

## ITEM 3

### BUDGET ACT AND TRAILER BILLS

#### STAFF REPORT

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On October 8, 2010, Senate Bill 870, the long awaited 2010 State Budget Act, was signed by the Governor. (Stats. 2010, ch. 712, eff. Oct. 8, 2010) Then, on October 19, 2010, the budget trailer bills were signed. For purposes of our review, we will focus on what is in the budget and two budget trailer bills, SB 856 (Stats. 2010, ch. 719, eff. Oct. 19, 2010) and AB 1610 (Stats. 2010, ch. 724).

This staff report reviews mandates-related appropriations and statutory changes enacted by the Budget Act and the budget trailer bills.

#### State Budget Act (SB 870)

##### School District Mandates – Item 6110-295-0001

Appropriation - \$80,355,000 for 28 programs

(1) <i>Consolidation of Annual Parent Notification</i>	\$8,844,000
(2) <i>Caregiver Affidavits</i>	\$ 502,000
(3) <i>Mandate Reimbursement Process</i>	0
(4) <i>Notification of Truancy</i>	\$3,645,000
(5) <i>Pupil Suspensions, Expulsions, Expulsion Appeals</i>	\$5,205,000
(6) <i>Charter Schools I, II, and III</i>	\$1,306,000
(7) <i>AIDS Instruction I and AIDS Prevention Instruction II</i>	\$1,293,000
(8) <i>Collective Bargaining</i>	\$1,789,000
(9) <i>Pupil Health Screenings</i>	\$ 759,000
(10) <i>Physical Performance Tests</i>	\$3,485,000
(11) <i>Juvenile Court Notices II</i>	\$1,024,000
(12) <i>Removal of Chemicals*</i>	0
(13) <i>Law Enforcement Agency Notifications and Missing Children Reports</i>	0
(14) <i>Immunization Records</i>	\$3,802,000
(15) <i>Habitual Truants</i>	\$1,383,000
(16) <i>Notification to Teachers and Pupil Discipline Records</i>	\$6,656,000
(17) <i>Scoliosis Screening*</i>	0
(18) <i>Pupil Residency Verification and Appeals*</i>	0
(19) <i>Criminal Background Checks I</i>	\$ 568,000
(20) <i>School Bus Safety I and II*</i>	0
(21) <i>Public Safety Officers Procedural Bill of Rights Act</i>	0
(22) <i>Financial and Compliance Audits</i>	\$ 359,000

(23) <i>Physical Education Reports*</i>	0
(24) <i>Health Benefits for Survivors of Peace Officers and Firefighters*</i>	0
(25) <i>County Office of Education Fiscal Accountability Reporting</i>	\$ 282,000
(26) <i>School District Fiscal Accountability Reporting</i>	\$ 2,668,000
(27) <i>Law Enforcement Sexual Harassment Training*</i>	0
(28) <i>County Treasury Withdrawals*</i>	0
(29) <i>Comprehensive School Safety Plans</i>	\$ 2,977,000
(30) <i>Immunization Records – Hepatitis B</i>	\$ 4,626,000
(31) <i>School District Reorganization</i>	0
(32) <i>Criminal Background Checks II</i>	\$ 303,000
(33) <i>Grand Jury Proceedings*</i>	0
(34) <i>Pupil Promotion and Retention</i>	\$ 1,074,000
(36) <i>Differential Pay and Reemployment</i>	\$ 2,000
(37) <i>Absentee Ballots</i>	0
(38) <i>Agency Fee Arrangements</i>	\$ 22,000
(39) <i>The Stull Act</i>	\$18,451,000
(40) <i>Threats Against Peace Officers</i>	0
(41) <i>State Teachers Retirement System Services Credit</i>	\$ 85,000
(42) <i>Pupil Safety Notices</i>	\$ 72,000
(44) <i>School Accountability Report Cards II &amp; III</i>	0
(45) <i>Prevailing Wage</i>	0
(46) <i>Intradistrict Attendance</i>	\$ 3,397,000
(47) <i>California High School Exit Examination</i>	\$ 5,776,000

*Suspensions*

The nine (9) programs marked above with an asterisk are identified as being suspended pursuant to Government Code section 17581.5 until June 30, 2013. SB 856, discussed below, includes the language in Government Code section 17581.5 to suspend the programs.

Community College District Mandates – Item 6870-295-0001

Appropriation - \$9,545,000 for 15 programs

(1) <i>Health Fees</i>	\$9,545,000
(2) <i>Sex Offenders: Disclosure Requirements</i>	\$ 1,000
(3) <i>Law Enforcement Jurisdiction Agreements*</i>	0
(4) <i>Absentee Ballots</i>	\$ 1,000
(5) <i>Collective Bargaining</i>	\$ 444,000
(6) <i>Health Benefits for Survivors of Peace Officers &amp; Firefighters*</i>	0
(7) <i>Integrated Waste Management*</i>	0
(8) <i>Enrollment Fee Collection and Waivers</i>	\$3,000,000
(9) <i>Sexual Assault Response Procedures</i>	\$ 3,000
(10) <i>Threats Against Peace Officers</i>	\$ 1,000
(11) <i>Agency Fee Arrangements</i>	\$ 57,000

(12)State Teachers Retirement System Services Credit	\$ 101,000
(13)Reporting Improper Governmental Activities	\$ 13,000
(14)Open Meetings/Brown Act	0
(15)Mandate Reimbursement Process	\$ 1,000
(16)Law Enforcement Sexual Harassment Training*	0
(17)Grand Jury Proceedings*	0
(18)Cal Grants	\$ 1,000
(19)Tuition Fee Waivers	\$ 13,000
(20)Student Records	\$ 1,000
(21)Prevailing Wage Rate	\$ 1,000

*Suspensions*

The five (5) programs marked above with an asterisk are identified as being suspended pursuant to Government Code section 17581.5 until June 30, 2013.

Local Agency Mandates – Item 8885-295-0001

*Appropriations - \$216,336,000.*

The Governor reduced this appropriation from \$216,336,000 to \$80,400,000. The veto message stated: “I am reducing this item by \$132,941,000 by deleting Schedule (1) (oo) Handicapped and Disabled Students I and II, and Seriously Emotionally Disturbed Pupils: Out of State Mental Health Services (AB 3632). This mandate is suspended. I am also reducing this item by \$2,995,000 by deleting Schedule 1) (pp) Local Recreational Background Checks. This mandate is suspended. However, I will support legislation that grants local entities fee authority to recoup the costs of the background screenings for employees and volunteers at locally operated parks, playgrounds, recreational centers, or beaches used for recreational purposes.” (Citations omitted.)

1. For payment of costs incurred in the 2004-05 through 2008-09 fiscal years, for the following mandated programs:

- (a) *Fifteen-Day Close of Voter Registration*
- (b) *Threats Against Peace Officers*
- (c) *Custody of Minors-Child Abduction and Recovery*
- (e) *Absentee Ballots*
- (f) *Permanent Absent Voters*
- (g) *Voter Registration Procedures*
- (h) *Absentee Ballots-Tabulation by Precinct*
- (i) *Brendon Maguire Act*
- (j) *Medi-Cal Beneficiary Death Notices*
- (u) *Sexually Violent Predators*
- (w) *Domestic Violence Treatment Services*
- (z) *Domestic Violence Arrest Policies*
- (bb) *Unitary Countywide Tax Rates*
- (dd) *Allocation of Property Tax Revenues*

- (ff) *Rape Victim Counseling*
- (gg) *Health Benefits for Survivors of Peace Officers and Firefighters*
- (jj) *Crime Victims' Domestic Violence Incident Reports*
- (kk) *Peace Officer Personnel Records: Unfounded Complaints and Discovery*
- (ll) *Domestic Violence Arrests and Victims Assistance*
- (mm) *In-Home Supportive Services II*
- (oo) *Handicapped and Disabled Students I and II, and Seriously Emotionally Disturbed Pupils: Out of State Mental Health Services (AB 3632) (appropriation vetoed)*
- (pp) *Local Recreational Background Checks (appropriation vetoed)*

(2) For payment of mandate claims for the 2005-06 through 2008-09 fiscal years for the *Public Safety Officers Procedural Bill of Rights Act (POBOR)* (CSM-4499).....0

(3) Suspended mandates pursuant to Government Code section 17581, for suspension during the 2010-11 fiscal year.....0

- (a) *Adult Felony Restitution*
- (b) *AIDS/Search Warrant*
- (c) *Airport Land Use Commission/Plans*
- (d) *Animal Adoption*
- (e) *Binding Arbitration*
- (f) *California Fire Incident Report System*
- (g) *Conservatorship: Developmentally Disabled Adults*
- (h) *Coroners' Costs*
- (i) *Crime Victims' Domestic Violence Incident Reports*
- (j) *Deaf Teletype Equipment*
- (k) *Developmentally Disabled Attorneys' Services*
- (l) *DNA Database & Amendments to Postmortem Examinations*
- (m) *Domestic Violence Information*
- (n) *Elder Abuse, Law Enforcement Training*
- (o) *Extended Commitment, Youth Authority*
- (p) *False Reports of Police Misconduct*
- (q) *Filipino Employee Surveys*
- (r) *Firearm Hearings for Discharged Inpatients*
- (s) *Grand Jury Proceedings*
- (t) *Guardianship/Conservatorship Filings*
- (u) *Handicapped Voter Access Information*
- (w) *Inmate AIDS Testing*
- (x) *Judiciary Proceedings*
- (y) *Law Enforcement Sexual Harassment Training*
- (z) *Local Coastal Plans*
- (bb) *Mentally Disordered Offenders' Treatment as a Condition of Parole*
- (cc) *Mentally Disordered Offenders Extended Commitment Proceedings*
- (dd) *Mentally Disordered Sex Offenders' Recommitments*
- (ee) *Mentally Retarded Defendants Representation*

(ff) *Missing Persons Report*  
 (gg) *Not Guilty by Reason of Insanity*  
 (hh) *Pacific Beach Safety*  
 (ii) *Perinatal Services*  
 (jj) *Personal Alarm Devices*  
 (kk) *Photographic Record of Evidence*  
 (ll) *Pocket Masks*  
 (mm) *Post Conviction: DNA Court Proceedings*  
 (nn) *Postmortem Examinations*  
 (oo) *Prisoner Parental Rights*  
 (pp) *Senior Citizens Property Tax Deferral*  
 (qq) *Sex Crime Confidentiality*  
 (rr) *Sex Offenders: Disclosure by Law Enforcement Officers*  
 (ss) *SIDs Autopsies*  
 (tt) *SIDs Contacts by Local Health Officers*  
 (uu) *SIDs Notices*  
 (vv) *SIDs Training for Firefighters*  
 (ww) *Stolen Vehicle Notification*  
 (xx) *Structural and Wildland Firefighter Safety Clothing and Equipment*  
 (yy) *Substandard Housing*  
 (zz) *Very High Fire Hazard Severity Zones*  
 (aaa) *Victims' Statements-Minors*  
 (bbb) *Mandate Reimbursement Process I*  
 (ccc) *Mandate Reimbursement Process II*

Staff notes that the mandates identified in the Governor's veto message were not included in the list of suspended mandates in the Budget Act.

## **SB 856 – State Government Budget Trailer Bill**

### **1. Amendments to Government Code Section 17556 – Exclusions to Mandate Reimbursement**

Government Code section 17556 defines the exclusions to a finding of mandate reimbursement. Subdivisions (a), (b), (d), and (e) were amended to add language that the subdivision applies regardless of whether the request for legislative authority; the action of the courts; fee authority; statute, executive order, or an appropriation that provides for offsetting savings or includes additional revenue, *occurred prior to or after the date on which the statute or executive order was enacted or issued*. Subdivision (f) was amended to delete “reasonably within the scope of” from the provision that refers to statutes or executive orders that impose duties that are necessary to implement or are expressly included in a state or local ballot measure approved by the voters. This language was deemed unconstitutional by the *CSBA* case.

### **2. Amendments to Government Code Section 17557 – Parameters and Guidelines Amendments**

The amendments clarify that proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program. SB 856 also specifies that a parameters and guidelines amendment may be filed to make any of the following changes consistent with the Statement of Decision:

- Delete any reimbursable activity that has been repealed by statute or executive order after the adoption of the original or last amended parameters and guidelines.
- Update offsetting revenues and offsetting savings that apply to the mandated program and do not require a new legal finding that there are no costs mandated by the state pursuant to subdivision (e) of section 17556.
- Include a reasonable reimbursement methodology for all or some of the reimbursable activities.
- Clarify what constitutes reimbursable activities.
- Add new reimbursable activities that are reasonably necessary for the performance of the state-mandated program.
- Define what activities are not reimbursable.
- Consolidate the parameters and guidelines for two or more programs.
- Amend the boilerplate language.

### 3. Mandate Redetermination Process

Senate Bill 856 establishes a new mandate redetermination program for the Commission on State Mandates. Specifically, the trailer bill:

- Establishes a new program for the Commission to adopt new test claim decisions to supersede prior decisions only upon a showing that the state's liability for mandate reimbursement pursuant to article XIII B, section 6, subdivision (a) of the California Constitution and sections 17514 and 17556 of the Government Code has been modified based on a "subsequent change in law" as defined.
- Defines "test claim decision," "mandates law" and "subsequent change in law."
- Allows cities, counties, special districts, school districts, state agencies, and statewide associations of cities, counties, and school districts to file a request for the Commission to adopt a new test claim decision.
- Requires the Commission to adopt regulations to specify the filing requirements, procedures and standards for the two-step hearing process.
- Requires the Commission to first adopt emergency regulations and specifies that "the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare."
- Defines the applicable period of reimbursement based on the filing date.
- Requires the Commission to notify interested parties, the Controller, the Department of Finance, affected state agencies, and the Legislative Analyst of any complete request for the adoption of a new test claim decision that the Commission receives.

- If the Commission determines that the requester has made a showing that the state’s liability pursuant to subdivision (a) of section 6 of Article XIII B of the California Constitution has been modified based on a subsequent change in law, and the Commission notices the request for a hearing to determine whether a new test claim decision shall be adopted that supersedes a prior test claim decision, the Controller is required to notify eligible claimants that the request has been filed with the Commission and that the original test claim decision may be superseded by a new decision adopted by the Commission. The notification may be included in the next set of claiming instructions issued to eligible claimants.
  - Requires the Commission to adopt new parameters and guidelines, amend existing parameters and guidelines, adopt a statewide cost estimate, if necessary, and report to the Legislature when a new test claim decision is adopted to supersede a prior decision.
  - Requires the State Controller to follow the procedures in sections 17558, 17558.5, 17560, 17561, and 17561.5, of the Government Code, as applicable for a new test claim decision adopted by the Commission.
  - Authorizes the Legislature, as part of its review and consideration pursuant to sections 17581 and 17581.5, of the Government Code, by statute, to request that the Department of Finance consider exercising its authority pursuant to subdivision (c) of section 17570.
4. Authorizes Local Agencies to Charge Fees to Volunteers for Costs of Fingerprinting

The trailer bill amends Public Resources Code 5164 to give local agencies fee authority to recover the costs of complying with the *Local Recreational Background Checks* program.

5. Open Meetings Act/Brown Act Reform

Although the first October 7 version of SB 856 included repeal of the *Brown Act*, the second October 7 version eliminated these provisions. The mandate is neither funded nor suspended for school districts and local agencies. It is identified in the community colleges budget with a zero appropriation.

**AB 1610 – Education Finance Budget Trailer Bill**

1. \$210 million in New Offsetting Revenues for School District and Community College District Reimbursement Claims

AB 1610 adds new section 41207.4 to the Education Code regarding the \$210,100,000 appropriation from the General Fund to the Controller for allocation to school districts and community college districts for the purpose of offsetting the 2009-10 outstanding balance of the minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution.

Education Code section 41207.4 (c) provides that “[f]unding received by school districts and community college districts shall first be deemed to be paid in satisfaction of any outstanding

claims pursuant to section 6 of Article XIII B of the California Constitution for reimbursement of state-mandated local costs for any fiscal year. Notwithstanding any amounts that are deemed, pursuant to this subdivision, to be paid in satisfaction of outstanding claims for reimbursement of state-mandated local costs, the Controller may audit any claim as allowed by law and may reduce any amount owed by school districts and community college districts pursuant to an audit by reducing amounts owed for any other mandate claims. The Controller shall apply amounts received by each school district or community college district against any balances of unpaid claims for reimbursement of state-mandated local costs and interest in chronological order beginning with the earliest claim. The Controller shall report to each school district and community college district the amounts of any claims and interest that are offset from funds provided pursuant to this section and shall report a summary of the amounts offset for each mandate for each fiscal year to the Department of Finance and the fiscal committees of the Legislature. The governing board of a school district or community college district may expend funds received pursuant to this section in excess of amounts offsetting mandate claims for any other one-time purposes, as determined by the governing board.

2. Notification of Truancy and Habitual Truant Programs

The *Notification of Truancy* program requires that school districts notify pupils' parents or guardians upon initial classification as a truant. AB 1610 amends Education Code section 48260.5 to clarify that the notification shall "use the most cost-effective method possible, which may include electronic mail or a telephone call."

Under the *Habitual Truant* program, no pupil shall be deemed a habitual truant, unless school districts make a "conscientious effort" to hold at least one conference with the pupil's parent or guardian and the pupil. AB 1610 amends Education Code section 48262 to define a "conscientious effort" as attempting to communicate with the parents of the pupil at least once using the most cost-effective method possible, which may include electronic mail or a telephone call.

3. Regulations, Behavioral Intervention Plans (Special Education), Characterized as Declaratory of Federal Law and Necessary to Implement the Federal Mandate; Identification of Offsetting Revenues for State-Mandated Program

Education Code section 56523 now specifies that "the implementing regulations adopted by the board are declaratory of federal law and deemed necessary to implement the federal Individuals with Disabilities Education Act and associated federal regulations. This section is intended to provide the clarity, definition, definition, and specificity necessary for local educational agencies to comply with the federal Individuals with Disabilities Education Act. This section, including the implementing state regulations needed to implement federal law and regulations, shall not exceed the requirements of federal law, create new or separate state requirements, or result in a level of state service beyond that needed to comply with federal law and regulations." The amendment further states that "as a condition of receiving funding from the federal Individuals with Disabilities Education Act, a local education agency shall agree to adhere to implementing federal regulations and state regulations. Beginning with the 2010-2011 fiscal year, if any activities authorized pursuant to this section and implementing regulations are found to be a state



reimbursable mandate, state funding provided for purposes of special education pursuant to Item 6110-161-0001 of Section 2.00 of the annual Budget Act shall first be used to directly offset any mandated costs. The bill also requests Department of Finance, by December 31, 2010, to file a request for a new test claim decision under the new redetermination process.

Staff notes that Item 6110-161-0001 of the annual Budget Act appropriates \$3,035,964,000 for special education instruction. The parameters and guidelines on this program are still pending and the *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, is being dismissed by the Department of Finance.

#### 4. Suspended Mandates – Amendment of Government Code Section 17581.5

School districts and community college districts are not required to implement or give effect to the following statutes, or portions of statutes:

*School Bus Safety I and II*  
*County Treasury Withdrawals (sic)*  
*Grand Jury Proceedings*  
*Law Enforcement Sexual Harassment Training*  
*Health Benefits for Survivors of Peace Officers and Firefighters*

For the 2010-11, 2011-12, and 2012-13 Fiscal Years

*Removal of Chemicals*  
*Scoliosis Screening*  
*Pupil Residency Verification and Appeals*  
*Integrated Waste Management*  
*Law Enforcement Jurisdiction Agreements*  
*Physical Education Reports*

#### 5. Requests for Mandate Redetermination

By the enactment of uncodified language in the budget trailer bill, the Legislature requests the Department of Finance on or before December 31, 2010, to file requests with the Commission on State Mandates for the purpose of seeking adoption of new test claim decisions based on subsequent changes in law that may modify a requirement that the state reimburse a local government for a state mandate, on the following prior decisions:

- *Behavioral Intervention Plans*
- *Collective Bargaining & Collective Bargaining Agreement Disclosure*

The Department of Finance has not indicated if or when requests may be filed.

#### 6. School Accountability Report Cards Mandate and the State Controller's Office

The budget trailer bill requires the Controller, on or before December 1, 2010, to confirm that school districts are no longer filing mandate claims pursuant to section 6 of Article XIII B of the

California Constitution for activities deleted from section 33126 of the Education Code related to the School Accountability Report Cards mandate (97-TC-21), including the following:

- (1) Reporting the average verbal and math Scholastic Aptitude Test scores of high school seniors, to the extent that those scores are provided, and the average percentage of seniors taking that exam for the most recent three-year period.
- (2) The degree to which pupils are prepared to enter the workforce.

The trailer bill further specifies that if the Controller finds that school districts are still filing claims for either of these activities, then the Controller shall file a request with the Commission on State Mandates to amend the parameters and guidelines accordingly for the *School Accountability Report Cards* mandate (97-TC-21).

Staff notes that the current parameters and guidelines allow reimbursement for item (1) above so it is unlikely that school districts are no longer filing mandate claims for this activity.

#### 7. Legislative Analyst's Working Group on Education Mandates

The Legislative Analyst's Office is required to convene a working group to consider the future of school district and community college district mandates. The working group shall include representatives from the Legislative Analyst's Office, the Department of Finance, the State Department of Education, the California Community Colleges Chancellor's Office, and staff of the fiscal and policy committees of the Legislature. The working group shall consult with appropriate stakeholders and shall develop recommendations by March 15, 2011, regarding the education mandates and the ways they should be treated, including whether to preserve, modify or eliminate particular mandates.

Staff notes that Government Code section 17562, subdivision (e), already provides a procedure for proposals to be submitted to the Legislature:

(e)(1) A statewide association of local agencies or school districts or a Member of the Legislature may submit a proposal to the Legislature recommending the elimination or modification of a state-mandated local program. To make such a proposal, the association or member shall submit a letter to the Chairs of the Assembly Committee on Education or the Assembly Committee on Local Government, as the case may be, and the Senate Committee on Education or the Senate Committee on Local Government as the case may be, specifying the mandate and the concerns and recommendations regarding the mandate. The association or member shall include in the proposal all information relevant to the conclusions. If the chairs of the committees desire additional analysis of the submitted proposal, the chairs may refer the proposal to the Legislative Analyst for review and comment. The chairs of the committees may refer up to a total of 10 of these proposals to the Legislative Analyst for review in any year. Referrals shall be submitted to the Legislative Analyst by December of each year.

(e)(2) The Legislative Analyst shall review and report to the Legislature with regard to each proposal that is referred to the office pursuant to paragraph (1). The Legislative

Analyst shall recommend that the Legislature adopt, reject, or modify the proposal. The report and recommendations shall be submitted annually to the Legislature by March 1 of the Year subsequent to the year in which referrals are submitted to the Legislative Analyst.