

**AGENDA****ASSEMBLY BUDGET SUBCOMMITTEE NO. 2  
ON EDUCATION FINANCE****Assemblymember Susan Bonilla, Chair****TUESDAY, APRIL 24, 2012****9:00 AM - STATE CAPITOL ROOM 444**

<b>Vote Only</b>		
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<b>6110</b>	<b>DEPARTMENT OF EDUCATION</b>	<b>2</b>
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**Vote Only CALENDAR**

**6110 DEPARTMENT OF EDUCATION**

**ISSUE 1: DOF APRIL LETTERS – VARIOUS STATE OPERATIONS AND LOCAL ASSISTANCE ADJUSTMENTS**

The issues for the Subcommittee to consider are various technical amendments proposed by the Department of Finance (DOF) to the 2012-13 Budget Act.

**BACKGROUND**

As part of the annual budget process, DOF submits a letter to the Legislature on April 1 that includes proposed changes to the Governor's January budget. The proposed revisions are largely technical and include adjustments to state operations and local assistance funding.

1	<p><b>Addition of Budget Bill Item 6110-301-0660, Capital Outlay, Department of Education.</b></p> <p>The following requests would address changes to proposed capital outlay projects:</p> <p>Add Item <del>66106110</del> 6110-301-0660 (Attachment 1) to add the following construction phase lease revenue bond appropriation for two projects to enable the projects to be completed. Both projects have had cost increases resulting from their stoppage due to the Pooled Money Investment Board's decisions to suspend the AB 55 loans used to provide interim financing for these types of projects. As a result, both projects were stopped until funding was identified to complete the design. These projects are finishing design and expect to be ready to bid in the fall in time for the fall bond sales, which will provide funding for the construction phase. The projects and their specific funding needs are as follows:</p> <p><i>California State Special Schools, Riverside School for the Deaf: Academic, Support Cores, Bus Loop and Renovation Project</i> will construct six support cores for academic areas (early childhood education, elementary, and high schools), three additional classrooms, a bus loop, will renovate office space, educational areas, and install efficient boilers.</p> <p>This project began in 2007 with the appropriation of approximately \$10.4 million in lease revenue bonds for preliminary plans, working drawings, construction, and equipment.</p> <p>As a result of the temporary stoppage, an additional \$1,510,000 is needed in construction to address cost increases from new federal accessibility code requirements, and compliance with California Department of Education's Program for Deaf and Hard of Hearing Students – Guidelines for Quality Standards that have since been updated.</p> <p><i>California State Special Schools, Riverside School for the Deaf: New Gymnasium and Pool Center Project</i> will demolish the existing gym and pool center to construct a new 45,000 square foot gymnasium and 23,000 square foot pool center. The project will include modifying existing utilities as necessary, complete telephone systems including teletypewriters, closed-circuit television, community access television, fire alarm systems, parking and road realignment.</p> <p>This project began in 2006 with the appropriation of approximately \$25 million in lease revenue bonds for preliminary plans, working drawings, construction, and equipment.</p> <p>As a result of the temporary stoppage, an additional \$4,591,000 is needed in construction to address</p>
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	<p>cost increases from new federal accessibility code requirements, abatement costs to remove chlordane found during site investigation work, and compliance with California Department of Education’s Program for Deaf and Hard of Hearing Students – Guidelines for Quality Standards that have been updated.</p> <p style="text-align: center;"><b>Attachment Budget Bill Language</b></p> <p style="text-align: center;"><b>Attachment 1</b></p> <p>6110-301-0660-For capital outlay, Department of Education, payable from the Public Buildings Construction Fund..... 6,101,000</p> <p>Schedule: California School for the Deaf, Riverside: (1) 80.80.052-New Gymnasium and Pool Center-Construction.....4,591,000 (2) 80.80.065-Academic Support Cores, Business Loop and Renovation-Construction...1,510,000</p>
<p>2</p>	<p><b>Item 6110-199-0890, Support, Increase Funding for the American Recovery and Reinvestment Act (ARRA) Early Learning Grant (Issue 403)</b>—It is requested that Provision 2 of this item be amended as follows to increase state operations funding by \$45,000 in federal carryover funds to support the last year of the Early Learning Grant authorized by ARRA of 2009, Public Law No. 111-5. This action will align expenditure authority with actual personnel costs incurred by the SDE.</p> <p>Specifically, it is requested that Provision 2 of Item 6110-199-0890 be amended as follows:</p> <p>“2. Of the funds appropriated in this item, <del>\$447,000</del><u>162,000</u> shall be transferred to Item 6110-001-0890 for state operations costs to support the State Advisory Council on Early Childhood Education and Care, subject to approval of a budget revision by the Department of Finance.”</p>
<p>3</p>	<p><b>Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education (SDE) (Issues 146, 322, 324, 611, 645, 801, 803, and 804)</b></p> <p><b>Add Support Carryover for Common Core Standards Implementation (Issue 146)</b>—It is requested that Item 6110-001-0890 be increased by \$2,360,000 to reflect one-time federal Title I carryover funds used to support the continued implementation of academic content standards in mathematics and English language arts and that Schedules (2) and (9) of Item 6110-001-0001 be amended to conform to that action. In August 2010, the State Board of Education adopted content standards in mathematics and English language arts based on the Common Core State Standards developed by national organizations. Chapters 605, 608, and 623, Statutes of 2011 authorize the SDE to conduct specific activities to implement these standards, and the 2011 Budget Act included \$3.5 million federal Title I funds for these purposes. The SDE reports that these funds will not be fully expended because the implementation timeline extends beyond the current year. This request will ensure that Common Core activities are completed as prescribed by the statutes.</p> <p>It is further requested that provisional language be added to Item 6110-001-0890 as follows to conform to this action:</p> <p>X. Of the funds appropriated in this item, \$2,360,000 is available in one-time Title I carryover funds to conduct activities related to implementation of the academic content standards in mathematics and English language arts, as authorized by Chapters 605, 608, and 623 of the Statutes of 2011.</p>
<p>4</p>	<p><b>Add Support Carryover for the Striving Readers Comprehensive Literacy Program (Issue 611)</b>—It is requested that Item 6110-001-0890 be increased by \$424,000 Federal Trust Fund and that Item 6110-001-0001 be amended to reflect the availability of one-time carryover funds for the Striving Readers Comprehensive Literacy Program. The program provides support to the State</p>

	<p>Literacy Team in developing California’s State Literacy Plan. In order to finalize the plan, the SDE requests \$424,000 to update the ten-year old California Recommended Reading List.</p> <p><del>It is further requested that provisional language be added to Item 6110-001-0890 as follows to conform to this action:</del></p> <p><del>X. Of the funds appropriated in this item, \$424,000 is provided in one-time federal Title I carryover funds for the Striving Readers Comprehensive Literacy program.</del></p>
<p>5</p>	<p><b>Add One-Time Carryover for Safe and Supportive Schools (Issue 804)</b>—It is requested that Item 6110-001-0890 be increased by \$680,000 in one-time federal carryover funds and that Item 6110-001-0001 be amended to support the Safe and Supportive Schools program. These carryover funds from 2011-12 will be used to (1) improve the aging California School Climate, Health, Learning Survey system at WestEd, which collects school safety climate data from students, parents, and staff and (2) provide increased technical assistance to participating high schools, which have the worst school safety climates statewide.</p> <p>It is further requested that provisional language be added to Item 6110-001-0890 as follows to conform to this action:</p> <p>X. Of the funds appropriated in this item, \$680,000 is provided in one-time carryover funds for the Safe and Supportive Schools program to support enhanced data collection capacity and accuracy and increased technical assistance to participating schools.</p>
<p>6</p>	<p><b>Add One-Time Federal Funding for Child Nutrition Reauthorization Workload and Current Year Expenditure Plan (Issue 803)</b>—It is requested that Item 6110-001-0890 be increased by \$4.8 million in one-time Federal Trust Fund and that Item 6110-001-0001 be amended to support contracts and staff travel associated with training SFAs on changes to meal and nutritional standards contained in the federal Healthy, Hunger-Free Kids Act of 2010, Public Law No. 111-296 (Act).</p> <p>In an effort to improve federal child nutrition programs, the Act contained many new requirements, including changes to meal patterns and nutritional standards and increased oversight of program sponsors. The Act also provides the following funding increases: (1) \$0.06 per meal to SFAs that are compliant with new meal and nutrition requirements and (2) administrative funds specifically for state agencies to provide technical assistance to SFAs on changes to the meal and nutrition requirements. California’s allocation of administrative funds is \$6.0 million for 2012-13.</p> <p>It is further requested that provisional language be added to Item 6110-001-0890 as follows to conform to this action:</p> <p>X. Of the funds appropriated in this item, \$4,800,000 is provided on a one-time basis to support statewide training of school food authorities regarding changes to meal and nutritional standards contained in the federal Healthy, Hunger-Free Kids Act of 2010, Public Law No. 111-296 (2010), as allowed by federal guidelines on the allocation of administrative funds for state costs of implementation of new meal patterns for the National School Lunch Program and School Breakfast Program.</p> <p><u>Current Year Expenditure Plan:</u> The 2011 Budget Act provided \$500,000 Federal Trust Fund (\$1.0 million annualized) for increased workload associated with the Act’s requirement that state agencies review each National School Lunch Program (NSLP) sponsor and School Breakfast Program sponsor once every three years. (Previously, only NSLP sponsors were reviewed once every five years.) Provisional language requires the Department of Finance (Finance) to approve the SDE’s plan to expend these funds. In February 2012, the SDE submitted a plan that proposed to redirect and fill 10.0 positions by the end of the current fiscal year and to fund these positions in the budget year with \$1.0 million of the \$6.0 million administrative grant because the positions will provide technical assistance to SFAs regarding new nutritional requirements and certification to receive the additional meal reimbursement.</p>

	<p>Finance hereby approves the SDE’s plan for the budget year. The SDE will need to use existing federal authority to absorb any current year expenses associated with these positions, which are expected to be minimal. When the increased review requirements take effect in 2013-14, these positions will conduct compliance reviews and will be funded with existing federal state administrative expense funds.</p> <p>It is requested that Provision 24 of Item 6110-001-0890 be amended as follows to conform to this action:</p> <p>“24. Of the funds appropriated in this item, \$1,000,000 is provided <u>in 2012-13 for technical assistance to child nutrition sponsors regarding new nutritional requirements and in 2013-14 for increased costs associated with new federal requirements to increase the frequency of compliance reviews for child nutrition programs. Expenditure of these funds is subject to Department of Finance approval of an expenditure plan. The expenditure plan shall be based upon final rules established by the United States Department of Agriculture regarding, but not limited to: (a) the effective date of the requirement to review each National School Lunch Program and School Breakfast Program once every three years and (b) how compliance reviews are conducted, especially new or amended regulations leading to efficiencies in the review process.</u> To the extent that additional staff resources are needed, positions shall be redirected from existing vacancies within the State Department of Education.”</p>
7	<p><b>Add Federal Funds for Oversight of Food Service Contracts (Issue 801)</b>—It is requested that Item 6110-001-0890 be increased by \$556,000 Federal Trust Fund and that Item 6110-001-0001 be amended to support workload associated with federally-required oversight of contracts between food service management companies (FSMCs) and school food authorities (SFAs).</p> <p>Federal regulations require state agencies to review and approve all contract documents (including solicitations, evaluations, contracts, and bid protests) between FSMCs and SFAs. The SDE’s Nutrition Services Division has only 0.25 of a position dedicated to these activities. This request will ensure that the SDE can fund redirected positions to provide the required level of oversight.</p> <p>It is further requested that provisional language be added to Item 6110-001-0890 as follows to conform to this action:</p> <p>X. Of the funds appropriated in this item, \$556,000 is provided to support workload associated with federally-required oversight of contracts between food service management companies and school food authorities.</p>
8	<p><b>Item 6110-161-0890, Local Assistance, State Improvement Grant (Issue 640)</b>—It is requested that Provision 9 of this item be amended to accurately reflect the intended use of the State Improvement Grant and prevent the misinterpretation that the funds are intended for a science-based curriculum, when they are to be used for scientifically-based professional development for special education. The federal State Improvement Grant assists state educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, education, and transition services to improve results for children with disabilities.</p> <p>Specifically, it is requested that Provision 9 of 6110-161-0890 be amended as follows:</p> <p>“9. Of the funds appropriated in Schedule (6), \$2,196,000 is provided for <del>science</del> <u>scientifically</u>-based professional development as part of the State Personnel Development grant.”</p>
9	<p><b>Add Support Carryover for the Public Charter Schools Grant Program (PCSGP) (Issue 322)</b>—It is requested that Item 6110-001-0890 be increased by \$825,000 Federal Trust Fund and that Item 6110-001-0001 be amended to reflect the availability of one-time carryover for the PCSGP. The PCSGP awards newly approved charter schools between \$250,000 and \$575,000 to support planning and initial implementation. As part of the 2010 federal grant application, the SDE agreed to contract for an independent evaluation to measure the effectiveness of the PCSGP and for charter development technical assistance to increase the quality of new charter schools in California. These</p>

	<p>activities were previously funded in the 2011 Budget Act, but due to concerns stemming from a reduction in the federal grant award, the SDE was unable to enter into contracts in the current year. This request will allow the SDE to fulfill its stated activities from the 2010 federal grant application.</p> <p>It is further requested that provisional language be added to Item 6110-001-0890 as follows to conform to this action:</p> <p>X. Of the funds appropriated in this item, \$825,000 is available on a one-time basis for the State Department of Education to contract for an independent evaluation of the Public Charter Schools Grant Program and contract to provide technical assistance to sub-grantees.</p>
<p>10</p>	<p><b>Item 6110-112-0890, Local Assistance, Carryover for the Public Charter Schools Grant Program (PCSGP) (Issue 325)</b>—It is requested that Item 6110-112-0890 be increased by \$25,814,000 Federal Trust Fund to reflect the availability of one-time federal carryover funds for the PCSGP. The PCSGP awards newly approved charter schools between \$250,000 and \$575,000 to support planning and initial implementation. The second grant cycle for 2011-12 will not close until March 31, 2012, with an expected grant notification date of June 30, 2012; therefore, there will be insufficient time to award and encumber these funds in the current year. This augmentation will allow SDE to award these funds to recipients in 2012-13.</p>
<p>11</p>	<p><b>Item 6110-170-0001, Local Assistance, Add Reimbursement Carryover for the Career Technical Education Program (Issue 082)</b>—It is requested that Item 6110-170-0001 be amended by increasing reimbursements by \$1,865,000 to reflect one-time reimbursement carryover funds for the Career Technical Education Program, which will allow for the completion of three projects that could not be completed in the current year due to contract delays.</p> <p>It is further requested that provisional language be added as follows to conform to this action:</p> <p>X. Of the funds appropriated in this item, \$1,865,000 reflects one-time reimbursement carryover funds to support the existing program.</p>
<p>12</p>	<p><b>Eliminate Funding for the SDE Administration of the California Subject Matter Projects (CSMP) (Issue 613)</b>—It is requested that Item 6110-001-0001 be decreased by \$5.0 million to reflect the reestablishment of the CSMP funding in the University of California (UC) budget. The Governor’s Budget proposed to shift \$5.0 million General Fund designated for the CSMP from the UC to the SDE. The shift was necessary to ensure that the funding was identified for matching purposes. However, the shift is no longer necessary because it has been determined that the UC can sufficiently identify the funding for federal matching purposes and that funding will remain in the UC budget.</p> <p>It is further requested that Provision 17 be deleted from Item 6110-001-0001 to conform to this action.</p>

**STAFF COMMENTS**

Staff recommends approval of all of the DOF April Letter proposals listed above. No issues have been raised for any of these issues. DOF will inform the subcommittee of any technical adjustments that may need to be made prior to adoption.

## ITEMS TO BE HEARD

### 6110 DEPARTMENT OF EDUCATION

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#### ISSUE 1: GOVERNOR'S 2012-13 PROPOSAL: SPECIAL EDUCATION: MENTAL HEALTH SERVICES

The California Department of Education (CDE) will open this item with an overview of the transition of mental health services from AB 3632 to Special Education and related services under Individuals with Disabilities Education Act (IDEA).

The issue for the Subcommittee to consider is the Governor's proposal to provide a total of \$417 million to Special Education Local Planning Areas (SELPA) on an average daily attendance (ADA) basis to fund educationally-related mental health costs.

#### PANELISTS

- California Department of Education
- Department of Finance
- Legislative Analyst's Office

#### BACKGROUND

Under federal law, known as IDEA, children with disabilities are guaranteed the right to receive a free appropriate public education (FAPE). This includes special education and related services, such as mental health care, necessary for the child to benefit from his or her education. These educationally related mental health services may include therapy and counseling, day treatment, medication management and, for the children with the most severe problems, 24-hour therapeutic residential programs with on-site schools.

Until 1984, California schools provided mental health services to special education pupils who needed the services to benefit from their Individualized Education Plans (IEP). In 1984, the Legislature passed AB 3632 (W. Brown), Chapter 1747, and assigned county mental health departments the responsibility for providing students these services (except students placed out of state). In 1996, the Legislature expanded county responsibilities to include services to students placed in out-of-state schools AB 2726 (Woods), Chapter 654, Statutes of 1995. This program was known as the "AB 3632 Program." Approximately 20,000 special education pupils received mental health services under the AB 3632 program.

Under the AB 3632 program, counties received federal special education funds and General Fund (GF) resources from the Departments of Mental Health (DMH) and Social Services (DSS). Counties also received funding from Medi-Cal. The Commission on State Mandates determined that any residual county program costs were a state-reimbursable mandate. The Constitution requires the state to pay mandate bills or suspend or repeal the mandate.

**2011-12 Budget Act.** AB 114 (Budget Committee), Chapter 43, Statutes of 2001, repealed the state mandate on special education and county mental health agencies and eliminated related references to mental health services in California statute. As a result of this new legislation, school districts are solely responsible for ensuring that students with disabilities receive special education and related services to meet their needs according to the IDEA of 2004.

As a part of this shift, the final budget package appropriated a total of \$423.6 million for educationally related mental health services in 2011-12, including the following funds:

- \$249.8 million in Proposition 98 funds allocated to Special Education Local Planning Areas (SELPA) for educationally related mental health services. Funds are allocated to SELPA using an equal per pupil formula.
- \$69 million in federal special education funds allocated to SELPA for educationally related mental health services. Funds are allocated on a one-time basis using a formula that reflects weighted student mental health service counts. It is the intent of the Legislature that in 2012-13 these funds be allocated to SELPA on an equal per pupil formula.
- \$98 million in Proposition 63 funds allocated to counties via a formula developed by the state Department of Mental Health and local counties (County Welfare Director's Association), pursuant to AB 100 (Budget Committee), Chapter 5, Statutes of 2011. Counties are required to use funds exclusively for educationally related mental health services within a pupil's individualized education program (IEP) during the 2011-12 fiscal year. Unused funding will be reallocated to other counties. In order to access funds, LEAs may develop a memorandum of understanding or enter into a contract with its county mental health agency to address the interagency service responsibility for the provision and transition of mental health services identified on a pupil's IEP during 2011-12.
- \$3 million in Proposition 98 funds available to the CDE to administer an extraordinary cost pool associated with educationally related mental health services for necessary small special education SELPA. Funding is provided to CDE – in collaboration with the DOF and Legislative Analyst's Office – and subject to final approval of DOF.
- \$2 million in one-time federal special education carryover funds appropriated to the Office of Administrative Hearings on a one-time basis for mental health service dispute resolution services in 2011-12. CDE shall submit documentation to the DOF justifying the increased mental health services caseload and obtain written approval from DOF prior to spending these funds.
- \$800,000 in one-time federal special education funds appropriated to the CDE to provide oversight and technical assistance for LEAs as the responsibility for overseeing education related mental health services transitions from counties and to SELPA. The Department shall use these funds to assist SELPA:



- Minimize disruptions and maintain quality services for pupils through the transition period and in future years;
- Develop internal capacity for overseeing, contracting for, and providing;
- Quality educationally related mental health services;
- Identifying best practices and effective models for service delivery ;
- Identifying options for controlling costs and accessing Medi-Cal and other local, state, and federal funds; and,
- Strengthening linkages between mental health and education services. The department shall also identify options for improving accountability for effective services and positive pupil outcomes. As a part of this effort, the Department shall:
  - Establish working groups to generate recommendations regarding best practices, accountability systems, and other matters, and,
  - Hold public meetings with stakeholders to solicit input and share results.
- \$443,000 in existing ongoing federal special education funds and 3.0 positions at the CDE redirected for increased department monitoring associated with educationally related mental health services.

## GOVERNOR'S PROPOSAL

The Governor's 2012-13 Budget proposes to provide a total of \$417 million to SELPAs on an ADA basis to fund educationally-related mental health costs. Consistent with the 2011-12 Budget Act, \$249 million in Proposition 98 (General Fund) is provided to SELPAs on an ADA basis. The remaining \$167.6 million is also proposed to be provided on an ADA basis; however, this allocation method differs from the distribution method of these funds in the 2011-12 Budget Act. Specifically, the differences are as follows:

- \$69 million in federal special education funds for educationally related mental health services are proposed to be allocated to SELPAs on an ADA basis rather than through the weighted formula based on 2010-11 CASEMIS data<sup>1</sup>. The formula used in 2011 was only used for that year. The Governor's proposal to distribute funds on an ADA basis is consistent with Legislative intent language in the 2011-12 Budget Act.

<sup>1</sup> California Special Education Management Information System Software (CASEMIS)

- \$98.6 million in Proposition 98, allocated on a per ADA basis to SELPAs to replace the one-time Proposition 63 funds allocated to county mental health agencies in 2011-12.

**April Letter Proposal.** In addition to the Governor’s January proposal, the Administration has proposed the following adjustments related to the provision of mental health services.

1.	<p><b>Increase Federal Funds for Mental Health Services Compliance and Monitoring of Out-of-State Residential Facilities (Issue 645)</b>—It is requested that Item 6110-001-0890 be increased by \$1,226,000 in federal Individuals with Disabilities Education Act (IDEA) funds and 3.0 limited-term positions be provided for three years, and that Item 6110-001-0001 be amended, to provide an adequate level of oversight and monitoring related to the transition of mental health services from counties to schools.</p> <p>With the passage of Chapter 43, Statutes of 2011 (AB 114), the responsibility for providing mental health services to special education students shifted from counties to schools and has created a significant increase in workload for the SDE. The SDE has already redirected 5.0 positions, which were funded in the current year with \$800,000 in one-time federal IDEA carryover funds, to assist local educational agencies (LEAs) and to provide technical assistance to the field. The proposed funding will continue to support these positions in providing oversight, monitoring, technical assistance, and fiscal and programmatic data collection to ensure a proper transition in the provision of mental health services. In addition, this request will fund 3.0 new limited-term positions that will monitor residential placements made by LEAs in out-of-state facilities to ensure they meet basic health and safety standards.</p>
2.	<p><b>Item 6110-001-0001, Support, Add Funding for Increased Non-Public Schools and Agencies Certification Workload (Issue 644)</b>—It is requested that Item 6110-001-0001 be amended by increasing reimbursements by \$190,000 for projected increases in workload relating to the number of non-public schools and agencies (NPS/As) seeking certification to provide individualized education program-based mental health services.</p> <p>With the passage of Chapter 43, Statutes of 2011 (AB 114), the responsibility for providing mental health services to special education students shifted from counties to schools. The SDE anticipates an increase in NPS/A certification applications it receives due to the ability of local educational agencies to contract with independent agencies for mental health services.</p>

**STAFF COMMENTS**

The SELPA organization and the Coalition for Adequate Funding for Special Education have raised concerns over the ADA allocation of funding and are asking for consideration of a "cost neutral transition plan" to phase in \$249 million of funding from a formula basis to an ADA basis. Staff notes, however, that the Governor’s proposed allocation method is consistent with the state’s traditional special education allocation methodology (which is ADA-based). Providing funding on a per ADA allocation is also consistent with legislative intent in the 2011-12 Budget Act.

**What is the actual cost of services?** The funding provided in the Governor's Budget is similar to the funding level provided in last year's budget, which is tied to historical data related to the AB 3632 program. It is not clear what cost analysis has been done to determine the adequate funding level for provision of education related mental health services.

**ISSUE 2: CHARTER SCHOOLS BACKGROUND (INFORMATION ONLY)**

This issue provides background and context for the following issues related to charter schools. This item is for information only. The Legislative Analyst's Office will also provide an overview of charter school funding as well as major findings and recommendations from their January 2012 report entitled *Comparing Funding for Charter Schools and Their School District Peers*.

**BACKGROUND**

A charter school is a public school that may provide instruction in any of grades K-12. It is usually created or organized by a group of teachers, parents, and or community leaders. For-profit and non-profit corporations may also establish charter schools. A charter school may be authorized by an existing local public school board, County Board of Education, or the State Board of Education. Specific goals and operating procedures for the charter school are detailed in an agreement (charter) between the sponsoring board and charter organizers. A charter school is generally exempt from most laws governing school districts, except where specifically noted in the law. According to the State Department of Education (SDE), there were 919 charter schools with an enrollment of 375,358 pupils in 2010-11.

**Highlights of the LAO report.** The Executive Summary from the LAO report -- *Comparing Funding for Charter Schools and Their School District Peers* – is reprinted below:

“The 1992 legislation that authorized charter schools in California created a funding model intended to provide charter schools with the same per-pupil operational funding as received by other schools in the same school district. The state subsequently modified this policy in 1998, enacting legislation specifying that “charter school operational funding shall be equal to the total funding that would be available to a similar school district serving a similar pupil population.” This policy remains in place. To assess the extent to which this policy is being met, we analyzed per-pupil Proposition 98 operational funding for charter schools and their school district peers. Due to data limitations, we focused our analysis primarily on direct-funded charter schools. (These schools receive funding directly from the state whereas locally funded charter schools have some of their funding allocations embedded within their local school district's allotment).

**Total General Purpose Per-Pupil Funding Is Somewhat Less for Charter Schools.** In 2010–11, charter schools received, on average, \$395 per pupil (or 7 percent) less in total general purpose funding than their school district peers. This difference is relatively small because the largest single source of funding—base general purpose funding—is comparable for both groups. Charter schools, however, receive less in-lieu (or “flexible”) categorical funding. The \$395 per-pupil funding gap is attributable to school districts receiving \$150 more for programs in the Charter School Categorical Block Grant (CSBG) and \$245 more for other in-lieu categorical programs. With the 2011–12 midyear elimination of the Home-to-School (HTS) transportation program, the per-pupil funding gap for programs in the CSBG decreased from \$150 to \$56—lowering the total funding gap to \$301 per pupil.

**Funding Gap Increases as a Result of Changes in K–3 Class Size Reduction (CSR) and Mandate Rules.** The funding gap between charter schools and their school district peers grows if one accounts for recent changes in K–3 CSR and mandate rules. Regarding K–3 CSR, in 2008–09, the state barred any new schools or additional classrooms from participating in the program. Because of the relatively rapid growth of new charter schools, only 49 percent of total K–3 charter school students participated in the program in 2010–11 whereas approximately 95 percent of school district K–3 students participated. This resulted in an additional funding gap of \$721 per pupil for new charter schools. Regarding education mandates, the Commission on State Mandates (CSM) made a determination in 2006–07 to disallow charter schools from receiving mandate reimbursement, and the Controller subsequently stopped reimbursing charter schools in 2009–10. While claiming school districts receive on average \$46 per pupil to complete certain mandated activities that also apply to charter schools, charter schools receive no associated funding.

**Three Recommendations if Existing K–12 Funding Structure Retained.** We recommend the Legislature equalize the funding rates of charter schools and their school district peers as well as provide more flexibility for both groups of schools. The Legislature could achieve these objectives either by making changes within the existing K–12 finance system or fundamentally restructuring the existing system. If the existing K–12 funding structure were retained, we recommend the Legislature:

- **Equalize In-Lieu Categorical Funding Rates.** We recommend providing charter schools with the average statewide amount received by school districts for all in-lieu categorical programs—\$837 per pupil (a \$301 increase from the existing rate of \$536 per pupil). Completely closing this funding gap in 2012–13 for the roughly 440,000 charter students projected statewide would cost \$133 million. Given the state’s current fiscal condition, the Legislature could close the funding gap over a multiyear period.
- **Maximize Flexibility for Charter Schools and School Districts.** We recommend making K–3 CSR flexible for both charter schools and school districts by including these funds in their base general-purpose allocations and providing the same associated per-pupil funding rate to new charter schools. If new charter schools were provided the statewide average K–3 CSR funding rate, this would cost the state \$16 million in 2012–13. Similarly, we recommend placing all remaining career technical education programs (agricultural vocational education, Partnership Academies, and apprentice programs) into base general-purpose allocations.
- **Provide Charter Schools In-Lieu Mandate Funding.** We recommend the state provide \$23 per charter pupil to fund the 17 mandated activities that apply to charter schools. This would cost the state \$10 million in 2012–13. We recommend the state provide this amount as a supplement to the CSBG. (This funding rate equates to roughly half the amount provided to school districts that file mandate claims, on the rationale that charter schools will incur lower costs as a result of not needing to participate in the state’s formal mandate process).

**Two Recommendations if Legislature Pursues More Fundamental Restructuring.**

Though the above changes would eliminate existing funding disparities between charter schools and school districts, the Legislature could pursue more fundamental restructuring of the K–12 finance system. If a new system were designed to replace the existing one, we recommend the Legislature:

- **Apply the Same Basic Funding Model to Charter Schools and School Districts.** For both charter schools and school districts, we recommend funding a base general-purpose allocation—one that is rationale, simple, and transparent—along with a few block grants linked with student needs, and then equalizing associated per–pupil rates over time. Alternatively, the Legislature could consider the Governor’s proposal to create a weighted student formula, which also would provide additional funding for disadvantaged students and equalize per–pupil rates over time.
- **Allow Charter Schools Access to Certain Mandate–Related Funding.** In addition to categorical restructuring, the Legislature could consider fundamental changes to the existing mandate reimbursement system. If this course of action were pursued, we recommend applying the new system to both charter schools and school districts. While we think the Governor’s discretionary mandate block grant proposal is a reasonable starting point, we recommend allowing both charter schools and school districts access to the associated funding.”

**ISSUE 3: CHARTER SCHOOLS: DEFERRAL EXEMPTIONS**

The issue for the Subcommittee to consider is the Governor's proposed trailer bill language to allow charter schools to directly seek a hardship waiver from the June deferral, rather than seeking the exemption through the charter authorizer as required under existing law.

**PANELISTS**

- Department of Finance
- Legislative Analyst's Office
- California Department of Education

**BACKGROUND**

Over the last several years, the state has deferred payments to school districts as a way to achieve Proposition 98 savings as well as manage the state's cash flow. Relying on deferrals has allowed the state to achieve significant one-time savings while simultaneously allowing school districts to continue operating a larger program by borrowing or using cash reserves. As the magnitude and length of payment deferrals have increased, however, school districts have found it increasingly difficult to front the cash required to continue operating at a higher programmatic level. According to the Legislative Analyst's Office, the state currently defers approximately \$9.4 billion in K-12 apportionment payments or 21 percent of the total K-12 program funding.

**Hardship exemptions.** As deferrals have grown over the years, school districts and charter schools have begun to have problems meeting their financial obligations. AB 1610 (Budget Committee), Chapter 724, Statutes of 2010, established a deferral exemption process for school districts and charter schools. There is no exemption provision for county offices of education. Specifically, statute provides the opportunity for school districts and charter schools to apply for a dollar-limited exemption from the deferral of the June principal apportionment payment to July. Exemptions totaling up to \$100 million may be approved by the DOF. If requests for exemptions exceed \$100 million, the State Controller, State Treasurer, and DOF may authorize exemptions totaling up to \$300 million. If requests exceed the amount available, payments will be made in order based upon the earliest date and time that the complete application was received via e-mail, fax, or mail.

In 2011, nine school districts and 133 charter schools were approved for deferral exemptions for the 2011 June deferral. According to DOF, all applications that were submitted were approved with the exception of one school because their attached cash flow indicated the school was in a positive cash position throughout the fiscal year. Applications for exemptions for the June 2012 deferral were due April 1, 2012. The DOF is still processing these applications.

**GOVERNOR'S PROPOSAL**

The Governor's Budget proposes trailer bill language to repeal the requirement for the charter authorizer to review and approve deferral exemption requests for a charter school. Specifically, the language would allow the governing body of a charter school to certify to the Superintendent of Public Instruction, in consultation with the county superintendent of schools, that the charter school would be unable to meet its financial obligations as a result of the June deferral. According to the DOF, this change will streamline the process by reducing the length of time it takes for a deferral exemption to be approved, and relieves both charter schools and charter authorizers of additional workload.

**STAFF COMMENTS**

Charter authorizers are responsible for the fiscal oversight of charter schools. If a charter is facing financial hardship, even on a temporary basis due to state deferrals, the charter authorizer should be aware of the charter's fiscal situation. Some charter advocates have expressed the need for this change due to strained relationships between some charter authorizers and charter schools. There are concerns that some charter schools have resisted asking their authorizer to seek an exemption for fear that their charter will not be renewed as this could be seen as being financially unstable. Seeking an exemption from these deferrals does not appear to be grounds for charter revocation under current law and staff is not aware of any charter schools that have gone bankrupt due to not seeking a waiver.



**ISSUE 4: CHARTER SCHOOLS: REFINANCING OF WORKING CAPITAL**

The issue for the Subcommittee to consider is the Governor's proposed budget trailer bill language to allow the California School Finance Authority to refinance working capital that has been previously structured.

**PANELISTS**

- Department of Finance
- California Department of Education
- Legislative Analyst's Office

**BACKGROUND**

**California School Finance Authority (CSFA).** The CSFA was created in 1985 to oversee the statewide system for the sale of revenue bonds to reconstruct, remodel or replace existing school buildings, acquire new school sites and buildings to be made available to public school districts (K-12) and community colleges, and to assist school districts by providing access to financing for working capital and capital improvements. Over the last 25 years, the CSFA has developed a number of school facilities financing programs and most recently is focused on assisting charter schools to meet their facility needs. The CSFA is a three-member board comprised of the State Treasurer, the Superintendent of Public Instruction, and the Director of the DOF, and is administered within the Office of the State Treasurer.

Current law authorizes the CSFA to issue lease revenue bonds for the purpose of financing working capital for school districts, county offices of education, community college districts, and charter schools. This working capital is available to be used by these educational entities to pay maintenance or operating expenses incurred in connection with the ownership or operation of an educational facility, that could include reserves for maintenance or operating expenses, interest for up to two years on any working capital loan, reserves for debt service and any other financing costs, payments for the rent or lease of an educational facility. Current authority for CSFA includes financing this working capital, but there is no authority for CSFA to refinance these financing packages.

**GOVERNOR'S PROPOSAL**

The Governor proposes budget trailer bill language to allow CSFA to refinance revenue bonds issued to finance school facilities working capital and capital improvements, which currently is not explicitly authorized. According to the DOF, this is a technical change that conforms to CSFA's current practices.

**STAFF COMMENTS**

**Recent Legislation.** The language in this proposal is substantially similar to language in SB 645 (Simitian) of 2011. SB 645 also proposed to establish new accountability measures for charter school renewal and expand eligibility of the Charter School Facility Grant Program (CSFGP). The bill was held on the suspense file of the Assembly Appropriations Committee.

**ISSUE 5: CHARTER SCHOOLS: EXTERNAL BORROWING**

The issue for the Subcommittee to consider is the Governor's proposed budget trailer bill language to require county treasurers to loan money to charter schools, allow county offices of education to make short term loans to charter schools and to make charter schools a public agency for the purpose of seeking Tax and Revenue Anticipation Notes (TRANS).

**PANELISTS**

- Department of Finance
- Legislative Analyst's Office
- California Department of Education

**BACKGROUND**

School district budgets have been stressed over the last few years with budget cuts and payment deferrals. This has caused local education agencies to increasingly rely on borrowing, both internally and externally.

**Internal Borrowing.** Internal borrowing is authorized by Education Code Section 42603 and allows LEAs to borrow between funds temporarily to address cash flow shortages. This is the most common method utilized among school districts. The limitations associated with this type of borrowing allows that no more than 75 percent of the money held in any fund during the current fiscal year may be transferred. In addition, funds must be repaid in the same fiscal year (i.e., by June 30) if the transfer is completed prior to the last 120 days of the fiscal year. If funds are transferred within the last 120 days of the fiscal year, repayment of the funds must be made prior to June 30 in the subsequent year. While this is an option for school districts, it is not an option for charter schools.

**External Borrowing.** There are a few options for districts to borrow externally, however these options are also not available to charter schools:

1. **Borrowing from the County Treasurer.** Education Code 42620 allows a school to borrow from the County Treasurer, also known as dry period financing. Under Article 16, Section 6, of the California Constitution the County Treasurer must provide funds to an school district should it not be able to meet its obligations. However, the County Treasurer cannot loan districts money after the last Monday in April of the current fiscal year. In addition, the governing board's approval is also required for this type of borrowing. The loan cannot exceed 85 percent of direct taxes levied on behalf of the school district. The advantage to having the County Treasurer provide the funds is based on the ability of the Treasurer to take the repayment from the tax receipts received prior to any distribution to the LEA for property taxes. Repayment must be made from the first monies received by the school district before any other obligation is paid.
2. **Borrowing from a County Office of Education.** Education Code 42621 and 42622 allow for a district to seek assistance from a County Office of Education (COE), however, this option is dependent upon the COE being willing and able to provide funding. Specifically, the law authorizes a county superintendent of schools, with

approval from the county board of education, to make temporary money transfers to any school district that does not have sufficient funds to meet its current operating expenses. A transfer cannot exceed 85 percent of the amount of money, which will accrue to the school district during the fiscal year. Statute also authorizes a county superintendent, with approval by the county board, to make temporary money transfers to any school district that does not have sufficient money to meet its current operating expenses in amounts it deems necessary. Any amount transferred by the county superintendent of schools to a school district is required to be repaid prior to June 30 of the current fiscal year.

3. **Tax and Revenue Anticipation Notes (TRANS).** School districts utilize these short-term loans to address cash flow problems created when expenditures must be incurred before tax revenues are received. This form of short-term borrowing is the most common method used by LEAs. The LEA must determine the cash flow needs to size the TRANS appropriately. If an LEA cannot demonstrate a cash shortage in the current year but issued a TRANS, they could be subject to arbitrage rebate.

## GOVERNOR'S PROPOSAL

The Governor's Budget proposes trailer bill language to amend existing law to require county treasurers to loan to charter schools and authorizes county offices of education to loan money to charter schools. The Governor's Budget also proposes trailer bill language to make charter schools a public agency and allow for county offices of education to borrow funds or issue TRANS for the purpose of providing temporary revenue backed loans to charter schools. According to the DOF, this change will allow charter schools to reducing financing costs and may save the state costs associated with deferral exemptions being requested by charter schools.

## STAFF COMMENTS

**Charters can currently seek exemption from deferrals.** Issues have been raised around charter school's ability to cope with the states cash management deferrals due to limited borrowing opportunities. Staff notes, however, that the Legislature has passed and the Governor signed measures to establish an exemption processes for inter-year and intra-year deferral payments to charter schools. According to DOF, all charter schools inter-year applications submitted were approved with the exception of one school because their attached cash flow indicated the school was in a positive cash position throughout the fiscal year. All intra-year waivers were approved. DOF is still reviewing 2012 inter-year waiver applications. Given that there is a process to alleviate short-term financing issues related to deferrals, it is not clear what other short-term cash issues charters may have that necessitate borrowing as proposed by the Administration.

**Constitutional issues with county treasurer "dry period financing" proposal.** The California Association of County Treasurers and Tax Collectors (CACTTC) has "serious concerns" regarding dry period financing for charter schools as proposed by the Administration and opposes the Governor's proposed trailer bill language. According to a letter from CACTTC, charter schools are not required to bank with county treasurers, as is

required by traditional school districts, however, the Governor's trailer bill language would authorize charter schools to receive financing from the county treasury. Such authorization would give public money and credit to non-profit corporations. Unless the charter school is formed by, and under the complete control of a school district, doing so would be unconstitutional. The Constitutional provision, which permits dry period financing (Article 16, Section 6) relies on the recipients of those loans banking solely with the county treasury that is how the treasury can be assured of repayment. This would not be the case with vary many, if any, charter schools.

**Pending legislation related to county board loans.** AB 1596 (Huber) of 2012 would authorize a county board of education to loan money to any charter school in the state for the purposes of meeting the short-term, working capital operational needs of the charter school. The bill is pending in the Assembly Appropriations Committee.

**Uncertainty over charter's current access to TRANS.** According to the DOF, charter schools may not issue traditional TRANS. Instead, charter schools have had to seek high interest bank loans because they cannot access low-cost TRANS. Some charter schools have attempted to be included in their local school districts TRANS, but have been rejected on the basis that there is no statutory authority to include a charter in their TRANS or for charters to issue TRANS.

While charter schools cannot issue an independent TRAN, it is staff's understanding that in certain instances, some charter schools have been able to borrow through affiliated school district TRANS. Most school districts, however, do not extend this offer to charter schools because of liability and increased transitional costs.

**ISSUE 6: CHARTER SCHOOLS: FACILITIES PROPOSALS**

The issues for the Subcommittee to consider are the Governor's Budget trailer bill proposals to: 1) Require the conveyance of a school districts surplus property to a charter school; 2) Authorize a school district to sell property to a charter school and maintain eligibility for various education facilities programs; and, 3) Make technical changes to the Charter School Revolving Loan Fund.

**PANELISTS**

- Department of Finance
- California Department of Education
- Legislative Analyst's Office

**BACKGROUND**

There are several state and federal resources that help charter schools obtain school facilities. These laws use different approaches in assisting charter schools with this need, including lending programs, grant programs, and a mandate for school districts to provide facilities to charter schools.

**Proposition 39.** Proposition 39, which passed in November 2000 and went into effect in 2003, requires school districts to provide to each charter school having a projected average daily attendance of at least 80 or more students from that district with "facilities sufficient to accommodate the charter school's needs." Districts can provide charter schools with existing facilities; to use discretionary funds; or use other revenues, such as local school bonds, to satisfy this requirement. The school district may charge the charter school a pro rata share of the district's facilities costs which are paid with unrestricted general fund revenues, based upon the ratio of space the charter school uses divided by the total space of the district.

**Charter School Facility Grant Program.** The Charter School Facility Grant Program (established under SB 740, (O'Connell), Chapter 892, Statutes of 2001) is a noncompetitive program that provides assistance with facilities rent and lease expenditures for charter schools that meet specific eligibility criteria. The grant program was enacted in 2002 to reimburse charter schools for rental and lease costs in low-income areas. This program is targeted toward schools and communities with high proportions of economically disadvantaged students. Eligible applicants must have at least 70 percent of students enrolled at the charter school who are eligible for free or reduced-price meals or the charter school must be physically located in an elementary school attendance area where at least 70 percent of students enrolled are eligible for free or reduced-price meals. The charter school must also give a preference in admissions to students who reside in the elementary school attendance area. The charter schools are funded \$750 per unit of classroom-based average daily attends, up to 75 percent of its annual facilities rent and lease costs for the school.

Historically, the program funds were used to reimburse eligible charter schools for their prior year facilities rent and lease expenditures. Commencing with fiscal year 2009-10, the state converted the program from a reimbursement to a grant program.

**Charter School Facilities Program.** In 2002, AB 14 created the Charter School Facilities Program (CSFP). This program is jointly administered by the CSFA, and Office of Public School Construction (OPSC) staff.

Through the passage of Propositions 47, 55 and 1D, \$900 million has been made available for the new construction of charter school facilities or the rehabilitation of existing school district facilities for charter school's that provide site based instruction. The CSFP funds 50 percent of project costs as a grant, and the charter school is responsible for paying the 50 percent balance either through a lump sum payment or through payments due on a long-term lease obligation. The school district in which the project is located retains ownership of the project for the benefit of the public education system. To qualify for funding, a charter school must be deemed financially sound by the CSFA.

When an application for funding is initially filed with CSFA and OPSC, the applicant is not expected to have designed the project, acquired a school site, etc. Schools are provided with a Preliminary Apportionment, which is sized using a project cost estimate prepared by OPSC. Charter schools that are awarded funding have four years to design the project, acquire a site, receive approvals from the necessary agencies, and file a funding application with the OPSC to convert the Preliminary Apportionment to a Final Apportionment.

**State Charter School Facilities Incentive Grants Program.** This is a federal program administered by CSFA through the State Treasurers Office. The program provides two five-year funding rounds of \$49.3 million and \$46.1 million, respectively, to assist California charter schools in meeting their facility needs. Charter schools may apply for this program along with the Charter School Facility Grant program; however, charter schools that receive grant funds authorized under either of those two programs may not receive funding in excess of 75 percent of annual lease costs through either program, or in combination with either program, for any one school year. Charters must meet a number of criteria including: being in good standing with the charter authorizer; have provided at least one school year of instruction, provides at least eighty percent of the instructional time at the school site with an average daily attendance rate of at least eighty percent based on the school's most recent CBEDS report.

**Charter School Revolving Loan Fund.** The Charter School Revolving Loan Fund (CSRLF), established in statute and created in the State Treasury, provides low-interest loans of up to \$250,000 to new, non-conversion charter schools to provide startup and initial operating capital to assist schools in establishing charter school operations. Specifically, the loan helps meet the objectives established in a school's charter, such as leasing facilities, making necessary improvements to facilities, purchasing instructional materials and equipment, and expanding programs.

The CSRLF is comprised of federal funds obtained by the state for charter schools and any other funds appropriated or transferred to the fund through the annual budget process. The loans must be repaid within five years, beginning with the first fiscal year after receipt of the loan. Loans shall be made at the interest rate earned by the money in the Pooled Money Investment Account (PMIA) as of the date of disbursement of the funds to the charter school. In the case of default of a loan made directly to a charter school, the charter school is liable for repayment of the loan.

A loan request must be submitted by the school district or county office of education that authorized the charter jointly with the charter school or a charter school directly if the charter school is incorporated (charter schools that are incorporated have the option to apply directly or jointly with the chartering entity).

The California Department of Education (CDE) approves the loans and may consider the following when determining whether to approve a school's loan application:

- soundness of the charter school's financial business plans;
- availability of other sources of funding for the charter school;
- geographic distribution of loans made from the Charter School Revolving Loan Fund;
- the impact the receipt of these funds will have on the charter school's receipt of other private and public financing;
- plans for creative uses of the funds received, such as loan guarantees or other types of credit enhancements;
- financial needs of the charter school; and,
- startup costs for new charter schools, which is a priority for loans.

Pursuant to EC Section 41367, moneys in the CSSF shall be available for deposit into the CSRLF, in case of default on any loan made from the CSRLF. The statute is silent regarding the transfer process and no transfer has been made to date from the Charter School Security Fund (CSSF) to the CSRLF. The balance in the CSSF is approximately \$3.9 million. Without specific authority regarding the transfer process, the CDE believes that it would need to go through the full discharge of accountability process, which involves several state agencies and is estimated to take a number of years to complete for each defaulted loan.

**Charter School Security Fund.** SB 1759, Chapter 586, Statutes of 2000, established the CSSF. Current law requires that the interest rate that charter schools pay on loans made from the CSRLF be deposited into the CSSF to be made available to the CSRLF in the case of default on loans made from the CSRLF. Current law requires the DOF to monitor the adequacy of the fund and report annually to the Legislature on the need, if any, to adjust the terms of the CSRLF and the Security Fund.



**GOVERNOR'S PROPOSAL**

The Governor's Budget proposes trailer bill language for the following issues:

- 1) **Conveyance of Surplus Property.** The Governor's Budget proposes trailer bill language to require a school district seeking to sell or lease surplus property to first offer the property to any interested charter school providing direct instruction or instructional support. The language further requires the property to be conveyed to any charter school that chooses to accept the surplus facility. The language defines "conveyed" as requiring the school district to transfer title to the property identified as surplus real property without requiring an accepting charter school to provide payments to the school district.

If a charter school accepts the "conveyed" property, they assume liability. If the property ceases to be used for an educational purpose, according to the proposed language, the charter school shall first offer to return the facility to the district that conveyed the property. If the district declines the property, the title goes to the Office of Public School Construction to dispose of the property consistent with the practice used to dispose of facilities under the Charter School Facility Program.

According to the DOF, this change will ensure that state funded education facilities remain to be used for their intended purpose of educating public school students.

- 2) **Sale of Property.** The Governor proposes budget trailer bill language to allow a school district to sell or lease real property to a charter school as long as the sale does not violate the provisions of a local bond act. Further, the language would allow a school district to remain eligible for other state facilities funding as long as the district can demonstrate eligibility pursuant to requirements under the existing bond act. The language would also allow the district to deposit the proceeds of the sale of real property and personal property located on the real property into the district's general fund to be used for any educational purpose. Further, the language requires a charter school that purchases real property to assume maintenance responsibility of the schoolsite and further requires the Office of Public School Construction to develop regulations to clarify and implement this new statute.

According to the DOF, this change will remove the disincentive of selling unused property to a charter school by removing the associated penalties; thereby, ensuring that educational facilities are effectively utilized.

- 3) **Charter School Revolving Loan Fund.** The Governor's Budget proposes trailer bill language to require the CDE to monitor the adequacy of the amount of funds in the Charter School Revolving Loan Fund and report annually to the DOF and the Controller on the need, if any, to transfer funds from the Charter School Security Fund to the Charter School Revolving Loan Fund. According to DOF, this determination process will ensure that the interest payments collected in the Security Fund can be transferred to the Revolving Loan Fund as the original law intended.

**LAO COMMENTS**

With regard to the Charter School Revolving Loan Fund, the Legislative Analyst's Office recommends the following amendments to the Administration's proposed trailer bill language:

1. Allow transfer of funds from the Charter School Security Fund to the Charter School Revolving Loan Fund only to recover funds lost due to loan defaults;
2. Require DOF to notify the Joint Legislative Budget Committee upon approval of transfer; and,
3. Require the Department of Education to submit detailed fund condition statements to DOF that will be included in the Governor's January budget each year.

**ISSUE 7: CHARTER SCHOOLS: ELIMINATION OF FUNDING DETERMINATION FOR CHARTER SCHOOL NON-CLASSROOM BASED INSTRUCTION**

The issue for the Subcommittee to consider is the Governor's proposed budget trailer bill language to eliminate the SB 740 funding determination process for non-classroom based instruction and instead provide 100 percent funding for all non-classroom based charter schools.

**PANELISTS**

- Department of Finance
- California Department of Education
- Legislative Analyst's Office

**BACKGROUND**

Non-classroom based schools differ from traditional schools in that they deliver instruction outside the confines of the classroom setting. Non-classroom based instruction encompasses homeschooling and various forms of independent study, including computer-based instruction using software modules and teacher-directed distance learning. Non-classroom based schools tend to serve somewhat different students from those found in other schools—that is, students seeking personalized instruction and a pace tailored to their needs.

According to a RAND report, *Non-classroom based Charter Schools in California and the Impact of SB 740*, "The potential for the misuse of public funds has been high in non-classroom based charter schools due to the nature of the instruction they provide. They use facilities and teachers in a different manner from other types of schools and may have lower cost structures. Therefore, disproportionate amounts of public per-pupil revenues may end up in the hands of school administrators in these schools."

In 2001, the state passed SB 740, Chapter 892, Statutes of 2001 in an effort to strengthen the oversight of non-classroom based schools and implement state funding reductions for schools failing to meet specific standards. In order for a charter school to receive, 100 percent average daily attendance (ADA) the charter school must meet the following conditions:

- 1) Ensure the charter school's pupils are engaged in educational activities required of those pupils, and the pupils are under the immediate supervision and control of an employee of the charter school who is authorized to provide instruction to the pupils.
- 2) Provide at least 80 percent of the instructional time at the school site.
- 3) The charter school site must be a facility that is used principally for classroom instruction.
- 4) The charter school requires its pupils to be in attendance at the school site at least 80 percent of the minimum instructional time required for pupils.

**Funding Determinations.** According to the CDE, most charter schools are approved for 100 percent funding. Based upon the funding determinations that were applied for, and approved during for the 2011-12 fiscal year, 79 charter schools applied for 100 percent funding. Approximately 20 percent (17 charters) were not initially approved to be funded at the 100 percent funding level. Of those charters not initially approved for 100 percent, after further review for mitigating circumstances, 13 charters were approved by CDE for 100 percent funding, 2 charters were approved for 100 percent funding by the State Board of Education (SBE) while the funding levels for the remaining 2 charters are still under review by the SBE staff.

### GOVERNOR'S PROPOSAL

The Governor's Budget proposes trailer bill language to repeal the funding determination process established under SB 740 and instead provides 100 percent funding for all non-classroom based charter schools. According to the DOF, this change will reduce workload for staff at the CDE and SBE as well as for charter schools and charter authorizers. DOF further contends that this change will equalize funding disparities between charter school that offer non-classroom based instruction and a school district that offers independent study instruction.

### STAFF COMMENTS

**CDE concerns.** The CDE has expressed concerns with providing full funding to the non-classroom based charter schools without any review of their needs. CDE contends that this lack of oversight could lead to profiteering at the expense of the students, the problem that prompted the funding adjustments in the first place. According to CDE, the potential for this same problem has not gone away. Currently, these charters are only audited once on a multiple year grant award. Under the Governor's proposal, the charters would automatically receive full funding for every student, but could actually spend very little on the student. It may be awhile before any misuse of funds are discovered through the audit process, and by that time, the charter may have closed making recovery of the funds very difficult.

**Potential costs.** In addition, all charters do not request nor meet the requirements for 100 percent funding. According to CDE, in the 2011-12 fiscal year, 203 charters are operating under funding determinations (determinations are made for more than one year). Of these 203, 11 charters receive less than 100 percent funding. The most recent current year data shows that the difference between the funded ADA and the reported ADA by these charters was over 3,300. If this additional ADA was funded at an average of \$6,000, the additional need would be \$19.8 million. These funds are not provided in the proposed budget.

**ISSUE 8: CHARTER SCHOOLS: CHARTER SCHOOL FACILITIES GRANT PROGRAM:  
NON-CLASSROOM BASED INSTRUCTION PARTICIPATION**

The issue for the Subcommittee to consider is the Governor's proposed trailer bill language to make non-classroom based instruction eligible for the Charter School Facilities Grant program. The Administration also proposes a defined apportionment schedule for these grant funds.

**PANELISTS**

- Department of Finance
- California Department of Education
- Legislative Analyst's Office

**BACKGROUND**

**Charter School Facility Grant Program.** The Charter School Facility Grant Program (CSFGP), established under SB 740, Chapter 892, Statutes of 2001, is a noncompetitive program that provides assistance with facilities rent and lease expenditures for charter schools that meet specific eligibility criteria. The grant program was enacted in 2002 to reimburse charter schools for rental and lease costs in low-income areas. This program is targeted toward schools and communities with high proportions of economically disadvantaged students. Eligible applicants must have at least 70 percent of students enrolled at the charter school who are eligible for free or reduced-price meals or the charter school must be physically located in an elementary school attendance area where at least 70 percent of students enrolled are eligible for free or reduced-price meals. The charter school must also give a preference in admissions to students who reside in the elementary school attendance area. The charter schools are funded \$750 per unit of classroom-based average daily attends, up to 75 percent of its annual facilities rent and lease costs for the school. Historically, the program funds were used to reimburse eligible charter schools for their prior year facilities rent and lease expenditures. Commencing with fiscal year 2009-10, the state converted the program from a reimbursement to a grant program.

**Program Prohibitions.** The program currently prohibits funding from being apportioned for any of the following:

- a) Units of ADA generated through non-classroom based instruction.
- b) Charter schools occupying existing school district or county office of education facilities.
- c) Charter schools receiving reasonably equivalent facilities from their chartering authority.

**Funding History.** The enacting legislation stated the Legislature's intent to appropriate \$10 million for the program for the 2001-02, 2002-03, and 2003-04 fiscal years (FY). Funds for this program have increased substantially over time, with the bulk of the funding coming from the transfer of funds from the phase out of the Multi-track Year-Round Education (MTYRE) Operational Grant Program. SB 658 (Romero), Chapter 271, Statutes of 2008, required all funds appropriated for the MTYRE Program at the FY 2007-08 level, which, at the time, was \$97 million, to be transferred to the CSFGP at a rate of 20 percent each year. The last payment of \$15 million Proposition 98 (General Fund) from MTYRE to the CSFGP is proposed for transfer in the 2012-13 Governor's Budget. With this transfer, the Governor's Budget proposes to provide a total of \$92 million for the program in 2012-13.

In 2009, the CSFGP was included in the categorical program reductions made to a total of 39 programs. Statute was also changed to transition the CSFGP from a reimbursement to a grant program. In order to implement this change, SDE was directed to "double fund" this program in order to pay off prior grant claims. Essentially, SDE allocates yearly funding to program grantees and any prior year funding owed. This has resulted in significant unspent funds in prior years.

## GOVERNOR'S PROPOSAL

- 1) **Non-classroom based charter school participation.** Current law allows a non-classroom based charter to receive reimbursement for allowable rent or lease expenses if the school meets the eligibility criteria. The funding formula is based on the charter's certified classroom-based ADA.

The Governor's budget proposes trailer bill language to repeal the non-classroom based ADA requirement. Instead, the language would allow portions of a charter school's facilities that are used to provide direct instruction and instructional support to pupils enrolled in the school to be eligible for funding under this program. According to the DOF, this change will equalize funding disparities between charter schools that offer non-classroom based instruction and school districts that offer independent study instruction, as well as provide much needed cash flow relief to charter schools through the earlier apportionment schedule.

- 2) **Apportionments.** Current law requires CDE to apportion funding in a "timely manner" as defined by CDE. The Governor's Budget proposes trailer bill language to require the apportionment of funding by August 31, of each fiscal year or 30 days after the enactment of the annual budget act, whichever is later.
- 3) **Eligibility Criteria.** Eligible applicants must have at least 70 percent of students enrolled at the charter school who are eligible for free or reduced-price meals or the charter school must be physically located in an elementary school attendance area where at least 70 percent of students enrolled are eligible for free or reduced-price meals.

The Governor's Budget includes trailer bill language to require CDE to use prior year data on pupil eligibility for free and reduced price meals and prior year rent or lease costs provided by the charter school to determine eligibility for the grant program until current year data or actual rent or lease costs become known or until June 30 of each fiscal year. If this data is not available, the language directs CDE to use estimates provided by the charter school so the total rent and lease costs do not exceed the schools total advanced apportionment funding.

## STAFF COMMENTS

**CDE concerns with program expansion.** The CDE has expressed concerns with expanding the criteria to allow additional non-classroom based charters access to the CSFGP. According to CDE, the proposal would increase the funding formula cap for all charter schools since the formula would be based on a charter school's total ADA. The CDE believes that this amendment will increase the reimbursable costs for charter schools and could result in prorating allocations to all schools because the budget appropriation is likely to be insufficient

In an attempt to limit the costs, the TBL would limit the reimbursement to "the portion of a charter school's facility that is used to provide direct instruction and instructional support." However, according to CDE, facility lease agreements do not identify the lease costs in this manner. Since lease agreements generally do not identify how each square foot of the facility is used, there is no way to audit this requirement.

**CDE concerns with allocation schedule.** The proposed trailer bill language requires the CDE to allocate current year funding by August 31 of each fiscal year. The allocations would be based on data available at that time in order to facilitate the timely release of funds. The CDE would not be required to review lease agreements and reimbursable cost claims; any overpayments in funding would be reported as a finding in the school's annual audit. The CDE would propose that the language clearly state that the SSPI's responsibility is to allocate funding based on only eligibility data and ADA and that the review and verification of allowable rent and lease expenses would be included in the audit guide. This would indicate more clearly the CDE's role to allocate funding based on data only.

Beginning in 2011-12, the CDE implemented an advance apportionment process for eligible continuing charter schools and newly operational charter schools in order to allocate funding on a current year basis. An advance apportionment for eligible continuing charter schools was certified on September 30, 2011, which equaled 50 percent of the charter school's prior year annualized funding amount. Additional advance apportionments were subsequently certified for eligible continuing and newly operational charter schools. In addition, a second apportionment is scheduled for spring 2012, which will reflect an additional 25 percent allocation based on current year data for eligible schools. CDE believes that the Governor's proposal to require the allocation of funding by August 31<sup>st</sup> of each year is unnecessary due to the internal changes that have been made.



**CDE concerns with audit adjustments.** The proposed trailer bill language requires the CDE to be considered the "senior creditor" for purposes of satisfying any audit findings pursuant to audit steps developed for inclusion in the annual audit guide. According to CDE, "It is our understanding that the Administration believes that this language will allow the state to collect any debts owed to us by charter schools that close. Based on our interpretation of the language, we do not believe that this provides any additional authority or would allow the state to be given priority for the recovery of funds in the event a charter school goes out of business. Furthermore, audit findings may be appealed by local educational agencies through the Education Audit Appeals Panel before audit finding costs can be recovered. The CDE does not believe that the proposed language supersedes the appeal process."

**Related Legislation.** SB 645 (Simitian) of 2011 addressed a number of charter school issues, including authorizing CSFGP funds to be apportioned to charter schools providing non-classroom based instruction, if the charter school operates facilities that provide direct instruction/support to pupils enrolled at the school and meets all of the other existing eligibility requirements. According to the Assembly Appropriations Committee analysis, this provision would result in potential loss of Proposition 98 (General Fund) savings of "the low to tens of millions, due to the proposed eligibility expansion of the CSFGP."