

AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 2 ON EDUCATION FINANCE

Assembly Member Wilmer Amina Carter, Chair

TUESDAY, MAY 4, 2010
STATE CAPITOL, ROOM 444
9:00 AM

ITEMS TO BE HEARD

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ITEMS TO BE HEARD**6110 DEPARTMENT OF EDUCATION****ISSUE 1: FEDERAL ENHANCING EDUCATION THROUGH TECHNOLOGY (EETT) FUNDS**

The issues for the Subcommittee to consider are the options for appropriating \$72 million in *one-time* American Recovery and Reinvestment Act (ARRA) EETT funds provided to California in 2009-10 and \$9.4 million in *ongoing* EETT funding provided for 2010-11.

PANELISTS

- Lexi Shankster - Legislative Analyst's Office
- Thomas Todd - Department of Finance
- Carol Bingham - Department of Education

BACKGROUND:

The Enhancing Education Through Technology (EETT) program was established in 2002 under No Child Left Behind (NCLB) to provide funding to Title I schools or schools that could demonstrate “a substantial need for assistance in acquiring or using technology.” According to the US Department of Education (USDOE), the primary goal of the EETT program is to “improve student achievement through the use of technology in elementary and secondary schools.” Local activities include the support of continuing, sustained professional development programs; use of new or existing technologies to improve academic achievement; the acquisition of curricula that integrate technology and are designed to meet challenging state academic standards; the use of technology to increase parent involvement in schools; and the use of technology to collect, manage, and analyze data to enhance teaching and school improvement.

On July 24, 2009, California was notified of the availability of \$72 million in one-time federal ARRA EETT funds. On August 6, 2009 the Superintendent of Public Instruction announced that California had official received these funds. These one-time funds must be expended by September 30, 2011. The ARRA EETT funding was in addition to the \$29 million California received in ongoing EETT funding in 2009-10. The ongoing funds have already been dispersed to districts pursuant to existing law however the \$72 million remains unappropriated.

The Governor’s January budget and April Letter proposal also provide \$9.4 million in ongoing EETT funds in 2010-11. The drop in funding appears to be a signal that the federal program is being phased out.

ARRA EETT Grant Allocations. Consistent with previous federal requirements, *at least 95 percent of the \$72 million* in one-time ARRA EETT funds must be allocated as grants to local education agencies (LEAs) – school districts, county offices of education, and charter schools. Up to five percent of ARRA EETT funds can be used for state administration and state level activities.

The EETT program authorizes both formula grants and competitive grants for LEAs:

- **Competitive Grants:** At a minimum, 50 percent of the amount available for local grants must be used for competitive grants – although up to 100 percent may be used for this purpose. The U.S. Department of Education (USDE) strongly encourages states to award all of the funds competitively. USDE believes that larger competitive grants potentially will have a greater impact than smaller formula grants awarded across all of a state's districts.
- **Formula Grants:** Up to 50 percent of local grants may be provided per formula grants allocated on the basis of Title I student counts for LEAs.

At least 25 percent of the funds for both competitive and formula grants must be used to provide professional development.

EETT Federal Program Requirements. Federal rules and regulations for EETT provides states with broad discretion on the use of one-time ARRA funds for education technology. According to the USDE, allowable local activities for EETT include:

- Support of continuing, sustained professional development programs and public-private partnership;
- Use of new or existing technologies to improve academic achievement;
- Acquisition of curricula that integrate technology and are designed to meet challenging state academic standards;
- Use of technology to increase parent involvement in schools; and the use of technology to collect, manage, and analyze data to enhance teaching and school improvement.

In making decisions about the uses of EETT funds, USDE encourages states and LEAs to give particular consideration to strategies that will help build sustainable capacity for technology integration, improve student achievement, and advance education reform in the following four areas:

1. Increasing teacher effectiveness and addressing inequities in the distribution of effective teachers through high-quality professional development and teacher incentive programs designed to attract and keep effective teachers in hard-to-staff schools in rural and urban areas;
2. Using advanced technology systems to collect, manage, and analyze data in order to track student progress from pre-K through college and career and foster continuous improvement;

3. Implementing technology-enhanced strategies that support rigorous college- and career-ready, internationally benchmarked standards, supplemented with high-quality assessments that are valid and reliable for all students, including limited English proficient students and students with disabilities; and
4. Targeting intensive support to high-poverty, high-need LEAs to improve access to and the effective use of advanced technologies to turn around the lowest-performing schools.

Furthermore, USDE expects states and LEAs to use EETT funds to implement strategies that will help build sustainable capacity for integrating technology into curricula and instruction in order to improve student achievement.

USDE believes that because ARRA EETT funds “constitute a large increase in Title II-D funding that will likely not be available at the same level beyond September 30, 2011,” that states and LEAs should “focus these funds on short-term investments with the potential for long-term benefits rather than make ongoing commitments that they might not be able to sustain once ARRA funds are expended.”

State Requirements. While not required by federal law, state Education Code implementing the federal EETT program in California restricts competitive grant funding to LEAs serving students in grades 4-8. These statutory provisions thereby exclude high school districts from competition. Formula grant dollars can be used to support any and all grade levels consistent with their local technology plan.

Governor’s Initial Expenditure Plan Rejected. The state did not receive notice of ARRA EETT funds until late July, after the 2009-10 Budget Act was enacted. In October, the Department of Finance (DOF) requested to increase spending authority for EETT pursuant to Section 28.00 of the 2009-10 Budget Act.

The October Budget Letter proposed allocating new one-time local grants on the same basis as the existing EETT program, which provides 50 percent as formula grants based upon Title 1 eligible student counts and 50 percent as competitive grants to districts serving students in grades 4-8. Competitive grants would be awarded on a geographic basis conforming to the 11 California Technology Assistance Project (CTAP) regions.

The Budget Letter also proposed state level activities as follows: \$1.0 million for CTAPs and \$1.3 million to fund a Brokers of Expertise project to allow LEAs to share research and standards based instructional programs and strategies. In addition, the Budget Letter proposed \$1.3 million for CDE state administration of EETT.

Legislature Did Not Concur with Initial EETT Expenditure Plan. In November 2009, the Joint Legislative Budget Committee raised several concerns with the administration’s plan. The state has made several data and technology commitments and as such, the JLBC felt the state should consider options for allocating and using EETT funds that would allow the state to maximize the effect of the federal investment

in educational technology. The JLBC letter also questioned the use of funding for the Brokers of Expertise project, since the Legislature rejected funding for the project in 2007 and since CDE was currently operating the project with private funds. Finally, the JLBC was concerned about lack of justification for a large amount of one-time funding for CTAP. The JLBC recommended that the Administration and CDE work with the Legislature to craft an alternative expenditure plan that furthers state and federal technology objectives in a more strategic, comprehensive manner.

CDE advised districts on use of funds without budget authority. Although CDE did not have budget authority to appropriate the ARRA EETT funds, CDE advised the field of how the funds would be distributed prior to requesting budget authority from the Legislature. In addition to the advisory, CDE sent out Requests for Application (RFAs) for the funds. The advisory and RFA were issued to the field nearly two months prior to Legislative notification of the need for increased expenditure authority.

- July 24, 2009 – CDE made aware of availability of federal ARRA EETT funds.
- August 6, 2009 – The Superintendent of Public Instruction issued an advisory to the field that stated, *“CDE will distribute the funds by the end of the year to school districts in two ways: half determined by formula and half through grants. The first half would go to local educational agencies that already have approved Ed Tech Plans and will be based on their proportion of the Title I, Part A funds distributed in California. The other half would go to local educational agencies and direct-funded charter schools after they fill out applications being offered in August and are selected through a competitive process.”* The advisory also told districts of the allowable uses of the funds.
- August 31, 2009 – CDE submitted their notice of unanticipated funds to DOF.
- September 11, 2009 – CDE sent Requests for Application (RFA)s to LEAs
- October 15, 2009 – RFAs were due back to CDE. According to letters from the field, CDE received 188 EETT ARRA competitive grant applications which were read the last week of October. There were approximately 440 eligible districts and charter schools that could apply for the competitive grants.
- October 16, 2009 – JLBC received Section 28.00 letter from DOF requesting adjustment of expenditure authority for the EETT program.
- November 12, 2009 – JLBC sent letter of non-concurrence with Section 28.00 letter.
- April 2009 – CDE releases ARRA EETT revised expenditure plan.

CDE alternative proposal. CDE has offered a slightly different alternative plan to the one proposed through the Section 28.00 letter.

<i>Dollars in Millions</i>	Section 28.00 Proposal	CDE Revised Proposal
Local Assistance (95 percent)		
--Formula Grants (Title 1 Districts)	34.3	34.0
--Competitive Grants	34.3 (LEAs serving Grades 4-8; Existing Purposes)	34.0 (LEAs serving K-12; Revised Purposes)
Subtotal Local Assistance	68.6	68.0
State Operations (5 percent)		
Technical Assistance		
--Brokers of Expertise	1.3	1.3
--California Technology Assistance Project	1.0	1.0
Unspecified	0.8	
State Administration		1.3
Subtotal State Operations	3.1	3.6
TOTAL	70.9	71.6

CDE Revised Plan Links Competitive Funds to RTTT Assurances. The revised CDE plan would utilize 50 percent of state LEA grants funds for new competitive applications focusing on assurances consistent with RTTT. While CDE would continue to allocate the remaining 50 percent of funds on a formula basis, LEAs would focus competitive grants on efforts to improve instruction and postsecondary/workforce readiness by:

- Implementing/enhancing and using a local instructional improvement system (see definition provided by the U.S. Department of Education) that provides teachers, principals, and administrators, with the information and resources they need to inform and improve their instructional practices, decision-making, and overall effectiveness;
- Offering professional development to teachers and school leaders related to using data to inform instructional improvement;
- Including the collection of pre-kindergarten data for future instructional use and high school student data for postsecondary/workforce readiness use.

LAO COMMENTS

The LAO notes several concerns with the CDE plan proposed through the Section 28.00 Budget Letter:

- **Important *Policy* Options to Consider.** The ARRA EETT funds may be used for a broad array of education technology activities, including hiring additional staff, providing professional development, purchasing software and hardware, and offering various student services. The only specific requirement at the local level is that at least 25 percent of the funds be used for professional development activities, but, even within this category, school districts have wide discretion. Thus, DOF's spending proposals are by no means the only available options. The Legislature could consider many alternative uses of the funds to improve academic achievement, such as enhancing the California Longitudinal Pupil Achievement Data System (CALPADS), facilitating initial preschool data collection and analysis, or encouraging the collection and use of new college readiness data.
- **Important *Allocation* Options to Consider.** Whereas the federal government provides high-level guidance on how states may distribute EETT funds, states retain considerable discretion. The EETT program specifies only that: (1) at least 95 percent of the funds be given out in local assistance grants, with at least half of those grants awarded competitively (though the U.S. Department of Education "strongly encourages States to award all of the [ARRA] funds competitively"); and (2) up to five percent may be used for state administration, technical assistance, and state-level activities (with no more than 60 percent of this allocation used for administration). Within these parameters, the Legislature has many allocation options it could consider.
- **Specific Concerns With DOF's Technical Assistance Proposals.** DOF has proposed two technical assistance expenditures—one relating to the "Brokers of Expertise" project and one relating to the California Technology Assistance Project (CTAP). The LAO has concerns with both proposals. Most notably, the state has not yet statutorily authorized the Brokers of Expertise project, in fact the Legislature rejected a similar proposal made by the administration in 2007. Furthermore, the Brokers of Expertise project (currently operating with private funds) received strong criticism in a recent independent evaluation. In addition, the CTAP proposal lacks specificity about what additional technical assistance would be provided by CTAP in return for the large one-time augmentation.
- **Funds Should Be Coordinated With Other Education Technology Efforts.** The state is in the midst of making several important decisions involving education technology. As part of the Fifth Extraordinary Special Session, legislation was enacted to make various improvements to CALPADS and develop a preschool through higher education data system (or "P-20") data system. This legislation was passed as a part of the Governor's proposal for federal Race to the Top (RTTT) funds. While California was not approved for RTTT Phase I funding, the new legislation commits our state to a number of data activities that are required for

eligibility for federal Phase II State Fiscal Stabilization Funding, as well. In addition, the California Department of Education has submitted a plan to access a federal Institute of Education Sciences grant to further a P-20 system. The ARRA EETT one-time augmentation could be used in concert with these other federal resources to further a coordinated set of state-local education technology objectives, thereby maximizing the combined effect of available education technology monies.

LAO recommends developing coordinated plan targeting preschool and high school data needs. According to the LAO, one of the of the greatest challenges associated with developing a P-20 data system will be collecting and integrating early childhood and postsecondary/workforce readiness data. The EETT monies could help districts meet these challenges. The LAO recommends the Legislature designate that the \$72 million in one-time EETT funding be used for two purposes.

- 1) The LAO recommends directing half of the EETT funds to school districts that provide early childhood education to help integrate pre-kindergarten data into the P-20 system. By helping districts collect, report, and analyze early education data, the funds would facilitate ongoing instructional improvement for California's youngest students.
- 2) The LAO recommends awarding the other half of EETT funds to districts serving high school students, with the funds used to help meet new postsecondary and workforce readiness data requirements.

Under other related federal grant applications, California is proposing to collect new high school-level data, including Advanced Placement and Scholastic Aptitude Test scores, as well as participation in courses relating to science, technology, engineering, and math. Under the LAO recommended approach, districts serving preschool or high school students would apply to the CDE and be awarded funding competitively based on their data needs.

DOF April Letter Adjustments. The Department of Finance has submitted two technical adjustments to the EETT funds available for appropriation in 2010-11:

1)	<p>Enhancing Education Through Technology Program (EET) (Issue 290)—It is requested that Item 6110-001-0890 be decreased by \$166,000 and that Item 6110-001-0001 be amended to align with the anticipated federal grant award for this program.</p> <p>It is further requested that language in Provision 7 of this item be updated to conform to this action as follows:</p> <p>7. Of the funds appropriated in this item, \$1,066,000 <u>\$900,000</u> shall be used for administration of the federal Enhancing Education Through Technology Grant Program. Of this amount:</p> <p>(a) \$150,000 of carryover funds is available only for contracted technical support and evaluation services.</p>
2)	<p>Item 6110-180-0890, Local Assistance, Education Technology Program (Issue 299 and 300)—It is requested that this item be decreased by \$20,091,000 federal Enhancing Education Through Technology Program funds. This adjustment includes a decrease of \$20,343,000 to align the Education Technology program with the anticipated federal grant award and an increase of \$252,000 to reflect the availability of one-time federal carryover funds. The reduction would be allocated proportionately among competitive grants, formula grants, and the California Technology Assistance Project.</p> <p>It is further requested that provisional language be amended as follows to conform to this action:</p> <p>“1. Of the funds appropriated in this item, \$14,508,000 <u>\$4,737,000</u> is allocated to school districts that are awarded formula grants pursuant to the federal Enhancing Education Through Technology Grant Program. <u>Of the funds appropriated in this provision, \$241,000 is provided from one-time carryover funds.</u></p> <p>2. Of the funds appropriated in this item, \$14,508,000 <u>\$4,507,000</u> is available for competitive grants pursuant to Chapter 8.9 (commencing with Section 52295.10) of Part 28 of the Education Code and the requirements of the federal Enhancing Education Through Technology Grant Program including the eligibility criteria established in federal law to target local educational agencies with high numbers or percentages of children from families with incomes below the poverty line and one or more schools either qualifying for federal school improvement or demonstrating substantial technology needs. <u>Of the funds appropriated in this provision, \$11,000 is provided from one-time carryover funds.</u></p> <p>3. Of the funds appropriated in this item, \$462,000 <u>\$143,000</u> is available for the California Technology Assistance Project (CTAP) to provide federally required technical assistance and to help districts apply for and take full advantage of the federal Enhancing Education Through Technology grants.”</p>

STAFF COMMENTS

CDE advised districts without budget authority. CDE did not have the authority to advise LEAs of the intended allocation and use of EETT funds prior to submission and approval of the Section 28.00 Budget Letter. Several LEAs have suggested the Legislature should appropriate ARRA EETT funds pursuant to CDEs plan because "districts have already spent these funds." Staff is particularly troubled that LEAs obligated funds based on a “promise” that money would be distributed in a particular manner, even though no grant approval letter was sent to LEAs. The Legislature should not appropriate funds pursuant to CDEs plan simply because districts have already committed these funds. The Legislature should continue to consider decisions around

the best use of EETT funds through the regular budget process. This will allow the Legislature to consider alternative proposals in a more informed, thoughtful, and strategic manner, while still providing the funds to districts in a timely manner.

EETT funds should be considered with the state's potential IES grant. The California Department of Education has submitted a proposal to access a federal Institute of Education Sciences (IES) grant to further a P-20 system. This is a competitive grant program for state education agencies. The ARRA EETT one-time augmentation could be used in concert with these other federal resources to further a coordinated set of state-local education technology objectives surrounding the P-20 system. For the LAO's recommendation to be coordinated with the state's IES grant; it is necessary to wait until the state has received final approval of its IES application before moving ahead with the EETT plan.

Staff Recommends the Subcommittee hold this issue open until May Revise but direct staff to work with CDE, DOF and LAO to develop a compromise that allows funds to be accessed by all high need, K-12 districts, including high school districts, to be maximized for a high priority, statewide benefit.

STAFF COMMENTS

- 1) CDE: Did CDE inform districts that its expenditure plan had not been approved last November?
- 2) CDE: Please explain your rationale for advising LEAs on the use of ARRA EETT funds given that the funds have not been authorized in the budget?
- 3) DOF: Does the Administration have a revised expenditure plan for EETT or a position on the CDE revised plan?
- 4) CDE/DOF/LAO: What are the trade-offs between directing all EETT funds to competitive grants – as strongly encouraged by USDE and supported by the LAO – and using half of the funds for formula grants and half for competitive grants?
- 5) CDE: CDE's revised EETT proposal would direct 50 percent to competitive grants for using data to improve instruction and postsecondary/workforce readiness. Can CDE provide more detail on this?
- 6) CDE: What are the major elements of CDE's Institute of Education Sciences (IES) grant proposal recently submitted to USDE? When will CDE know the outcome of its IES grant?

ISSUE 2: BACKGROUND ON K-14 EDUCATION MANDATES (INFORMATION ONLY)

The Legislative Analyst's Office (LAO) will give a brief presentation on the history of mandates, the mandate claim process and the various K-14 mandates. This issue provides background and context for the LAO presentation.

PANELISTS

- Jim Soland - Legislative Analyst's Office
- Thomas Todd - Department of Finance

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 (Commission). The Commission 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 Commission 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.

Mandate claims 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. 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 (Ps and Gs)" for determining mandate costs. Ps and Gs identify the mandated program, eligible claimants, period of reimbursement, reimbursable activities, and other necessary claiming information. The Commission then adopts the Ps and Gs, 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.

Issues with the claims 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 the Commission'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.

- ◆ ***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.

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 RRM is developed by Department of Finance who works with local agencies to develop a funding methodology and statewide estimate of costs for a particular mandate which is then adopted by the Commission on State Mandates.

Pending legislation. AB 2082 (Committee on Education), pending in the Assembly Appropriations Committee, implements three changes related to the state's reimbursement process for educational mandates by streamlining the process for hearing incorrect reduction claims, providing for future Legislative review of new mandates, and clarifying the information on educational mandates that the Legislative Analyst is required to provide the Legislature.

Process for payment of claims. Once approved by the Commission, ongoing and new education mandates are identified (listed) in the annual budget. The State Controller's Office (SCO) is authorized to make payments for costs of mandated programs from amounts appropriated by the annual Budget Act, by the State Mandates Claims Fund, or by specific legislation. In the event the appropriation is insufficient to pay claims in full, claimants receive prorated payments in proportion to the dollar amount of approved claims for the program. Balances of prorated payments are made when supplementary funds become available. The SCO reports the amounts of insufficient appropriations to DOF, the Chairperson of the Joint Legislative Budget Committee, and the Chairperson of the respective committee in each house of the Legislature which considers appropriations, in order to assure appropriation of these funds in the Budget Act. If these funds cannot be appropriated on a timely basis in the Budget Act, this information is transmitted to the Commission on State Mandates which will include these amounts in its report to assure that an appropriation sufficient to pay the claims is included in the next local government claims bill or other appropriation bills. When the supplementary funds are made available, the balances of each claim are paid. A claimant is entitled to receive accrued interest at the pooled money investment account rate if the payment is made more than a specified period of time after the claim filing deadline or the actual date of claim receipt, whichever is later.

State has deferred payment in recent years. Since 2001-02, the state has deferred the cost of most education mandates but still required local education agencies (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 \$900 million in one-time funds for state mandates which retired almost all district and college claims (plus interest) through 2004-05. However, the state has not provided ongoing funding for mandates in recent years.

In December 2008, a superior court found the state's practice of deferring education mandates unconstitutional and ordered the state to fully fund mandated programs "in the future." (The opinion responds 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 deferrals.) The state is seeking to overturn this decision and a final decision by the 4th District Court of Appeal in San Diego is not expected until mid-2010.

While constitutional separation of powers means the court cannot *force* the Legislature to make appropriations for past mandate costs, its decision increases pressure on the state to pay the annual ongoing cost of education mandates.

Aside from deferring the cost of mandates, the state has the following options:

- **Fund.** The Legislature may appropriate funding for each mandate based upon the State Controller's Office Statewide Cost Estimate Report.
- **Suspend.** 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. In recent years, five mandates applying to school districts (three of which also apply to community colleges) were suspended.
- **Repeal.** The Legislature may also choose to repeal a mandate by eliminating funding in the budget and repealing the underlying statute.

Number of education mandates. According to the LAO, the state currently requires K-14 education agencies to perform approximately 51 mandated activities (see *appendix A*). Of this total, 36 mandates are claimable by K-12 schools districts only; seven mandates are claimable by community colleges only; three are claimable by school districts and community colleges only; and five are claimable by all local government agencies – including school districts and community colleges.

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.** 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, the Commission determined that providing an additional science class imposes a higher level of service on districts and, therefore, constituted a reimbursable mandate.

In 2004, a court ruling indicated that school districts had full discretion to increase their total graduation requirements and total instructional costs. Based on this 2004 ruling, the Commission decided the state could not increase the number of courses it requires for graduation. The estimated costs based on this ruling is roughly \$200 million per year with roughly \$2.3 billion in prior year claims.

The Administration believes that the science high school graduation mandate is not a reimbursable state mandate because funding is available to offset the costs of this requirement. The Administration is seeking a court decision to reject the reimbursement rate methodology adopted by the Commission on State Mandates. The Administration is not seeking to overturn the Commission's original finding of a mandate. Imbedded in its dispute over the RRM, the Administration contends that this "mandate" is fully supported or "offset" by revenue limit funding provided to schools. The Administration points out that while not typical, there are examples of activities being found to be mandates, but offsetting revenues/fee authority/etc., render any actual claims moot. For these reasons, The Administration does not believe any amount of funding, or even suspension is required at this point. However, to the extent its lawsuit is rejected, the Administration understands it will have to revisit the issue of funding.

- **Behavior Intervention Services.** Annual claims for this mandate are estimated to be \$65 million each year. The Administration is pursuing a court settlement agreement on this pending K-12 mandate related to behavior intervention plans for students with disabilities. As a part of that agreement, the Administration proposes to 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 4 of this agenda will discuss this pending mandate in more detail.

Outstanding mandate obligations. Over the last two decades, annual K–14 mandate claims have grown substantially. In 1992–93 (the first year for which data are readily accessible), annual K–14 unadjusted mandate claims totaled less than \$5 million. By 2005–06 (the most recent year for which complete data were available at the time this report was being prepared), annual claims exceeded \$400 million. (These figures include claims for some of the mandates still completing the determination process.) Increases in claims have corresponded with the identification of more mandates, more districts filing claims, and increased costs for existing mandates.

Outstanding K–14 Mandate Obligations Total \$3.6 Billion^a

<i>(In Millions)</i>	2007–08	2008–09	2009–10
Outstanding K–12 claims	\$2,141	\$2,501	\$2,867
Ongoing cost of K–12 claims	360	366	373
Outstanding CCC claims	260	299	340
Ongoing cost of CCC claims	39	41	43
Total Outstanding Obligations	\$2,800	\$3,207	\$3,623

^a Excludes mandates still in the mandate determination process. Includes mandate relating to high school science graduation requirement.

Source: LAO

ISSUE 3: GOVERNOR'S 2010-11 PROPOSAL: ONGOING K-14 MANDATES AND LAO ALTERNATIVE

The issues for the Subcommittee to consider are:

1. The Governor's proposal to suspend most ongoing, state mandate payments and mandate requirements for K-14 education agencies in 2010-11 but fully fund three K-12 mandates at a cost of \$13.4 million General Fund (Proposition 98).
2. The LAO alternative which proposes comprehensive mandate reform and adoption of a new mandate reconsideration process.

PANELISTS

- Thomas Todd - Department of Finance
- Jim Soland - Legislative Analyst's Office
- Carol Bingham - Department of Education

GOVERNOR'S PROPOSAL

Suspends rather than defers most mandates. Beginning in 2010-11, the Governor proposes to provide zero funding for 51 ongoing K-14 education mandates. Under the Governor's proposal, the state's obligation to pay for mandated activities and local obligations to provided these activities would also be suspended. The Administration estimates annual savings of \$200 million (Proposition 98)¹.

The Governor's proposal to suspend education mandates is substantially similar to the Administration's proposal in 2009-10. The Legislature rejected this proposal in favor of continuing the practice of deferring mandates. By deferring mandates, the state does not fully fund the annual costs of education mandates. Instead, the state provides a nominal amount for each education mandate in the budget (\$1,000) and defers the balance to be paid in future years. In the meantime, LEAs are still required to perform the activity. Suspending, rather than deferring mandates, stops the accumulation of funding owed to schools in future years (as well as the requirement for LEAs to do the activity).

The Governor's proposal appears to stem from a superior court decision from December 2008 in which the court found the state's practice of deferring education mandates unconstitutional and ordered the state to fully fund mandated programs "in the future." The state is seeking to overturn this decision and a final decision by the 4th District Court of Appeal in San Diego is not expected until mid-2010.

The Administration does not include the High School Graduation mandate in their proposal since they do not consider this requirement to be a reimbursable state mandate. The estimated costs associated with this mandate are \$200 million annually with \$2.3 billion in prior year claims.

While constitutional separation of powers means the court cannot *force* the Legislature to make appropriations for past mandate costs, its decision increases pressure on the state to pay the annual ongoing cost of education mandates.

Continues suspension of five K-14 mandates that have been suspended in recent years. These mandates include two claimable only by school districts (School Bus Safety I–II and County Treasury Withdrawals) and three claimable by both school districts and community colleges (Law Enforcement Sexual Harassment Training, Health Benefits for Survivors of Peace Officers and Firefighters, and Grand Jury Proceedings).

Provides funding for three education mandates. The Governor proposes to provide a total of \$13.4 million annually for three mandates: \$7.7 million for inter-district and intra-district transfers and \$6.8 million for 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. These transfer policies are also consistent with an Administration priority to ensure school choice options for all students and parents.

LAO ALTERNATIVE

The LAO has identified some shortcomings with the Governor's plan to suspend most education mandates. According to the LAO, the Governor's proposal does nothing to preserve the state policies that underlie some education mandates. For instance, 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. Lawmakers could develop 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.

LAO recommends comprehensive reform. The LAO recommends a comprehensive reform package for education mandates that relies on making determinations for individual mandates that would eliminate most mandates, continue some mandates, and modify other mandates. For most mandates, the LAO recommends either funding or eliminating them in their entirety. For a few mandates, the LAO recommends a hybrid approach whereby certain activities associated with a mandate would be funded and the remaining activities eliminated. The LAO contends that oftentimes, a mandate can be eliminated while still preserving underlying policies that serve a compelling purpose (*See appendix B for detail*).

The LAO estimates their proposal would save approximately \$360 million annually by no longer requiring what they deem to be non-essential or ineffective services. The LAO would also fund more than \$30 million in ongoing mandates to support essential services.

LAO also recommends new mandate reconsideration process. According to a 2009 Appellate Court ruling, the practice of referring mandates back to the Commission in an attempt to reduce associated costs through the commission's "reconsideration" of the claim was found to be unconstitutional without a consistent process in statute for doing so. Effectively this means that the state has no process in place that would allow mandates and their reimbursements to evolve as legal interpretations, technology or state statute changes over time. Toward this end, the Commission has proposed a new process whereby mandates impacted by changes in legal precedent, fact, or circumstance could be reconsidered.

The Commission has held several hearings on this issue and has worked with the LAO and legislative staff to develop draft language on a new mandate redetermination process. The working group is continuing to meet to work out details in the language, and is continuing to take comments and feedback from interested parties. The goal is to develop a product this legislative session. This issue is under the jurisdiction of the Assembly Subcommittee 4 on State Administration since the process will apply to all state mandates. Subcommittee 4 plans to hear the issue on May 5, 2010.

STAFF COMMENTS

Individual mandate reform. Although suspension stops the ongoing costs of mandates, it also stops all activities required by the mandate. Each mandate has been created because a specific activity was deemed necessary either by the Legislature, Executive Order or clarifying regulations. Across-the-board suspension does not allow for consideration of the merits of each individual mandate. Suspension also implies that at some point the state will resume the activity. It is difficult for a district to stop program activities for a few years and then resume them again without sacrificing some continuity to the program.

While the LAO has done considerable work providing options for funding, reforming or eliminating mandates; these proposals should be fully vetted through the policy committee process. Individual mandate reform warrants a thoughtful review process that takes into consideration the merits of each mandate on a case-by-case basis and that allows for input from the public and various stakeholders.

Staff recommendation: Staff recommends the Subcommittee hold this issue open until the May Revision.

Mandate reconsideration. Staff supports the LAO recommendation to implement a mandate reconsideration process for the Commission on State Mandates. Staff will update this Subcommittee on the progress of this issue as it moves through Subcommittee 4.

SUGGESTED QUESTIONS

DOF: What is the Administration's rationale for proposing to suspend most K-14 education mandates? Does the Administration plan to eventually restore these mandates?

DOF: Under the Administration's suspension proposal, what effect will "stopping" and "starting" mandated services have on school districts and community colleges?

DOF: Because of the constitutional separation of powers, the 2008 San Diego County Superior Court Decision cannot force the Legislature to make budgetary appropriations. 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?

DOF: The Governor's suspension proposal would result in \$200 million in direct state savings from local mandate costs. 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?

LAO: 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?

ISSUE 4: GOVERNOR'S 2010-11 PROPOSAL: FUNDING FOR BEHAVIORAL INTERVENTION PLAN MANDATE

The issue for the Subcommittee to consider is the Governor's proposal to provide \$65 million in ongoing General Fund (Proposition 98) for the behavioral assessments and intervention plans (BIP) mandate and trailer bill language proposing to implement this portion of the Administration's settlement on this mandate.

PANELISTS

- Thomas Todd - Department of Finance
- Jim Soland - Legislative Analyst's Office
- Carol Bingham - Department of Education

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 an IEP team -- including parents -- with special education expertise and knowledge of a child's particular needs.

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, 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 analysis" and develop a Behavioral Intervention Plan (BIP) for students with disabilities exhibiting serious behavior issues. SBE regulations also require districts to train staff to implement BIPs.

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 reached a settlement with districts outside of the legal process in December 2008/January 2009.

Governor's settlement and 2009-10 Budget Proposal. In 2009, 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 -- reached a settlement in the Behavioral Intervention Plans ("BIP") Mandated Cost Claim and lawsuit, a claim dating from 1994.

The settlement provided 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 provided 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 average daily attendance (ADA) for 2007-08.
- \$10 million payable as general fund reimbursement in 2009-10 as follows:
 - \$1.5 million to county offices based on December 2007 county special education pupil counts
 - \$6.0 million to SELPAs based on December 2007 special education pupil counts
 - \$2.5 million to claimants and others for administrative costs incurred in pursuing the claim (legal costs).
- \$65 million in 2009-10 added as a permanent increase to the AB 602 special education funding base. Commencing in 2010-11, this amount will be subject to cost-of-living adjustment (COLA) growth to the extent it is added to AB 602 generally.

Legislation must be enacted to appropriate the funds agreed to in the settlement. As such, AB 661 (Torlakson) was introduced in 2009 to implement the 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 on an ongoing basis; 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. The bill was held in Assembly Appropriations Committee.

GOVERNOR'S PROPOSAL

The Governor's Budget proposes to provide \$65 million in ongoing General Fund (Proposition 98) starting in 2010-11 to be added as a permanent increase to the AB 602 special education funding base pursuant to the settlement on the BIP mandate.

The Governor's budget does not address the \$510 million or the \$10 million one-time funding proposed under the settlement.

LAO RECOMMENDATION

The LAO makes the following findings and recommendations about the BIP mandate:

- **Regulations Exceed Legislative Intent.** According to the LAO, 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 analysis” — 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 should include.

Eliminate mandate and ongoing costs. Given that activities mandated by federal law are not reimbursable mandates for the state, the LAO recommends eliminating the BIP mandate because federal special education laws now largely overlap with state laws. As a result of the new changes in federal law, IDEA funding likely could be used to implement most, if not all, desired BIP activities. The LAO's recommendation would save the state \$65 million in estimated annual ongoing 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. It has 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.

Trailer Bill Language. The Governor’s budget includes the \$65 million in ongoing funding in the special education 6110-161-0001 budget act item and proposes conforming trailer bill language to implement this portion of the settlement agreement.

STAFF COMMENTS

Legislative action is necessary to implement the terms of the BIP settlement. The issue will return to court in December 2010 if the Legislature does not act before then.

The Legislature is not a party to the Administration’s settlement proposal. Given its substantial state costs, staff suggests that the Subcommittee explore options for addressing both prior-year and ongoing BIP mandate costs.

Similar to the staff recommendation regarding suspension or elimination of other existing mandates, staff recommends that thorough public discussions of the costs and benefits associated with aligning state policy with federal law occur before the Legislature takes action.

Consistent with the recommendation made by the Senate Education Subcommittee, **Staff recommends** this Subcommittee:

- 1) Direct the LAO to review prior-year BIP mandate claims costs and develop options for funding prior-year claims; and
- 2) Direct the LAO – pursuant to their recommendation – to create a work group that includes special education experts to make recommendations for revising associated state laws and regulations. Per the LAO, the work group could help ensure new federal requirements are implemented effectively and state requirements are rolled back carefully, such that important existing protections for students and districts are not undermined.

SUGGESTED QUESTIONS

- 1) DOF: 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) DOF: How did the Administration’s settlement arrive at the \$510 million for prior year claims?
- 3) LAO: How has federal law changed regarding behavioral services to students with disabilities since the state BIP mandate was enacted?

- 4) LAO: If the BIP mandate is eliminated, how can we ensure important protections for students with disabilities continue? Is it possible 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?
- 5) CDE: How many students currently have a BIP statewide? How does the state currently monitor behavior services for these students to assure student safety?
- 6) CDE: Can the \$1.2 billion in new federal ARRA funds for special education be used as a source of funding for behavior services and related staff training?

Appendix A

Comprehensive List of K–14 Mandates^a

Claimable Only by K–12 School Districts (36)	
Included in 2009–10 Budget Act	
AIDS Prevention Instruction I–II	Notification to Teachers of Mandatory Expulsion
Annual Parent Notification	Physical Education Reports
Caregiver Affidavits	Physical Performance Tests
Charter Schools I–III	Pupil Health Screenings
Comprehensive School Safety Plans	Pupil Promotion and Retention
County Office of Education Fiscal Accountability Reporting	Pupil Residency Verification and Appeals
Criminal Background Checks	Pupil Suspensions, Expulsions, and Expulsion Appeals
Criminal Background Checks II	Removal of Chemicals
Differential Pay and Reemployment	School District Fiscal Accountability Reporting
Expulsion Transcripts	School District Reorganization
Financial and Compliance Audits	Scoliosis Screening
Graduation Requirements	Teacher Incentive Program
Habitual Truants	Additional Claimable Mandates
Immunization Records	High School Exit Examination
Immunization Records—Hepatitis B	Missing Children
Intradistrict Attendance	Pupil Safety Notices
Juvenile Court Notices II	School Accountability Report Cards
Law Enforcement Agency Notifications	Stull Act
Notification of Truancy	
Claimable Only by Community Colleges (7)	
Included in 2009–10 Budget Act	
Health Fee/Services	Additional Claimable Mandates
Law Enforcement College Jurisdiction Agreements	Enrollment Fee and Waiver
Sex Offenders: Disclosure by Law Enforcement	Integrated Waste Management
	Reporting Improper Governmental Activities
	Sexual Assault Response Procedures
Claimable by Both School Districts and Community Colleges (3)	
Included in 2009–10 Budget Act	
Collective Bargaining	Additional Claimable Mandates
	Agency Fee Arrangements
	California State Teachers’ Retirement System Service Credit
Claimable by Local Governments (5)	
Included in 2009–10 Budget Act	
Mandate Reimbursement Process	Additional Claimable Mandates
Public Safety Officers Procedural Bill of Rights	Absentee Ballots
	Open Meetings Act
	Threats Against Peace Officers

^a In addition to these 51 mandates, two mandates claimable only for school districts (School Bus Safety I–II and County Treasury Withdrawals) and three mandates claimable for both school districts and community colleges (Law Enforcement Sexual Harassment Training, Health Benefits for Survivors of Peace Officers and Firefighters, and Grand Jury Proceedings) have all been suspended in recent years.

Appendix B

LAO Comprehensive Reform Proposal

Fund some mandates *(Dollars In Thousands)*

Mandate	Requirements	Annual Cost ^a
K–12 Mandates		
High School Exit Exam	Cover excess costs for administering the California High School Exit Exam.	\$8,458
Immunization Records—Hepatitis B	Request, record, and follow-up on documentation that student is immunized against: hepatitis B, measles, mumps, rubella, diphtheria, tetanus, and pertussis (whooping cough). Exclude students from school if documentation is not provided within a set period.	6,160
Immunization Records—Original		4,821
Charter Schools I–III	Review petitions for charter schools and charter renewals, notify charter schools of reasons for charter revocation, and administer facility rentals.	2,325
Pupil Health Screenings	Inform parents that students must have a health screening before enrollment in kindergarten or first grade, follow up with parents to ensure compliance, and exclude any pupil without a screening after 91 days in school from attending for at most five days.	1,570
School District Fiscal Accountability Reporting/	Counties must annually certify that district budgets are financially sound and follow specific timelines for certification and public review of budgets.	2,612
County Office Fiscal Accountability Reporting	Includes district compliance activities.	404
Differential Pay and Reemployment	Maintain a list of certificated employees who have exhausted all sick leave and process paperwork to return that employee to work upon recovery.	11
School District Reorganization	Counties must send district reorganization petitions to the State Board of Education, make petitions public, and review petitions based on established criteria.	9
Pupil Safety Notices	Inform parents when a school does not meet certain safety standards, including for lead, and provide an interpreter anytime a parent does not speak English and wishes to discuss certain safety issues, such as child abuse.	6
Missing Children Reports	Post notices of missing children provided by law enforcement. Notify law enforcement if another school requests the student's records.	3
Community College Mandates		
Sex Offenders: Disclosure by Law Enforcement	Campus police must register students who are sex offenders and live on campus.	\$1
^a Based on estimated 2009–10 claims. Costs could increase to the extent more districts file claims given our recommendation to simplify the reimbursement process.		

Eliminate Most Education Mandates *(In Thousands)*

Mandate	Requirements	Likely Impact on Students and Teachers	Annual Savings^a
K-12 Mandates			
Truancy	Notification—Develop truancy procedures. Identify students absent or tardy three or more times as truant. Use a form letter to inform parents their child has been classified as truant.	Minimal impact expected. Almost all mandate costs are generated by form letters, which are reimbursed at a rate of \$17 each and do not substantively increase parent involvement or reduce dropouts. Further, the federal No Child Left Behind Act already requires districts to develop extensive policies for increasing parental involvement.	\$15,900
	Habitual Truants—If a student is truant three or more times: verify prior truancies, inform the parents using a form letter, and request a conference with the parent. After these steps, classify the student as habitually truant.		6,883
Notification to Teachers of Mandatory Expulsion	Document and maintain information on all students in the past three years who have committed suspendable or expellable offenses. Inform teachers of students who have engaged in such activities.	Minimal impact expected. Keeping teachers and students safe is one of the primary responsibilities of any principal. Moreover, compelling liability concerns provide a stronger incentive than a mandate to inform teachers.	6,818
Scoliosis Screening	Screen all female students in grade seven and male students in grade eight for scoliosis. Train staff as needed. Report results to state departments.	Minimal impact expected. Rigorous studies show these tests are costly and do a poor job of identifying students in need of further treatment.	3,652
Physical Performance Tests	Purchase equipment, train staff, conduct assessments, analyze assessment data, and respond to state agency requests associated with administering physical fitness tests in grades five, seven, and nine.	Minimal impact expected. The state already requires two years of physical education in high school and has well-developed curriculum standards for middle school. Data are not used to improve education practices.	2,325
Law Enforcement Agency Notifications	File a report with law enforcement whenever a student violates particular sections of state Penal Code. Maintain records of those reports.	Minimal impact expected. Most districts already inform law enforcement of crimes committed on campus, in part due to compelling liability concerns.	1,894
Removal of Chemicals	Hire consultants to inventory chemicals in science classrooms, review those inventories, and remove all chemicals that are outdated but have not yet become dangerous as defined in Health and Safety Code.	No impact expected. Health and Safety Code requires the removal of dangerous chemicals. Potential lawsuits resulting from harm to students create greater incentives for compliance than a mandate.	1,289
Caregiver Affidavits	For a student living with a caregiver residing in the district: prepare affidavit procedures and approve valid affidavits to allow the student to attend local schools. Perform related administrative tasks.	Minimal impact expected. Schools legally allowed to enroll these students. Attendance funding provides sufficient incentive to prepare an affidavit.	975

Pupil Residency Verification and Appeals	Verify student's residency in the district and U.S. citizenship at times other than annual residency verification, especially if concerns arise over the validity of residency documentation provided. Conduct appeals for students deemed not to be legal residents.	Minimal impact expected. No compelling reason exists to mandate the district verify residency outside of the annual residency period or upon the student's arrival at the district. Districts are still free to perform these activities at their discretion.	\$348
Expulsion Transcripts	Districts cannot charge students for the cost of providing a transcript for expulsion hearings if the family is low-income or the county reverses the district's decision.	Minimal impact expected. Costs are minimal and districts already frequently provide this service when a student's family cannot afford it.	13
Teacher Incentive Program	Inform teachers of a \$10,000 state incentive to receive National Board Certification. Certify to the National Board that the teacher is employed by the district. Submit the application to the California Department of Education.	Minimal impact expected. Additional funding from the state to attract and train qualified teachers is itself sufficient incentive for districts to participate.	6
Physical Education Reports	Report to the California Department of Education on whether students receive 200 minutes of physical education instruction every two weeks.	No impact expected. The state already receives this information as part of its broader district compliance and audit processes.	2
Community College Mandates			
Law Enforcement College Jurisdiction Agreements	Campus police must develop and update (as needed) agreements with local law enforcement agencies concerning which agency has responsibility for investigating violent crimes occurring on campus.	No impact expected. Campus police have already adopted agreements. New statute could allow them to keep in place such policies (or update at their discretion).	\$195
Sexual Assault Response Procedures	Districts must adopt policies and procedures on campus response if students are sexually assaulted.	No impact expected. Districts have already adopted procedures. New statute could allow them to keep in place such policies (or update at their discretion).	—
Reporting Improper Governmental Activities	Districts must pay for all costs of State Personnel Board hearings (as well as certain other related activities) if an employee files a complaint with the Board alleging retaliation by the district for whistleblowing.	Minimal impact expected. State law already provides protections and legal recourses for CCC whistleblowers. By eliminating requirement, CCC would be treated the same as K-12.	27
Shared K-12 and Community College Mandates			
Agency Fee Arrangements	Deduct bargaining unit fees from employees' paychecks. Provide the local bargaining unit representative with any new employee's home address.	No impact expected. Districts involved in bargaining likely already do these activities. Unions can also bargain to have these activities included in contracts.	\$75
^a Based on estimated 2009-10 claims.			

Preserve Core Policies Underlying Some Mandates *(In Thousands)*

Mandate	Requirements	Likely Impact on Students and Teachers	Annual Savings ^a
K–12 Mandates			
High School Science Graduation Requirement	Require two science classes for graduation (rather than one). Acquire space and equipment for additional science classes. Acquire and produce related instructional materials. Pay teacher salary costs for an additional science course.	No impact expected. A simple statute clarification can eliminate the mandate while preserving the requirement.	\$200,000
Stull Act	Evaluate certificated instructional personnel related to: adherence to curricular objectives and students' progress on state assessments. Review tenured teachers that receive an unsatisfactory evaluation on a yearly basis.	No impact expected. Core evaluation requirements are not part of the mandate. Assessment requirements are covered in other Education Code sections. Districts have a compelling interest in evaluating teachers, including those with previously unsatisfactory performance.	19,166
Inter/Intradistrict Attendance	Prepare policies regarding student transfer. Develop a random selection process for transfers. Determine school site capacity prior to transfer. Study the impact of any transfer on racial and ethnic balances. Within–district transfers are required, but across–district transfers are optional and only require county office oversight.	Minimal impact expected. Within district transfers are required for failing schools under No Child Left Behind and across–district transfers are already optional.	5,792
Pupil Suspensions, Expulsions, and Expulsion Appeals	Automatically suspend students for certain offenses and recommend students for expulsion for certain offenses. Hold expulsion appeals and follow due process. Perform all related administrative activities.	Minimal impact expected. Leave suspension and expulsion decisions to local discretion—most serious offenses likely would still result in suspension or expulsion. (Students expelled for identified offenses would still generate higher funding at community and community day schools.)	3,849
Criminal Background Checks I and II	Conduct criminal background checks prior to hiring all certificated personnel and contractors. Purchase necessary electronic fingerprinting equipment. Prepare all related district policies. Exchange information with the Department of Justice and other law enforcement agencies.	No impact expected. Districts already charge fees for some of these services—the state could allow them to charge fees for all related services.	1,713
Financial and Compliance Audits	Conduct activities required to comply with new audit procedures, submit corrective plans to county offices, respond to requests for financial information, and review audits publicly.	No impact expected. State could streamline the audit process and requirements to correspond with the recent consolidation of state categorical programs.	427
Community College Mandates			
Enrollment Fee Collection and Waivers	Districts must collect enrollment fees and waive fees for certain students (such as financially needy students).	No impact expected. Create a strong incentive for districts to perform these administrative duties by	\$20,000

<p>Integrated Waste Management</p>	<p>Districts must divert from landfills a specified percentage of their solid waste through reduction, recycling, and compacting activities. Develop and report annually on their ability to meet solid-waste division goals.</p>	<p>reducing districts' General Fund support by the amount of fee revenues that they decline to collect.</p> <p>Minimal impact expected. Statewide cost estimate scheduled for January 2010. To the extent that savings and revenues fully offset all costs that districts incur from required activities, retain the mandate. If significant cost, treat CCC the same as K-12 school districts, which are encouraged—but not required—to comply with diversion goals. Like K-12 schools, likely that colleges would participate anyway in waste-division programs.</p>	<p>Unknown</p>
<p>Health Fee/Services</p>	<p>Each district is required to provide students at least the level of health services it provided in 1986-87. Fee districts may charge for health services is capped.</p>	<p>No impact expected. Continue to require districts to provide same level of health services, but eliminate mandate costs by allowing districts to assess a fee amount that covers the full cost to provide current service levels.</p>	<p>12,100</p>

Shared K-12 and Community College Mandates

<p>Collective Bargaining</p>	<p>Determine appropriate bargaining units and representatives. Hold and certify elections for unit representatives. Negotiate contracts and make them public. Participate in impasse proceedings. Administrate and adjudicate contract disputes.</p>	<p>No impact expected. Recent court decisions suggest most collective bargaining requirements should no longer be considered a mandate. Upon adoption of new reconsideration process, laws could remain unchanged while drastically reducing the associated cost to the state.</p>	<p>\$42,092</p>
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^a Based on estimated 2009-10 claims.

Hybrid Approach for some mandates (In Thousands)

Mandate and Required Activities	Annual Fiscal Effect ^a	
	Fund	Eliminate
Fingerprinting program for school staff	—	395
Subtotals	(\$1,855)	(\$8,292)
AIDS Prevention I–II		
Provide all middle school students with HIV prevention instruction	\$396	—
Provide professional development on HIV instruction	314	—
Provide all high school students with additional HIV prevention instruction	—	\$396
Notify parents of right to exempt students from HIV instruction	—	75
Provide instructional materials on HIV instruction	—	194
Keep relevant sections of Education Code available for parents	—	120
Subtotals	(\$710)	(\$785)
Comprehensive School Safety		
Develop a schoolwide safety plan ^c	\$151	—
Review and annually update safety plan ^c	—	\$4,890
Subtotals	(\$151)	(\$4,890)
Juvenile Court Notices II		
Maintain private record of students' juvenile court notices	\$154	—
Transfer notices to students' subsequent schools	461	—
Destroy records when student turns 18 years–old	154	—
Distribute notices to teachers	—	\$308
Provide juvenile courts with school's mailing address	—	154
Subtotals	(\$769)	(\$461)
Pupil Promotion and Retention		
Notify parent of teacher's recommendation to retain a student	\$480	—
Discuss recommendation with parent	480	—
Provide appeals process for student recommended for retention	480	—
Provide supplemental instruction for students underperforming on state tests	—	\$563
Provide supplemental instruction for students recommended for retention	—	563
Develop local policies on promotion and retention	—	563
Subtotals	(\$1,439)	(\$1,689)
School Accountability Report Cards		
Schools must report the following information to the state and parents:		
Salaries paid to teachers and staff	\$408	—
Current year dropout rate	203	—
Student assessment data	407	—
Total number of instructional minutes and days	204	—
Average class size	408	—
Credentialing status and qualifications of staff members	407	—
Suspension and expulsion rates	204	—
School average Scholastic Aptitude Test scores when reported ^d	—	\$408
School days devoted to staff development ^d	—	204
Degree to which pupils prepared to enter workforce ^d	—	204

Mandate and Required Activities	Annual Fiscal Effect ^a	
	Fund	Eliminate
Subtotals	(\$2,241)	(\$816)
California State Teachers' Retirement System (CalSTRS) Service Credit		
Submit sick leave records to CalSTRS for audit purposes	\$18	—
Provide information to CalSTRS regarding reemployment of military personnel	18	—
Certify number of unused excess sick days to CalSTRS for retiring members	18	—
Inform new staff of eligibility for membership in the Defined Benefit Program.	—	18
Alert new employee of right to make an election to CalSTRS or CalPERS and make available written information on the plans	—	18
Maintain new employees' written acknowledgment information was received	—	18
Subtotals	(\$54)	(\$54)
Total Estimated Annual Fiscal Effect	\$7,219	\$16,988

^a Based on estimated 2009–10 claims.

^b Requirement would not be eliminated entirely, but costs would be reduced substantially by alerting parents of right to obtain sexual harassment policies from the school by request rather than printing entire policy in the notification letter.

^c Proposal would fund cost of developing an initial plan, submitting it to the district, consulting with local law enforcement, conferring with other schools, assessing the current status of school crime, and developing strategies to comply with current safety laws. Any update to the plan would be left to district discretion.

^d Alternatively, state could use these data reporting requirements to collect more useful data rather than simply eliminate the cost.