AMENDED IN ASSEMBLY OCTOBER 7, 2010

# SENATE BILL No. 864

**Introduced by Committee on Budget and Fiscal Review**

January 11, 2010

~~An act relating to the Budget Act of 2010.~~ *An act to amend Section 22954 of the Education Code, and to add and repeal Sections 16327 and 16327.5 of the Government Code, relating to state finance, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 864, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2010.~~ *State finance.*

*(1) 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. Existing law also provides for 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.*

*This bill would require the Controller, Treasurer, and Director of Finance to implement and carry out a cash management plan to meet specified goals concerning a short-term General Fund cash shortage until sufficient external borrowing for the 2010–11 fiscal year may be* *secured. In implementing and carrying out this plan, the bill would state that these officials have all of the applicable constitutional and statutory authority available to them, including, but not limited to, specific authority granted by enactments in the 2009–10 8th Extraordinary Session. The bill would, until January 1, 2011, specifically authorize the deferral of specific kindergarten and grades 1 to 12, inclusive, apportionment and categorical payments, community college apportionments, and Cal Grant payments. The bill would prioritize repayments of these deferrals if external borrowing is secured in the amount of $3,200,000,000 or more. The bill would also revise the payment schedule for transfers to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund.*

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

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2010.~~

Vote: ~~majority~~ *2⁄3*. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

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

*SECTION 1. It is the intent of the Legislature, due to the late enactment of the 2010 Budget Act, to recognize that it may not be possible for the state to meet all General Fund payment obligations and maintain a prudent General Fund cash reserve, as determined by the Controller, until an external cashflow borrowing has been secured. As a result, to the extent necessary to protect the state's credit ratings and to assist the state with managing its cashflow to make its priority payments to mitigate the possibility of issuing registered warrants, the state shall delay nonpriority payments, including tax refunds and Department of Social Services payments for the CalWORKS program and its administration by counties, and other payment delays specified in this act.*

*SEC. 2. Section 22954 of the Education Code is amended to read:*

22954. (a) Notwithstanding Section 13340 of the Government Code, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund.

(b) Except as reduced pursuant to subdivision (c), the total amount of the appropriation for each year shall be equal to 2.5 percent of the total of the creditable compensation of the fiscal year ending in the immediately preceding calendar year upon which members' contributions are based for purposes of funding the supplemental payments authorized by Section 24415, as reported annually to the Director of Finance, the Chairperson of the Joint Legislative Budget Committee, and the Legislative Analyst pursuant to Section 22955.5.

(c) Beginning with the 2008–09 fiscal year, the appropriation in subdivision (b) shall be reduced in accordance with the following schedule:

| | |
|---|---|
| 2008–09 | $66,386,000 |
| 2009–10 | $70,000,000 |
| 2010–11 | $71,000,000 |
| 2011–12 and each fiscal year thereafter | $72,000,000 |

(d) Transfers made to the Supplemental Benefit Maintenance Account, pursuant to subdivision (a) shall be made on October 15 and April 15 of each fiscal year with each payment to be 50 percent of the annual appropriation.

*(e) Notwithstanding subdivision (d), for the 2010–11 fiscal year only, the transfer that would have been made pursuant to subdivision (d) on October 15, 2010, shall be made on November 15, 2010, and the transfer that would have been made pursuant to subdivision (d) on April 15, 2011, shall be made on March 14, 2011.*

~~(e)~~

*(f)* The board may deduct from the annual appropriation made pursuant to this section an amount necessary for the administrative expenses of Section 24415.

~~(f)~~

*(g)* It is the intent of the Legislature in enacting this section to establish the supplemental payments pursuant to Section 24415 as vested benefits pursuant to a contractually enforceable promise to make annual contributions from the General Fund to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund in order to provide a continuous annual source

of revenue for the purposes of making the supplemental payments under Section 24415.

*SEC. 3. Section 16327 is added to the Government Code, to read:*

*16327. (a) An effective cash management plan is needed upon enactment of the Budget Act of 2010 to address a short-term General Fund cash shortage until sufficient external cashflow borrowing for the 2010–11 fiscal year may be secured. The goals of the cash management plan described in this section are to accomplish the following:*

*(1) Increase the state's ability to address this cash shortage 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 Section 16327.5 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 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 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) Notwithstanding any other law, the deferrals authorized in the cash management plan described in this section and Section 16327.5 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 Section 16327.5 do not replace, remove, or alter any previously implemented payment delays or payment deferrals, and are not limited to the conditions specified in Section 16326.*

*(d) The Controller, Treasurer, and Director of Finance shall implement and carry out payment deferrals pursuant to a cash management plan that meets the goals specified in subdivision (a) and is in accordance with the intent expressed in subdivisions (b) and (c). In implementing and carrying out this plan, these officials shall have all of the applicable constitutional and statutory authority available to them, including, but not limited to, the authority granted by Chapter 10 of the 2009–2010 Eighth Extraordinary Session Section 16327.5.*

*(e) Activities by the Controller, Treasurer, and Director of Finance to implement and carry out the cash management plan described in this section and Section 16327.5 are hereby exempted from the provisions of the Administrative Procedure Act (Chapter 3.5 commencing with Section 11340) of Part 1 of Division 3.*

*(f) Nothing in this section and Section 16327.5 shall affect the Controller's existing authority to delay nonpriority claims including, but not limited to, tax refunds and Department of Social Services payments for the CalWORKS program and its administration by counties. For purposes of this section, nonpriority claims include those claims not otherwise required to be paid promptly pursuant to the California Constitution, federal law, or court order.*

*(g) Subject to the approval of the Director of Finance, entities subject to the deferrals identified in paragraphs (1) or (2) of subdivision (b) of Section 16327.5 may request a hardship waiver as described in subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a) of Section 16326. These hardship waiver requests shall be received by the Director of Finance no later than October 15, 2010.*

*(h) Subject to the approval of the Director of Finance, entities subject to the deferrals identified in paragraph (3) of subdivision (b) of Section 16327.5 may request a hardship waiver as described in paragraph (3) of subdivision (a) of Section 16326. These hardship waiver requests shall be received by the Director of Finance no later than October 15, 2010.*

*(i) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.*

*SEC. 4. Section 16327.5 is added to the Government Code, to read:*

*16327.5. (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 2010–11 General Fund payments not made due to budget impasse or projected to be made for the programs or departments listed in subdivision (b) shall be deferred, in whole or in part, as provided in subdivision (b). Nothing in this section shall be construed to authorize the deferral of the payments listed in subdivision (b) of Section 16327.*

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

*(1) To the extent an external cashflow borrowing has not been secured in an amount of three billion two hundred million dollars ($3,200,000,000) or more, kindergarten and grades 1 to 12, inclusive, October 2010 apportionments, shall be paid no later than November 15, 2010.*

*(2) Kindergarten and grades 1 to 12, inclusive, categorical payments up to $300 million, due for the months of July, August, September, and October 2010, shall be paid no later than November 4, 2010.*

*(3) To the extent an external cashflow borrowing has not been secured in an amount of three billion two hundred million dollars ($3,200,000,000) or more, California Community Colleges October 2010 apportionments, including the July 2010 payment deferred to October 2010 pursuant to paragraph (3) of subdivision (a) of Section 16326, shall be paid no later than November 4, 2010.*

*(4) Cal Grant payments to the University of California, for the months of July, August, September, and October 2010, shall be paid no later than December 10, 2010.*

*(5) Cal Grant payments to the California State University, for the months of July, August, September, and October 2010, shall be paid no later than December 3, 2010.*

*(c) After implementing any of the payment deferrals identified in subdivision (b), the Controller, Treasurer, and Director of Finance shall, at least weekly, jointly review and compare the actual General Fund receipts and disbursements with the receipts and disbursements contained in the most current published cashflow projections. After a payment deferral has been implemented, to the extent that an external cashflow borrowing is secured in the amount of three billion two hundred million dollars ($3,200,000,000) or more, the payment deferrals identified in paragraphs (1) and (3) of subdivision (b) shall have first priority for payment upon being presented to the Controller. If the Controller, Treasurer, and Director of Finance determine sufficient cash is available to make these payments deferrals, in whole or in part, prior to the receipt of sufficient external cashflow borrowing, and maintain a prudent cash reserve, the Controller shall make the deferred payment, in whole or in part, as soon as possible. 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. At the end of this short-term cash program, the Department of Finance shall notify the Joint Legislative Budget Committee of the final deferred amount and dates of payments by December 31, 2010.*

*(d) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.*

*SEC. 5. 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, it is necessary to defer certain payments so that all other General Fund payments can be made.*

~~SECTION 1. It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2010.~~

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