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**SMALL SCHOOL DISTRICTS' ASSOCIATION**

# **NEWSLETTER**

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## **SNAPSHOTS FROM THE SSDA 2011 Regional Road Shows**



SSDA wishes to thank the following Associates for presenting at SSDA's 2011 Regional Meetings:

Fiscal Crisis and Management Assistance Team (FCMAT) - Joel Montero  
Former California State Senator - Denise Moreno Ducheny  
Kronick Moskowitz Tiedmann & Girard - Shauna Cunningham and Chelsea Olson  
Murdoch, Walrath & Holmes - David Walrath  
Salas O'Brien Engineers, Inc. - Carl Salas  
School Innovation & Advocacy - Kevin Gordon and Jack O'Connell  
School Services of California - John Gray and Sheila Vickers

# Controller Poised to Distribute Mandate Reimbursement Funding

Submitted by: Kevin Gordon - School Innovation & Advocacy



School districts and county offices of education have just begun receiving funding from the State Controller to pay for appropriations in the current budget year for 2010-11 mandate reimbursement. Local school agencies will be getting the \$80 million in K-12 reimbursements in accordance with provisions of the adopted budget

act. The success in securing funding for mandates in the budget came after an effort to reverse the Governor's May Revision proposal and legislative interest in suspending or eliminating several mandates, including many that school districts would be stuck administering without the prospect of reimbursement.

As the budget was finally crafted, legislative budget writers and the Brown administration agreed to a plan that continues to fund the mandate reimbursement program without the games and gimmicks floated over the past few years. The agreement followed an outpouring of communication by school superintendents, locally elected board members, public safety groups and civil rights organizations who pointed to the importance of maintaining funding for the numerous mandate programs that districts operate every year. Given that mandate funding has now been provided for the second consecutive year during the worst fiscal years we have

seen in California and across our schools, the prognosis for continued funding is very good.

Meanwhile, ongoing efforts are being pursued to enact sensible reforms that help make the mandate process fair and less bureaucratic. Legislation supported by many in the education community has been aimed at countering proposals by state bureaucrats who are more focused on preventing school agencies from being fully and fairly reimbursed in accordance with the State Constitution. SB 64 by Senator Liu and AB 202 by Assembly Education Chair Julia Brownley are both examples of legislation supported by school groups. AB 202 has been passed and was unfortunately vetoed by the Governor while the content of SB 64 will be considered further next year.

SB 64 (Liu) would revise the education mandate test claim process by eliminating some existing requirements for school districts to file test claims and establish a school district test claim advisory committee. This committee will provide the Commission on State Mandates with recommendations on school district test claims, incorrect reduction claims, prepare proposed parameters and guidelines, review and propose revisions to parameters and guidelines every three years, to act on behalf of school districts in the process of establishing reasonable reimbursement methodologies.

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# Labor Compliance Program Changes

Submitted by: David Walrath - SSDA Legislative Advocate



Governor Brown signed AB 436 that restructures Labor Compliance Program (LCP) responsibilities for public works projects. The bill provides that the Department of Industrial Relations (DIR) shall provide LCP services for public projects funded in whole or in part with state bond funds. The Compliance Monitoring Unit in DIR will be responsible to perform the LCP services. The bill also allows the Office of Public School Construction (OPSC) to reopen Proposition 47 and 55 funded LCP services and “recover” any excess state bond funds for those services.

Commencing January 2012, DIR is authorized to charge for their services through direct billing to school districts. The billing is capped at one quarter of one percent (.0025) of the project’s costs – excluding land acquisition costs. The State Allocation Board (SAB), however, has not adopted regulations on how or whether to reimburse school districts for the DIR billing. Payment of the DIR bills can be made from school district bond or other facility funds.

## OPSC Recovery Authority in AB 436

Because Propositions 47 and 55 required either school district approved or third party LCP on state bond funded school facility projects, the SAB authorized a state per pupil grant increase for school projects that required an LCP. The grant increase was retroactive for Proposition 47 projects because the LCP was required before the grant increase was approved. This retroactive funding was possible because the LCP requirement included an exemption from the full and final apportionment provision.

AB 436 specifically allows OPSC to audit school districts and recover the difference between the LCP state grant (with local match) and the actual cost of the LCP program. Any school district that had a Proposition 47 or 55 funded project should expect to hear from OPSC after January 1, 2012.

## Suggestions to SSDA members: OPSC Audit

School districts and county offices of education (COE)


with a Proposition 47 or Proposition 55 funding project should review their actual LCP costs. These costs should be the contract costs, school district oversight costs, as well as other soft costs caused by the LCP.

School districts or COEs should include the following in any new AB 436 eligible contract:

- 1) The district will forward any payment complaints to DIR for action; and
- 2) The contractor and subcontractors will be required to assume full liability for appropriate payment of wages.

The new contracts should include that the district has no liability for any errors in prevailing wage and all contractors and each subcontractor will indemnify the district and provide first dollar defense for DIR penalties and charges applied to the district for wage violations alleged to have occurred on the project.

Finally, if the SAB chooses not to fund the DIR bills to school districts, then the new contracts should include that the contractor(s) will pay any such bills.

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# Will The Trigger Be Pulled?

Submitted by: David Walrath - SSDA Legislative Advocate



The State Budget mid-year cuts could occur if state revenues are more than \$2 billion below projected revenues for the full fiscal year. While the first three months' revenue has been below projections, this does not mean the full year revenues will not meet the budget projection. The Director of the Department of Finance

(DOF), Ana Matosantos, has stated that most of the additional \$4 billion budget revenues are expected to be received in 2012, predominantly in the months of April, May and June. Because the Director of Finance has adopted this position, the month-to-month state General Fund revenue reports will not be the only factor used to determine the full year General Fund revenue projection made by the Department of Finance in mid-December.

SSDA believes the trigger will be pulled for others, but not for K-14 education. SSDA believes that the DOF December full year revenue projections will be less than the budget projection but not more than \$2 billion less. If that is the case, then K-14 will not be subject to a trigger.

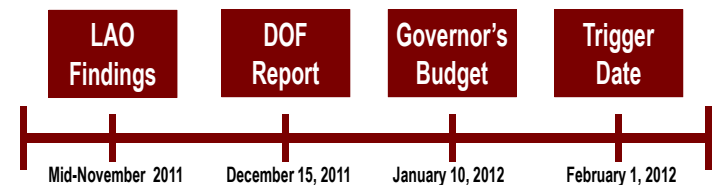
Supporting the Director of Finance's expectation that revenues can increase significantly during the 2011-12 second half, the California economy is growing, albeit slowly. Vehicle sales are increasing, more homes are being sold and more residential building permits are being pulled compared to last year. State personal income tax revenues are exceeding expectations while sales tax and corporate tax revenues are below expectation. I believe sales tax revenue will improve because that is the historic correlation between personal income growth and consumption increases. Corporate tax revenue, however, probably will continue to lag because the 2009 corporate tax cut appears to be much more generous than originally estimated.

The state major industries of technology, entertainment and agriculture are improving with technology having strong growth. When these three are doing well, the California economy does better. This is why SSDA believes the DOF December full year General Fund revenue estimate will not result in the mid-year cuts trigger being pulled for K-14.

However, SSDA is concerned, that if revenues are projected to be \$2.25 billion below estimates, the school transportation cut could be triggered. SSDA urges small school districts to pass board resolutions opposing Home-to-School Transportation cuts that primarily hurt students from low-income families in small, rural school districts. SSDA also urges small school districts to inform their communities and urge community action if the Home-to-School Transportation cut is triggered by the DOF General Fund revenue projection in December 2011. For information on draft letters, a sample board resolution and how the Home-to-School Transportation cut could affect your school district, please go visit [www.ssda.org](http://www.ssda.org).

In an attempt to increase General Fund revenue, SSDA is urging the sale of state school bonds so these funds can immediately be spent on school construction projects and have a stimulative effect on state General Fund revenues. If \$2 billion in school bonds were sold, then the effect would be a \$260 million revenue increase for 2011-12. SSDA is urging the State Allocation Board (SAB) to work with the Director of the Department of Finance to sell state school bonds in order to generate additional General Fund revenue and help avoid a mid-year trigger.

## Trigger Timeline:



## SSDA Wishes to Welcome our New and Returning Members

### District Members

- Arcata Elementary SD
- Ballico-Cressey SD
- Baker Valley Unified SD
- Bear Valley Unified SE
- Big Springs Union Elementary SD
- Little Shasta Elementary SD
- Lucerne Valley Unified SD
- Maple Creek Elementary SD
- North Cow Creek Elementary SD
- Peninsula Union SD
- Planada Elementary SD
- Scott Valley Unified SD

# Missouri's "Facebook Law" Restricts Communications Between Teachers And Students On Social Media Websites

Submitted by: Elizabeth T. Arce - Liebert Cassidy Whitmore



For many parents, sending their children off to school can be both a joyous and fearful occasion. The worry experienced by parents is fueled, in part, by news headlines of teachers having inappropriate sexual relationships with their students. In order to address these concerns, the Missouri

Legislature recently signed into law the Amy Hestir Student Protection Act. This so-called "Facebook Law" regulates communications between teachers and students on social media websites such as Facebook and Twitter. State Senator Jane Cunningham, who sponsored the bill, said the purpose of the law is to discourage teachers and students from engaging in exclusive communications with each other through social networking platforms because such contact with each other "is a pathway into sexual misconduct."

The new law requires school districts to develop a written policy concerning teacher-student and employee-student communications that include guidelines on the appropriate use of electronic media including text messaging and social networking sites. In addition, the new law prohibits teachers from establishing, maintaining, or using a work-related website unless it is available to school administrators and the child's parents or legal guardian. Finally, the law prohibits teachers from establishing, maintaining, or using a nonwork-related website that allows exclusive access with a current or former student.

Passage of the "Facebook Law," which is believed to be the first of its kind in the country, drew immediate criticism. Opponents argue that the law chills free speech and will cause teachers to communicate less with their students resulting in weaker teacher-student relationships. However, supporters of the law insist that it does not restrict speech between educators and students. Rather, the law merely provides transparency to the process by giving parents, guardians, and administrators access to the websites where teachers and students are communicating with one another.

It remains to be seen how long Missouri's "Facebook Law" will remain in effect and whether it will prompt

other states such as California to adopt similar legislation. Regardless of whether the "Facebook Law" survives, the reality is that teachers and students are increasingly using social media as a vehicle to communicate with each other. Consequently, school districts should adopt policies and guidelines regarding the appropriate use of social media platforms. This may include deciding whether to allow teachers and students to communicate through social media at all, or to prohibit it altogether.

If the district allows such contact, then guidelines should remind teachers to consider the content on their social media sites including their profile, pictures, and postings on their wall. Anything they would not feel comfortable sharing in a classroom setting or in the presence of parents, should not be shared with students via social media. Educators should be trained on using social media to foster learning and to enhance the educational experience. Finally, educators should be trained on separating their professional from their private life, and should be reminded that their relationships with students, both in and out of the classroom, must be appropriate and comply with legal and professional standards.

## Note:

*A Missouri Circuit Court issued a preliminary injunction blocking the law until February 2012 on the grounds that the law is overbroad and has a chilling effect on free speech rights. The hearing on a permanent injunction is scheduled for February 20. In addition, the Missouri Legislature recently voted to repeal portions of the law. The repeal is currently pending the approval of Governor Jay Nixon. LCW will continue to report any developments regarding the "Facebook Law" in future blog posts.*

**Elizabeth T. Arce** ([earce@lcwlegal.com](mailto:earce@lcwlegal.com)) is an associate with the Los Angeles office of Liebert Cassidy Whitmore, a full-service education (including business and facilities), labor and employment law firm representing California school districts. Elizabeth is a contributor to the firm's California public agency labor and employment blog.

# Article Bills Report

Submitted by: David Walrath - SSDA Legislative



During 2011, SSDA adopted positions of Support or Oppose on 41 bills. SSDA also reviewed additional bills of which 32 were on the watch list for possible changes that would cause SSDA to change to a support or oppose position.

## Status of Oppose Bills

- 1 was amended to remove SSDA opposition
- 13 were held in a committee and became two year bills.
- 3 were passed by the Legislature
- 1 was vetoed
- 2 were signed

## Status of Support Bills

- 1 was amended and SSDA removed support
- 17 were held in a committee and became two year bills.
- 8 were passed by the Legislature
- 2 were vetoed
- 6 were signed

A number of bills were gutted and amended during the last three days (or less) of session. SSDA did not have time to adopt formal positions on those bills. The following are the gut and amend bills that would have probably been opposed by SSDA if they had gone through the regular committee process.

- Assembly Bill 436 dealing with OPSC retroactively billing school districts to recover labor compliance program funding.
- Senate Bill 922 penalizing school districts and students if voters prohibit project labor agreements.

Both of these bills were signed by Governor Brown.

For a list of SSDA Support and Oppose bills that were signed or vetoed, please go to [www.sdda.org](http://www.sdda.org).

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