

SUBCOMMITTEE NO.1 on Education



Subcommittee No. 1
Chair, Carol Liu
Member, Robert Huff
Member, Roderick Wright

Thursday, May 26, 2011
9:30 a.m.
Room 3191, State Capitol

K-12 AGENDA – PART C **OUTCOMES**

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**ISSUE 1. Various State Operations and Local Assistance Adjustments
(Vote Only)**

DESCRIPTION: The Department of Finance (DOF) proposes the following technical adjustments to various state operations and local assistance items in the 2011-12 budget. These revisions are proposed by the DOF April and May Budget Letters. Most of these items involve technical adjustments to update budget appropriation levels so they match the latest federal grant estimates and utilize funds consistent with current programs and policies. Remaining items update special fund reimbursements.

DOF April Letter – Federal Fund Adjustments

- 1. Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education, Public Charter Schools Grant Program (Issue 801).** Requests that Item 6110-001-0890 be increased by \$1,225,000 Federal Trust Fund and that Item 6110-001-0001 be amended to reflect an increase in the federal grant award. The Public Charter Schools Grant Program (PCSGP) provides planning and implementation grants to new charter schools. Up to 15 percent of PCSGP funds may be used for state-level activities including contracting for an independent evaluation of the program, providing technical assistance to sub-grantees, and awarding best practices dissemination sub-grants.
- 2. Item 6110-156-0890, Local Assistance, Adult Education Program (Issues 482 and 483).** Requests that Provision 1 of this item be amended to delete the reference to the 25 percent advance payment process and to clarify that Reimbursements would be provided on a quarterly basis. The SDE transitioned to a reimbursement-only funding process for the federal Adult Education Program.

It is also requested that this item be increased by \$2,298,000 federal Title II funds to reflect the availability of one-time carryover funds for the Adult Education Program, which supports the Adult Basic Education, English as a Second Language, and Adult Secondary Education programs.

It is further requested that Provisions 1 and 5 be amended as follows to conform to these actions:

~~“1. Under any grant awarded by the~~ The State Department of Education shall reimburse claims from ~~under this item to a qualifying community-based organizations to provide that provide adult basic education under this item in English as a Second Language and English as a Second Language Citizenship classes, the department shall make an initial payment to the organization of 25 percent of the amount of the grant. In order to qualify for an advance payment, a community-based organization shall submit an expenditure plan and shall guarantee that appropriate standards of educational quality and fiscal accountability are maintained. In addition, reimbursement of claims shall be distributed~~ on a quarterly basis. ~~The department shall withhold 10 percent of the~~

~~final payment of a grant as described in this provision until all claims for that community-based organization have been submitted for final payment.”~~

“5. Of the funds appropriated in this item, ~~\$802,000~~ \$3,100,000 is provided in one-time carryover funds for the federal Adult Education Program.”

- 3. Item 6110-161-0890, Local Assistance, Special Education (Issues 681).** Requests that this item be decreased by \$24,267,000 in Schedule (1) to align it with the anticipated federal IDEA, Part B grant award for 2011-12. It is further requested that provisional language be amended as follows to conform to this action:

“1. If the funds for Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) (IDEA) that are actually received by the state exceed ~~\$1,242,154,000~~ 1,217,887,000, at least 95 percent of the funds received in excess of that amount shall be allocated for local entitlements and to state agencies with approved local plans. Up to 5 percent of the amount received in excess of ~~\$1,242,154,000~~ 1,217,887,000 may be used for state administrative expenses upon approval of the Department of Finance. If the funds for Part B of the IDEA that are actually received by the state are less than ~~\$1,242,154,000~~ 1,217,887,000, the reduction shall be taken in other state-level activities.”

DOF May Revise Letter – Federal Fund Adjustments

- 4. Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education (SDE), One-time Carryover for the Striving Readers Comprehensive Literacy Program (Issue 570).** Requests that Item 6110-001-0890 be increased by \$500,000 Federal Trust 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 Striving Readers Comprehensive Literacy Program provides support to the State Literacy Team in developing California’s State Literacy Plan and applying for a federal implementation grant. Due to the compressed timeline for developing the plan and submitting the application to the United States Department of Education, the entire grant amount of approximately \$841,000 will not be expended in the current year. The SDE anticipates using the \$500,000 to implement the grant award in fiscal year 2011-12.

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, \$500,000 is provided in one-time Title I carryover funds for the Striving Readers Comprehensive Literacy Program.

- 5. Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education (SDE), One-Time Carryover Authority for School Violence and Substance Abuse Prevention (Issue 752).** Requests that Item 6110-001-0890 be increased by \$100,000 Federal Trust Fund and that Item 6110-001-0001 be amended to reflect the availability of one-time carryover funds from the Building State Capacity for Preventing Youth Substance Use and Violence Prevention grant, a

“bridge” grant received in 2010 after the Title IV Safe and Drug-Free Schools (SADFS) Program ended. These funds will be used to close-out the SADFS Program and to sustain other substance abuse and violence prevention services.

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, \$100,000 is provided in one-time carryover funds to support school violence and substance abuse prevention programs.

- 6. Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education (SDE), One-time Carryover for County Court Schools Special Education Technical Assistance (Issue 808).** Requests that Item 6110-001-0890 be increased by \$201,000 Federal Trust Fund and that Item 6110-001-0001 be amended to reflect the availability of one-time carryover funds for technical assistance for county court schools on special education issues. In 2008-09, \$1,250,000 in one-time federal special education carryover funding was provided over three fiscal years to contract for special education instructional training and technical assistance for county court schools. This request would allow an additional year, until June 30, 2012, for the completion of the project and expenditure of the remaining funds.

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, \$201,000 is provided in one-time carryover funds for existing contracts with county offices of education for special education instructional training and technical assistance in county court schools.

- 7. Item 6110-136-0890, Local Assistance, Federal Title I Even Start Program (Issue 309).** Requests that Schedule (2) of this item be decreased by \$7,088,000 federal Title I funds to reflect the elimination of the Even Start Program at the federal level. Although all 2011-12 base funding is eliminated, \$970,000 in prior year carryover funding will remain available for allocation during 2011-12.
- 8. Item 6110-161-0001, Local Assistance, Special Education (Issue 642).** Requests that Proposition 98 General Funds for this item be decreased by \$7,237,000 to reflect offsetting property tax revenues.
- 9. Item 6110-166-0890, Local Assistance, Decrease Vocational Education (Issue 503).** Requests that this item be decreased by \$10.0 million federal Title I funds to reflect a reduction in available Vocational Education funding due to the elimination of the Tech Prep component of the program. The Tech Prep program is an articulated, planned sequence of study in vocational education beginning in high school and extending through at least two years of postsecondary education or an apprenticeship program. Federal budget reductions eliminated funding for the Tech Prep program.

10. Item 6110-180-0890, Local Assistance, Education Technology (Issue 310).

Requests that this item be decreased by \$10,983,000 Federal Trust Fund to reflect the elimination of the Enhancing Education Through Technology Program at the federal level. This adjustment includes a decrease of \$5,452,000 to Schedule (1), a decrease of \$5,452,000 to Schedule (2), and a decrease of \$79,000 to Schedule (3). While all 2011-12 base funding is eliminated, one-time prior year carryover funding of \$258,000 in Schedule (1), \$5,000 in Schedule (2), and \$230,000 in Schedule (3) will remain available for allocation in 2011-12.

11. Item 6110-240-0890, Local Assistance, Advanced Placement Fee Waiver Program (Issue 758).

Requests that this item be increased by \$2,853,000 Federal Trust Fund to align the appropriation with the federal grant award of \$7,231,000 for the Advanced Placement (AP) Fee Waiver Program, which reimburses school districts for specified costs of AP and International Baccalaureate (IB) test fees paid on behalf of eligible students. The AP and IB programs allow students to pursue college-level course work while still in secondary school.

DOF May Revise Letter - General Fund and Other Adjustments

12. Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education, One-Time Carryover for the Federal Public Charter School Grant Program (Issue 809). Requests that Item 6110-001-0890 be increased by \$530,000 Federal Trust Fund and that Item 6110-001-0001 be amended to reflect the availability of one-time carryover funds for the Public Charter School Grant Program. Of this amount, \$150,000 would be provided for an independent evaluation of the program, and \$380,000 would be for charter school best practices dissemination through the Brokers of Expertise website. This carryover is the result of a late grant award notification and subsequent delays in the contracting process.

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, \$530,000 is provided in one-time carryover funds for the Public Charter School Grant Program.

13. Item 6110-101-0231, Local Assistance, Tobacco-Use Prevention Education Program (Issue 759). Requests that this item be increased by \$68,000 Health Education Account funds to reflect increased revenue estimates from the Cigarette and Tobacco Products Surtax Fund (Proposition 99). These funds are used for health education efforts aimed at the prevention and reduction of tobacco use. Activities may include tobacco-specific student instruction, reinforcement activities, special events, and cessation programs for students.

14. Item 6110-113-0001, Local Assistance, Restore California High School Exit Exam Funding Erroneously Eliminated from the Governor's Budget (Issue 083).

Requests that Schedule (4) of this item be increased by \$425,000 Proposition 98 General Fund to fully fund the California High School Exit Exam (CAHSEE) contract. During development of the Governor's Budget, the SDE's request for

CAHSEE was incorrectly decreased by \$350,000 due to a Department of Finance miscalculation. This requested action will net to an increase of \$350,000 Proposition 98 General Fund after a budget adjustment is made per Control Section 12.42.

15. Items 6110-492 and 6110-001-3085, Support, Reappropriation, Mental Health Services Act, Proposition 63 (Issue 641). Requests that \$111,000 Mental Health Services Fund appropriated in Item 6110-001-3085 of the 2010 Budget Act be reappropriated in 2011-12. These funds will be provided to contract with an outside source to develop an on-line professional development training program for LEA staff regarding youth suicide issues and prevention, which was delayed in the current year due to contract issues.

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

6110-492—Reappropriation, Department of Education. Notwithstanding any other provision of law, the balance of the appropriation provided in Item 6110-001-3085 of the Budget Act of 2010 (Ch. 712, Stats. 2010) is reappropriated and shall be available for encumbrance or expenditure until June 30, 2012, to contract with mental health/educational professionals or local education agencies to support the involvement of local education agencies in local mental health planning and implementation efforts pursuant to the Mental Health Services Act (Proposition 63, as approved by the voters at the November 2, 2004, statewide general election).

STAFF RECOMMENDATION: Staff recommends approval of all of the DOF Budget Letters proposals listed above, including staff revisions highlighted for issue #2. These revisions align appropriations with the latest federal grant estimates from the U.S. Department of Education and other technical changes agreed to by all parties. No issues have been raised for any of these issues.

OUTCOME: Approve staff recommendation. (Vote: 3-0.)

ISSUE 2. DOF Budget Letters – Federal Funds – Child Nutrition (Vote Only)

DESCRIPTION: The Department of Finance (DOF) proposes the following technical adjustments to various state operations and local assistance items for federal child nutrition programs in the 2011-12 budget. These revisions are proposed by the DOF April and May Budget Letters. Most of these items involve technical adjustments to update budget appropriation levels for child nutrition programs and administration so they match the latest federal grant estimates and utilize funds consistent with current programs and policies.

DOF April Letter -- Federal Funds Adjustments

- 1. Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education (SDE), Support for Child Nutrition Reauthorization Workload (Issue 722).** Requests that Item 6110-001-0890 be increased by \$200,000 Federal Trust Fund and that Item 6110-001-0001 be amended to support 2.0 existing positions on a limited-term basis through June 30, 2013, and associated travel and technical assistance costs for the purpose of assisting School Food Authorities with implementation of new requirements contained in the federal Healthy, Hunger-Free Kids Act of 2010.

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, \$200,000 is available to fund 2.0 existing positions on a limited-term basis through June 30, 2013, and other costs to support increased technical assistance activities associated with new federal child nutrition requirements under the Healthy, Hunger-Free Kids Act of 2010.

DOF May Revise Letter -- Federal Funds Adjustments

- 2. Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education (SDE), Child Nutrition Compliance Monitoring Workload (Issue 751).** Requests that Item 6110-001-0890 be increased by \$500,000 Federal Trust Fund and that Item 6110-001-0001 be amended to support an increase in the frequency of required compliance reviews of federal child nutrition programs. This funding is available through the child nutrition State Administrative Expense (SAE) Fund and reflects estimated half-year costs associated with staff needed to support the anticipated workload increase.

The federal Healthy, Hunger-Free Kids Act passed by Congress in December 2010 requires each National School Lunch Program and School Breakfast Program to be reviewed once every three years. Previously, only lunch programs were reviewed once every five years. The United States Department of Agriculture (USDA) is expected to release a final rule this winter, including an implementation timeline and, possibly, revisions that will streamline the compliance review process. Therefore, it

is proposed that the use of this funding be contingent on additional justification from the SDE, based upon the final rule issued by the USDA.

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, \$500,000 is provided 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: (1) the effective date of the requirement to review each National School Lunch Program and School Breakfast Program once every three years, and (2) 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 department.

- 3. Items 6110-001-0001 and 6110-001-0890, Support, State Department of Education (SDE), One-Time Carryover Authority for Child Nutrition State Administrative Expense (SAE) Fund (Issue 753).** Requests that Item 6110-001-0890 be increased by \$2.0 million Federal Trust Fund and that Item 6110-001-0001 be amended to reflect the availability of one-time carryover funds from the child nutrition SAE Fund. These funds will be used for one-time projects that will support the efficiency and quality of child nutrition program administration, including the development of a Fresh Fruit and Vegetable Program payment module within the Child Nutrition Information and Payment System and revising the SDE's nutrition education curriculum to align with new standards and requirements contained in the federal Healthy, Hunger-Free Kids Act passed by Congress in December 2010.

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, \$2,000,000 is provided in one-time carryover funds to support one-time projects to improve the efficiency and quality of child nutrition program administration.

- 4. Item 6110-201-0890, Local Assistance, Federal Child Nutrition Programs (Issue 755).** Requests that Schedule (2) of this item be increased by \$2.0 million Federal Trust Fund due to the anticipated increase in meals served through the Summer Food Service Program. Sponsors of this federal entitlement program include public or private nonprofit schools; local, municipal, county or tribal governments; residential camps; and private nonprofit organizations.

STAFF RECOMMENDATION (Vote Only): Staff recommends approval of all of the DOF Budget Letters proposals listed above for federal child nutrition programs and administration. These revisions align child nutrition appropriations with the latest federal program requirements and grant estimates from the U.S. Department of Education. No concerns have been raised for these issues.

OUTCOME: Approve staff recommendation. (Vote: 3-0.)

6110 CALIFORNIA DEPARTMENT OF EDUCATION

ISSUE 3. DOF May Revise Letter - Capital Outlay - State Special Schools - Item 6110-490 (Vote Only)

DESCRIPTION: The Department of Finance (DOF) May Revise Letter requests that a new budget item be added to the 2011-12 Budget Act to reflect the reappropriation of the unencumbered balances of the bond funded appropriations for four capital outlay projects at the California School for the Deaf, Riverside.

BACKGROUND: Pursuant to Budget Letter 08-33 in December 2008, state departments were directed to suspend any projects that require cash disbursement from Pooled Money Investment Account loans. In order to comply with this budget letter, the California Department of Education (CDE) suspended project activities for four lease-revenue bond funded projects at the State Special School in Riverside. These projects were all authorized in previous state budgets. Due to suspension, implementation of these projects was delayed in recent years, but all these projects have now resumed.

DOF MAY LETTER REQUEST:

Addition of Budget Bill Item 6110-490, Capital Outlay, Department of Education (Issue 302). It is requested that Item 6110-490 be added to reappropriate the following unencumbered balances of bond funded appropriations for four CDE Education projects at the California School for the Deaf, Riverside until June 30, 2015. Funding for these projects was originally appropriated in the Budget Acts of 2005, 2006, 2007, and 2008; and unencumbered balances of all four projects were previously reappropriated for one year in the 2010 Budget Act.

- ~~\$22,567,000~~ \$23,974,000 for the New Gymnasium and Pool Center Project – Working Drawings, Construction and Equipment.
- ~~\$18,223,000~~ \$19,449,000 for the Career and Technical Education Complex and Service Yard Project – Working Drawings, Construction and Equipment.
- ~~\$12,317,000~~ \$13,087,000 for the Kitchen and Dining Hall Renovation Project – Working Drawings, Construction and Equipment.
- ~~\$9,757,000~~ for the Academic Support Core, Bus Loop and Renovation Project – Working Drawings, Construction and Equipment.

STAFF RECOMMENDATION: Staff recommends approval of the DOF May Revise Letter request with DOF revisions reflected above to reflect funds for working drawings. This DOF request reappropriates funds for four capital outlay projects at the School for the Deaf, Riverside. These bond funded projects were approved in previous state budgets with state lease-revenue bonds. No issues have been raised for any of these reappropriations.

OUTCOME: Approve staff recommendation. (Vote: 3-0.)

ISSUE 4: Reduction of K-12 Inter-Year Payment Deferrals

DESCRIPTION: The Governor’s May Revision proposes to reduce the amount of inter-year payment deferrals for K-12 school districts by nearly **\$2.5 million** in 2011-12, as a means of expending most of the \$3.0 billion in additional Proposition 98 funding proposed by the Governor at May Revise. Specifically, this proposal would eliminate a new **\$2.1 billion** deferral in 2011-12 enacted by the March budget package and eliminate roughly **\$434 million** in other existing deferrals that would otherwise continue in 2011-12. As a result, ongoing inter-year payment deferrals would drop from **\$9.4 billion** to **\$6.9 billion** for K-12 schools in 2011-12.

BACKGROUND:

Inter-Year Deferrals Used for Ten Years as Alternative to K-12 Program Cuts. The state has been utilizing inter-year payment deferrals for ten years – since 2001-02. Deferrals have allowed K-12 local education agencies (LEAs) to essentially borrow from the next fiscal year to cover current programmatic costs.

The Legislative Analyst’s Office (LAO) points out, that initially, inter-year payment deferrals were a means of making mid-year budget reductions that would not cut programs well after the school year had commenced. Since the initial years, deferrals have become more a part of primary budget packages, as is the case with the Governor’s current proposal.

In addition, the size of deferrals has grown significantly in recent years. While remaining at about \$1.1 billion for most of the first seven years, inter-year deferrals have grown by \$6.280 billion in the last three years (2008-09 through 2010-11), as indicated by the LAO’s figures below. The March budget package bring annual K-12 inter-year payment deferrals to **\$9.4 billion** in 2011-12, which equates to **21 percent** of annual K-12 Proposition 98 payments.

K-12 Inter-Year Deferrals	Amount
Prior Year Base (Beginning in 2001-02)	\$1.103 billion
2008-09 New	\$2.851 billion
2009-10 New	\$1.679 billion
2010-11 New	\$1.750 billion
2011-12 (March Package)	\$2.064 billion
TOTAL	\$9.417 billion
Share of Proposition 98 Program	(21 percent)

While a portion of the 2002-03 inter-year payment deferral was repaid in 2003-04, no other inter-year payment deferral has been repaid since then.

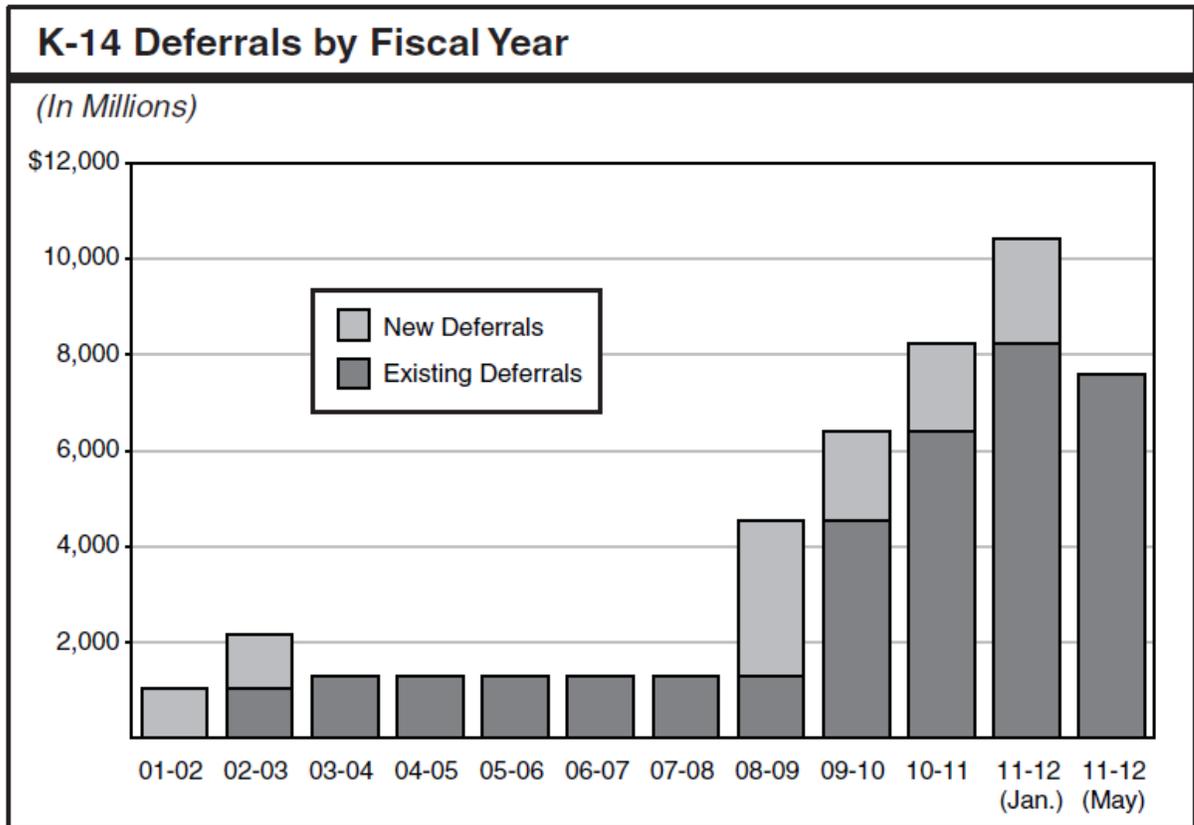
GOVERNOR’S MAY REVISE PROPOSAL:

The Governor’s May Revise proposes to pay down inter-year payment deferrals for K-12 school districts by a total of **\$2.5 billion** in 2011-12. More specifically, the Governor proposes to:

- Eliminate the new **\$2.1 billion** payment deferral in 2011-12 enacted by the March budget package (Chapter 70; Statutes of 2011). This new deferral shifts \$1.3 billion in apportionment payments from March 2012 and \$764 million in payments from April 2012 to August 2012.
- Reduce other existing, ongoing February to July payment deferrals from \$2.0 billion to \$1.565 billion – a reduction of **\$434 million**.

The Governor proposes trailer bill language to make these changes. The Governor also proposes to reduce community college deferrals by **\$350 million** in 2011-12, bringing total inter-year payment deferrals for K-14 education to **\$2.8 billion**.

LAO COMMENTS: The LAO has developed the following chart summarizing inter-year payment deferrals for K-12 schools and community colleges over the last ten years, including the **\$2.8 billion** reduction proposed by the Governor at May Revise. Per the Governor’s May Revise proposal, **15 percent** of the K-14 Proposition 98 program would be paid late, compared to **20 percent** under the March budget proposal.



LAO RECOMMENDATIONS:

If the final state budget package contains revenues able to support the May Revision level of Proposition 98 spending, the LAO recommends that the Legislature adopt the Administration's May Revise plan to rescind previously adopted deferrals. Per the LAO, by not creating new programs and instead paying down deferrals, the May Revision provides benefits to both the state and school districts:

- From the state's perspective, outstanding state obligations as well as out-year state budget shortfalls are reduced.
- From districts' perspective, less borrowing is needed, thereby reducing associated transaction and interest costs and potentially allowing districts to build back some programmatic support and/or replenish their reserves.
- From both perspectives, using additional funds for deferrals is fiscally responsible.

STAFF COMMENTS:

- **Governor's May Revise Makes Significant Reduction to Ongoing K-12 Inter-Year Deferrals.** The March budget package will bring total inter-year payment deferrals for K-12 school districts to **\$9.4 billion** in 2011-12, which equates to **21 percent** of annual K-12 Proposition 98 payments. The Governor's May Revise proposal would reduce ongoing, inter-year payment deferrals to **\$6.9 billion** in 2011-12, which equates to **15 percent** of annual K-12 Proposition 98 payments.
- **Good Fiscal Policy.** Large ongoing inter-year deferrals enacted in March – coupled with significant intra-year deferrals also enacted in March – will place a large cash flow burden on school districts in 2011-12. The LAO is concerned that additional deferrals would continue the deterioration of LEA fiscal health and could result in the need for emergency loans to avoid insolvency. Reducing deferrals will reduce these burdens on school districts and reduce state obligations for repayment at the same time. The Governor also proposes to use future increases in Proposition 98 funding to pay off remaining deferrals. According to DOF Proposition 98 forecasts, the Governor proposes to pay off all inter-year payment deferrals by 2013-14. This is prudent policy to reduce long-term debt obligations to school districts.
- **No Programmatic Change, But Some Savings From Reduced Borrowing.** The Governor's proposal to reduce deferrals by \$2.5 billion does not increase programmatic funding for K-12 schools, but simply makes payments on time. However, by avoiding additional borrowing associated with delayed payments, districts can reduce costs associated with deferrals – savings that can be used to preserve K-12 programs.

STAFF RECOMMENDATIONS:

- (1) Approve Governor's May Revision proposal to reduce K-12 inter-year payment deferrals, but conform final amount to reflect Subcommittee action to restore \$122 million in Proposition 98 funds for child care. This action provides nearly **\$2.4 billion** in K-12 payment deferral reductions in 2011-12, instead of **\$2.5 billion** proposed by the Governor.

- (2) Adopt Administration's placeholder trailer bill language to eliminate the new 2011-12 inter-year deferral enacted in March, and make remaining reductions to ongoing February to July inter-year deferrals.

OUTCOME: Approve staff recommendation. (Vote: 2-1.)

ISSUE 5: Special Education Mental Health Related Services

DESCRIPTION: The Governor's May Revision proposes to repeal the state AB 3632 mandate program and shift responsibility for special education mental health related services back to K-12 schools. In so doing, the Governor proposes to provide **\$221.8 million** in Proposition 98 funds to K-12 schools for this purpose in 2011-12. The Governor proposes to "rebench" the Proposition 98 minimum funding guarantee to reflect this programmatic shift. In addition, the Governor proposes to continue **\$69 million** in federal funds and **\$98.6 million** in Proposition 63 funds, bringing total funding for K-12 schools for this purpose to **\$389.4 million** in 2011-12.

BACKGROUND:

The federal Individuals with Disabilities Education Act (IDEA) requires schools to provide "special education and related services" to students with disabilities. Related services are defined to cover "transportation, and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education." Mental health services clearly fall into the category of a related service. For example, federal law explicitly states that related services include, but are not limited to – social work, counseling, and psychological services.

Until 1984, California schools provided mental health services to special education pupils who needed the services to benefit from their Individualized Education Plans (IEP). At that time, the Legislature saw a need to assure coordination of services among publicly funded agencies. In 1984, the Legislature passed AB 3632 (Chapter 1747, Statutes of 1984) and assigned county mental health departments the responsibility for providing students these services [except students placed out-of-state].

In 1996, the Legislature passed AB 2726 (Chapter 654, Statutes of 1995), which expanded county responsibilities to include services to students placed in out-of-state schools.

Approximately **20,000** students with disabilities receive mental health services under the AB 3632 program. According to the LAO, about half of these students are enrolled in the Medi-Cal program.

While AB 3632 was written in response to federal IDEA requirements, state law is more specific than federal law in articulating all allowable mental health services. The statute defines mental health related services to include therapy and counseling, day treatment, medication management, and for children with the most severe problems, 24-hour therapeutic residential programs with on-site schools.

AB 3632 tasks mental health professionals, in consultation with other members of the IEP team (parents/students, teachers, administrators) with deciding what special education and related services are needed in the student's IEP.

Funding for the AB 3632 Program. The LAO has prepared the chart below summarizing the irregular pattern of funding for the AB 3632 program through 2009-10. (The following section details more significant program and funding beginning in 2010-11 and 2011-12.) In summary, there are two major categories of expenditures -- mental health services and residential care.

AB 3632 Costs Over Time						
<i>(In Millions)</i>						
	Mental Health Services			Residential Care		Totals
	Federal Special Education	DMH Categorical	Mandate Claims ^a	DSS	County Funds ^a	
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 ^b	311

^a 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.
^b Additional mandate claims being submitted for 2009-10.
DMH = Department of Mental Health and DSS = Department of Social Services.

For mental health services, counties have received federal special education funds from the California Department of Education (CDE), state General Fund from the Departments of Mental Health (DMH), and reimbursements for remaining costs through the state mandate claims program. (The Constitution requires the state to pay mandate bills or suspend or repeal the mandate.) Counties can also receive Medi-Cal funding for eligible students; however, these funds are not reflected in the LAO chart above.

For residential care, county welfare departments receive state General Fund through the Department of Social Services and use local funds (mostly from 1991 realignment) to pay the room and board costs for students requiring residential placements. In addition, the state currently makes payments for mandate claims submitted by counties to cover costs in excess of other state and federal appropriations.

Recent Funding Changes for the AB 3632 Program. Due to the state’s budget shortfall, the Legislature did not provide funding in the 2010-11 budget for either DMH mental health services or DSS residential services. The Legislature did include \$133 million for AB 3632 mandate payments to offset these funding reductions, but Governor Schwarzenegger vetoed these funds and suspended the AB 3632 state mandate on counties. While the Governor’s authority to suspend by elimination of funding was challenged in court, recent decisions have upheld the action. As a result, the state

mandate for providing mental health related services for students with disabilities effectively shifted to schools pursuant to federal law.

Governor Schwarzenegger also vetoed language requiring \$76 million in federal funds be allocated to counties for mental health services in the 2010-11 budget. The Department of Education elected to release these funds to counties to continue some AB 3632 services. These federal funds were the only funds appropriated in the 2010-11 budget act for AB 3632. As a result of the uncertainty around the legality of suspending a mandate through a line-item veto, responsibility for funding and service delivery between schools and counties has been characterized as unclear, confusing, and even chaotic by the field in 2010-11.

In January 2011, Governor Brown continued the AB 3632 suspension and proposed no additional funding for the program in 2010-11. Due to mounting concerns about the lack of funding, the March 2011 budget package appropriated an additional \$80 million in one-time Proposition 98 savings to schools for mental health related services in 2010-11.

For 2011-12, the Governor proposed \$98 million from Proposition 63 funds for mental health services. These funds were proposed as a part of a larger county realignment proposal that shifted the AB 3632 program to the counties, but eliminated the state mandated program. The final March budget package (AB 100/ Chapter 5; Statutes of 2011) appropriates \$98.6 million for mental health services for special education students. The Governor's May Revise continues these funds, but realigns mental health related services to schools, instead of counties.

GOVERNOR'S MAY REVISE BUDGET PROPOSAL: The May Revise proposes a total of **\$389.4 million** to shift mental health related services for students with disabilities back to K-12 schools in 2011-12, as follows:

- **Proposition 98 Funds.** The May Revise provides an increase of **\$221.8 million** in Proposition 98 General Funds to shift responsibility for providing mental health services, including out-of-home residential services, required under the federal Individuals with Disabilities Education Act (IDEA) from county mental health and county welfare agencies (where it has been funded as a reimbursable state mandate) to school districts . The \$221.8 million in Proposition 98 funds includes:
 - ✓ \$ 218.8 million available only for the purpose of providing mental health services allocated to special education local plan areas (SELPAs) based on an equal rate per student, calculated using total average daily attendance (ADA) from the prior year's second principal apportionment in each school district within the special education local plan area.
 - ✓ Up to \$3.0 million shall be made available for the Superintendent, in collaboration with the Department of Finance and the Legislative Analyst and subject to Department of Finance approval, to administer an extraordinary cost pool associated with mental health services for necessary small special education local plan areas as defined in Section 56212 of the Education Code.

The Governor's May Revise "rebenches" the Proposition 98 minimum guarantee upward by **\$221.8 million** to reflect the programmatic shift from counties to schools.

As a part of the May Revision, the Administration proposes a permanent repeal of the AB 3632 state mandate and removes mental health related services from the realignment proposal for counties. More specifically, the Administration requests that Chapter 1747, Statutes of 1984 (AB 3632), and Chapter 654, Statutes of 1995 (AB 2726), be repealed in separate trailer bill legislation to conform to this action.

- **Federal Funds.** The May Revise also continues **\$69 million** in federal IDEA funds for mental health related services required by federal law in 2011-12 and conforms provisional budget language to reflect realignment of mental health services from counties to schools. More specifically, federal funding would be allocated to SELPAs on an equal rate per student, calculated using total average daily attendance, from the prior year's second principal apportionment in each school district within the special education local plan area.
- **Proposition 63 Funds.** The May Revision continues to provide **\$98.6 million** in Proposition 63 funds appropriated in the March package pursuant to AB 100 (Chapter 5; Statutes of 2011). These funds are provided to counties on a one-time basis for the purpose of providing mental health services for students with disabilities. These funds would be allocated based upon a formula developed by the state (DMH) and local counties (the California Mental Health Directors Association). These funds would only be available for school districts that choose to contract with county mental health agencies for mental health related services. In furtherance of the Governor's May Revise proposal, the 3632 program will be removed from the continuing realignment proposal for counties.

The Governor's May Revise proposal states that the existing approach to delivering mental health services for students receiving special education, by which the state reimburses counties for providing mental health services in response to claims, has lacked accountability for program funding and service efficiencies. Per the Administration, shifting this responsibility back to school districts and limiting services to only those required under federal law would create a stronger correlation to educational outcomes and also result in greater cost containment.

LAO COMMENTS/RECOMMENDATIONS: Consistent with their approach in recent years, the LAO recommend the Legislature adopt the Governor's May Revise proposal to officially shift mental health responsibilities to school districts. The LAO supports the Governor's proposal for the following major policy and fiscal reasons:

- Refocuses emphasis on students' educational needs.
- Strengthens program accountability.
- Encourages cost-effective provision of services.

Per the LAO, in implementing the Governor's proposals, districts can continue to contract with county mental health agencies, choose a different service provider, or

develop in-house expertise. The LAO raises the following implementation issues to consider if the Legislature adopts the Governor's May Revision proposal:

- **Amount and Sources of Funding.** Provide the \$389 million proposed by the Governor, including Proposition 63, or some other amount/source?
- **Allocation of Funding.** Allocate funding to districts based on an equal per-pupil basis (Governor's proposal) or based on caseload and costs from the existing program? To avoid inappropriate incentives, the current special education funding model is based on a per-pupil formula.
- **Requirements for Use of Funds.** Require that districts use new funds only for mental health services or allow usage for any special education costs? Caseload may vary across the state, and the current special education funding model does not restrict funds for particular services.
- **Program Requirements.** Repeal state law and default to the broad federal special education mandate (Governor's proposal) or maintain some California-specific statutory requirements for student mental health services?
- **Transitional Issues.** Are there additional ways the state can or should assist districts through this transition?
- **Schools' Access to Medi-Cal Funding.** Should the state enable school districts to claim full Medi-Cal reimbursements the way counties currently do?

CDE COMMENTS: The California Department of Education (CDE) does not oppose the Governor's May Revise proposal and will provide comments at the Subcommittee hearing.

CDE requests \$789,000 in federal IDEA carryover funds be redirected on a one-time basis for state operations and state level transition planning activities, including technical assistance to special education local planning areas (SELPA) and local educational agencies (LEAs) during the transition period.

CDE reports it has already redirected \$3.0 million in federal special education funds from current ongoing workload required under federal law to respond to the confusion created by Governor's Schwarzenegger's veto last fall. Specific activities include providing advisories to the field, investigating complaints, providing support to legal staff, and providing oversight for the provision of mental health related services by SELPA in 2010-11.

STAFF RECOMMENDATIONS: Approve Governor's May Revise proposal to shift funding and responsibilities for mental health related services back to schools. Adopt placeholder trailer bill language proposed by the Governor to eliminate the state mandated program for mental health related services.

Staff makes the following additional recommendations – building on issues raised by LAO and CDE - to address implementation issues for the Governor’s proposal.

1. **Work with Administration and LAO to (a) Refine Funding for the Governor’s Proposal to Better Reflect Program Costs and More Accurately Rebench Proposition 98, and (b) Refine the Funding Formulas, as Needed, to Ensure they are Workable.**
2. **Designate State and Federal Funds for Mental Health Related Services Only, at Least in the Short Term.** Specifically, revise budget provisional language for items 6110-161-0000 and 6110-161-0890 to require that federal and state appropriations for mental health related services, be used “only” for these purposes in the transition period.
3. **Add Accountability Provisions to Track and Monitor Services and Outcomes for Students, Especially During Transition Period.** Staff to work with DOF, CDE, LAO, in consultation with other stakeholders, to develop trailer bill language that is workable and agreeable to all parties.
4. **Redirect Some One-Time Federal Savings for CDE Program Oversight and Technical Assistance Activities During Transition Period.** Staff to work with DOF, CDE and LAO to redirect savings for limited-term, state level activities that does not include any new positions and is agreeable to all parties.
5. **Align \$31 Million in Ongoing Proposition 98 Funds for Pre-Referral Services to Governor’s Proposal.** These funds were initially authorized by Chapter 493; Statutes of 2004 for mental health pre-referral services. Adopt placeholder budget provisional language.
6. **Pursue Changes to Allow LEAs to Maximize Medi-Cal Reimbursement for Mental Health Related Services for Eligible Students.** DOF is researching this issue, which could be addressed in trailer bill, if needed.
7. **Direct State Improvement Grant Carryover Funds to Build SELPA Capacity for Mental Health Related Services.** The DOF April Letter (Issue 682) requests approval of \$520,000 in federal one-time local assistance funds for the State Improvement Grant. Per the April Letter request, these funds would be distributed to LEAs for innovative, special education professional development ideas. Staff recommends that these one-time federal carryover funds be directed to professional development in the area of mental health related services, to the extent permitted by the federal grant.

OUTCOME: Approve staff recommendations. (Vote: 3-0.)