

**Introduced by Senator Romero**February 27, 2009

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An act to amend Sections 44662, 44664, 48260.5, and 48264.5 of the Education Code, and to amend Section 17617 of the Government Code, relating to school districts.

## LEGISLATIVE COUNSEL'S DIGEST

SB 540, as introduced, Romero. School districts: mandates.

(1) Existing provisions of the California Constitution provide that, whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state is required to provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except as specified. Existing statutory provisions establish procedures for local government entities to apply for, and receive, reimbursements for expenses that are within the scope of the constitutional requirement for reimbursement.

This bill would express findings and declarations of the Legislature relating to the operation of the statutory procedures for reimbursement of these mandates with respect to school districts.

The bill would express the intent of the Legislature to enact legislation to repeal or amend statutory provisions that impose reimbursable state mandates on school districts, contingent on an evaluation of each mandate based on prescribed factors.

(2) Existing law expresses the intent of the Legislature that school district governing boards establish a uniform system of evaluation and assessment of the performance of all certificated personnel within each school district of the state. Existing law requires the governing board of each school district to evaluate and assess certificated employee

performance as it reasonably relates to all of the following: (A) the progress of pupils toward expected pupil achievement at their respective grade levels; (B) the progress of pupils toward state-adopted academic content standards as measured by state-adopted criterion referenced assessments; (C) the instructional techniques and strategies used by the employee; (D) the employee's adherence to curricular objectives; and (E) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities.

This bill would instead make the school district's evaluation and assessment of certificated employee performance as it relates to the categories listed in (B), (C), and (D) above optional rather than mandatory.

(3) Existing law requires school districts to perform the evaluation and assessment of the performance of each certificated employee on a continuing basis in accordance with a prescribed schedule. Under existing law, if any permanent certificated employee has received an unsatisfactory evaluation, the employing authority is required to annually evaluate the employee until the employee achieves a positive evaluation or is separated from the school district.

This bill would instead make the annual evaluation of a permanent certificated employee who has received an unsatisfactory evaluation optional rather than mandatory.

(4) Existing law requires school districts to notify a pupil's parent or guardian, by first-class mail or other reasonable means, that the pupil is truant and to communicate additional information relating to truancy, as prescribed.

This bill would instead make this notification optional, but would encourage school districts to make the notification if the district determines that the notification achieves the goal of preventing truancy.

(5) Existing law requires, the 3rd time that a truancy report is required about a pupil in the same school year, that pupil is to be classified as a habitual truant, and the 4th time that a truancy report is required about a pupil in the same school year, that pupil is to be within the jurisdiction of the juvenile court, which may adjudge the pupil to be a ward of the court.

This bill would make the classification of a pupil who has been the subject of a 3rd truancy report in the same school year, and the placement of a pupil who has been the subject of a 4th truancy report in the same school year within the jurisdiction of the juvenile court, optional rather than mandatory.

(6) Existing law requires, commencing with the Budget Act for the 2006–07 fiscal year and concluding with the Budget Act for the 2020–21 fiscal year, the total amount due to each city, county, city and county, and special district, for which the state has determined that reimbursement is required pursuant to the constitutional requirement referenced in (1) above to be paid to those entities over a period of not more than 15 years.

This bill, commencing with the Budget Act for the 2010–11 fiscal year, would require that the total amount that is due to school districts for which the state has determined that reimbursement is required pursuant to the constitutional requirement referenced in (1) above to be paid to those entities over a period of not more than an unspecified number of fiscal years.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 (1) California’s mandate reimbursement system has resulted in  
4 the state owing school districts more than one billion dollars  
5 (\$1,000,000,000) to pay districts for activities that the state has  
6 required but not funded.

7 (2) Section 6 of Article XIII B of the California Constitution  
8 provides that, with certain exceptions, whenever the Legislature  
9 or any state agency mandates a new program or higher level of  
10 service on any local government, including a school district, the  
11 state shall reimburse the local government for the costs of the new  
12 state-mandated activities.

13 (3) Statutory provisions establish the Commission on State  
14 Mandates, procedures for the commission to hear and decide local  
15 government reimbursement claims, and procedures for the  
16 Controller to make annual payments to local governments for  
17 mandated activities that the commission has determined are  
18 reimbursable.

19 (4) School districts are entitled to reimbursement for the cost  
20 of required activities in connection with at least 40 separate state  
21 mandates as described in the State-Mandated Cost Manual and as  
22 identified in Item 6110-295-0001 of the Budget Act of 2007.

1 (5) Since the 2001–02 fiscal year, the Legislature has failed to  
2 appropriate funds to provide school districts the mandate  
3 reimbursements to which the Commission on State Mandates has  
4 determined the districts are entitled.

5 (6) As of December 2008, the state owed school districts more  
6 than one billion dollars (\$1,000,000,000) in unpaid mandate claims.

7 (7) Additional test claims pending before the Commission on  
8 State Mandates could result in the state’s reimbursement obligation  
9 to school districts increasing by millions of dollars.

10 (8) The Superior Court of California for the County of San  
11 Diego ruled in December 2008 that it is unconstitutional for the  
12 Legislature to fail to appropriate funds to pay state mandate claims  
13 that are owed to school districts.

14 (b) It is the intent of the Legislature to enact legislation to repeal  
15 or amend statutory provisions that impose reimbursable state  
16 mandates on school districts, contingent on an evaluation of each  
17 mandate based on the following factors:

18 (1) Whether the policy goal or purpose that the mandate was  
19 intended to achieve remains a legislative priority.

20 (2) Whether any data or information is available to demonstrate  
21 that the mandate has achieved that policy goal or purpose.

22 (3) Whether that policy goal or purpose can be achieved in a  
23 less costly manner.

24 (4) Whether charter schools not subject to the mandate have  
25 achieved that policy goal or purpose.

26 (5) Whether a school district is likely to continue the mandated  
27 activity in the absence of state reimbursement.

28 (6) For waivable mandates, whether the State Board of  
29 Education has received requests from school districts for waiver  
30 of the mandate and, if it has, whether the board has granted those  
31 waiver requests.

32 (7) Whether any audit information is available from the  
33 Controller to demonstrate how the mandate has been implemented.

34 (8) Whether performance-based measurements can be  
35 incorporated into the mandate.

36 SEC. 2. Section 44662 of the Education Code is amended to  
37 read:

38 44662. (a) The governing board of each school district shall  
39 establish standards of expected pupil achievement at each grade  
40 level in each area of study.

1 (b) (1) The governing board of each school district shall  
2 evaluate and assess certificated employee performance as it  
3 reasonably relates to *both of the following*:

4 ~~(1)~~

5 (A) The progress of pupils toward the standards established  
6 pursuant to subdivision (a) ~~and, if applicable, the state-adopted~~  
7 ~~academic content standards as measured by state-adopted criterion~~  
8 ~~referenced assessments.~~

9 ~~(2) The instructional techniques and strategies used by the~~  
10 ~~employee.~~

11 ~~(3) The employee's adherence to curricular objectives.~~

12 ~~(4)~~

13 (B) The establishment and maintenance of a suitable learning  
14 environment, within the scope of the employee's responsibilities.

15 (2) *The governing board of each school district may evaluate*  
16 *and assess certificated employee performance as it reasonably*  
17 *relates to all of the following*:

18 (A) *The progress of pupils toward the state-adopted academic*  
19 *content standards as measured by state-adopted criterion*  
20 *referenced assessments.*

21 (B) *The instructional techniques and strategies used by the*  
22 *employee.*

23 (C) *The employee's adherence to curricular objectives.*

24 (c) The governing board of each school district shall establish  
25 and define job responsibilities for certificated noninstructional  
26 personnel, including, but not *necessarily* limited to, supervisory  
27 and administrative personnel; whose responsibilities cannot be  
28 evaluated appropriately under the provisions of subdivision (b),  
29 and shall evaluate and assess the performance of those  
30 noninstructional certificated employees as it reasonably relates to  
31 the fulfillment of those responsibilities.

32 (d) Results of an employee's participation in the Peer Assistance  
33 and Review Program for Teachers established by Article 4.5  
34 (commencing with Section 44500) shall be made available as part  
35 of the evaluation conducted pursuant to this section.

36 (e) The evaluation and assessment of certificated employee  
37 performance pursuant to this section shall not include the use of  
38 publishers' norms established by standardized tests.

39 (f) Nothing in this section shall be construed as in any way  
40 limiting the authority of school district governing boards to develop

1 and adopt additional evaluation and assessment guidelines or  
2 criteria.

3 SEC. 3. Section 44664 of the Education Code is amended to  
4 read:

5 44664. (a) Evaluation and assessment of the performance of  
6 each certificated employee shall be made on a continuing basis as  
7 follows:

8 (1) At least once each school year for probationary personnel.

9 (2) At least every other year for personnel with permanent status.

10 (3) At least every five years for personnel with permanent status  
11 who have been employed at least 10 years with the school district,  
12 are highly qualified, if those personnel occupy positions that are  
13 required to be filled by a highly qualified professional by the  
14 federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301,  
15 et seq.), as defined in 20 U.S.C. Sec. 7801, and whose previous  
16 evaluation rated the employee as meeting or exceeding standards,  
17 if the evaluator and certificated employee being evaluated agree.  
18 The certificated employee or the evaluator may withdraw consent  
19 at any time.

20 (b) The evaluation shall include recommendations, if necessary,  
21 as to areas of improvement in the performance of the employee.  
22 If an employee is not performing his or her duties in a satisfactory  
23 manner according to the standards prescribed by the governing  
24 board, the employing authority shall notify the employee in writing  
25 of that fact and describe the unsatisfactory performance. The  
26 employing authority shall thereafter confer with the employee  
27 making specific recommendations as to areas of improvement in  
28 the employee's performance and endeavor to assist the employee  
29 in his or her performance. If any permanent certificated employee  
30 has received an unsatisfactory evaluation, the employing authority  
31 shall *may* annually evaluate the employee until the employee  
32 achieves a positive evaluation or is separated from the district.

33 (c) Any evaluation performed pursuant to this article ~~which~~ *that*  
34 contains an unsatisfactory rating of an employee's performance  
35 in the area of teaching methods or instruction may include the  
36 requirement that the certificated employee shall, as determined  
37 necessary by the employing authority, participate in a program  
38 designed to improve appropriate areas of the employee's  
39 performance and to further pupil achievement and the instructional  
40 objectives of the employing authority. If a district participates in

1 the Peer Assistance and Review Program for Teachers established  
2 pursuant to Article 4.5 (commencing with Section 44500), any  
3 certificated employee who receives an unsatisfactory rating on an  
4 evaluation performed pursuant to this section shall participate in  
5 the Peer Assistance and Review Program for Teachers.

6 (d) Hourly and temporary hourly certificated employees, other  
7 than those employed in adult education classes who are excluded  
8 by the provisions of Section 44660, and substitute teachers may  
9 be excluded from the provisions of this section at the discretion  
10 of the governing board.

11 SEC. 4. Section 48260.5 of the Education Code is amended to  
12 read:

13 48260.5. (a) Upon a pupil's initial classification as a truant,  
14 the school district ~~shall~~ *may* notify the pupil's parent or guardian,  
15 by first-class mail or other reasonable means, of the following:

16 ~~(a)~~

17 (1) That the pupil is truant.

18 ~~(b)~~

19 (2) That the parent or guardian is obligated to compel the  
20 attendance of the pupil at school.

21 ~~(c)~~

22 (3) That parents or guardians who fail to meet this obligation  
23 may be guilty of an infraction and subject to prosecution pursuant  
24 to Article 6 (commencing with Section 48290) ~~of Chapter 2 of~~  
25 ~~Part 27.~~

26 ~~(d)~~

27 (4) That alternative educational programs are available in the  
28 district.

29 ~~(e)~~

30 (5) That the parent or guardian has the right to meet with  
31 appropriate school personnel to discuss solutions to the pupil's  
32 truancy.

33 ~~(f)~~

34 (6) That the pupil may be subject to prosecution under Section  
35 48264.

36 ~~(g)~~

37 (7) That the pupil may be subject to suspension, restriction, or  
38 delay of the pupil's driving privilege pursuant to Section 13202.7  
39 of the Vehicle Code.

40 ~~(h)~~

1 (8) That it is recommended that the parent or guardian  
2 accompany the pupil to school and attend classes with the pupil  
3 for one day.

4 (b) *A school district is encouraged to make the notification*  
5 *authorized by this section if the district determines that the*  
6 *notification achieves the goal of preventing truancy.*

7 SEC. 5. Section 48264.5 of the Education Code is amended to  
8 read:

9 48264.5. Any minor who is required to be reported as a truant  
10 pursuant to Section 48260 or 48261 may be required to attend  
11 makeup classes conducted on one day of a weekend pursuant to  
12 subdivision (c) of Section 37223 and is subject to the following:

13 (a) The first time a truancy report is required, the pupil may be  
14 personally given a written warning by any peace officer specified  
15 in Section 830.1 of the Penal Code. A record of the written warning  
16 may be kept at the school for a period of not less than two years,  
17 or until the pupil graduates, or transfers, from that school. If the  
18 pupil transfers, the record may be forwarded to any school  
19 receiving the pupil's school records. A record of the written  
20 warning may be maintained by the law enforcement agency in  
21 accordance with that law enforcement agency's policies and  
22 procedures.

23 (b) The second time a truancy report is required within the same  
24 school year, the pupil may be assigned by the school to an  
25 afterschool or weekend study program located within the same  
26 county as the pupil's school. If the pupil fails to successfully  
27 complete the assigned study program, the pupil shall be subject to  
28 subdivision (c).

29 (c) The third time a truancy report is required within the same  
30 school year, the pupil ~~shall~~ *may* be classified a habitual truant, as  
31 defined in Section 48262, and may be referred to, and required to  
32 attend, an attendance review board or a truancy mediation program  
33 pursuant to Section 48263 or pursuant to Section 601.3 of the  
34 Welfare and Institutions Code. If the district does not have a  
35 truancy mediation program, the pupil may be required to attend a  
36 comparable program deemed acceptable by the school district's  
37 attendance supervisor. If the pupil does not successfully complete  
38 the truancy mediation program or other similar program, the pupil  
39 shall be subject to subdivision (d).

1 (d) The fourth time a truancy is required to be reported within  
 2 the same school year, the pupil ~~shall~~ *may* be within the jurisdiction  
 3 of the juvenile court which may adjudge the pupil to be a ward of  
 4 the court pursuant to Section 601 of the Welfare and Institutions  
 5 Code. If the pupil is adjudged a ward of the court, the pupil shall  
 6 be required to do one or more of the following:

7 (1) Performance at court-approved community services  
 8 sponsored by either a public or private nonprofit agency for not  
 9 less than 20 hours but not more than 40 hours over a period not to  
 10 exceed 90 days, during a time other than the pupil’s hours of school  
 11 attendance or employment. The probation officer shall report to  
 12 the court the failure of the pupil to comply with this paragraph.

13 (2) Payment of a fine by the pupil of not more than one hundred  
 14 dollars (\$100) for which a parent or guardian of the pupil may be  
 15 jointly liable.

16 (3) Attendance of a court-approved truancy prevention program.

17 (4) Suspension or revocation of driving privileges pursuant to  
 18 Section 13202.7 of the Vehicle Code. This subdivision shall apply  
 19 only to a pupil who has attended a school attendance review board  
 20 program, a program operated by a probation department acting as  
 21 a school attendance review board, or a truancy mediation program  
 22 pursuant to subdivision (c).

23 SEC. 6. Section 17617 of the Government Code is amended  
 24 to read:

25 17617. (a) The total amount due to each city, county, city and  
 26 county, and special district, for which the state has determined that  
 27 reimbursement is required under paragraph (2) of subdivision (b)  
 28 of Section 6 of Article XIII B of the California Constitution, shall  
 29 be appropriated for payment to these entities over a period of not  
 30 more than 15 *fiscal* years, commencing with the Budget Act for  
 31 the 2006–07 fiscal year and concluding with the Budget Act for  
 32 the 2020–21 fiscal year.

33 (b) *The total amount that is due to school districts, for which*  
 34 *the state has determined that reimbursement is required under*  
 35 *Section 6 of Article XIII B of the California Constitution, shall be*  
 36 *appropriated for payment to those entities over a period of not*  
 37 *more than \_\_\_\_ fiscal years, commencing with the Budget Act for*  
 38 *the 2010–11 fiscal year.*

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