, it would be important to maintain centralized tracking of utilization and remaining eligibility.

#### **D. Distribution of Cal Grant Dollars to Public Campuses.**

Under the administration's proposal, Cal Grant funds would be appropriated to the public higher education segments—and to the CCC Chancellor's Office for private institutions and competitive awards—based on current utilization patterns. (The Director of Finance could transfer unexpended funds among institutions.) While this model could accomplish some of the goals of decentralization, federal Pell Grant distribution model may provide important advantages. In that model, campuses make awards to students directly, and the federal government promptly transfers funds to the campuses based on invoices for approved awards. This process bypasses the system offices, and avoids extensive

payment and reconciliation cycles required under the current Cal Grant model. It would keep General Fund cash in the State Treasury until it is needed, and minimize overpayments and underpayments to the campuses. Another benefit of this model is that it would maintain a clearer distinction between state Cal Grant funds and institutional aid funds. It would also facilitate tracking of individual student utilization and remaining eligibility across institutions. The LAO notes however, that implementation of such a system would likely take a year or more.

### **LAO Recommendation.**

The LAO recommendation mirror several of the recommendations from a 2002 CPEC task force report on decentralization. Specifically, the LAO recommends that the Legislature approve the Governor's proposal to decentralize Cal Grant administration, with some modifications.

- Permit campus financial aid offices to approve Cal Grant entitlement awards for eligible students.
- Establish a just-in-time funding model for Cal Grants parallel to the federal grant distribution model.
- Maintain several functions in CSAC or its successor organization, including tracking of utilization and remaining eligibility, administration of competitive and private college grants, and administration of specialized aid programs. Do not transfer statewide functions unrelated to community college students to the CCC Chancellor's office.
- Consider statutory changes in requirements for Cal Grants to streamline administration of awards while preserving the intent of the financial aid programs. These could include changes to the GPA verification requirement and income and asset ceilings.

### **Action Item - Staff Recommendation.**

Given the benefits to students of a campus-based financial aid system, staff recommends that the subcommittee adopt "placeholder" trailer bill language related to this proposal.

This "placeholder" language is to be based on the Administration's proposal, but take into account the LAO's suggestions related to: (1) using a federal Pell Grant funding model; (2) retaining some core functions at a centralized level; and (3) developing a better system for the administration of competitive Cal Grants and grants to private college students.

**OUTCOME: Staff recommendation adopted (3-0), with understanding that issue would be contained in a stand alone budget trailer bill.**

## **II. Consolidation of CSAC and CPEC.**

The Governor's proposal would eliminate both the existing CSAC and the existing CPEC and in their place establish (1) a new executive branch department to administer financial aid and outreach programs; and (2) an advisory board, with a composition and appointment process similar to those of the existing CPEC—but it would have no formal powers.

### **A. Establishment of New Executive Branch Higher Education Entity.**

Although there may be some specific concerns about the Governor's reorganization proposal (as noted later in the agenda), staff notes that it may make sense to move the CSAC's duties into an executive branch department. CSAC's primary responsibility is to administer programs governed by statute. While CSAC also recommends changes to financial aid programs, most of its attention has been focused on program implementation and organizational issues, rather than policy matters. Such implementation of laws is fundamentally a responsibility of the executive branch. Most of CSAC's functions are ministerial and could appropriately be performed in an executive branch department. Further, the LAO notes that eliminating the independent governing board that oversees financial aid administration could resolve longstanding conflicts between it and the board of CSAC's auxiliary organization (EdFUND).

### **B. Establishment of Accompanying Advisory Board.**

The Governor's proposal would transfer CPEC's functions to the new executive branch department described above, under the supervision of the Secretary of Education. An advisory board would provide recommendations to the department director (and to the Governor, Legislature, other governmental officials, and institutions of postsecondary education), but would have no direct authority to perform policy analysis, planning, or coordination of higher education independent from the executive branch. Given that the advisory board would have no formal powers, it would be up to the director, who is answerable to the Governor and not bound by the recommendations of the advisory board, to carry out the department's functions.

In recent years, there have been increasing concerns about CPEC's ability to effectively perform its responsibilities. In a 2003 white paper on this topic commissioned by the Legislature, a working group (convened by the Office of the Legislative Analyst) identified three reasons for this: (1) The scope of CPEC's statutory responsibilities is varied and broad; (2) CPEC's responsibilities are not matched to its resources; and (3) A tension exists between CPEC's coordination/advocacy responsibilities and its role as an independent fiscal and policy watchdog. Other factors, such as the composition of the commission, may also contribute to its underperformance.

Reflecting these concerns, support for CPEC has been declining among policymakers. In 2002-03, Governor Gray Davis' May Revision budget proposal sought to eliminate nearly all funding for CPEC. The Legislature rejected the proposal, but reduced CPEC's funding by one-third. In 2005, the Governor supported the California Performance Review proposal to eliminate CPEC and merge its functions into an executive office. In 2008, Senate

amendments to the proposed budget would have begun a phase-out of the organization over three years.

Recent legislation sought to address some of these concerns. Chapter 514, Statutes of 2008 (SB 361, Scott), directs CPEC to give priority to campus and program reviews and recommendations, implementation of federal programs, and data management responsibilities when all functions and tasks cannot be performed within budgeted resources.

### **C. Challenges.**

#### **Policy Analysis Role Requires Independence.**

An independent governing board is useful when there is a need to protect an agency's work from undue political influence, or when the primary audience for an agency's work products includes both the legislative and executive branches. The CPEC meets both of these conditions. In the LAO's view, the interests of the state are best served when the Governor and Legislature can base their policy decisions on rigorous, unbiased analysis supported by thorough research and accurate data. If higher education policy analysis were conducted in an agency under executive control, the Legislature could reasonably be concerned about partisan or ideological bias. This could intensify existing concerns about the quality of CPEC's work products. Furthermore, if the functions of CSAC and CPEC were consolidated into a single organization, there could be a perceived conflict of interest in at least some of CPEC's analytical work. It is important to note that a policy body in the executive hierarchy would also not be free to critically appraise the administration's budget and policy proposals, further diminishing its usefulness to the Legislature.

#### **Development of an Advisory Board.**

The LAO raises questions related to the advisory board, by specifically asking why a strictly advisory body with no actual authority should be statutorily created. Instead, the LAO finds it would be a better management practice for the director to regularly convene one or more advisory panels representing the higher education segments and other stakeholders for regular consultation about entity activities. If it wishes to ensure that this takes place, the Legislature could require the director to convene and consult with such panels. This could be done without creating a formal advisory board in statute.

#### **Exclusion of Private Postsecondary and Vocational Schools.**

The administration's restructuring proposal does not encompass the regulation of private postsecondary and vocational schools. According to the LAO, the Governor's proposal, provides an opportunity for the Legislature to consider a broader reform that could include this function. Should the Legislature approve a new regulatory framework for these institutions, it may wish to reconsider where best to place the regulatory functions. Currently, the Bureau for Private Postsecondary and Vocational Education (BPPVE) is in the Department of Consumer Affairs, emphasizing the consumer protection aspect of private postsecondary school regulation. The LAO notes that, placing it in a higher

education agency could instead highlight the role of private postsecondary institutions in the state's system of higher education. In addition, there may be some overlap between the audit and data management activities required to regulate private postsecondary schools and similar activities required to monitor implementation of financial aid programs at public and private institutions (including many private postsecondary schools).

**LAO Recommendation.**

The LAO recommends that the Legislature accept most elements of the Administration's restructuring proposal, as it relates to reconfiguring financial aid administration and oversight into the executive branch.

However, the LAO recommends against create a statutory advisory body. Instead, the LAO would prefer that the director of the new department convene one or more advisory panels representing the higher education segments and other stakeholders for regular consultation about agency activities.

Further, in order to maintain policy independence, the LAO recommends the Legislature reject the portion of the Governor's proposal related to the consolidation of CPEC. The LAO believes that other changes could preserve CPEC's independence and address specific problems and concerns about the agency's performance. Changes in structure and duties, for example, could address previously identified deficiencies.

**Action Item - Staff Recommendation.**

Staff recommends that the committee adopt "placeholder" trailer bill language based on the Administration's overall consolidation scheme, but continue addressing unresolved issues.

Based on the Administration's proposal, this "placeholder" language will: (1) take into account the LAO's suggestions related to preserving the independence of policy recommendations, (2) attempt to include the BPPVE; (2) examine options for where the new organization is to be housed; and (3) consider expanded membership on the consolidated organization's governing board.

**OUTCOME: Staff recommendation adopted (3-0), with understanding that issue would be contained in a stand alone budget trailer bill.**

## CONSENT

The following items are proposed for consent:

- 1) Item 6440-496            Capital Outlay, University of California. *Revert funding for San Diego Structural and Materials Engineering Building, per May Finance Letter (Issue 001).*
- 2) Item 6870-497            Capital Outlay, California Community Colleges. *Revert funding for College of the Redwoods Science/Humanities Building, per April Finance Letter (Issue 303).*
- 3) Item 6870-301-6049    Capital Outlay, California Community Colleges. *Appropriate funds for both working drawings and construction phases of College of the Redwoods Science/Humanities Building, per April Finance Letter (Issue 306).*
- 4) Item 7980-001-0001    Support, California Student Aid Commission. *Amend provisional language, per April Finance Letter (Issue 007), to clarify Commission's ability to conduct compliance reviews of specialized grant programs.*

**OUTCOME: Consent agenda adopted (3-0).**