

# SUBCOMMITTEE NO. 1 on Education



**Subcommittee No. 1**  
**Chair, Carol Liu**  
**Member, Ted Gaines**  
**Member, Roderick Wright**

**Thursday, April 26, 2012**  
**9:30 a.m. or**  
**Upon Adjournment of Session**  
**Room 3191, State Capitol**

**Consultant: Kim Connor**

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## **ISSUE 1. Governor's Proposal for Special Education - Mental Health Related Services**

**DESCRIPTION:** The Governor proposes to increase Proposition 98 funding for the special education program by a total of **\$98.6 million** in 2012-13 to maintain current funding levels for educationally related mental health services. The Governor's proposal is intended to backfill the loss of \$98.6 million in one-time Proposition 63 funds available for educationally related mental health services in 2011-12. By providing an additional \$98.6 million in Proposition 98 funding in 2012-13, the Governor's proposal provides a total of **\$420.4 million** in local assistance funding for mental health related services in 2012-13, which maintains funding at levels available in the current year.

### **BACKGROUND:**

Federal special education law – currently the Individuals with Disabilities Education Act (IDEA) -- requires that school districts provide students with disabilities the accommodations necessary for them to benefit from their education. This entitlement covers a range of services, including, mental health services, if determined educationally necessary by a student's Individualized Education Program (IEP).

School districts were responsible for mental health related services for students with disabilities from the mid-1970s -- following the passage of the federal special education laws – until 1984. In 1984, California required county mental health agencies to provide mental health services to special education students instead of school districts. These responsibilities, referred to as AB 3632 services after the authorizing legislation, were determined to be a state reimbursable mandate for counties.

As part of the 2010–11 budget act, then–Governor Schwarzenegger vetoed state funding for the AB 3632 program and declared the state mandate suspended, leading to uncertainty as to which entity—schools or counties—was responsible for ensuring that students receive services in 2010–11. To help address uncertainty from the veto and ensure students continued to receive services in 2010–11, the March 2011 education trailer bill provided \$81 million in one–time Proposition 98 funds to school districts. This funding was provided on top of \$76 million in federal special education funds that was made available to county mental health agencies for providing mental health related services in 2010-11.

As proposed by Governor Brown, the 2011-12 budget package repeals the AB 3632 mandate and permanently shifts responsibility for special education–related mental health services from county mental health agencies back to schools.

**Mental Health Related Services Shift – Transition Budget in 2011-12.** The 2011-12 budget (1) eliminated the state AB 3632 mandate program, which required counties to provide mental health services to student with disabilities, and (2) shifted responsibility for providing

educationally related mental health services – including out-of-state residential services – as required by federal law for students with disabilities.

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 new and existing funds directed for this purpose:

- **\$218.8 million** in new Proposition 98 funds allocated to Special Education Local Planning Areas (SELPA) for educationally related mental health services. Funds are allocated to SELPAS using an equal per pupil formula.
- **\$3 million** in new 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 SELPAS. Funding is provided to CDE – in collaboration with the Department of Finance (DOF) and Legislative Analyst's Office – and subject to final approval of DOF.
- **\$31 million** in existing Proposition 98 funds redirected to SELPAS for provision of educationally related mental health services. Funds are allocated to SELPAS on a one-time basis using an equal per pupil formula.
- **\$69 million** in existing federal special education funds allocated to SELPAS 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 SELPAS on an equal per pupil formula.
- **\$98.6 million** in Proposition 63 funds allocated to counties via a formula developed by the state Department of Mental Health and local counties (County Mental Health Directors Association), pursuant to Chapter 5, Statutes of 2011. Counties shall 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.
- **\$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 Department of Finance (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 Department of Education to provide oversight and technical assistance for LEAs as the responsibility for overseeing education related mental health services transitions from counties and to SELPAS. The department shall use these funds to assist SELPAS:
  - 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 Department of Education redirected for increased department monitoring associated with educationally related mental health services.

As outlined above, the \$423.6 million appropriated in 2011-12 includes **\$420.4 million** in local assistance funds and **\$3.243 million** in state operations funds to support the program shift.

## **GOVERNOR’S BUDGET PROPOSAL FOR 2012-13.**

### **Governor’s January Adjustments- Local Assistance:**

1. **Local Assistance Funding.** The Governor proposes to increase Proposition 98 funding for the special education program by a total of **\$98.6 million** in 2012-13 to maintain current funding levels for educationally related mental health services. The Governor proposes to allocate funding pursuant to pupil average daily attendance (ADA), consistent with current allocation methodologies. The Governor’s proposal is intended to backfill the loss of \$98.6 million in one-time Proposition 63 funds available for educationally related mental health services in 2011-12. (The Governor proposes to “rebench” the Proposition 98 minimum funding guarantee to reflect this funding backfill.) By providing an additional \$98.6 million in Proposition 98 funding in 2012-13, the Governor’s proposal provides a total of **\$420.4 million** in local assistance funding for mental health related services in 2012-13, which maintains funding at levels available in the current year.
2. **Federal Funding Allocations.** The Governor also proposes to adjust the allocation methodology for **\$69 million** in federal special education funds beginning in 2012-13. More specifically, the Governor proposes to allocate these federal funds on a per pupil (ADA) basis and to discontinue the current, limited-term formula based on service counts – reflecting 2010-11 special education data -- that was put in place during the initial transition of mental health related services back to schools. The Governor’s proposal is consistent with budget bill language in the 2011-12 budget that states intent to allocate the \$69 million in federal funds on an equal, per pupil basis (ADA) in 2012-13.

## DOF April Letter Requests – State Operations Adjustments:

- 3. Federal Funds for Mental Health Services Compliance and Monitoring of Out-of-State Residential Facilities (Issue 645).** 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.

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.

- 4. Funding for Increased Non-Public Schools and Agencies Certification Workload (Issue 644).** 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.

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.

**LAO COMMENTS:** The LAO does not have a formal recommendation on the Governor's special education proposals. However, the LAO has offered a few issues for the Subcommittee to consider in evaluating the Governor's proposals:

- Level of New State Funding.** The Governor's proposal to add **\$98.6 million** in new Proposition 98 is tied to last year's funding, which is based on historical, AB 3632 spending data. It is unclear how much mental health services actually will cost education under the new model. However, it should be noted that California does not fund special education based on reimbursing actual costs in any case, so that is not a requirement now. It is possible the amount proposed by the Governor could be too much under the new model— given new efficiencies – but special education might be an appropriate place to spend funds.

- **Restrictions & Use of New Funds.** Should the Legislature restrict the additional \$98.6 million in Proposition 98 funds just for mental health services or allow SELPAs to use it for any special education purpose based on local population and needs? For the most part, the state does not build firewalls around particular components of special education for particular disabilities, so this is a departure from current practice. Different areas of the state may have different populations with different needs, and what kinds of incentives are created when there is funding restricted for just one type of student or set of services? Restricting funds may also conflict with the intent of the census-based funding model contained in AB 602. During the 3632 transition, however, there has been uniform preference from the field to have these funds "protected" and reserved for this purpose at least for the short term as the dust settles. But given about \$320 million of the funding provided to schools to support mental health related services is "restricted" in the current year and proposed to continue to be in 2012-13, the Legislature could think about making the additional \$99 million now shifting to schools more flexible within special education. Or the Legislature could add statutory language – beyond what was already provided in AB 114 -- clarifying that if these new funds are restricted, they are restricted for just the short term.
- **Allocation of Federal Funds.** Based on variance in historical allocations and overall state policy for special education funding, Governor's proposal to allocate the **\$69 million** based on ADA makes sense. Also, the Legislature stated intent in the 2011-12 budget act to change the formula to an ADA basis in 2012-13.

#### STAFF COMMENTS.

- **Proposed Federal Fund Allocation Consistent with State and Federal Law.** The Governor's proposed allocation adjustment for the **\$69 million** in federal funds is consistent with the state's traditional special education allocation methodology, which utilizes general education pupil counts – as measured by ADA -- not special education pupil counts or placements. Special education funding reforms – enacted by AB 602 in the late 1990's -- moved our state away from funding based upon placement settings or type of disability in order to address historical inequities in funding levels among SELPAs and to eliminate incentives for more restrictive (and costly) placements, which also complies with the least restrictive environment provisions of federal law.

The Governor's allocation adjustment is also consistent with budget bill language in the 2011-12 budget act, which states that the \$69 million federal funds are allocated on a **one-time basis** using a formula that reflects student mental health service counts. The language further states that it is the intent of the Legislature that in 2012-13 these funds be allocated to SELPAs **on an equal, per pupil (ADA) formula**.

- **Costs of Providing Mental Health Related Services Unclear.** More information is needed to assess the true costs of shifting mental health related services to schools, and therefore to fully evaluate the additional \$98.6 million proposed by the Governor to cover the costs to education. As evidence, state and federal appropriations for the AB 3632 program prior to the program shift ranged from **\$119 million to \$347 million** annually between 1998-99 and

2009-10 according to the LAO. In the following chart, the LAO summarizes the irregular pattern of funding for the AB 3632 program prior to 2010-11 when most non-education state funding stopped and the status of the state mandate program was in question. In summary, there are two major categories of expenditures -- mental health services and residential care.

<b>AB 3632 Costs Over Time</b>						
<i>(In Millions)</i>						
	Mental Health Services			Residential Care		Totals
	Federal Special Education	DMH Categorical	Mandate Claims <sup>a</sup>	DSS	County Funds <sup>a</sup>	
1998-99	—	\$12	\$50	\$23	\$34	\$119
1999-00	—	12	68	24	35	139
2000-01	—	12	78	25	37	152
2001-02	—	12	119	31	46	208
2002-03	—	—	146	38	57	241
2003-04	—	—	57	39	58	154
2004-05	\$69	—	68	37	55	229
2005-06	69	—	72	38	57	236
2006-07	69	52	61	43	65	290
2007-08	69	52	83	48	72	324
2008-09	69	104	46	51	77	347
2009-10	69	—	94	59	89 <sup>b</sup>	311

<sup>a</sup> Some counties are claiming mandate reimbursements for some of their local share of residential care costs, so some costs may be double-counted in these two columns.  
<sup>b</sup> Additional mandate claims being submitted for 2009-10.  
DMH = Department of Mental Health and DSS = Department of Social Services.

It is important to point out that the costs of the AB 3632 program may not necessarily be the same for education. For example, some SELPAs are reporting savings from providing mental services directly or contracting directly for services, rather than going through the counties. Additionally, now that schools are fully responsible for mental health services, early intervention could reduce the need for long-term, more intensive and costly services to students in the future. On the other end of the spectrum, some SELPAs may be facing additional costs for providing services. Finally, it is likely that the annual costs for education will change over the transition period, i.e., need for training and service start-up might be needed on the front end but diminish over time.

**STAFF RECOMMENDATIONS:** Staff recommends that the Subcommittee hold the Governor’s mental health budget proposals open until May Revise.

**SUGGESTED QUESTIONS:**

1. **DOF:** What assumptions does the Administration make about the additional costs of shifting mental health related services back to schools?
2. **CDE:** What is the Department doing to monitor the provision of mental health related services by LEAs and to assure positive outcomes for children and youth with disabilities during the transition?
3. **CDE:** Based on your survey data, how would the Department summarize service delivery by LEAs during the transition to date?

## ISSUE 2. Legislative Analyst’s Report on Charter School Funding

**DESCRIPTION:** The LAO published a report entitled on charter school funding in January 2012 entitled *Comparing Funding for Charter Schools and Their School District Peers*. The LAO will present to the Subcommittee major findings and recommendations from that report. The LAO will also provide some general information on charter schools and funding in California, as background for the evaluating the Governor’s charter school budget proposals on the Subcommittee hearing agenda today.

### GENERAL BACKGROUND:

Under current law, charter schools are public schools – covering any combination of grades Kindergarten through 12 – that are initiated by parents, teachers, or community members through a charter petition, which is typically presented to and approved by a local school district governing board.

Current law also grants chartering authority to county boards of education and to the State Board of Education under certain circumstances, such as the appeal of a petition’s denial by a school district governing board or the direct approval of countywide benefit or statewide benefit charter schools.

The specific goals and operating procedures for a charter school are detailed in the “charter” agreement between the authorizing entity and the school’s organizers. While charter schools are free from many of the state statutes and regulations that apply to school districts, they are subject to the following conditions, as identified by the California Department of Education (CDE):

- An existing private school may not be converted to a charter school.
- A charter school must be nonsectarian.
- A charter school may not discriminate, nor can it charge tuition.
- No pupil can be required to attend a charter school, nor can teachers be required to work in a charter school.
- A charter school must have highly qualified, credentialed teachers in all core subjects.
- Charter schools must admit all students who wish to attend the school; however, if the number of students exceeds the school's capacity, attendance shall be determined by a public random drawing. Certain attendance preferences are available under state law.

According to CDE, there are currently about **1,007 charter schools** and **8 all-charter districts** operating in California. As reflected by the following table, charter schools have been growing by about 100 schools annually over the last couple of years. Nearly **399,000 pupils** now attend charter schools, which equates to about **6 percent** of the public school pupil population statewide.

	2009-10		2010-11		2011-12	
	Number	Funded ADA**	Number	Funded ADA**	Numbers	Funded ADA**
<b>Charter Schools</b>	818	298,034	913	343,107	1,007	391,725
<b>Charter Districts*</b>	8	6,949	8	6,992	8	7,062
<b>TOTAL, Charters</b>	<b>826</b>	<b>304,983</b>	<b>921</b>	<b>350,099</b>	<b>1,015</b>	<b>398,787</b>

\*Charter district average daily attendance (ADA) included both block grant and revenue limit ADA.

\*\*Numbers are from principal apportionment system and may not exactly match other sources.

As last reported, CDE identifies the following characteristics for individual charter schools statewide:

- Approximately **85 percent are start-up schools**, and the remainder are conversions of pre-existing public schools.
- Approximately **77 percent are classroom-based or site-based**, and the remainder are either partially or exclusively non-classroom based (independent study).
- Approximately **71 percent are directly funded** (i.e., have a separate account in the county treasury), and the remaining 29 percent are locally funded (i.e., are included in the budget of the chartering authority).

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

### Executive Summary

“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.”

**STAFF COMMENTS & RECOMMENDATIONS:** This is an informational item. However, the LAO’s findings and recommendations on charter schools may be useful for the Subcommittee in considering Proposition 98 decisions at May Revise. While the remaining Subcommittee agenda today covers a number of individual charter school issues proposed by the Governor, staff notes that two of the Governor’s major finance proposals – weighted pupil formula and mandate block grants – include charter schools in substantial, new ways. While not the only option recommended by the LAO, these major proposals would address the charter school funding disparities outlined in the LAO report.

**SUGGESTED QUESTIONS:**

1. DOF: What are the benefits for charter schools of the Governor’s proposals to implement school finance reforms through a weighted pupil formula and education mandate reforms – through his mandate block grant? How do these benefits compare to the benefits from the Governor’s other charter school budget proposals that will be discussed in the agenda today?
2. LAO: What is the impact of funding disparities identified by your report on charter schools and students?
3. LAO: How can charter school funding disparities be addressed within the current fiscal environment? What timing would the LAO recommend?
4. CDE: What do we know about the performance outcomes of charter schools compared to other public schools?

### ISSUE 3. Education Funding for Non-Classroom Based Charter Schools

**DESCRIPTION:** The Governor proposes trailer bill language to eliminate the current law funding determination process for non-classroom-based instruction and instead provide full funding for all non-classroom based charter schools.

**BACKGROUND:** Current law regulates the provision of funding to charter schools that provide instruction in non-classroom based settings. Non-classroom based schools differ from traditional schools in that they generally deliver instruction outside the confines of the classroom setting. Non-classroom based instruction may encompass 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 the California Department of Education (CDE), most charter schools receive full funding -- 100 percent of pupil average daily attendance (ADA). However, through a “determination” process administered by CDE and the State Board of Education, a limited number of charter schools statewide receive less than full funding based due to exclusions of their non-classroom based ADA.

Most student ADA for non-classroom based charter schools is funded. As indicated in the table below, an estimated 105,367 student ADA (97 percent) for non-classroom based charter schools is being funded in 2011-12; only 3,329 student ADA (3 percent) is not being funded.

	2009-10	2010-11	2011-12
<b>Non-Classroom Based Charter Schools – Funded &amp; Non-Funded ADA</b>	Student ADA	Student ADA	Student ADA
<b>Reported ADA</b>	<b>96,119</b>	<b>107,107</b>	<b>108,696</b>
<b>Funded ADA</b>	<b>93,633</b>	<b>104,326</b>	<b>105,367</b>
<b>ADA Not Funded</b>	<b>2,486</b>	<b>2,781</b>	<b>3,329</b>
<i>Number of non-classroom based schools</i>	<i>191</i>	<i>213</i>	<i>203</i>
<i>Schools funded at 100 percent</i>	<i>178</i>	<i>200</i>	<i>192</i>
<i>Schools funded at less than 100 percent</i>	<i>13</i>	<i>13</i>	<i>11</i>

Per CDE, a total of 203 charter schools were operating under funding “determinations”, which are granted for more than one year. Of these 203 charter schools, only 11 schools receive less than full funding, as indicated in the table above.

In 2011-12, a total of 79 charter schools applied for 100 percent funding per CDE. All but two charter schools were approved for full funding, and the remaining two charter schools are still under review by the State Board.

**SB 740 Determination Process.** As enacted, SB 740 (Chapter 892; Statutes of 2001) strengthened state oversight of non-classroom based charter schools and implemented state funding reductions for schools failing to meet specific standards. In order for a charter school to receive 100 percent ADA funding the school must meet the following conditions:

- 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.
- Provide at least 80 percent of the instructional time at the school site.
- The charter school-site must be a facility that is used principally for classroom instruction.
- 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.

**GOVERNOR'S BUDGET PROPOSAL:** The Governor proposes trailer bill language to remove the funding determination process for non-classroom-based instruction for charter schools. According to the Administration, this change will reduce workload for staff at the California Department of Education, State Board of Education, charter schools and charter authorizers. In addition, the Administration believes this change will equalize funding disparities between charter schools that offer non-classroom-based instruction and school districts that offer independent study instruction.

**LAO COMMENTS & RECOMMENDATIONS:** The LAO recommends that the Legislature reject the Governor's proposal to eliminate the funding determination process and provide full funding to all non-classroom-based charter schools.

Per the LAO, removing the state's fiscal oversight process would allow non-classroom-based schools to reduce spending on instruction-related activities and still receive full funding. Also would provide schools that have lower cost structures with funding augmentations in 2012-13 without a clear rationale. For these schools, state costs would increase by about \$20 million.

**STAFF RECOMMENDATION:** Staff supports the LAO's recommendations, but recommends that the Subcommittee hold this issue open until May Revise.

**SUGGESTED QUESTIONS:**

1. DOF: What are the problems with the current determination process that the Administration is trying to address or streamline?
2. DOF: Does the Administration have any concerns about the loss of oversight with elimination of the determination process? Has the Administration considered other ways to streamline the determination process that don't include total elimination of the process?
3. DOF: The Administration believes the Governor's proposal will equalize funding disparities between charter schools that offer non-classroom-based instruction and school districts that offer independent study instruction. Can the Administration provide more detail about this comparison?
4. DOF: What are the costs of providing full funding to about eleven charter schools not receiving full funding, per the Governor's proposal?
5. CDE: What is the audit process for non-classroom based charter schools approved for funding? How often are these charter schools audited?
6. CDE: What are the Department's greatest concerns about the elimination of the determination process for non-classroom based charter schools? Can the Department suggest other alternatives to streamline the current process?

## **ISSUE 4. Charter School Facilities Grant Program**

**DESCRIPTION:** The Governor proposes trailer bill language to make non-classroom-based instruction eligible for the Charter Schools Facilities Grant program. The Governor also proposes to establish an apportionment schedule for the program that would provide earlier payments to charter schools.

**BACKGROUND:** The Charter School Facility Grant Program was established by SB 740, (Chapter 892; Statutes of 2001) as a non-competitive grant program to provide assistance with facilities rent and lease expenditures for charter schools that meet specific eligibility criteria.

Specifically, the Charter School Facility Grant Program is targeted to 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 at \$750 per unit of classroom-based average daily attendance, or up to 75 percent of its annual facilities rent and lease costs for the school, whichever is lower.

Historically, the program was structured to reimburse eligible charter schools for their prior year facilities rent and lease expenditures. In 2009-10, the program was converted from a reimbursement-based to a grant-based program.

**Funding History.** The enacting legislation stated the Legislature's intent to appropriate \$10 million for the program for three years -- 2001-02, 2002-03, and 2003-04. However, funding for the program was extended annually through the budget act after the three year time limit.

Funds for this program increased substantially with the transfer of funds from the phase out of the Multi-track Year-Round Education (MTYRE) Operational Grant Program. Chapter 271 (2008) required all funds appropriated for the MTYRE program in 2007-08 -- a total of \$97 million -- to be transferred to the Charter School Facility Grant Program a rate of 20 percent each year. The proposed 2012-13 budget makes the final transfer payment of \$15 million from MTYRE program to the Charter School Facility Grant program. With this transfer, the Governor's Budget proposes to provide a total of \$92 million for the program in 2012-13.

Beginning in 2008-09, the Charter School Facility Grant Program was subject to across-the-board categorical reductions for most state categorical programs. Under current law, these reductions will remain in place through 2014-05 -- a total of seven years.

## **GOVERNOR'S BUDGET PROPOSALS:**

1. **Coverage for Non-Classroom Based ADA.** The Governor's budget proposes trailer bill language to repeal provisions of current law which prohibits Charter School Facility Grant funds for units of pupils average daily attendance (ADA) generated through non-classroom based instruction. 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 Administration, 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. **Earlier Apportionments.** 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. Current law requires the California Department of Education (CDE) to apportion funding in a "timely manner" -- as defined by the department.

The Governor's proposal would 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 school's total advanced apportionment funding.

**LAO COMMENTS & RECOMMENDATIONS:** The LAO recommends that the Legislature **modify** the Governor's proposal to streamline the application process by requiring California Department of Education (CDE) to use prior-year data to make initial funding apportionments and require the first payment to be issued by August 31. Per the LAO, using prior-year data for first apportionment would allow for a more timely release of funds.

More specifically, the LAO recommends the following modifications:

- Designate at least one-third of funds be released in initial apportionment.
- Ensure actual cost data used and school amounts are "trued up" accordingly for purposes of the final apportionment.

## **RELATED LEGISLATION:**

- **SB 645 (Simitian).** This 2011 measure addressed a number of charter school issues, including authorizing Charter School Facility Grant program 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. **Status:** Held in Assembly Appropriations.

**STAFF RECOMMENDATION:** Staff recommends that the Subcommittee hold these issues open until May Revise.

**SUGGESTED QUESTIONS:**

1. DOF: Given the nature of non-classroom ADA – which presumably does not require school facilities - why is there a need to provide additional facilities funding for these pupils?
2. DOF: What are the costs of adding non-classroom ADA to the Charter School Facility Grant program per the Governor’s proposal?
3. DOF: What will the impact of ADA expansion be for charter schools currently served by the program?
4. DOF: What are the reasons for expediting apportionments per the Governor’s language?
5. CDE: Please describe the apportionment schedule for the Charter School Facility Grant program and indicate how it compares to allocations for most other school programs.

## **ISSUE 5. Conveyance/Sale of Surplus District Property to Charter Schools**

**DESCRIPTION:** The Governor proposes trailer bill language to require school districts to convey its surplus property to any interested charter school. The Governor also proposes trailer bill language to allow school districts to sell property to a charter school and maintain eligibility for various educational facility programs.

**BACKGROUND:** There are several state and federal resources that help charter schools obtain school facilities, which are listed below. **Some of these programs are the subject of proposals included later in this agenda.** These programs use different approaches to assist charter schools with their facility needs, including loan, grants, and statutory requirements.

### **State Programs.**

**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 Facilities Program.** In 2002, AB 14 created the Charter School Facilities Program (CSFP). This program is jointly administered by the California School Finance Authority (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 schools 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.

**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.

**Charter School Security Fund (CSSF).** 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.

**Charter School Facility Grant Program.** The Charter School Facility Grant Program was established by SB 740, (Chapter 892; Statutes of 2001) as a non-competitive grant program to provides assistance with facilities rent and lease expenditures for charter schools that meet specific eligibility criteria. The program is targeted to 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. Eligible 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.

### **Federal Programs**

**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; and provide 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 state attendance reports.

### **GOVERNOR'S BUDGET PROPOSALS:**

- 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 choses 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. The language also allows 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 further 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. In addition, the language requires a charter school that purchases real property to assume maintenance responsibility of the school-site 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.

**LAO COMMENTS & RECOMMENDATIONS:** LAO supports the concept of allowing school districts to sell or lease surplus property to charter schools, but does not support conveyance of school facilities to charter schools, which raises numerous concerns. For this reason, the LAO makes the following recommendations:

- **Reject Governor's proposal to require districts seeking to sell or lease surplus property to first offer facilities to charter schools and then convey properties to charter schools at no cost.** Per the LAO, because the charter school can return the facility to the district at any time in any condition, it may not have strong incentives to invest in regular maintenance and major facility upgrades that would extend the building's life.
- **Reject Governor's proposal to allow school districts to sell or Lease real property to a charter school without losing eligibility for state bond funding.** Per the LAO, allowing school districts to retain eligibility for state bond funds could result in additional state costs. Some districts would be able to sell a facility and subsequently apply for state bond funding to replace the sold facility.

**RELATED LEGISLATION:**

- **AB 2434 (Block).** Existing law authorizes a school district that meets prescribed requirements to deposit the proceeds from the sale of surplus school property, together with any personal property located on that property, purchased entirely with local funds, into the general fund of the school district and to use those proceeds for any one-time general fund

purpose. This flexibility is currently granted to school districts through January 1, 2014. This bill would extend the operation of this provision to January 1, 2019. **Status: Assembly Appropriations.**

**STAFF COMMENTS & RECOMMENDATIONS:** Staff supports the LAO's recommendations, but suggests that the Subcommittee hold the Governor's proposals on conveyance and sale of surplus district property open until May Revise, pending possible development of alternatives to the Governance proposal.

**SUGGESTED QUESTIONS:**

1. DOF: Has the Administration considered alternatives to requiring "conveyance" of surplus property from districts to charter schools? Could charters be given first priority, or first right of refusal, for sale or lease of surplus property, building upon current statutory frameworks?
2. DOF: Who is responsible for building maintenance and upkeep for facilities conveyed to charter schools? Who is the long-term owner of buildings conveyed to charter schools?
3. DOF: How is surplus property defined? Real property? And personal property?
4. DOF: How does sale of surplus property currently affect district eligibility for hardship assistance levels or eligibility for hardship funding?
5. DOF: Would there be a role for the State Allocation Board (SAB) in conveyance? Would the SAB need to certify?

## **ISSUE 6. Payment Deferral Exemptions for Charter Schools**

**DESCRIPTION:** The Governor proposes trailer bill language to allow charter schools to seek a hardship deferral waiver from their governing bodies, rather than through their charter authorizers, as currently required.

### **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.)

Under current law, school districts and charter schools may apply for an exemption from the deferral of the June to July principal apportionment payment. 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.

### **GOVERNOR'S BUDGET PROPOSAL:**

The Governor proposes trailer bill language to repeal the requirement for charter authorizers to review and approve deferral exemption requests. This change would allow charter schools to make their deferral waiver requests directly with the Superintendent of Public Instruction and the Department of Finance. According to the Administration, this change is intended to 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.

**LAO COMMENTS & RECOMMENDATIONS:** The LAO recommends that the Legislature reject the Governor's proposal. The LAO believes that charter authorizers are responsible for the fiscal oversight of charter schools and therefore need to be able to review applicable information, including charter schools' deferral exemption applications. The LAO does not believe this change is necessary and believes that existing fiscal oversight of charter schools by their authorizers is good policy and should be continued.

**STAFF COMMENTS:**

- **Problem Unclear.** There is no evidence of charter schools having problems with their hardship waiver requests being turned down by their authorizers for unsubstantiated reasons. Most hardship deferral waivers approved are for charter schools. In 2011, nine school districts and 133 charter schools were approved for deferral exemptions for the 2011 June deferral. Reportedly, there are concerns that some charter schools have not sought deferral waivers from their authorizers due to fear they would be viewed as financially unstable. However, according to the LAO, seeking an exemption from payment deferrals does not appear to be grounds for charter revocation under current law.

**STAFF RECOMMENDATIONS:** Staff recommends that the Subcommittee adopt the LAO recommendation to reject the Governor's charter schools deferral proposal.

**SUGGESTED QUESTIONS:**

1. DOF: What is the underlying problem behind this proposal?
2. DOF: How many charter schools have been granted deferral waivers? What is the proportion of charter waivers granted compared to total deferral waivers granted to date?
3. DOF: Have any charter schools had a deferral waiver turned down?
4. DOF: Is there concern that some charter schools are not applying for deferral waivers?
5. DOF: Could any of the requirements for deferral waiver threaten charter renewal?

## **ISSUE 7. Charter School External Borrowing**

**DESCRIPTION:** The Governor proposes 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 purposes of seeking Tax and Revenue Anticipation Notes (TRANS).

**BACKGROUND:** Due to substantial ongoing, program reductions and substantial ongoing payment deferrals, many local educational agencies have been forced to borrow funds – through internal and external sources – in order to meet their cash needs and avoid fiscal insolvency. These internal and external borrowing sources for LEAs are summarized below:

**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 currently available to charter schools:

- **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 a 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.
- **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.

- **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 BUDGET PROPOSALS:** The Governor proposes trailer bill language to allow county offices of education and county board of supervisors to make short term loans to charter schools from any funds not immediately needed. According to the Administration, this change will allow charter schools to reduce financing costs and may save the state costs associated with deferral exemptions being requested by charter schools.

The Governor also proposes trailer bill language to make charter schools a public agency and allows for county offices of education to borrow funds or issue Tax and Revenue Anticipation Notes (TRANS) for the purpose of providing temporary revenue backed loans to charter schools. According to the Administration, this change will also allow charter schools to reduce financing costs and may save the state costs associated with deferral exemptions being requested by charter schools.

**LAO COMMENTS & RECOMMENDATIONS:** The LAO does not support provisions of the Governor’s proposal that would require counties to make loans to charter schools. The LAO supports other provisions that would authorize counties to make loans and give charters greater access to TRANS. More specifically, the LAO makes the following recommendations.

1. **Adopt Governor’s Proposal Allow Charter Schools to Access TRANS.** Per the LAO, this proposal provides additional borrowing option for charter schools. Tax-exempt status of TRANS may provide a lower-cost alternative to current loans from private sector.
2. **Adopt the Governor’s Proposal to Authorized County Offices to Provide Loans to Charter Schools.** Per the LAO, this proposal provides additional borrowing options to charter schools without requiring COEs to issue high-risk loans.
3. **Reject the Governor’s Proposal to Require the County Treasurer to Provide Charter Schools with Loans if the Charter School is Unable to Meet its Financial Obligations.** Per the LAO, a county may be required to loan funds to a charter school that appears unlikely to repay. Alternatively, the LAO recommends that counties be authorized, but not required, to provide loans.

**RELATED LEGISLATION:**

- **AB 1576 (Huber).** This current measure 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. **Status: Assembly Appropriations Committee.**

**STAFF COMMENTS:**

- **Do Charter Schools Qualify as Public Entity for Purposes of Receiving Loans from the County Treasury?** The California Association of County Treasurers and Tax Collectors 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 the Association, charter schools are not required to bank with county treasurers, as required by traditional school districts, however, the Governor’s trailer bill language would authorize charter schools to receive financing from the county treasury. Per the Association, 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, the Association believes doing so would be unconstitutional. The Association indicates that the State Constitutional provision that permits dry period financing (Article 16, Section 6) relies on the recipients of those loans banking solely with the county treasury, so that the treasury can be assured of repayment. Per the Association, this would not be the case with many, if any, charter schools.

**STAFF RECOMMENDATIONS:** Staff supports the LAO’s recommendations, but that the Subcommittee hold these issues open until May Revise.

**SUGGESTED QUESTIONS:**

1. DOF: Does the Administration believe there are any constitutional issues that preclude loans from the county treasurers?
2. DOF: Can the Administration clarify current charter school access to TRANS? Are some charters able to access TRANS?
3. DOF: How would counties recoup funds under the Governor’s proposals if charter schools closed?

## **ISSUE 8. Charter School Revolving Loan Fund**

**DESCRIPTION:** The Governor proposes trailer bill language to add a determination process, authorized by Finance, to ensure that the interest payments collected in the Security Fund can be transferred to the Revolving Loan Fund. According to the Administration, this is a technical change that allows the Security Fund to be used as intended.

**BACKGROUND:** The Charter School Revolving Loan Fund (CSRLF), as 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, interest from loans issued to charter schools, and any other funds appropriated or transferred to the fund through the annual budget process.

The Charter School Security Fund consists of revenue from interest payments on loans.

**Loan Terms:** CSRLF 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.

**Loan Requests & Criteria:** 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,
- start-up costs for new charter schools, which is a priority for loans.

**Loan Deposits.** Under current law (EC Section 41367), funds 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.**

**Fund Balance.** 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.

**GOVERNOR'S BUDGET PROPOSAL:** 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 the Administration, 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 & RECOMMENDATIONS:** According to the LAO, the Governor's proposal provides an important technical allow the Charter School Revolving Fund to access funds from the Charter School Security Fund, but suggests some improvements. Specifically, the LAO recommends that the Subcommittee adopt the Governor's proposal with modifications, as follows:

- 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;
- Require DOF to notify the Joint Legislative Budget Committee upon approval of transfer;
- 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.

#### **STAFF COMMENTS:**

**Charter Schools Loan Default Rate is Problematic.** The LAO has concerns about the current imbalance of the Charter School Revolving Fund due to a high loan default rate and the small amount of revenues available to offset loan defaults. Funds generated from interest payment on loans are supposed to offset the losses the state incurs when a charter school cannot repay its loan (or closes and the state cannot recover associated funds). According to CDE, the primary reason for loan default is the closure of some charter schools. According to the LAO, the Revolving Fund has accumulated \$5.7 million in losses from the default of 38 charter school loans. In 2011-12 alone, the state may lose up to \$1.0 in loan payments due to defaults.

**STAFF RECOMMENDATIONS:** Staff recommends that the Subcommittee approve the Governor's budget proposal, with modifications recommended by the LAO.

#### **SUGGESTED QUESTIONS:**

1. CDE: What additional information can the Department provide about the loan default rate for charter schools?
2. CDE: What ability does CDE have to recoup funds when charter schools close?
3. CDE: Is it possible for the Charter School Revolving Loan Fund to be self-sustaining?

## **ISSUE 9. California School Finance Authority – Charter School Refinancing**

**DESCRIPTION:** The Governor proposes trailer bill language to allow the California School Finance Authority (CSFA) to refinance working capital that has been previously structured.

### **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.

**While current authority for CSFA includes “financing” this working capital, but there is no authority for CSFA to “refinance” these financing packages.**

**GOVERNOR’S BUDGET PROPOSAL:** The Governor proposes trailer bill language to allow the California School Finance Authority (CSFA) to refinance revenue bonds issued to finance school facilities working capital and capital improvements, which currently is not explicitly authorized. According to the Administration, this is a technical change that conforms to CSFA’s current practices.

**LAO COMMENTS & RECOMMENDATIONS:** The LAO recommends approval of the Governor’s budget proposal. Per the LAO, CSFA has the authority to “finance” working capital and capital improvements for charter schools; the Governor’s proposal would simply clarify CSFA authority for “refinance” activities.

**RELATED LEGISLATION:**

- **SB 645 (Simitian).** This 2011 bill authorized the Charter School Financing Authority to refinance working capital for charter schools. The language in SB 645 (Simitian) is very similar to the Governor's budget proposal. **Status: Held in Assembly Appropriations Committee.**

**STAFF RECOMMENDATION:** Staff recommends that the Subcommittee approve the Governor's proposal. This is considered a technical adjustment to reflect current activities of the California School Finance Authority. There is no known opposition to this proposal.

**OUTCOME:**

## **ISSUE 10. DOF April Letters – Various K-12 State Operations and Local Assistance Fund Adjustments (Vote Only)**

**DESCRIPTION:** The Department of Finance (DOF) proposes the following technical adjustments to various K-12 state operations (support) and local assistance items in the 2012-13 budget. These revisions are proposed by the DOF April 1 Budget Letter. These items are considered technical adjustments, mostly to update federal budget appropriation levels so they match the latest estimates and utilize funds consistent with current programs and policies.

### **Federal Funds – State Operations (Support) and Local Assistance**

- 1. Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education (SDE) Add Support Carryover for Common Core Standards Implementation (Issue 146).** 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.

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

X. Of the funds appropriated in this item, \$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.

- 2. Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education (SDE) Add Support Carryover for the Striving Readers Comprehensive Literacy Program (Issue 611).** 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 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.

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

X. Of the funds appropriated in this item, \$424,000 is provided in one-time federal **Title I** carryover funds for the Striving Readers Comprehensive Literacy program.

3. **Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education (SDE) Add Federal Funds for Oversight of Food Service Contracts (Issue 801).** 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).

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.

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

X. Of the funds appropriated in this item, \$556,000 is provided to support workload associated with federally-required oversight of contracts between food service management companies and school food authorities.

4. **Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education (SDE) Add One-Time Federal Funding for Child Nutrition Reauthorization Workload and Current Year Expenditure Plan (Issue 803).** 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).

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.

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

X. Of the funds appropriated in this item, \$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.

Current Year Expenditure Plan: 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.

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.

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

~~"24. Of the funds appropriated in this item, \$1,000,000 is provided 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. To the extent that additional staff resources are needed, positions shall be redirected from existing vacancies within the State Department of Education."~~

5. **Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education (SDE). Add One-Time Carryover for Safe and Supportive Schools (Issue 804).** 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.

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

X. Of the funds appropriated in this item, \$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.

6. **Item 6110-161-0890, Local Assistance, State Improvement Grant (Issue 640).** 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.

Specifically, it is requested that Provision 9 of 6110-161-0890 be amended as follows:

9. Of the funds appropriated in Schedule (6), \$2,196,000 is provided for science scientifically-based professional development as part of the State Personnel Development grant.

7. **Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education (SDE) Add Support Carryover for the Public Charter Schools Grant Program (PCSGP) (Issue 322).** *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 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.*

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

- X. Of the funds appropriated in this item, \$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.

8. **Item 6110-112-0890, Local Assistance, Carryover for the Public Charter Schools Grant Program (PCSGP) (Issue 325).** 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.
9. **Item 6110-199-0890, Support, Increase Funding for the American Recovery and Reinvestment Act (ARRA) Early Learning Grant (Issue 403).** 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.

Specifically, it is requested that Provision 2 of Item 6110-199-0890 be amended as follows:

2. Of the funds appropriated in this item, ~~\$147,000~~162,000 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.

### **General Fund and Other Adjustments**

10. **Eliminate Funding for the SDE Administration of the California Subject Matter Projects (CSMP) (Issue 613).** 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.

It is further requested that Provision 17 be deleted from Item 6110-001-0001 to conform to this action.

11. **Item 6110-170-0001, Local Assistance, Add Reimbursement Carryover for the Career Technical Education Program (Issue 082).** 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.

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

- X. Of the funds appropriated in this item, \$1,865,000 reflects one-time reimbursement carryover funds to support the existing program.

**STAFF RECOMMENDATION (CONSENT ITEMS):** Staff recommends approval of the entire DOF April Letter list above (Items 1-11), including technical corrections. No issues have been raised for any of these items.

### **OUTCOME:**