

MAY 22, 2020

May Revision Control Section Proposals

PRESENTED TO:

Assembly Budget Subcommittee No. 6 on
Budget Process Oversight and Program Evaluation
Hon. Philip Y. Ting, Chair



LEGISLATIVE ANALYST'S OFFICE

Overview of Proposals

COVID-Related Expenditures

Direct COVID-19 Related Funding in the May Revision <i>(In Billions)</i>	
	Amount
Funding Already Expended	
Authorized under C.S. 36	\$0.8
Authorized under DREOA	1.4
Funding Proposed in the May Revision	
Direct response expenditures	\$3.5
COVID-19 contingency fund (C.S. 36)	2.9
Total	\$8.6

COVID-19 = coronavirus disease 2019; C.S. = Control Section; and DREOA = Disaster Response-Emergency Operations Account.

- **Control Section (C.S.) 36** was created earlier this year just before the Legislature went on recess. The language requires a 72-hour notification to the Joint Legislative Budget Committee (JLBC). In particular:
 - \$805 million has already been allocated under this authority.
 - \$2.9 billion in new funding is proposed to be spent under this authority in the newly created coronavirus disease 2019 (COVID-19) contingency fund.
- **Disaster Response-Emergency Operations Account (DREOA)** provides the administration access to funding from a state reserve account—the Special Fund for Economic Uncertainties (SFEU)—for response and recovery operation costs incurred by state agencies during a state of emergency. When using this authority for COVID-19-related expenditures, the administration notified the Legislature when the transfer was made, but not consistently about the actual allocations of funds.



Overview of Proposals

(Continued)

New Federal Funding

Allocating New Federal Funding. The administration proposes two new control sections (C.S. 11.90 and C.S. 11.95) to change proposed allocations of Coronavirus Relief Funds and allocate new federal funding.

How the Administration Proposes Allocating Coronavirus Relief Funds <i>(In Billions)</i>	
	Amount
State	\$3.8
Schools	4.0
Counties	1.3
Cities	0.5
Total	\$9.5

- **C.S. 11.90** would allow the Department of Finance (DOF) to allocate \$9.5 billion of Coronavirus Relief Funds to support activities and expenses that promote public health and public safety and may be used to offset or reduce General Fund appropriations incurred to support the COVID-19 response. DOF's current expenditure plan for these funds is described above. The May Revision also authorizes DOF to reallocate funds described above if they are not spent by September 1, 2020. The proposed language does not require DOF to notify the Legislature about these changes.
- **C.S. 11.95** would allow DOF to allocate funds provided in federal legislation to support the state's COVID-19 response and offset, or reduce, General Fund appropriations. The proposed language does not require DOF to notify the Legislature about these allocations.



Overview of Proposals

(Continued)

Federal Triggers

Spending Reductions Subject to Federal “Triggers.” Administration proposes making nearly \$15 billion in spending reductions subject to C.S. 8.28.

Spending Reductions That Would Be Restored Under Proposed Triggers	
<i>(In Billions)</i>	
	Amount
K-14 education	\$8.1
Flat 10 percent spending reductions	3.6
Targeted spending reductions	2.3
Special fund loans	0.9
Total	\$14.9

- **C.S. 8.28** would allow the Director of Finance to restore all of the spending reductions subject to the trigger if the federal government provides new assistance to the state and those funds are sufficient to cover the costs of the reductions. The proposed language includes a notification to the JLBC.



LAO Comments

New Control Sections Differ Substantially From Other, Typical Processes. The budget act has processes in place for the administration to allocate new, unanticipated federal funding or to make expenditures for contingencies or emergencies. These include several limitations—for instance, on how funds can be used—and generally require a 30-day notice. Language in these control sections specifically preclude them from being used as an alternative budget process.

Administration Reasonably Requests Flexible Funding to Address Evolving Disaster Needs... The administration’s request for *some* flexibility—relative to typical processes—in light of the public health emergency and evolving needs of the state is reasonable. In some cases, the state’s ordinary mechanisms could constrain the administration’s ability to act quickly and efficiently to respond to evolving circumstances related to COVID-19.

...But Administration Proposes Processes That Sideline Legislative Authority. However, the level of authority that the administration has requested the Legislature delegate is troubling. Specifically, the administration effectively proposes to delegate the power of appropriation to the executive branch for practically all direct COVID-19 expenditures. While the administration often is granted significant latitude regarding expenditures for other natural disasters, the response to this pandemic is decidedly different—for example, in terms of duration and scope.

Administration’s Information Sharing Limits Legislative Oversight. We understand the state faces considerable uncertainty about the future, which presents challenges for planning. However, in several cases, the administration has provided very little information to the Legislature about both current and future response activities and state expenditures. Such information is a necessary for the Legislature to perform effective oversight of public finances.



Options

These options seek to achieve a better balance between the need for administrative flexibility and legislative authority and oversight.

State Spending

Notification and Approval Process. There are multiple ways to improve the notification process for COVID-19 related expenditures, including:

- Setting different notification requirements depending on whether or not the Legislature is in session.
- Requiring that the Legislature approve a request before funds are made available.
- Increasing the legislative review period.
- Requiring that the notifications contain specific types of information.
- Requiring notification both when a transfer to DREOA from SFEU and before the funds are disbursed.

Eligible Uses of Funds. Require specific information on contracts over a certain size and/or clarify the types of eligible costs that can be covered. In particular, the Legislature may wish to limit these types of expenditures to unanticipated costs.

Reporting Requirements. Require interim reporting and/or reporting on the expenditures after the emergency has passed.



Options

(Continued)

Federal Funding

Process. Create a different process for allocating funds if the Legislature is in session or out of session, or if the budget process is ongoing.

Notifications and Reporting. Require notifications about funds allocated or reallocated through C.S. 11.90 and C.S.11.95, and require the notifications to have specific types of information. Require interim reporting on September 1, 2020.

Eligible Uses of Funds. Limit the amount of funding that can be appropriated through the process and/or restrict the use to funding—for example, for funds that must be expended in 2020-21.



Appendix

Control Section 8.28

SEC. 8.28. (a) No later than seven days after any federal legislation has been enacted to provide additional funding to the state for the 2019-20 and/or 2020-21 fiscal years, the Director of Finance shall determine whether the federal legislation will make available, by June 30, 2021, additional federal funds that may be used to offset not less than thirteen billion nine hundred eighty-six million nine hundred forty thousand dollars (\$13,986,940,000) in General Fund expenditures.

(b) If the Director of Finance determines that sufficient federal funds have been made available as described in subdivision (a), the Director of Finance shall notify, in writing, the Joint Legislative Budget Committee of this determination, and that the following services and programs that were reduced in the 2020 Budget Act and bills related to the 2020 Budget Act shall be restored for the 2020-21 fiscal year, and the related items shall be augmented to reflect the restoration.



Appendix

(Continued)

Control Section 11.90

SEC. 11.90. (a) In the Coronavirus Aid, Relief, and Economic Security (CARES) Act created a Coronavirus Relief Fund, Congress provided \$9,525,564,744 to the state for expenditures incurred due to the COVID-19 public health emergency. Notwithstanding any other law, the Department of Finance may allocate these federal funds to support activities and expenses that promote public health and public safety. These activities include, but are not limited to, any of the following:

(1) State and local public safety, including implementation of social distancing guidelines in public facilities; (2) State and local public health, including testing and contact tracing; (3) Services for vulnerable populations, including increased caseload; (4) K12 learning loss mitigation; (5) County public health, behavioral health, and health and human services; and (6) Other items permitted by US Treasury guidance or frequently asked questions as allowable expenditures that support the state's COVID-19 response.

(b) Funds may be allocated to offset or reduce General Fund appropriations in fiscal year 2019-20 and 2020-21 incurred to support the COVID-19 response between March 1, 2020 and December 30, 2020.

(c) If funds allocated pursuant to the purposes identified in subsection (a) above are not spent by September 1, 2020, the Department of Finance may reallocate those funds to any item of appropriation for other allowable activity that has expenditures incurred to support COVID-19 response.

(d) Funding to local governments, pursuant to this section, is contingent on adherence to federal guidance and the state's stay-at-home orders. Funding shall be released upon jurisdictions' certification of both.



Appendix

(Continued)

Control Section 11.95

SEC. 11.95. (a) Federal legislation is providing the state funding for expenditures incurred due to the COVID-19 public health emergency. Notwithstanding any other law, the Department of Finance may allocate these funds to support the state's COVID-19 response.

(b) Funds may be allocated to offset or reduce General Fund appropriations in fiscal year 2019-20 and 2020-21 that support the COVID-19 response between March 1, 2020 and June 30, 2021.

(c) The Department of Finance may adjust any item in Section 2.00 of this Act to account for additional federal funding to support the COVID-19 response.



Appendix

(Continued)

Control Section 36.00

SEC. 36.00. Notwithstanding any other law, \$2,863,000,000 is hereby appropriated from the General Fund for any purpose related to the Governor's March 4, 2020 proclamation of a state of emergency in response to the COVID-19 outbreak. Upon order of the Department of Finance, any portion of this appropriation may be transferred to any item for expenditure. Funds appropriated in this section may not be expended sooner than 72 hours after the Department of Finance notifies the Joint Legislative Budget Committee in writing of the purposes of the planned expenditure. The chairperson of the Joint Legislative Budget Committee or the chairperson's designee may shorten the 72-hour period by written notification.



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