

Assembly Bill No. 14

Passed the Assembly March 4, 2010

Chief Clerk of the Assembly

Passed the Senate March 4, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 16324, 16325, 16325.5, and 16326 of the Government Code, and to amend Section 2103.1 of the Streets and Highways Code, relating to state cash resources, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 14, Committee on Budget. State cash resources.

(1) Existing law prohibits certain General Fund payments to the California Community Colleges, the trial courts, the California State University, and the University of California scheduled for March 2010 from being paid sooner than April 15, 2010, or later than May 1, 2010, except as specified.

This bill would require the Controller, subject to the approval of the Department of Finance, to pay the full amount of the apportionment payments for March 2010 for a community college for which the Chancellor of the California Community Colleges determines, in consultation with the Director of Finance, on or before March 15, 2010, that a deferral of payment would present an imminent threat to the fiscal integrity and security of the community colleges. The bill would also delete an extraneous cross reference.

(2) Existing law, until September 1, 2011, enacts a cash management plan to authorize the Controller, Treasurer, and Director of Finance to defer General Fund payments for up to 60 or 90 days, as specified, beginning July 2010, for specific entities, including county offices of education, public schools, and charter schools, subject to certain conditions. Existing law provides a process by which county offices of education, public schools, and charter schools may receive payments that would otherwise be deferred if certain determinations are made and the Department of Finance is notified on or before May 17, 2010.

This bill would prohibit the total amount of deferrals to school districts, county offices of education, and charter schools from exceeding \$2,500,000,000 at any given time. The bill would require the Controller, Treasurer, and Director of Finance to determine and jointly provide a written declaration of the amounts and timing

of payment deferrals for the 2010–11 fiscal year to the Legislature and to the State Department of Education, and would require the State Department of Education to provide this information to school districts, county offices of education, and charter schools. The bill would require this declaration to be provided no later than March 31, 2010. The bill would revise the process pursuant to which county offices of education, public schools, and charter schools may receive payments that would otherwise be deferred, and would permit these entities to apply for a hardship waiver in order to receive payments even if earlier payments were deferred. The bill would require that deferred payments for specified public schools be paid no later than April 29, 2011.

(3) Existing law extends the deferral of specified apportionments from the Highway Users Tax Account in the Transportation Tax Fund to cities, counties, and cities and counties from July 2010 to March 2011, inclusive, and limits the amount of those deferrals to no more than \$50,000,000 per month. Existing law permits cities, counties, and cities and counties to borrow certain designated funds from their accounts in the fund for the purpose of meeting cash obligations for local street and road maintenance and operations, as specified.

This bill would provide that these deferrals from July 2010 to March 2011 are to be made on a pro rata basis, as determined by the Controller, from all allocations to cities, counties, and cities and counties from the Highway Users Tax Account. The bill would require that borrowing by cities, counties, and cities and counties, as described above, be repaid with interest and would direct that the interest repaid be applied to a specified purpose.

(4) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 16324 of the Government Code is amended to read:

16324. (a) Notwithstanding any other law, in order to effectively manage state cash resources, the General Fund payments to be made in March 2010 for the programs or departments listed in subdivision (b) shall be paid no sooner than April 15, 2010, but not later than May 1, 2010, which shall be carried out by the Controller, subject to subdivision (c). Nothing in this section shall be construed to authorize the deferral of state payroll, debt service, or rental payments that support lease-revenue bonds.

(b) The departments and programs subject to subdivision (a) are as follows:

(1) California Community Colleges (excluding twelve million dollars (\$12,000,000)).

(2) Trial court operations (nonpayroll).

(3) California State University.

(4) University of California.

(c) Prior to each of the payment deferrals identified in subdivision (b), the Controller, Treasurer, and Director of Finance shall jointly review and compare the actual General Fund receipts and disbursements with the receipt and disbursement projections contained in the cashflow statements associated with the proposed 2010–11 Governor’s Budget. If the Controller, Treasurer, and Director of Finance determine sufficient cash is available to make all scheduled payments through April 15, 2010, including the payments otherwise subject to deferral identified in subdivision (b), and maintain a prudent cash reserve, the Controller shall make the payments as originally scheduled. The Department of Finance shall notify the Joint Legislative Budget Committee within 10 days of making this determination.

(d) In the event payments are deferred pursuant to subdivision (a), beginning April 1, 2010, the Controller, Treasurer, and Director of Finance shall review daily the actual cash receipts and disbursements in comparison to the receipt and disbursement projections associated with the proposed 2010–11 Governor’s Budget. If the Controller, Treasurer, and Director of Finance determine sufficient cash is available to make payments through April 15, 2010, including the payments otherwise subject to

deferral identified in subdivision (b), and maintain a prudent cash reserve, the Controller shall make the deferred payments, in whole or in part, as soon as feasible, in the order listed in subdivision (b). The Department of Finance shall notify the Joint Legislative Budget Committee within 10 days of making this determination and identify the date upon which the payments were made.

(e) Notwithstanding paragraph (1) of subdivision (b), and subject to the approval of the Director of Finance, the Controller shall issue warrants pursuant to Sections 84320, 84321, and 84321.5 of the Education Code that include the full amount of the apportionment payments for the month of March 2010 for a community college for which the Chancellor of the California Community Colleges determines, in consultation with the Director of Finance, on or before March 15, 2010, that the deferral of warrants pursuant to this section will present an imminent threat to the fiscal integrity and security of the community college.

SEC. 2. Section 16325 of the Government Code is amended to read:

16325. (a) An effective cash management plan is needed for the 2010–11 fiscal year to address General Fund cash shortages that otherwise may occur during the fiscal year. The goals of the cash management plan described in this section are to accomplish the following:

(1) Increase the state’s ability to address cash shortages in a quick and responsible manner.

(2) Address rating agencies’ and bond markets’ concerns regarding the state’s ability to react effectively to cashflow pressures while providing a higher level of certainty to bondholders.

(3) Preserve external borrowing capacity and affordability for the state’s infrastructure programs.

(4) Provide a higher level of predictability to affected programs and entities where deferrals or delays are required.

(b) Nothing in this section or in Sections 16325.5 and 16326 shall be construed to affect in any way the timing or amount of payments of state payroll or to affect in any way any judicial proceeding related to the timing or amount of state employee compensation. Nothing in this section, Section 16325.5, or Section 16326 shall be construed to authorize the delay of debt service payments, rental payments that support lease-revenue bonds,

reimbursements to local governments for certain reductions in ad valorem property taxes, as required by Section 25.5 of Article XIII of the California Constitution, or required payments for borrowings secured by these repayment obligations, payments required under a Funds Transfer Cooperative Agreement that are pledged to pay debt service on state payment acceleration notes that were issued to finance toll bridge seismic retrofit and replacement projects, payments appropriated in any year to pay a court judgment pursuant to the settlement agreement in *Paterno v. State* (2003) 113 Cal.App.4th 998, or payments to small vendors as defined in the California Prompt Payment Act (Chapter 4.5 (commencing with Section 927) of Part 3 of Division 3.6 of Title 1). Nothing in this section, Section 16325.5, or Section 16326 shall be construed to affect the applicability of interest, late payment penalty, and similar payment requirements under the California Prompt Payment Act or Section 926.19 when payments to persons or entities specified in those laws are delayed.

(c) Deferrals authorized in the cash management plan described in this section and in Sections 16325.5 and 16326 are in addition to any payment delays, payment deferrals, or payment schedules specified in other laws. Deferrals authorized in the cash management plan described in this section and in Sections 16325.5 and 16326 do not replace, remove, or alter any previously implemented payment delays or payment deferrals.

(d) Activities by the Controller, Treasurer, and Director of Finance to implement and carry out the cash management plan described in this section and Sections 16325.5 and 16326 are hereby exempted from the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3).

(e) This section shall become inoperative on September 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 16325.5 of the Government Code is amended to read:

16325.5. (a) Notwithstanding any other law, and to the extent not prohibited by federal law or the California Constitution, in order to effectively manage state cash resources, the General Fund

payments projected to be made for the programs or departments listed in subdivision (b) shall be deferred, effective beginning in the months of July 2010, October 2010, and March 2011, in full for no more than 60, 90, and 60 days, respectively, unless otherwise specified in Section 16326, and Section 2103.1 of the Streets and Highways Code. Nothing in this section shall be construed to authorize the deferral of state payroll, debt service, or rental payments that support lease-revenue bonds.

(b) The departments and programs subject to subdivision (a) are as follows:

(1) Kindergarten to grade 12, inclusive, apportionments.

(2) Supplementary Security Income/State Supplementary Payments made by the State Department of Social Services.

(3) Local government social services and transportation payments.

(4) Trial court operations (nonpayroll).

(c) Prior to implementing each of the payment deferrals identified in subdivision (b) and other provisions of the act adding this section, the Controller, Treasurer, and Director of Finance shall jointly review and compare the actual General Fund receipts and disbursements with the receipts and disbursements contained in the most current published cashflow projections. If the Controller, Treasurer, and Director of Finance determine sufficient cash is available to make all scheduled payments through the 60- or 90-day period or other period specified in law, including the payments otherwise subject to deferral identified in subdivision (b), and maintain a prudent cash reserve, the Controller shall make the deferred payment as originally scheduled or within the time provided for by law. In making the determination that cash is sufficient to make the payments, the Controller, Treasurer, and Director of Finance shall also consider costs for state government, the scope of any identified cash shortage, timing, achievability, legislative direction, and the impact and hardship imposed on potentially affected programs, entities, and related public services. The Department of Finance shall notify the Joint Legislative Budget Committee of this action within 10 days of making this determination.

(d) In the event payments are deferred pursuant to subdivision (a) or other provisions of the act adding this section, beginning July 1, 2010, the Controller, Treasurer, and Director of Finance

shall review on a monthly basis, or as necessary, the actual General Fund cash receipts and disbursements in comparison to the receipt and disbursement projections associated with the Governor's most current cashflow statements. If the Controller, Treasurer, and Director of Finance determine sufficient cash is available to make payments otherwise deferred for the 60- or 90-day period or other period specified in law, including the payments otherwise subject to deferral identified in subdivision (b) or other provisions of the act adding this section, and maintain a prudent cash reserve, the Controller shall make the deferred payments, in whole or in part, as soon as feasible unless otherwise provided in Section 16326, or Section 2103.1 of the Streets and Highways Code. In making the determination that cash is sufficient to make the payments, in whole or in part, the Controller, Treasurer, and Director of Finance shall also consider costs for state government, the scope of any identified cash shortage, timing, achievability, legislative direction, and the impact and hardship imposed on potentially affected programs, entities, and related public services. The Department of Finance shall notify the Joint Legislative Budget Committee within 10 days of this determination and identify the date upon which the payments were made.

(e) Upon concurrence of the Controller, Treasurer, and Director of Finance, deferrals authorized pursuant to subdivision (a) or other provisions of the act adding this section may be moved forward to the prior month or delayed to the subsequent month. Any changes may be authorized no sooner than 30 days after notification in writing by the Department of Finance to the Joint Legislative Budget Committee, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee, or his or her designee, may determine.

(f) This section shall become inoperative on September 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 16326 of the Government Code is amended to read:

16326. (a) Notwithstanding any other law, except as otherwise specified in Sections 16325 and 16325.5, cash deferrals specified in Sections 16325 and 16325.5, and Section 2103.1 of the Streets

and Highways Code, as amended by the act that added this section and as amended by the act adding this language, shall be limited, as follows:

(1) Payments to school districts, county offices of education, and charter schools shall be deferred as specified in Section 16325.5 with the total amount of the deferrals under this action limited to two billion five hundred million dollars (\$2,500,000,000) for each deferral, and a maximum of three deferrals during the fiscal year. The total outstanding amount of these deferrals, as described in Section 16325.5, shall not exceed two billion five hundred million dollars (\$2,500,000,000) at any given time. The Controller, Treasurer, and the Director of Finance shall determine and jointly provide a written declaration to the Legislature and to the State Department of Education, and the State Department of Education shall inform school districts, county offices of education, and charter schools of the amounts and timing of payment deferrals for the 2010–11 fiscal year. This declaration shall be provided no later than March 31, 2010. It is the intent of the Legislature that the advance principal apportionment payment due in July be deferred first as a part of the July 2010 deferral as specified in Section 16325.5.

(A) Subject to the approval of the Director of Finance, in order for a county office of education to receive scheduled apportionments from the Controller in the event payments are deferred, as specified in Section 16325.5, the Superintendent of Public Instruction shall certify that the deferral of warrants will result in the county office of education being unable to meet its expenditure obligations for the time period during which warrants are deferred and shall notify the Director of Finance of this fact on or before June 1, 2010. Subject to the approval of the Director of Finance, a county office of education that did not receive apportionments for July 2010 and October 2010, as specified in Section 16325.5, may seek a hardship waiver to receive scheduled apportionments from the Controller for the March 2011 deferral. To apply for a hardship waiver, the Superintendent of Public Instruction shall certify that the deferral of warrants will result in the county office of education being unable to meet its expenditure obligations for the time period during which warrants are deferred, and shall notify the Director of Finance of this fact on or before January 5, 2011. The criteria, as applicable, set forth in statute and

regulations to qualify a school district for an emergency apportionment shall be used to make the certification specified in this subparagraph.

(B) Subject to the approval of the Director of Finance, in order for a charter school to receive scheduled apportionments from the Controller in the event payments are deferred, as specified in Section 16325.5, the chartering authority, in consultation with the county superintendent of schools, shall certify that the deferral of warrants will result in the charter school being unable to meet its expenditure obligations for the time period during which warrants are deferred, and shall notify the Superintendent of Public Instruction and the Director of Finance of this fact on or before June 1, 2010. Subject to the approval of the Director of Finance, a charter school that did not receive apportionments for July 2010 and October 2010, as specified in Section 16325.5, may seek a hardship waiver to receive scheduled apportionments from the Controller for the March 2011 deferral. To apply for a hardship waiver, the chartering authority, in consultation with the county superintendent of schools, shall certify that the deferral of March warrants will result in the charter school being unable to meet its expenditure obligations for the time period during which warrants are deferred, and shall notify the Superintendent of Public Instruction and the Director of Finance on or before January 5, 2011. The criteria, as applicable, set forth in statute and regulations to qualify a school district for an emergency apportionment shall be used to make the certification specified in this subparagraph.

(C) Subject to the approval of the Director of Finance, in order for a school district to receive scheduled apportionments from the Controller in the event payments are deferred, as specified in Section 16325.5, the county superintendent of schools shall certify to the Superintendent of Public Instruction and to the Director of Finance on or before June 1, 2010, that the deferral of warrants will result in the school district being unable to meet its expenditure obligations for the time period during which warrants are deferred. In order for a school district to receive scheduled apportionments from the Controller in the event payments are deferred in March 2011, as specified in Section 16325.5, the county superintendent of schools shall certify to the Superintendent of Public Instruction and to the Director of Finance on or before January 5, 2011, that the deferral of warrants will result in the school district being

unable to meet its expenditure obligations for the time period during which warrants are deferred. The criteria, as applicable, set forth in statute and regulations to qualify a school district for an emergency apportionment shall be used to make the certification specified in this subparagraph.

(D) Payments deferred pursuant to this section for public schools in which kindergarten or grades 1 to 12, inclusive, are taught shall be paid no later than April 29, 2011.

(2) Of the amount appropriated from the General Fund to the University of California for the 2010–11 fiscal year, payments made by the state to the University of California shall not exceed one-twelfth of the annual appropriation for each month from July 2010 through April 2011. Any remaining appropriation balance may be paid to the University of California thereafter with no limitations.

(3) Notwithstanding Sections 84320, 84321, and 84321.5 of the Education Code and any other law that governs the regulations adopted by the Chancellor of the California Community Colleges to disburse funds, two hundred million dollars (\$200,000,000) and one hundred million dollars (\$100,000,000) from the payment of apportionments to districts pursuant to Sections 84320, 84321, and 84321.5 of the Education Code for July 2010 and March 2011, respectively, shall be deferred to October 2010 and May 2011, respectively. Notwithstanding this paragraph and subject to the approval of the Director of Finance, the Controller shall issue warrants pursuant to Sections 84320, 84321, and 84321.5 of the Education Code that include the full amount of the apportionment payments for the months of July 2010 or March 2011, or both, for a community college for which the Chancellor of the California Community Colleges determines, in consultation with the Director of Finance, on or before June 1, 2010, that the deferral of warrants pursuant to this paragraph will present an imminent threat to the fiscal integrity and security of the community college.

(4) Of the amount appropriated from the General Fund to the California State University for the 2010–11 fiscal year, payments made by the state to the California State University shall not exceed one-twelfth of the annual appropriation for each month from July 2010 through April 2011. Any remaining appropriation balance may be paid to the California State University thereafter with no limitations.

(5) The 2010–11 cash management plan described in Sections 16325 and 16325.5 may include deferrals in state payments for specific programs that are disbursed to cities, counties, and other public entities not addressed elsewhere in this section. Deferral of payments by the state to cities, counties, and other public entities not addressed elsewhere in this section shall be as follows:

(A) Payments shall be deferred as specified in Section 16325.5 per the specific program.

(B) Payments shall be limited to one billion dollars (\$1,000,000,000) for all programs that affect cities, counties, and other public entities not addressed elsewhere in this section at any given point in time.

(C) A maximum of three deferrals per specific program may be made during the fiscal year.

(D) The state shall not defer any payments to a county with a population less than 50,000, or a city within a county with a population less than 50,000.

(E) Payments to local governments may be deferred for social services programs, transportation programs, and Mental Health Services Act (Proposition 63 of 2004) programs.

(6) In addition to implementing the payment schedule described in paragraph (4), the Director of Finance may at any time during the 2010–11 fiscal year defer payment of General Fund moneys, in a cumulative amount not to exceed two hundred fifty million dollars (\$250,000,000), appropriated to the California State University. Payment of the amount deferred shall be made in the final week of April 2011.

(b) Limits on payment deferrals specified in subparagraphs (A) and (C) of paragraph (5) of subdivision (a) shall not apply to payments authorized in paragraph (3) of subdivision (a) of Section 2103.1 of the Streets and Highways Code to cities and counties. Limits on payment deferrals specified in subparagraphs (A) and (C) of paragraph (5) of subdivision (a) shall not apply to payments to the Mental Health Services Act (Proposition 63) programs.

(c) Upon the Controller's receipt of a letter from the executive officer of the Administrative Office of the Courts, or any other executive officer representing cities or counties, the state may defer payments to the entity or entities that the executive officer represents as specified in the letter even if the specified amounts exceed the deferrals authorized in this section or elsewhere in law.

(d) This section shall become inoperative on September 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 2103.1 of the Streets and Highways Code is amended to read:

2103.1. (a) Notwithstanding any other law, the apportionment of revenues deposited to the credit of the Highway Users Tax Account in the Transportation Tax Fund that are otherwise required to be made, pursuant to this chapter, to cities, counties, and cities and counties for the following months shall be deferred and shall be made as follows:

(1) For the months of July and August of 2009, the apportionments shall be paid with the payment of August revenues in September 2009. This deferral shall not apply to a county with a population of less than 40,000.

(2) For the months of November and December of 2009, and January, February, and March of 2010, the apportionments shall be paid on or within two business days of April 28, 2010. This deferral shall not apply to a county with a population of less than 40,000.

(3) For the months of July, August, September, October, November, and December 2010, and January, February, and March 2011, no more than fifty million dollars (\$50,000,000) for each month shall be deferred on a pro rata basis, as determined by the Controller, from all allocations to cities, counties, and cities and counties from the Highway Users Tax Account. The balance of unpaid apportionments for these months shall be paid on or within two business days of April 28, 2011. The state shall not defer any payments to a county with a population less than 50,000, or a city within a county with a population less than 50,000.

(b) For the purpose of meeting the cash obligations associated with ongoing budgeted costs, a city, county, or city and county may borrow from its account that is designated for the receipt of state funds allocated for local streets and roads or the county road fund, including that resulting from the receipt of funds pursuant to the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2 of the Government Code)

and apply the proceeds of the borrowing to local street and road maintenance and operations, during the period of the deferrals of apportionment payments pursuant to subdivision (a). Any borrowing from funds that is disbursed by the Controller's office on or after March 1, 2010, shall be repaid with interest, computed at the current average rate of interest earned by the local agency with respect to amounts on deposit in the account from which the borrowing occurs, as determined by the local agency, within the fiscal year in which the borrowing initially occurs. Interest that is repaid on amounts borrowed pursuant to this subdivision shall be applied by the local agency for the purposes set forth in the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006. The use of this cash shall not be considered as an expenditure of bond act funds if the cash is replaced when the payments in subdivision (a) are made.

(c) Notwithstanding any other provision of law, for the purpose of meeting the cash obligations associated with ongoing street and road costs, a city, county, or city and county may make use of any cash balance available to a special fund of the city, county, or city and county during the period of deferral of apportionment payments pursuant to subdivision (a).

(d) This section shall not affect any requirement that an expenditure is required to be accrued and reflected from the appropriate funding source for which the money was received and that an expenditure is required to meet all the requirements of its funding source.

SEC. 6. This act addresses the fiscal emergency declared by the Governor by proclamation on January 8, 2010, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Due to the projected insufficient cash balance in late March or early April of this year, it is necessary to defer certain payments so that all other General Fund payments can be made.

Approved _____, 2010

Governor