

Last Minute Memorandum

To: STATE BOARD MEMBERS

Date: November 4, 2003

From: William J. Ellerbee, Jr., Deputy Superintendent
School and District Operations Branch

Re: ITEM 26

Subject ASSEMBLY BILL 1994 PROGRAMMATIC IMPLEMENTATION:
APPROVE COMMENCEMENT OF THE RULEMAKING PROCESS FOR
AMENDMENTS TO TITLE 5

Please add the following attachment, which provides the required analysis of the fiscal impact of the proposed regulations:

[Attachment 4](#): Economic and Fiscal Impact Statement and Analysis (Pages 1-10)

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME	CONTACT PERSON	TELEPHONE NUMBER
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400		NOTICE FILE NUMBER Z

ECONOMIC IMPACT STATEMENT**A. ESTIMATED PRIVATE SECTOR COST IMPACTS** (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|---|---|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance standards |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) _____

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

3. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: Statewide Local or regional (list areas): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

 Yes No

If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ _____

4. Will this regulation directly impact housing costs? Yes No If yes, enter the annual dollar cost per housing unit: \$ _____ and the number of units: _____

5. Are there comparable Federal regulations? Yes No Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?
Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? Yes No

Explain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.)
Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million ? Yes No (If No, skip the rest of this section)

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ _____ Cost-effectiveness ratio: _____

Alternative 1: \$ _____ Cost-effectiveness ratio: _____

Alternative 2: \$ _____ Cost-effectiveness ratio: _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in (Item _____, Budget Act of _____) or (Chapter _____, Statutes of _____)

b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in _____

b. implements the court mandate set forth by the _____
court in the case of _____ vs. _____

c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
election; (DATE)

d. is issued only in response to a specific request from the _____
_____, which is/are the only local entity(s) affected;

e. will be fully financed from the _____ authorized by Section
(FEES, REVENUE, ETC.)
_____ of the _____ Code;

f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

3. Savings of approximately \$ _____ annually.

4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)*

- 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
 - a. be able to absorb these additional costs within their existing budgets and resources.
 - b. request an increase in the currently authorized budget level for the _____ fiscal year.
- 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- 4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
- 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- 4. Other.

SIGNATURE	TITLE
AGENCY SECRETARY ¹	DATE
APPROVAL/CONCURRENCE	
DEPARTMENT OF FINANCE ²	DATE
APPROVAL/CONCURRENCE	

Original on File

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

**Economic and Fiscal Impact Analysis
Proposed Amendments of Title 5, CCR, Regulations
Relating to Multisite Charter Schools**

The Fiscal Policy Office has reviewed for economic and fiscal impact the proposed new and amended (version 10/08/03) regulations, amending Sections 11967, 11968, 11969, and adding Sections 11967.6 and 11967.7, of Subchapter 19, of Chapter 11, of Division 1, of Title 5, of the California Code of Regulations, relating to Multisite Charter Schools.

What would the proposed regulations do?

The proposed regulations clarify existing law with regard to the State Board of Education's process for reviewing charter petitions that have been denied by a county office and a local school district; establish a process and criteria for State Board review and approval of charter schools of statewide interest that will operate on multiple sites; clarify the funding process to be used for statewide and countywide charter schools; and clarify the State Board's process for numbering charter schools that will operate on multiple sites.

These regulations are being written or amended as a result of the implementation Assembly Bill (AB) 1994 (Chapter 1058, Statutes of 2002) which amended the Charter School Act of 1992, and added or amended Education Code Sections (EC§) which:

- Create new responsibilities for the State Board to review and approve charter schools of statewide interest that propose to operate on multiple sites (§47605.8)
- Require the SBE to adopt regulations to implement this section (§47605.8(a))
- Create new responsibilities for county boards of education to review and approve charter schools of countywide interest that propose to operate on multiple sites within the county (§47605.6)
- Relate to State Board numbering of charter petitions (§47602)
- Relate to appeals of charter petitions that have been denied (§47605(j))

Do the proposed regulations impose a local cost mandate?

No. There are no additional cost or savings because these regulations make only technical, non-substantive or clarifying changes to current law and regulations. The activities specified in the regulations are necessary in order to implement the statute and are consistent with the direction given in statute; therefore, any costs associated with the activities are attributable to the statute.

In addition, costs associated with the increased activities (specified in statute and clarified in these regulations) to be performed by the county offices or the local school districts are to be paid for in accordance with EC §47613, which states:

EC §47613.

- (a) Except as set forth in subdivision (b), a chartering agency may charge for the actual costs of supervisorial oversight of a charter school not to exceed 1 percent of the revenue of the charter school.

- (b) A chartering agency may charge for the actual costs of supervisory oversight of a charter school not to exceed 3 percent of the revenue of the charter school if the charter school is able to obtain substantially rent free facilities from the chartering agency.
- (c) A local agency that is given the responsibility for supervisory oversight of a charter school, pursuant to paragraph (1) of subdivision (k) of Section 47605, may charge for the costs of supervisory oversight, and administrative costs necessary to secure charter school funding, not to exceed 3 percent of the revenue of the charter school. A charter school that is charged for costs under this subdivision shall not be charged pursuant to subdivision (a) or (b).
- (d) This section shall not prevent the charter school from separately purchasing administrative or other services from the chartering agency or any other source.
- (e) For the purposes of this section, a chartering agency means a school district, county department of education, or the State Board of Education, that granted the charter to the charter school.

Further, any activities mandated of a charter school, by the regulations, would be required only of a charter school choosing to be chartered by the State Board of Education or providing instruction at multisites; thus these regulations do not impose a reimbursable mandate on a charter school.

SPECIAL NOTE:

This Economic and Fiscal Impact Statement is made with the knowledge that an important and relevant question is being asked of the Commission on State Mandates in “Charter Schools III,” a test claim being heard before the Commission (CSM 99-TC-14). The question is simply whether charter schools are eligible to receive reimbursement for mandated costs under Division 4, Part 7 of the *Government Code*. The Department of Finance (DOF) via the Attorney General’s Office (AG) states in comments filed with the Commission that:

- A. The School’s Claim.** DOF will show that the School is not a proper claimant as it is not a “school district” within the meaning of Government Code Section 17551. Therefore the Commission lacks jurisdiction and should neither hear nor decide upon any claim the School asserts. However, even assuming for the sake of argument that the School was a proper claimant, none of the asserted mandates are unfounded because the State has already allocated enough money to charter schools to fund any and all mandated and discretionary activities. Additionally, unlike school districts, charter schools upon seeking to be chartered and upon having their charter reauthorized every five years, operate an optional program and thus choose to accept the State’s requirements for such operation. Furthermore, even ignoring the preceding, some of the challenged “mandates” are merely unreimbursable costs or valid redistributions of local funds. Lastly, the other claims listed are not increased services new to school districts and local education agencies; they simply constitute long-standing traditional requirements of schools.
- B. District’s Claim.** DOF will demonstrate that, for the most part, the codified code sections raised by the District stemming from Chap. 34/98, Chap. 78/99, Chap. 786/99 and the CDE Letter do not constitute any significant new programs or higher level of services in existing programs have been mandated by the State. Moreover, DOF will demonstrate that many of the challenged responsibilities are part of the District’s normal overhead and operating cost — i.e., basic costs of doing business that are covered by general purpose appropriations. DOF will also show that the State provided the District an ability to gain additional revenue by charging the charter schools for administrative services provided to the charter schools. Further, many of the supposedly new requirements are wholly optional and voluntary, with any costs flowing naturally and foreseeably from discretionary choices made by the District itself or from circumstances not attributable to the challenged state laws and executive order.

Do the proposed regulations impose costs upon the state?

Yes. The proposed new and amended regulations would create additional workload in an existing program, thereby creating the potential for additional expenditures by the state.

New or Amended Section	Language or Practice Prior to Amendment	Fiscal Effect
<p><u>Section 11967.6. Statewide Charter Schools.</u> <u>(b)...</u> <u>(3) After a charter has been granted, but before the instruction of pupils commences at each site, the site shall be subject to an administrative determination by the California Department of Education as to the completion of site-related requirements in subdivision (c) and compliance of the site with any conditions the State Board of Education may prescribe in its approval of the charter petition.</u></p>	<p>* No regulatory language prior to this amendment.</p>	<p><i>*Additional State workload without reimbursement or funding</i></p> <p>Since EC §47613(e) does not include the California Department of Education (CDE) the CDE would not be subject to reimbursement of actual cost for supervisorial oversight. Since these activities are not addressed in statute this work would be unfounded, however, the CDE believes it can absorb the additional cost of these activities within their existing budgets and resources.</p>
<p><u>Section 11967.6. Statewide Charter Schools.</u> <u>(b)...</u> <u>(4) The school shall notify the California Department of Education within 60 days of proposed commencement of instruction at each site identified in the charter, including submission of all documentation required in paragraph (3). Within 30 days of the receipt of a complete and documented request for an administrative determination pursuant to this paragraph, the California Department of Education shall evaluate the adequacy and appropriateness of the facilities for the proposed educational program and notify the charter petitioner(s) and any affected local education agency of its determination. The charter petitioner(s) or any affected local education agency may appeal the administrative determination within 10 days of the California Department of Education’s notification. If an appeal is filed, the administrative determination is temporarily stayed, and the matter will be placed on the agenda of the next meeting of the State Board of Education (consistent with the requirements of the Bagley-Keene Open Meeting Act). The State Board of Education may approve, amend and approve, or reject the administrative determination of the California Department of Education. If no action is taken by the State Board of Education, the administrative determination of the California Department of Education shall stand.</u></p>	<p>* No regulatory language prior to this amendment.</p>	<p><i>*Additional State workload without reimbursement or funding</i></p> <p>Since EC §47613(e) does not include the California Department of Education (CDE) the CDE would not be subject to reimbursement of actual cost for supervisorial oversight. Since these activities are not addressed in statute this work would be unfounded, however, the CDE believes it can absorb the additional cost of these activities within their existing budgets and resources.</p>

<p><u>Section 11967.6. Statewide Charter Schools.</u> <u>(e)...</u> <u>(2) Prior to consideration by the State Board of Education, the petition shall be considered by the Advisory Commission on Charter Schools established pursuant to Education Code section 47634.2(b). If the Advisory Commission holds a public hearing in conjunction with its consideration of the petition, then the State Board need not hold an additional public hearing before taking action. The State Board is obligated to hear public comment on each agenda item it considers in accordance with the Bagley-Keene Open Meeting Act.</u></p>	<p>* No regulatory language prior to this amendment.</p>	<p>The Advisory Commission established by EC §47634.2(b)(1) is authorized to “recommend criteria to the board in accordance with this section if it has not done so by the effective date of the act...” The proposed language of Section 11967.6(e)(2) would broaden the charge of the commission and is not authorized in statute; as such these activities are unfunded.</p>
<p><u>Section 11967.6. Statewide Charter Schools.</u> <u>(e)...</u> <u>(3) The California Department of Education shall review the petition and provide an analysis, along with any recommendation(s), to the members of the Advisory Commission and to the petitioner(s) at least 10 days prior to the petition’s consideration by the Advisory Commission on Charter Schools. The California Department of Education’s analysis and recommendations are subject to clarification or revision prior to (or at) the meeting of the Advisory Commission as may be necessary in the judgment of the California Department of Education.</u></p>	<p>* No regulatory language prior to this amendment.</p>	<p><i>*Additional State workload without reimbursement or funding</i></p> <p>Since EC §47613(e) does not include the California Department of Education (CDE) the CDE would not be subject to reimbursement of actual cost for supervisory oversight. Since these activities are not addressed in statute this work would be unfounded, however, the CDE believes it can absorb the additional cost of these activities within their existing budgets and resources.</p> <p>Additionally, the Advisory Commission established by EC §47634.2(b)(1) is authorized to “recommend criteria to the board in accordance with this section if it has not done so by the effective date of the act...” The proposed language of Section 11967.6(e)(3) would broaden the charge of the commission and is not authorized in statute; as such these activities are unfunded.</p>

— Continued on next page —

<p>Section 11968. Maximum Number of Charters.</p> <p>(a) If a charter school ceases to operate <u>through for any reason, including, but not limited to,</u> voluntary surrender, revocation, or non-renewal of its charter, the charter school's number <u>or numbers will lapse and will not be reassigned in the numbering system maintained by the California Department of Education pursuant to Section 11969. The purpose of reassignment of numbers shall be to ensure, to the extent practicable, that the highest charter number assigned at any given time corresponds to the total number of charters that may provide instruction to pupils in this state. The reassignment of charter numbers shall be accomplished so as to avoid any confusion that might otherwise arise from a current charter school being assigned a number that formerly was assigned to a different charter school.</u></p>		<p><i>*Additional State workload without reimbursement or funding</i></p> <p>The activities of Section 11968 and 11969 are to be performed by the State Board of Education in accordance with EC §47602; however, the CDE believes it can absorb the additional cost of these activities within their existing budgets and resources.</p>
<p>Section 11969. Numbering of Charter School Petitions.</p> <p>(a) <u>(1) In accordance with subdivision (a) of Section 47602 of the Education Code, the California Department of Education, on behalf of the State Board of Education, shall establish and administer a numbering system to track the total number of charter schools authorized to operate in the state, based on the chronological order of the receipt of notification of charter approval or, in the case of a charter petition approved by the State Board of Education, the time of the State Board’s approval. The purpose of the numbering system shall be to ensure that the maximum number of charter schools that may provide instruction to pupils in this state is not exceeded at any time.</u></p>	<p>* Previous regulatory language required “Each charter petition granted pursuant to subdivision (j) of Section 47605 of the Education Code and each charter notice received by the State Board of Education pursuant to subdivision (i) and paragraph (5) of subdivision (j) of Section 47605 shall be given one number. For purposes of calculating the maximum total number of charter schools authorized to operate in this state, each petition shall be deemed to authorize one charter school.”</p>	<p><i>*Additional State workload without reimbursement or funding</i></p> <p>The activities of Section 11968 and 11969 are to be performed by the State Board of Education in accordance with EC §47602; however, the CDE believes it can absorb the additional cost of these activities within their existing budgets and resources.</p>
<p>Section 11969. Numbering of Charter School Petitions.</p> <p>(b) ...</p> <p>(3) <u>As necessary, the petitioner or petitioners for a charter school that has been approved by a local education agency shall provide the California Department of Education information regarding the applicability to the school of the conditions specified in subparagraphs (A) and (B) of paragraph (1) for purposes of assisting the State Board of Education in determining the appropriateness of assigning the school a single charter number or multiple charter numbers.</u></p>	<p>* No regulatory language prior to this amendment.</p>	<p><i>*Additional State workload without reimbursement or funding</i></p> <p>The activities of Section 11968 and 11969 are to be performed by the State Board of Education in accordance with EC §47602; however, the CDE believes it can absorb the additional cost of these activities within their existing budgets and resources.</p>

<p>Section 11969. Numbering of Charter School Petitions. <u>(b)...</u> <u>(4) The State Board of Education shall also assign multiple charter numbers to a charter school when the provisions of subdivision (c) apply.</u></p>	<p>* No regulatory language prior to this amendment.</p>	<p><i>*Additional State workload without reimbursement or funding</i></p> <p>The activities of Section 11968 and 11969 are to be performed by the State Board of Education in accordance with EC §47602; however, the CDE believes it can absorb the additional cost of these activities within their existing budgets and resources.</p>
<p>Section 11969. Numbering of Charter School Petitions. <u>(c) (1) When the chartering entity of an existing, numbered charter school allows the school to open one or more additional sites, the charter school shall notify the California Department of Education within 30 days (of the chartering entity's action being taken) in order for a determination to be made as to whether one or more additional charter numbers must be assigned to the school.</u></p>	<p>* No regulatory language prior to this amendment.</p>	<p><i>*Additional State workload without reimbursement or funding</i></p> <p>The activities of Section 11968 and 11969 are to be performed by the State Board of Education in accordance with EC §47602; however, the CDE believes it can absorb the additional cost of these activities within their existing budgets and resources.</p>

Summary:

- Costs for the new and amended activities identified in Sections 11968 and 11969 shall be absorbed by the CDE within their existing budgets and resources.
- Costs for the new activities identified in Section 11967.6 are unfounded, however, the CDE believes it can absorb the additional cost of these activities within their existing budgets and resources.

Do the proposed regulations impact local business?

No. The proposed amendments to the regulations should have no impact on local business.

This analysis reflects the attached Economic and Fiscal Impact Statement.

Donald E. Killmer, Consultant
Fiscal and Administrative Services Division

Date

Gerald C. Shelton, Director
Fiscal and Administrative Services Division

Date

Note: The purpose of the Department's review of regulations for Economic or Fiscal Impact is in part to, determine prior to the Department's submission of the Notice of Proposed Rulemaking to the Office of Administrative Law (OAL), if the regulations impose a mandate upon the locals and if so if there is a cost or savings. Additionally, the review may make a determination of what the cost or savings "may" be and if there is precedence in the determination of the potential costs through previous claims reimbursable through the mandate process authorized in state statute and set forth by the CSM.

If the Department determines that a potential mandate and an additional cost exists, the Department is required to forward that information (via the STD. 399 and this analysis) to the Department of Finance (DOF) for their review. The review by DOF does not need to be completed prior to the Department's submission of the Notice of Proposed Rulemaking to OAL but must be completed prior to the closing of the "Rulemaking Record" and prior to OAL forwarding of the "Record" to the Secretary of State. The DOF review contains an approval or disapproval; typically regulations that impose or could potentially impose an additional cost upon the state are disapproved and the department is required to amend the regulation to eliminate the cost or pull the "Record".