

**ASSEMBLY BUDGET SUBCOMMITTEE NO. 2  
ON EDUCATION FINANCE****Assembly Member Wilmer Amina Carter, Chair****TUESDAY, APRIL 21, 2009  
STATE CAPITOL, ROOM 444  
9:00 AM**

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**ITEMS TO BE HEARD**

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<b>6870</b>	<b>CALIFORNIA COMMUNITY COLLEGES</b>	
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## ITEMS TO BE HEARD

### **6110 DEPARTMENT OF EDUCATION/6870 CALIFORNIA COMMUNITY COLLEGES**

#### **ISSUE 1: BACKGROUND ON EDUCATION MANDATES**

The Department of Finance will give a brief presentation on the history of mandates and the mandate claim process. This issue provides background and context for the presentation from the Department of Finance.

#### **PANELISTS**

- Department of Finance
- Legislative Analyst's Office

#### **BACKGROUND**

The concept of state reimbursement to local agencies and school districts for state mandated activities originated with the Property Tax Relief Act of 1972 (Senate Bill 90, Chapter 1406, Statutes of 1972), known as SB 90. The primary purpose of the Act was to limit the ability of local agencies and school districts to levy taxes. To offset these limitations, the Legislature declared its intent to reimburse local agencies and school districts for the costs of new programs or increased levels of service mandated by state government. The Legislature authorized the State Board of Control to hear and decide upon claims requesting reimbursement for costs mandated by the state.

In 1979, voters approved Proposition 4, which added article XIII B to the California Constitution and superseded the SB 90 legislation. Article XIII B imposed appropriation limits on the tax proceeds of both state and local governments. Section 6 of article XIII B requires that whenever the Legislature or any state agency mandates a new program or higher level of service on local government, the state must provide a subvention of funds to reimburse the associated costs, with certain exceptions.

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

**Commission on State Mandates.** In 1984, the state created the Commission on State Mandates (CSM). CSM is a quasi-judicial body whose primary responsibility is to hear and decide test claims that allege that the Legislature or a state agency imposed a reimbursable state mandate program upon local government. Originally, the CSM was composed of five members: the State Controller, State Treasurer, Director of the Department of Finance, Director of the Office of Planning and Research, and a public member, appointed by the Governor, with experience in public finance. Effective

January 1, 1997, two local elected official positions were added to the Commission. The public member and the two local elected officials are subject to Senate confirmation and serve for a term of four-years, subject to reappointment.

**CSM process.** The Commission's decisions on mandate claims are based primarily on case law and written briefs submitted by state agencies and school districts. This structure was intended to create a fair process for both the state and local governments to establish a clear record documenting CSM's decisions. The process, however, can be cumbersome and take several years before a claim is settled. In the meantime, districts are incurring costs and guessing what may be reimbursed while costs at the state level build up.

Several attempts have been made to reform the CSM process. The most recent was through AB 1222 (Chapter 329, Statutes of 2007). This bill established the use of a reasonable reimbursement methodology (RRM) as a way of simplifying mandate claims based on a representative sample of local cost data. The underlying concept of the RRM is to develop an average cost estimate that establishes a fair, but approximate, reimbursement level for state-mandated local programs. This is a relatively new process that is still being tested.

Even with the new RRM, problems remain with the CSM process:

- ◆ ***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 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. For example, reimbursements for performing collective bargaining requirements range from \$4 to \$43 per pupil among districts—a greater than tenfold difference. Regarding the graduation requirement mandate, claims range from \$10 to \$163 per pupil.
- ◆ ***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 mandate liabilities for ineffective implementation of a mandated activity.

**Mandate costs deferred in most years.** Starting in 2001-02, the state has deferred the cost of most education mandates but still required LEAs to perform the mandated activity by providing a nominal amount of money (\$1,000) for each activity. In good times, the state has been able to provide funding for prior year mandate costs. For example the *2006-07 Budget Act* included more than \$800 million in one-time funds for state mandates which retired almost all district and college claims (plus interest) through 2004-05. The state has not however provided ongoing funding for mandates. As such, the state continues to add to the "education credit card".

**Number of education mandates.** The state currently requires LEAs to perform approximately 45 mandated activities, the cost of which are either suspended or deferred each year. The LAO estimates that the total cost of these unpaid mandates will exceed \$1 billion in 2008–09 (with annual ongoing costs of roughly \$190 million).

### Total Outstanding Mandate Obligations<sup>a</sup>

(In Millions)

Year	2006-07	2007-08	2008-09
K-12 mandates <sup>b</sup>	\$424	\$583	\$746
California Community College mandates	90	115	300
<b>Totals</b>	<b>\$514</b>	<b>\$698</b>	<b>\$1,046</b>

<sup>a</sup> As of June 30<sup>th</sup> of each fiscal year.

<sup>b</sup> Costs for the Stull Act, high school science graduation, and California High School Exit Exam mandates could be substantially higher once various outstanding issues have been resolved.

In addition to these mandates, there are four new mandates (pupil safety notices, charter schools, missing children and enrollment fees) that are not recognized in the budget. Total costs through 2007–08 for these mandates are \$344,000.

There are also several mandates that are still pending with the CSM. The pending mandate with the potentially greatest cost involves state high school Science graduation requirements. The LAO estimates the state would face annual ongoing mandate costs of roughly \$200 million and they estimate retroactive costs would total approximately \$2 billion.

**Recent court decision regarding deferral of mandates.** In December 2008, a San Diego Superior Court judge ruled that the Legislature's practice of budgeting \$1,000 for certain mandates in order to defer payment on the total claim, is unconstitutional. The opinion was in response to a lawsuit filed in 2007 by five school districts and the California School Boards Association against the Department of Finance and State Controller seeking payment of past mandate claims and an end to future deferrals.

While constitutional separation of powers led to the court not *forcing* the Legislature to make budgetary appropriations, its decision increases pressure on the state to pay the annual ongoing cost of education mandates.

**Court of Appeal decision challenges states ability to overturn or reconsider its final decisions.** On March 9th, 2009 the Court of Appeal ruled on a challenge to a lawsuit regarding the legislature's approval of AB 138 (Chapter 72, Statutes 2005), a budget trailer bill that:

1. Directed CSM 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 CSM *should not* find a reimbursable mandate in cases when a law or regulation is "necessary to implement" or "reasonably within the scope of" a voter-approved measure.

The court ruled that the Legislature's direction to CSM 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.

**Pending Legislation.** Several bills were introduced this session to address mandate funding and reform.

- ◆ **SB 540 (Romero).** The bill states legislative intent to enact legislation 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 also requires state reimbursement for school mandates to be paid over an unspecified period of time. The bill is pending in the Senate Education Committee.
- ◆ **AB 548 (Krekorian).** This bill deletes the option that permits the Controller, in specified circumstances, to begin an audit of a reimbursement claim for actual costs within three years of the initial payment of a claim rather than the date on which the claim is filed or last amended. This bill is pending action in the Assembly Local Government Committee.
- ◆ **AB 661 (Torlakson).** This bill requires the Superintendent of Public Instruction to revise the special education funding model to provide for a permanent increase in funding and appropriates specified amounts from the General Fund for this and

other purposes, as stipulated in a pending mandate claim settlement agreement. This bill is pending in the Assembly Appropriations Committee.

- ◆ **AB 844 (Villines).** According to the sponsor, Small School Districts Association, the bill, as proposed to be amended, provides that new school district mandates are not operative until costs are known and a claiming process is developed; would create a review process for current school district mandates; would provide more flexibility in complying with mandates; and would allow non-compliance for two years for non-health and safety mandates. This bill is pending action in the Assembly Education Committee.

## QUESTIONS

Questions for DOF or LAO:

- 1) What is the total number of K-14 education mandates that have been approved by the Commission on State Mandates? How many of these have been included in the 2009-10 Budget Act? How many are pending? What is the total cost associated with all CSM approved mandates?
- 2) What is the status of both of the court decisions discussed in the agenda, are either of the cases being challenged? What is the impact of these decisions on the Legislature?

**ISSUE 2: GOVERNOR'S 2009-10 BUDGET PROPOSAL: SUSPENSION OF EDUCATION MANDATES**

When the Legislature passed the 2009-10 Budget Act in February, the Act did not include the Administration's proposal to suspend all education mandates and instead continued the practice of deferring the cost of these mandates. This was done so that the issues related to funding mandates could be heard through the Subcommittee process.

The issue for the Subcommittee to consider is the Governor's 2009-10 budget proposal to suspend all but three education mandates.

**PANELISTS**

- Department of Finance
- Legislative Analyst's Office
- Public Comment

**BACKGROUND**

The Governor's 2009–10 budget proposed to suspend all but three K–14 mandates through 2010-11. [*The Governor's budget also did not recognize four new mandates approved by the Commission on State Mandates (CSM) in 2008.*] Suspending mandates relieves the state from the obligation to pay for required activities and also relieves local schools from performing the activities. According to the LAO, the Governor's proposed suspensions would reduce associated 2009–10 claims by roughly \$200 million.

The three mandates that the Governor proposes to fund in the 2009-10 Budget Act are the California High School Exit Exam (CAHSEE), Interdistrict transfer and Intradistrict transfer. According to the Department of Finance, rationale for funding the CAHSEE mandate is that it satisfies an annual student testing requirement under NCLB and continued funding would ensure compliance with federal accountability requirements. The Administration's rationale for funding Inter/Intra District Transfer policies is that these policies also satisfy federal requirements, specifically with regard to school choice for students who attend schools in Program Improvement, but they are also consistent with an Administration priority to ensure school choice options for all students and parents. According to the Department of Finance, the cost of the CAHSEE mandate is \$7.070 million and the Inter/Intra District mandate is \$6.252 million.

**LAO response to the Governor's proposal.** According to the LAO, by suspending most mandate requirements (and paying for the few remaining mandates), the Governor's proposal relieves cost pressures and responds to the legal risk associated with the latest court ruling regarding suspension of education mandates.

While the Governor's plan reduces state mandate payments in the short-term, the LAO believes his plan misses an opportunity to substantively address flawed mandates in the long-term.

According to the LAO, suspending mandates only provides savings in the budget year and does not provide permanent solutions. Given the recent court's ruling, pressure to fund the annual ongoing cost of mandates will persist. The LAO notes that the cost of many mandates can be reduced on a long-term basis with simple amendments to state law.

The LAO also notes that the Governor's proposal does nothing to preserve the state policies that underlie some education mandates. For instance, according to the LAO, while the graduation requirement mandate would not justify its price tag reimbursed using the existing method, the LAO believes 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.

## QUESTIONS

Questions for DOF:

- 1) What was the Administration's rationale for suspending mandates? As we understand, the Administration's primary reasons are to: (1) provide maximum funding flexibility to LEAs and (2) to provide short-term budget savings in order to address the state's budget shortfall.
- 2) Can the Department of Finance clarify what is meant by "suspension"? Is the Administration proposing to suspend all activities associated with the mandated activity or just the portion of the activity that generates the mandated cost?
- 3) Can the Department of Finance clarify the length of the proposed suspension? Is it for a two year period only? What does the Administration propose after two years?
- 4) 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?
- 5) The state currently suspends some education mandates already. Can you give the committee a list of these mandates and discuss why they have been suspended? How will these mandates be handled under the Administration's proposal? Does the Administration have a sense about whether LEAs are continuing to provide mandated services since the state has suspended these mandates?



**ISSUE 3: GOVERNOR'S 2009-10 BUDGET PROPOSAL: BEHAVIORAL INTERVENTION PLAN (BIP) SETTLEMENT**

When the Legislature passed the 2009-10 Budget Act in February, the Act did not include the Administration's proposal to fund the Behavioral Intervention Plan settlement so that the issue could be heard through the subcommittee process.

The issue for the Subcommittee to consider is the Governor's 2009-10 budget proposal to provide \$65 million in the 2009-10 Budget Act pursuant to a settlement agreement related to Behavioral Intervention Plans (BIP) mandate claim.

**PANELISTS**

- Department of Finance
- Legislative Analyst's Office
- Public Comment

**BACKGROUND**

Federal law entitles children with disabilities to a "free and appropriate education" (FAPE) tailored to their unique needs. Toward this end, 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. As part of the IEP process, AB 2586 Hughes, (Chapter 959, Statutes of 1990), sought to regulate the use of behavioral interventions and encourage the use of positive behavioral strategies with special education students. To this end, the law required 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.

When SBE adopted regulations to implement the Hughes legislation, they required districts to conduct one particular type of behavioral assessment—a "functional" assessment—followed by a particular type of behavioral intervention plan (BIP)—a systematic positive BIP—for any special education student exhibiting serious behavior problems that interfered with the implementation of his or her IEP. In addition, the regulations require districts to train staff on these strategies.

In 1994, three school districts filed a claim arguing that BIP-related requirements constituted a reimbursable mandate. In reviewing the claim, CSM staff found that state statute, "on its face, does not impose any reimbursable state mandated activities," however, regulations adopted pursuant to state law do.

**Recent Settlement.** In December 2008, the Governor and the school test claimants (including San Diego Unified School District, Butte County Office of Education and San Joaquin County Office of Education) reached a settlement in the BIP Mandated Cost Claim and lawsuit, thus ending a 14 year long dispute. 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") (collectively "LEAs") for general fund use, contingent on LEA approval.

According to the Department of Finance, 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.
- \$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 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 is contingent on the following:

- 1) By February 28, 2009, 85% of all LEAs (school districts, county offices, and SELPAs) must sign a waiver document; the signatory school districts and county offices must represent at least 92% of statewide ADA. In the document, LEAs waive their rights to contest the settlement and to file any BIP/Hughes Bill mandated cost claims.
- 2) The parties will seek a superior court ruling that the settlement is final and binding on all LEAs in March 2009.
- 3) Legislation must be enacted appropriating the necessary funds and placing the ongoing funding in statute. The current vehicle for the settlement is AB 661 (Torlakson) and the bill is pending action in the Assembly Appropriations Committee.

If any of the above does not happen, the matter will revert to Sacramento Superior Court.

**Legislative Options.** The LAO recommends that the state 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 (per the terms of the settlement).

<b>QUESTIONS</b>
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- 1) What does the Administration estimate the cost of the BIP mandate is to date?
- 2) How much would the state potentially have to pay in prior year claims should the terms of the settlement not be met? What options does the state have for funding the prior year costs? For example, could new federal IDEA funds be used?
- 3) Funding the current terms of this settlement places significant pressure on the General Fund both in the current year and the out years. Given the current fiscal situation, how does the Administration propose the state fund this settlement? Will funding need to be reduced elsewhere in the budget?
- 4) Per the LAO proposal, is it possible to eliminate the BIP state mandate costs without eliminating the behavior plans or behavior services deemed to be appropriate by the IEP team?

**ISSUE 4: LAO EDUCATION MANDATE RECOMMENDATIONS**

The issues for the Subcommittee to consider are the various targeted approaches the Legislative Analyst's Office (LAO) suggests for specific education mandates.

**PANELISTS**

- Legislative Analyst's Office
- Department of Finance
- Public Comment

**BACKGROUND**

Rather than suspend virtually all K-14 mandates in one fell swoop as was proposed by the Governor, the LAO recommends reviewing each mandate on a case-by-case basis. The LAO provides examples of some of the costliest mandates that the Legislature could work to reform.

**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>

**LAO recommends optional funding for many mandated activities.** As demonstrated in the previous graphic, the LAO identifies some mandated activities that the state might want to continue supporting but through optional funding sources (such as a voluntary categorical program). In addition to reducing associated state costs, the LAO believes this approach can be a better method of implementing policy objectives. For example, the existing mandate process can be administratively burdensome for districts. 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. The LAO also argues that tying activities to an optional funding source could improve coordination among education policies. They also argue that since these funding sources are large, most districts will apply and therefore continue to comply with existing mandate requirements.

**Recommendations for K-12 mandates.** Some of the specific K-12 mandates that the LAO proposes for reform are as follows:

- ◆ **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.

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. According to the LAO, reports from several districts suggest that these letters are formalities and do not increase substantive interaction among educators, parents, and students.

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.

**LAO Recommendation.** The LAO recommends 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, 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. 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. The LAO notes, however, that in K–12 education, these evaluations are rarely linked to teacher raises and dismissals. Given that evaluations are not linked to these decisions, justifying the cost of mandating them is difficult.

**LAO recommendation.** 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. 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.

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.

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.

**LAO Recommendation.** 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.

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.

*Significant costs associated with this mandate.* 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, the LAO estimates retroactive costs would total approximately \$2 billion (resulting in part from the formula approved by CSM to be the basis for reimbursement).

**LAO Recommendation (prospectively).** 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. This change would have minimal programmatic impact on districts because districts would still have substantial discretion both to

increase academic requirements beyond the state requirements and require electives. 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).

**LAO Recommendation (retrospectively).** Addressing retroactive costs is more complicated 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 CSM'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.

**Recommendations for California Community Colleges (CCC) mandates.** Some of the specific CCC mandates that the LAO proposes for reform are as follows:

- ◆ **Health Fees/Services Mandate.** California Community Colleges (CCC) provide varying levels of on-campus health services to students. Generally, these 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 contains a 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, but can choose to provide health services even without state reimbursement. The 2008-09 Budget Act had originally provided \$4 million for this mandate, which partially offsets claimants' total costs (roughly \$10 million annually after accounting for offsetting revenues collected from student health fees).

**LAO recommendation.** The LAO recommends 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. Thus, LAO believes that 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 cost associated with the MOE.



- ◆ **Integrated Waste Management Mandate.** AB 75 (Strom-Martin), Chapter 764, Statutes of 1999, 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.

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. CSM found that savings (from the sale of recyclable materials) could not be used to offset districts' cost claims. In March 2007, CIWMB and the Department of Finance sued CSM over this 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.

**LAO recommendation.** Since community college districts had until March 2009 to submit their claims, the statewide cost estimate for this mandate will not be known until this summer. According to CIWMB, it is possible that savings and revenues could fully offset any costs that districts incur. If so, LAO recommends that 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. LAO believes that most colleges, like K-12 schools, would participate in waste-diversion programs.

**Other Existing Mandates.** While the costliest K–14 mandates have been reviewed in this section, the review is far from 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, then the LAO recommends 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.

## QUESTIONS

- 1) How would optional funding sources (such as a voluntary categorical program) work in light of the recent budget action to make all categorical program funding flexible?