

ITEM 16
FINAL STAFF ANALYSIS
PROPOSED STATEWIDE COST ESTIMATE

Education Code Sections 44660-44665
(Former Ed. Code, §§ 13485-13490)

Statutes 1983, Chapter 498
Statutes 1999, Chapter 4

The Stull Act
98-TC-25

Denair Unified School District and Grant Joint Union High School District, Claimants

EXECUTIVE SUMMARY

Summary of the Mandate

On May 27, 2004, the Commission on State Mandates (Commission) adopted the Statement of Decision for *The Stull Act* test claim, finding that Education Code sections 44660-44665 (formerly Ed. Code, §§ 13485-13490) constitute a new program or higher level of service and impose a state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for specific reimbursable activities related to evaluation and assessment of the performance of “certificated personnel” within each school district, except for those employed in local, discretionary educational programs. On September 27, 2005, the Commission adopted the parameters and guidelines.

Statewide Cost Estimate

Staff reviewed the claims data submitted by the claimants and compiled by the State Controller’s Office (SCO). On July 5, 2006, the actual claims data showed that approximately 489 school districts filed 3,243 claims between fiscal years 1997-1998 and 2004-2005, for a total of over \$104.3 million. As of May 9, 2007, the actual claims data showed that approximately 626 school districts filed 4,200 claims between fiscal years 1997-1998 and 2005-2006, for a total of over \$160 million. This data includes all initial years’ claims, including late and amended claims. With late penalties assessed, the SCO’s final approved amount to be paid for fiscal years 1997-1998 through 2005-2006 is over \$135.9 million.

A draft staff analysis and proposed statewide cost estimate were issued on August 3, 2006. On May 10, 2007, the Department of Finance (DOF) submitted comments, highlighting its concerns with the accuracy of the claims and proposing that the SCO audit the claims. Staff agrees that an audit of this program may be warranted. Therefore, our assumptions note that the actual claiming data is unaudited and may be inaccurate, and that an SCO audit of these claims may reduce the costs of the program.

Staff made the following assumptions to develop a statewide cost estimate for this program:

1. The actual claiming data is unaudited and may be inaccurate because:
 - a) the costs claimed do not appear to have any relationship to the number of teachers evaluated;
 - b) the Los Angeles Unified School District claimed equal amounts for activities that could have been performed concurrently;
 - c) the claims reviewed did not identify the state or federal law(s) mandating the educational program(s) being performed, and thus, staff could not verify whether the educational programs performed by the certificated employees were mandated;
 - d) the claiming forms lack a reimbursable component box for training, making costs for training unclear; and
 - e) one ineligible claimant, a charter school, filed reimbursement claims totaling \$64,126 for this program. Staff did not include this amount in the proposed statewide cost estimate.
2. Costs will vary over time, increasing as experienced teachers retire and new teachers are hired, or decreasing over time if the number of teachers retained by school districts decline as enrollment declines.
3. The SCO may reduce any reimbursement claim for this program if it deems any reimbursement claim to be excessive or unreasonable.
4. At least 626 claimants will continue to claim costs in fiscal years 2006-2007 and 2007-2008.
5. These claimants will evaluate at least the same number of certificated employees in 2006-2007 and 2007-2008.

The proposed statewide cost estimate includes 11 fiscal years for a total of \$182,828,898. This averages to more than \$16.6 million annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	# of Claims Filed w/ SCO	Estimated Cost
1997-1998	335	\$ 7,896,678
1998-1999	370	8,824,529
1999-2000	398	11,459,646
2000-2001	437	13,481,818
2001-2002	466	16,197,749
2002-2003	502	16,928,399
2003-2004	521	17,779,677
2004-2005	545	21,189,243
2005-2006	626	22,081,686
2006-2007 (estimated)	N/A	22,766,218
2007-2008 (estimated)	N/A	24,223,255
TOTAL	4,200	\$182,828,898

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$182,828,898** for costs incurred in complying with *The Stull Act* program. If the Commission adopts this proposed statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

STAFF ANALYSIS

Chronology

- 06/30/99 The claimant, Denair Unified School District, filed the test claim
- 05/27/04 The Commission on State Mandates (Commission) adopted the Statement of Decision
- 08/13/04 Grant Joint Union High School District requested to be added as a co-claimant
- 09/27/05 The Commission adopted the parameters and guidelines
- 04/11/06 Deadline for eligible claimants to file initial reimbursement claims with the State Controller's Office (SCO)
- 07/05/06 Commission staff obtained claims data from the SCO
- 07/20/06 Commission staff reviewed claims at the SCO
- 08/03/06 Commission staff issued the draft staff analysis and proposed statewide cost estimate
- 08/23/06 Department of Finance (DOF) requested an extension of time until October 23, 2006, to file comments on the proposed statewide cost estimate
- 08/30/06 Commission staff granted DOF's request
- 10/23/06 DOF requested an extension of time until January 22, 2007, to file comments on the proposed statewide cost estimate
- 11/01/06 Commission staff granted DOF's request
- 01/22/07 DOF requested an extension of time until March 27, 2007, to file comments on the proposed statewide cost estimate
- 01/26/07 Commission staff granted DOF its final extension to file comments on the proposed statewide cost estimate by March 27, 2007
- 05/10/07 DOF submitted comments on the proposed statewide cost estimate
- 05/11/07 Commission staff received updated claims data from the SCO
- 05/16/07 Commission staff issued the final staff analysis and proposed statewide cost estimate

Summary of the Mandate

On May 27, 2004, the Commission adopted the Statement of Decision for *The Stull Act* test claim, finding that Education Code sections 44660-44665 (formerly Ed. Code, §§ 13485-13490) constitute a new program or higher level of service and impose a state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for specific reimbursable activities related to evaluation and assessment of the performance of "certificated personnel" within each school district, except for those employed in local, discretionary educational programs. On September 27, 2005, the Commission adopted the parameters and guidelines.

Reimbursable Activities

The Commission approved the following reimbursable activities for this program:

A. Certificated Instructional Employees

1. Evaluate and assess the performance of certificated instructional employees that perform the requirements of educational programs mandated by state or federal law as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives (Ed. Code, § 44662, subd. (b), as amended by Stats. 1983, ch. 498.). (*Reimbursement period begins July 1, 1997.*)

Reimbursement for this activity is limited to:

- a. reviewing the employee's instructional techniques and strategies and adherence to curricular objectives, and
- b. including in the written evaluation of the certificated instructional employees the assessment of these factors during the following evaluation periods:
 - once each year for probationary certificated employees;
 - every other year for permanent certificated employees; and
 - beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated instructional employees.

2. Evaluate and assess the performance of certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 as it reasonably relates to the progress of pupils towards the state adopted academic content standards as measured by state adopted assessment tests (Ed. Code, § 44662, subd. (b), as amended by Stats. 1999, ch. 4.). (*Reimbursement period begins March 15, 1999.*)

Reimbursement for this activity is limited to:

- a. reviewing the results of the Standardized Testing and Reporting test as it reasonably relates to the performance of those certificated employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and
- b. including in the written evaluation of those certificated employees the assessment of the employee's performance based on the Standardized Testing and Reporting results for the pupils they teach during the evaluation periods specified in Education Code section 44664, and described below:
 - once each year for probationary certificated employees;
 - every other year for permanent certificated employees; and

- beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

B. Certificated (Instructional and Non-Instructional) Employees

1. Evaluate and assess permanent certificated, instructional and non-instructional, employees that perform the requirements of educational programs mandated by state or federal law and receive an unsatisfactory evaluation in the years in which the permanent certificated employee would not have otherwise been evaluated pursuant to Education Code section 44664 (i.e., every other year). The additional evaluations shall last until the employee achieves a positive evaluation, or is separated from the school district (Ed. Code, § 44664, as amended by Stats. 1983, ch. 498). (*Reimbursement period begins July 1, 1997.*)

This additional evaluation and assessment of the permanent certificated employee requires the school district to perform the following activities:

- a. evaluating and assessing the certificated employee performance as it reasonably relates to the following criteria: (1) the progress of pupils toward the standards established by the school district of expected pupil achievement at each grade level in each area of study, and, if applicable, the state adopted content standards as measured by state adopted criterion referenced assessments; (2) the instructional techniques and strategies used by the employee; (3) the employee's adherence to curricular objectives; (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities; and, if applicable, (5) the fulfillment of other job responsibilities established by the school district for certificated non-instructional personnel (Ed. Code, § 44662, subs. (b) and (c));
- b. reducing the evaluation and assessment to writing (Ed. Code, § 44663, subd. (a)). The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If the employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the school district shall notify the employee in writing of that fact and describe the unsatisfactory performance (Ed. Code, § 44664, subd. (b));
- c. transmitting a copy of the written evaluation to the certificated employee (Ed. Code, § 44663, subd. (a));
- d. attaching any written reaction or response to the evaluation by the certificated employee to the employee's personnel file (Ed. Code, § 44663, subd. (a)); and
- e. conducting a meeting with the certificated employee to discuss the evaluation (Ed. Code, § 44553, subd. (a)).

Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated, instructional and non-instructional, employees.

C. Training

1. Train staff on implementing the reimbursable activities listed in Section IV of these parameters and guidelines. (One-time activity for each employee.) (*Reimbursement period begins July 1, 1997.*)

Statewide Cost Estimate

Staff reviewed the claims data submitted by the claimants and compiled by the SCO. On July 5, 2006, the actual claims data showed that approximately 489 school districts filed 3,243 claims between fiscal years 1997-1998 and 2004-2005, for a total of over \$104.3 million. As of May 9, 2007, the actual claims data showed that approximately 626 school districts filed 4,200 claims between fiscal years 1997-1998 and 2005-2006, for a total of over \$160 million. This data includes all initial years' claims, including late and amended claims. With late penalties assessed, the SCO's final approved amount to be paid for fiscal years 1997-1998 through 2005-2006 is over \$135.9 million.

A draft staff analysis and proposed statewide cost estimate were issued on August 3, 2006. On May 10, 2007, DOF submitted comments, highlighting its concerns with the accuracy of the claims and proposing that the SCO audit the claims to: 1) determine whether the claims are appropriately limited to only the incremental costs of evaluations under the new criteria, and 2) determine whether the claims are consistent with all requirements of the parameters and guidelines. Staff agrees that an audit of this program may be warranted. Therefore, our assumptions note that the actual claiming data is unaudited and may be inaccurate, and that an SCO audit of these claims may reduce the costs of the program.

Based on the data available, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program. If the Commission adopts this proposed statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

Assumptions

Staff made the following assumptions:

1. *The actual claiming data is unaudited and may be inaccurate.* The 4,200 actual claims filed by approximately 626 school districts for 1997-1998 through 2005-2006 are unaudited, and therefore, may be inaccurate.¹

Staff reviewed a random sample of claims that were filed by 10 school districts. This is not a statistical scientific sample. Based on total enrollment, staff reviewed claims filed by small, medium, and large school districts located in northern California (3), central California (3), and southern California (4). The districts and their claimed amounts are shown in Table 1.

Staff notes the following:

- The costs claimed do not appear to have any relationship to the number of teachers evaluated, as shown in Table 2. Various claimant representatives have indicated that a number of other factors must be considered in addition to the number of teachers evaluated. Some of the other factors mentioned include time spent in evaluation, the position and salary of the evaluator, and the way each district conducts evaluations.

¹ Claims data reported as of May 9, 2007.

Some representatives stated that there was a lot of work involved but not enough time to capture costs for other activities. Therefore, costs claimed in one fiscal year varied from a few thousand dollars to over \$1.5 million, regardless of the number of teachers evaluated. This amounts to a few dollars to hundreds of dollars per teacher evaluation.

- The Los Angeles Unified School District claimed equal amounts for the following activities under IV.A.1. of the parameters and guidelines: “a) reviewing the employee's instructional techniques and strategies and adherence to curricular objectives, and b) including in the written evaluation of the certificated instructional employees the assessment of these factors during the [certain] evaluation periods....” Staff notes that the performance of these activities should be concurrent.

Staff contacted a representative of the Los Angeles Unified School District to discuss the issue and the representative explained that the district used a conservative time estimate of 30 minutes to review the techniques and strategies, and another 30 minutes to include an assessment of the factors in the written evaluation. The district then multiplied the unit time by the salary of an assistant principal. The representative noted that the district was in the process of conducting a time study and that it intended to submit amended claims showing significantly higher costs. However, late and amended claims were due to the SCO in April 2007. The district did not amend its claims.

- The adopted parameters and guidelines for *The Stull Act* program noted the following in the Reimbursable Activities section:

For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated, instructional and non-instructional employees.

The claims reviewed did not identify the state or federal law(s) mandating the educational program(s) being performed, and thus, staff could not verify whether these programs were mandated.

- The Commission found that training staff on implementing the reimbursable activities listed in Section IV of the parameters and guidelines is reimbursable. However, staff notes that the claiming forms lack a reimbursable component box for training, making costs for training unclear. At least three claimant representatives indicated that training costs were minimal and were claimed under a different component.
- The Eligible Claimants section of the parameters and guidelines for this program specifically states that charter schools are not eligible claimants. Staff notes that the updated claims data included claims filed by one charter school, in which the SCO approved a total amount to be paid of \$64,126. Because charter schools are not eligible claimants, staff did not include this amount in the proposed estimate.

Therefore, based on the foregoing observations, staff finds that the actual, unaudited claims only represent an estimated cost of the program for fiscal years 1997-1998 through 2005-2006.

**TABLE 1. SAMPLED SCHOOL DISTRICTS:
CLAIMED AMOUNTS BY FISCAL YEAR**

District	# of Teachers ²	Total Enrollment ³	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	Totals
Small Districts												
Mt. Shasta Union Elementary (Siskiyou County)	50	887	-	-	-	-	-	4,272	2,198	3,351	2,710	\$ 12,531
Aromas/San Juan Unified (San Benito County)	73	1,286	3,471	10,808	10,612	13,784	10,202	20,955	23,346	16,331	18,326	\$ 127,835
Imperial Unified (Imperial County)	141	2,956	-	-	-	10,480	9,480	11,025	10,656	11,787	10,746	\$ 64,174
Medium Districts												
Grant Joint Union High (Sacramento County)	624	13,558	11,619	9,367	10,247	12,408	18,066	7,356	34,452	28,299	-	\$ 131,814
Alum Rock Union Elementary (Santa Clara County)	710	13,604	15,449	29,536	31,218	49,291	41,191	46,382	55,495	69,220	52,924	\$ 390,706
Panama Buena Vista Union Elementary (Kern County)	746	14,722	34,663	38,993	43,218	33,191	27,846	37,891	29,960	40,710	31,301	\$ 317,773
Large Districts												
Elk Grove Unified (Sacramento County)	2,923	58,670	228,136	399,222	517,207	410,120	354,049	495,341	453,142	411,801	139,177	\$3,408,195
Fresno Unified (Fresno County)	4,040	80,760	29,327	48,151	50,272	74,614	84,162	86,085	86,349	95,168	86,661	\$ 640,789
Los Angeles Unified (Los Angeles County)	35,807	741,367	694,381	773,788	852,553	804,351	957,129	1,028,494	984,087	1,136,269	1,268,307	\$8,499,359
San Diego Unified (San Diego County)	7,421	134,709	762,086	855,783	972,579	949,524	983,001	875,159	760,328	924,261	1,589,949	\$8,672,670

# of teachers in sample	50,191
Total # of teachers in California	306,548
% teachers represented in sample	16.4%

² For 2004-2005, based on data from the California Department of Education's DataQuest. < <http://data1.cde.ca.gov/dataquest/>>

³ For 2004-2005, based on data from the California Department of Education's DataQuest. < <http://data1.cde.ca.gov/dataquest/>>

TABLE 2. COST OF PER TEACHER EVALUATION

District	97/98		98/99		99/00		00/01		01/02		02/03		03/04		04/05	
	# Eval	Cost/ Eval ⁴	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval
Small Districts																
Mt. Shasta Union Elementary (Siskiyou County)	-	-	-	-	-	-	-	-	-	-	18	\$237	9	\$244	13	\$258
Aromas/San Juan Unified (San Benito County)	9	\$386	27	\$400	24	\$442	23	\$599	16	\$638	35	\$599	36	\$649	24	\$680
Imperial Unified (Imperial County)	-	-	-	-	-	-	89	\$118	74	\$128	80	\$138	84	\$127	85	\$139
Medium Districts																
Grant Joint Union High (Sacramento County)	79	\$148	69	\$135	92	\$111	101	\$123	121	\$149	101	\$73	125	\$276	123	\$230
Alum Rock Union Elementary (Santa Clara County)	177	\$87	307	\$96	292	\$107	376	\$131	340	\$121	337	\$138	414	\$134	387	\$179
Panama Buena Vista Union Elementary (Kern County)	812	\$43	868	\$45	664	\$65	462	\$72	370	\$75	487	\$78	374	\$80	522	\$78
Large Districts																
Elk Grove Unified (Sacramento County)	809	\$282	995	\$401	882	\$586	877	\$468	899	\$394	1,069	\$471	1,030	\$448	896	\$467
Fresno Unified (Fresno County)	791	\$37	745	\$65	901	\$56	946	\$79	941	\$89	1,037	\$83	746	\$116	1,079	\$88
Los Angeles Unified (Los Angeles County)	13,646	\$51	14,896	\$52	15,881	\$54	15,453	\$52	16,166	\$59	17,904	\$57	16,167	\$61	18,346	\$62
San Diego Unified (San Diego County)	3,321	\$226	3,592	\$238	3,552	\$274	3,206	\$296	3,546	\$277	3,219	\$272	2,920	\$260	3,212	\$288

⁴ Derived by dividing the total amount claimed (Table 1) by the number of teachers evaluated during the fiscal year.

2. *Costs will vary over time.* Under this program, probationary teachers are evaluated once a year while permanent teachers are evaluated once every two years. Therefore, costs may increase over time as experienced teachers retire and new teachers are hired. On the other hand, costs may also decrease over time because the number of teachers retained by school districts may decline as enrollment declines.
3. *The SCO may reduce any reimbursement claim for this program.* If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced. Therefore, the total amount of reimbursement for this program may be lower than the statewide cost estimate.
4. *At least 626 claimants will continue to claim costs in fiscal years 2006-2007 and 2007-2008.*
5. *These claimants will evaluate at least the same number of certificated employees in 2006-2007 and 2007-2008.*

Methodology

Fiscal Years 1997-1998 through 2005-2006

The proposed statewide cost estimate for fiscal years 1997-1998 through 2005-2006 is based on the 4,200 actual reimbursement claims filed with the SCO for these years, as reduced by the SCO for any late claim penalties. Staff notes that claims filed by one charter school for a total of \$64,126 was deducted from the total claims amount. Staff also notes that the claims are unaudited and may be inaccurate for the reasons stated above.

Fiscal Years 2006-2007 and 2007-2008

Staff estimated fiscal year 2006-2007 costs by multiplying the 2005-2006 amount by the implicit price deflator for 2005-2006 (3.1%), as forecast by DOF. Staff estimated fiscal year 2007-2008 costs by multiplying the 2006-2007 estimate by the implicit price deflator for 2006-2007 (6.4%).

The proposed statewide cost estimate includes 11 fiscal years for a total of \$182,828,898. This averages to more than \$16.6 million annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

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TOTAL	4,200	\$182,828,898

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$182,828,898** for costs incurred in complying with *The Stull Act* program.