

The Stull Act (98-TC-25)

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

Statutes 1983, Chapter 498
Statutes 1999, Chapter 4

Test Claim Filed: July 7, 1999

Reimbursement Period for this Estimate: July 1, 1997 through June 30, 2008

Initial Reimbursement Claims Filed April 11, 2006:

Eligible Claimants: All School Districts, except Community Colleges and Charter Schools

Statewide Cost Estimate: \$182,828,898

Adopted: May 31, 2007

The statewide cost estimate includes eleven fiscal years for a total of \$182,828,898. This averages to \$16,620,809 annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

| Fiscal Year | Number of Claims Filed with SCO | Claim Totals |
|------------------|---------------------------------|----------------------|
| 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 (est.) | N/A | 22,766,218 |
| 2007-2008 (est.) | N/A | 24,223,255 |
| TOTALS | 4,200 | \$182,828,898 |

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.

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, subds. (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 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 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.¹¹

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.

¹¹ Claims data reported as of May 9, 2007.

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. 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.

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 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%).

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

| District | # of Teachers ¹² | Total Enrollment ¹³ | 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% |

¹² For 2004-2005, based on data from the California Department of Education's DataQuest. < <http://data1.cde.ca.gov/dataquest/>>

¹³ 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 ¹⁴ | # 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 |

¹⁴ Derived by dividing the total amount claimed (Table 1) by the number of teachers evaluated during the fiscal year.