

SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal



Hearing Outcomes
(see actions under each issue)

Agenda Part "A"

Day: Thursday, May 13, 2010
Time: 9:30 am or upon adjournment of session
Room: Rose Ann Vuich Hearing Room (2040)

Consultant: Brian Annis

Transportation

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(The Department of Transportation issue on Proposition 1B bonds includes funding issues technically budgeted in State Transit Assistance (Item 2640) and Shared Revenues (Item 9350))

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2670 Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun

Department Overview: The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board) licenses and regulates maritime pilots who guide vessels entering or leaving those bays. The pilots, themselves, are not employees of the Board. However, the Board does pay stipends to pilot trainees.

January Governor's Budget Overview: The January Governor's Budget proposed expenditures of \$2.2 million (no General Fund) and 4.2 positions – a year-over-year decrease of \$876,000 and an increase of 0.2 positions. The Board is wholly funded through fees on shippers. The year-over-year budget change is primarily explained by the expiration of one-time funding related to legal defense of the November 2007 Cosco Busan collision with the San Francisco Oakland Bay Bridge, and expiration of one-time funding related to pilot training.

	2009-10		2010-11	
	Funding (\$1,000s)	Positions	Funding (\$1,000s)	Positions
Ongoing baseline funding	\$1,830	2.5	\$1,997	2.5
Limited-term funding related to the Cosco Busan incident	\$680	0.5	\$0	0
Limited-term funding for Pilot Training	\$438	0	\$0	0
2009-10 new permanent position	\$160	1.0	\$160	1.0
2010-11 Budget Request			\$75	1.0
TOTAL	\$3,108	4.0	\$2,232	4.5

March 11, 2010, Hearing and April Finance Letters: At the March hearing, the Subcommittee rejected a January budget request to add one clerical position to the Board. Subsequent to that hearing, the Administration submitted two April 1, Finance Letters (FLs), which are outlined below.

Issues proposed for Vote Only:

- 1. One-time Legal Costs (April FL #1):** The Administration requests one-time funding of \$233,000 (special fund) for costs associated with the legal defense of the Board in the various civil actions initiated after the Cosco Busan collision. As indicated on the prior page, one-time funding of \$680,000 for the Cosco Busan incident expires in 2009-10. At the March 11 hearing, the Board updated the Subcommittee on this litigation and indicated that costs would likely continue into 2010-11.

Staff Recommendation: Approve the request.

Action: *Approved on a 3 – 0 vote.*

- 2. One-time Pilot Training Costs (April FL #2):** The Administration requests one-time funding of \$162,000 (special fund) to provide pilot training in accordance within the regulatory safety interval. Due to retirements and other factors, the training cost in 2010-11 exceeds the baseline funding amount. As indicated on the prior page, limited-term funding of \$438,000 for pilot training expires in 2009-10.

Staff Recommendation: Approve the request.

Action: *Approved on a 3 – 0 vote.*

2600 California Transportation Commission

Department Overview: The California Transportation Commission (CTC) is responsible for the programming and allocating of funds for the construction of highway, passenger rail, and transit improvements throughout California. The CTC also advises and assists the Secretary of the Business, Transportation and Housing Agency and the Legislature in formulating and evaluating State policies and plans for California's transportation programs.

January Governor's Budget Overview: The January Governor's Budget proposes expenditures of \$3.9 million and 20.0 positions for the administration of the CTC (no General Fund) – an increase of \$569,000 and no change in positions. Additionally, the budget includes \$28.9 million in Clean Air and Transportation Improvement Bond Act funds (Proposition 116 of 1990) that are budgeted in the CTC and allocated to local governments. The Administration submitted one Budget Change Proposal, which is described below.

March 11, 2010 Hearing: The Subcommittee heard the CTC's budget on March 11 and left the below Budget Change Proposal (BCP) open for further review. The CTC did not submit any April Finance Letters.

Issues proposed for Discussion / Vote:

- 1. Design Build / Public Private Partnership Review (BCP #1):** The Administration requests a one-time increase of \$200,000 (State Highway Account) to contract out with a financial consultant to assist in the review of proposed projects under the design build contract method and the public private partnership (P3) program. This request is related to SB X2 4 (Statutes of 2009, Cogdill), which mandates that the CTC establish criteria and review projects for inclusion in these programs.

Staff Comment: In 2008, the Legislature approved two-year funding of \$100,000 per year for 2008-09 and 2009-10 for consultants to review High Occupancy Toll (HOT) projects associated with AB 1467 (Statutes of 2006, Nunez). Reviews in that program cost about \$50,000 per project; however, the scope of review was less broad because it only included the feasibility of toll revenues being sufficient to fund the cost of the project – not the contract terms of a P3. This year's BCP would include both the sufficiency of toll revenues (as applicable) and the terms of a P3 contract. Due to greater breadth of review, the cost is estimated to be closer to \$80,000 per project. So the budget funding would provide for two to three project reviews. Given the fiscal risk of these projects to the State, investing in a complete analysis of the proposed projects should be a prudent investment.

Staff Recommendation: Approve this request.

Action: *Held open. Staff directed to work with CTC to develop BBL to require CTC guidelines and review of P3 proposals to include privacy protection.*

2660 Department of Transportation

Department Overview: The Department of Transportation (Caltrans) constructs, operates, and maintains a comprehensive state system of 15,200 miles of highways and freeways and provides intercity passenger rail services under contract with Amtrak. The Department also has responsibilities for airport safety, land use, and noise standards. The Caltrans budget is divided into six primary programs: Aeronautics, Highway Transportation, Mass Transportation, Transportation Planning, Administration, and the Equipment Service Center.

January Governor's Budget Overview: The January Governor's Budget proposed total expenditures of \$13.9 billion (\$83 million General Fund) and 21,513 positions, an increase of about \$100 million and a decrease of 44 positions over the revised current-year budget. For comparison purposes, Administration is not distributed by program in 2010-11 as it is in the Governor's Budget.

Activity: (in millions):

Activity	2009-10	2010-11
Aeronautics	\$4	\$8
Highway: Capital Outlay Support	1,598	1,738
Highway: Capital Outlay Projects	6,820	6,180
Highway: Local Assistance	2,891	2,192
Highway: Program Development	82	75
Highway: Legal	113	126
Highway: Operations	187	201
Highway: Maintenance	1,233	1,303
Mass Transportation	223	587
Transportation Planning	151	164
Administration	457	1,293
Equipment Program (distributed costs)	(227)	(251)
TOTAL	\$13,759	\$13,867

Major Funding Sources (in millions):

Fund Source or Account	2009-10	2010-11
Federal Funds	\$5,172	\$4,797
State Highway Account (SHA)	3,085	3,597
Proposition 1B Bond Funds	2,560	2,937
Reimbursements	1,614	1,477
General Fund (Proposition 42 – Caltrans share)	531	0
Federal Revenue Bonds (GARVEEs)	498	496
Public Transportation Account	165	413
Other funds	134	150
TOTAL	\$13,759	\$13,867

March 11 and April 8 Hearings / April Finance Letters: The Subcommittee heard the Caltrans budget on March 11 and April 8, approving some requests, rejecting others, and keeping other issues open for further review. The Administration submitted a number of requests in April Finance Letters to revise January requests and to make new requests in other areas. Most of the April requests will be heard for the first time at the May 13 hearing.

Issues proposed for Vote Only:

(see also the summary table on page 7)

- 1. ARRA Oversight Positions – Mass Transit (April FL #3):** The Administration requests a shift of \$412,000 in federal funding to support 5.0 two-year limited-term positions for workload related to monitoring and reporting on American Recovery and Reinvestment Act (ARRA) projects administered at the local level. The positions would be funded by redirection of local-project money. Caltrans indicates these positions are necessary to fully comply with federal requirements.

Staff Recommendation: Approve the request.

Action: *Approved on a 3 – 0 vote.*

- 2. Pavement Management System Funding Amendment (April FL #6):** The Administration requests an amendment to the multi-year funding plan for the Pavement Management System approved in 2009-10. The project cost is still estimated at \$1.7 million; however, some expenditures are delayed until later years. This is an information technology (IT) project to obtain a commercial off-the-shelf software application and database that will allow the department to optimize the selection of future needed work to maintain highway pavement.

Staff Recommendation: Approve the request.

Action: *Approved on a 3 – 0 vote.*

- 3. Continuity of Operations Planning - Transfer (April FL #8):** The Administration requests a net-zero change in funding and positions, but a shift of three staff and \$321,000 (State Highway Account) from the Administration Program to the Maintenance Program to consolidate the Continuity of Operations / Continuity of Government (COOP/COG) functions. These positions are charged with planning and program development to respond to a catastrophic disaster.

Staff Recommendation: Approve the request.

Action: *Approved on a 3 – 0 vote.*

- 4. District 3 Marysville Office Building (April FL #10):** The Administration requests a permanent increase in operating expenses of \$2.4 million (State Highway Account) to pay debt service on the District 3 Office Building in Marysville and the Caltrans share of the Department of General Services (DGS) Central Plant in Sacramento. Both of these facilities were previously approved by the Legislature with the financing mechanism of lease revenue bonds.

Staff Recommendation: Approve the request.

Action: *Approved on a 3 – 0 vote.*

- 5. Various Appropriation Adjustments (April FL #12):** The Administration requests various changes to items of appropriation and some new reappropriations. Included are the following:

- A reduction of \$132,000 to reflect lease savings from a modular unit in District 1, (Eureka) due to the state exercising a contractual option to purchase the facility for \$1 at the end of the lease term.
- A reduction in the specialty facilities item of appropriation from \$39 million to \$18 million due to the California Transportation Commission reprogramming two projects to 2012-13. Budget bill language is also included to authorize the purchase of the modular unit in Eureka for \$1.
- Reappropriation for federal reimbursements. Budget bill amendments are requested to reappropriate expiring federal funds appropriations where projects are still active with unliquidated encumbrances.
- Various net-zero shifts in Proposition 1B items of appropriation – see the Prop 1B section of this agenda for further information.

Staff Recommendation: Approved this request, excluding the Prop 1B part which should be taken up in the Prop 1B agenda issue.

Action: *Approved staff recommendation on a 3 – 0 vote.*

- 6. May 1 Capital Outlay Request – Eureka Office (April FL #12):** The Administration requests \$687,000 (State Highway Account) to the working drawings phase of the Eureka District 1 Office renovation project. Future costs would include \$8.7 million for construction. The facility is 57-years old and the repairs would address fire-safety, heating and ventilation, and other deficiencies.

Staff Recommendation: Approved this request.

Action: *Approved on a 3 – 0 vote.*

Summary of Vote Only Issues:

Issue #	Issue Description	Action	Vote
1	ARRA Oversight Positions – Mass Transit	Approve	3 - 0
2	Pavement Management System Funding Amendment	Approve	3 - 0
3	Continuity of Operations Planning - Transfer	Approve	3 - 0
4	District 3 Marysville Office Building	Approve	3 - 0
5	Various Appropriation Adjustments	Approve, except exclude Prop 1B which should be taken up in the Prop 1B agenda issue	3 - 0
6	May 1 Capital Outlay Request – Eureka Office	Approve	3 - 0

Issues proposed for Discussion and Vote:

- 1. Update on Cash and Bid Savings (informational issue).** Recently, a Caltrans official was quoted indicating that the Great Recession has enabled Caltrans to save approximately \$2.4 billion in construction costs for major projects since 2006 due to competition and some bids coming in up to 40 percent less than estimates. Going forward, Caltrans and the CTC indicate bid savings may result in State Highway Operations and Protection Program (SHOPP) savings of \$600 million in the current year and \$1.0 billion over the next two fiscal years. Adding to cash balances, at the April 11, 2010, hearing, the Subcommittee took placeholder language to budget \$200 million in savings over 2009-10 and 2010-11 that is anticipated to result from continued operations savings such as reduced equipment purchases and reduced training and travel. Finally, the Administration indicates \$80 million in expected savings at Caltrans from the “Workforce Cap” executive order.

Bid Savings Allows for more Pay-go Financing and Less Bonding: Caltrans has indicated that due to bid savings and other factors, it does not intend to use the \$675 million in Grant Anticipation Vehicles (GARVEE) bonds (revenue bonds that use future federal revenue), which were authorized in the 2009 Budget Act, and will instead use cash. With the pay-go approach, \$175 million in interest costs are saved over the next 12 years. While the Administration’s “availability payment” proposal does not include state bonding, the future payments to the operator would include escalation for the time-value-of-money and the equivalent of interest costs to the state.

Transportation Loan Repayments: The 2008 Budget Act included a \$230 million Article XIX loan from transportation special funds to the General Fund and budget bill language requires repayment by June 30, 2011. The Constitution requires this loan be repaid in the third fiscal year from the date the loan was made, which would be 2011-12 instead of 2010-11. So the loan repayment could be deferred by one year for General Fund relief in 2010-11 of about \$250 million (including interest).

Major-Maintenance Contracts: Bid savings have been directed to accelerate SHOPP projects, but the shelf of SHOPP projects is being exhausted. Additional major maintenance contracts may be an option for consideration. Caltrans has found that additional maintenance activities provide out-year SHOPP cost avoidance of \$5 for every \$1 spent on maintenance today.

Staff Comment: The favorable bid environment has produced huge savings for the state, and is increasing the number of projects fundable from Prop 1B and federal stimulus funds. The LAO, the CTC, and Caltrans should comment on how the bid savings should be factored into the budget decisions related to GARVEE bonds, availability payments, and loan repayments. Additionally, should some savings go to augment major maintenance funding to produce cost avoidance in the future?

Action: No action – informational issue.

2. GARVEE Bonds (BCP #2). The Administration proposes an appropriation of \$680 million to fund the full multi-year debt repayment (generally over about 12 years) for Grant Anticipation Revenue Vehicles (GARVEE) bonds that Caltrans would like to issue in 2010-11. GARVEE bonds are revenue bonds backed by future federal transportation funding. The use of GARVEE bonds accelerates projects that would otherwise be delayed because of insufficient transportation funds – saving construction-inflation costs, and delivering the projects faster to travelers. The Administration identifies three State Highway Operations and Protection Program (SHOPP) projects for GARVEE funding in 2010-11: (1) the Sacramento I-5 Rehabilitation project; (2) the San Bernardino I-15 Rehabilitation project; and (3) the Los Angeles 710 Roadway Rehabilitation project. The Administration expects a 4.15 percent interest rate for GARVEE debt and a five percent construction inflation rate.

Background on past use of GARVEEs: Existing statute allows the California Transportation Commission to authorize GARVEE projects up to a level where GARVEE debt service reaches 15 percent of annual federal funding. The budget assumes GARVEE debt service of \$138 million in 2010, which is less than five percent of baseline federal funding. GARVEEs have been appropriated in three prior state budgets as indicated in the summary table below (in millions).

GARVEE Year	Amount Appropriated	Project amount	Interest amount	Unused GARVEE (Project amount)
2004-05	\$783	\$660	\$123	\$0
2008-09	\$181	\$141	\$40	\$43
2009-10	\$675	\$497	\$178	\$497
2010-11 proposed	\$680	\$495	\$185	?

The Administration does not currently anticipate using GARVEE bonds appropriated in the 2009 Budget Act; however, the January Governor’s Budget did assume the bonds would be used. The item of appropriation is specific to GARVEEs issued in the 2009-10 fiscal year, so the budget authority should not carry-over into 2009-10 if bonds are not issued.

Staff Comment: As discussed in the prior informational issue on cash, bid savings have augmented the department’s cash balances, and reduced the need for GARVEE financing. The Administration indicates it will not use 2009-10 GARVEE authority. While the Administration is still requesting new GARVEE authority for 2010-11, continued bid savings in the current year and budget year may result in the 2010-11 authority also being unnecessary. Accordingly, the Subcommittee may want to consider (1) reverting the 2009-10 GARVEE authority as technical conformity to the Administration’s updated plan, and (2) making any 2010-11 GARVEE authority contingent on Joint Legislative Budget Committee approval, to ensure that GARVEES are used only to the extent cash is unavailable (i.e., appropriate only \$1,000 for GARVEES, but add language to allow an augmentation up to \$680 million with JLBC approval).

Staff Recommendation: (1) Revert 2009-10 GARVEE authority; (2) Reduce 2010-11 GARVEE authority to \$1,000; and (3) add budget bill language to augment 2010-11 GARVEE authority up to \$680 million with JLBC reporting and demonstration by the Administration that cash resources are insufficient.

Action: *Approved staff recommendation on a 3 – 0 vote.*

3. Public Private Partnerships (P3s) / Availability Payments / Doyle Drive (BCP #13 as modified by April FL #17). The Administration proposes an appropriation of \$3.45 billion to fund multi-year “availability payments” (over about 30 years) for one designated highway project (a portion of Doyle Drive – about \$1.4 billion of the total) and other non-designated highway projects (about \$2.1 billion). “Availability payments” are a type of public private partnership (P3) where the private partner initially funds the project and then the state compensates the private partner with payments over many years – here, future federal funds are proposed with about \$115 million directed annually to this purpose over 30 years (for Doyle Drive, there would be a \$150 million payment upon completion of construction plus about \$38 million annually thereafter). The draft Doyle Drive lease agreement (available at: <http://www.catc.ca.gov/programs/DB-P3/P3/doyledrive.htm>) would provide the developer the right to impose tolls and user fees. If the developer exercises this right, it would have to be consistent with a November 26, 2008, MOU, which allows only “cordon tolling,” that would be a system of tolling on all vehicles entering San Francisco, but it is unclear if the MOU could be further revised.

April 1 Finance Letter Modifications to January Proposal (FL #17): The Administration requests to reduce the federal funds authority by \$495 million, and add State Highway Account (SHA) authority of \$495 million. This would respond to and LAO finding that the original proposal would not comply with federal rules that prohibit the use of federal highway funds for operations and maintenance.

Background on P3s: California has used P3s for past highway investments with mixed results – Route 91 linking Orange and Riverside counties and Route 125 in San Diego County are examples. Senate Bill X2 4 (Chapter 2, Statutes of 2009, Cogdill), revised the P3 process, by removing the statutory limit on the number of P3s and removing the Legislature from the approval process. The structure of this proposed P3 differs from prior P3s by using “availability payments.”

LAO Comments: Overall, the LAO finds the Governor’s proposal is “problematic” and recommends rejecting the proposal. However, the LAO also notes the Administration is reassessing its proposal and may submit an amended request in the spring (April Finance letter – see above). The full LAO March 2 report is available at: <http://www.lao.ca.gov>. The LAO makes the following findings and recommendations:

- SB X2 4 specifically requires that P3 project agreements include financing from toll or user fee revenues – the proposed agreement does not appear to be allowed under current law.
- The Doyle Drive proposal would fund the developers for project operations and maintenance out of federal funds – these costs are not eligible for federal funding.
- \$2.1 billion of the request is undesignated and budget bill language allows the Department of Finance open-ended authority to augment the \$3.45 billion. This provides little or no opportunity for legislative review and oversight.

- This proposal, as specified for Doyle Drive, may not reduce State costs. The Administration assumes the developer could reduce construction costs relative to the standard process, but the basis for this assumption is not identified.

Staff Comments:

- In addition to cash resources in the SHOPP program, the Administration could also utilize GARVEE bonds for the Doyle Drive project. So the Doyle Drive project will go forward in any case, the question is one of the best funding mechanism.
- The consultants' report does not include the option of GARVEE financing or other bonding options, which would likely show a lower cost to the state when net present value is considered.
- The consultants assume an 8.5 discount rate to calculate net present value (NPV) – for example, the NPV of a \$100 payment due in ten years is only \$40. Since this P3 makes payments over 30 years, the NPV is easily lower for this approach than for traditional pay-go financing. Any borrowing with an interest rate below 8.5 percent would seem prudent with this approach. This discount rate seems high due to a state's responsibility to preserve the quality of life for future generations. If the discount rate was lowered, the consultant's fiscal benefit of the proposal would quickly disappear.
- The consultants assume retained risk reserves of \$125 million in NPV for the traditional financing version versus \$47 million in NPV for this P3. This suggests that the State would achieve a \$78 million "saving" from shifting risk to the contractor in the P3. The risk premium savings seems too high, as the state is better able to absorb risk than a private contractor.
- A 30-year general obligation bond for \$500 million would typically cost about \$1.0 billion to pay off over thirty years. The 30-year cost of this P3 is estimated at \$1.4 billion.
- The uncertainty with respect to future tolling is troubling – if the State feels Doyle Drive is a good candidate for tolling, they should propose this, instead of leaving it to the discretion of the developer.
- The federal government recently awarded the project \$46 million in a discretionary Transportation Investment Generating Economic Recovery (TIGER) grant. This funding occurred after the Governor's budget was released.

Legislative Counsel Opinion: Subsequent to the March 11, 2010, Subcommittee hearing on this topic, the Legislative Counsel was asked to provide an opinion on two questions:

- Is a transportation project funded by a revenue stream of public agency availability payment, rather than toll or user fee revenues eligible to be undertaken under the provision of statute added by SB X2 4. Counsel believes SB X2 4 does not authorize availability payments.
- Is the Doyle Drive Replacement Project eligible to be undertaken as a transportation project under the provisions of statute added by SB X2 4. Counsel notes that SB X2 4 requires that only projects that are new or supplemental to existing facilities be considered for P3 financing – Doyle Drive would not

supplement the existing facility, but would rather *replace* existing lanes. Therefore, Counsel believes Doyle Drive fails this eligibility criterion to be considered for a P3.

Suggested questions / discussion:

- (a) The LAO should update the Subcommittee on developments since the March 11 hearing, including the April Finance Letter and the Legislative Counsel opinion.
- (b) The Administration should respond to the Legislative Counsel opinion.
- (c) The Administration should again explain why they are pursuing this project that does not produce new transportation dollars, is not authorized under current law, and would cost the state more money than traditional GARVEE bonds or other revenue bonds.

Staff Recommendation: Reject the BCP and related Finance Letter.

Action: *Rejected proposals on a 2 – 1 vote with Senator Cogdill voting no.*

- 4. Public Private Partnership (P3) Development Funding Reappropriation (April FL #16).** Last year, the Administration requested a total of \$9.4 million in State Highway Account (SHA) funding to develop a P3 program. The funding was split into three parts: (1) \$933,000 for 8.0 two-year limited-term positions; (2) \$1.6 million in onetime funding to develop the base P3 program with boilerplate contracts and analysis, etc.; and (3) \$6.9 million to develop five projects as P3 candidates (about \$1.4 million per project). The Legislature approved funding for staff and \$1.6 million for baseline P3 development. Funding for individual projects (\$6.9 million) was made contingent on approval by the Joint Legislative Budget Committee (JLBC) after Caltrans submitted a request with information on the projects and financing proposed. In this April FL, Caltrans requested to reappropriate the unspent balance of the \$6.9 million for expenditure in 2010-11.

April 15, 2010, JLBC Letter: In an April 15, letter, the Administration requests approval to expend \$500,000 of the \$6.9 million made available by Provision 12, of item 2660-001-0042 of the 2009 Budget Act. As this agenda was finalized, the JLBC had not acted on the request. Caltrans indicates that the \$500,000 would be spent in support of four projects. With one of the projects Doyle Drive (see the prior issue) and an additional two projects candidates for availability payments – only one of the four projects would consider tolls as the only financing option.

2009-10 Expenditures Inconsistent with Approved Budget: As indicated above, the Legislature approved \$1.6 million for general P3 development, with funding for specific P3 projects subject to JLBC approval. Caltrans indicates that instead of the budget plan, \$1.4 million has been spent on P3 work specific to Doyle Drive, with \$200,000 spent on general P3 work. Caltrans does note that some of the Doyle Drive documents, once complete, could be modified and used for other P3 projects. Given the legal and fiscal concerns with the Doyle Drive project, the state would have been better served if Caltrans had followed the budget direction to use the JLBC process to obtain project funding prior to embarking on costly analyses for that project.

Proposed Reappropriation Language is Flawed: The reappropriation language submitted with the April FL would appear to reappropriate any and all funds unexpended in item 2660-001-0042, not just those associated with P3 work. Additionally, the \$6.9 million was not technically appropriated, but rather allowable as an augmentation to the appropriation via the JLBC process. Staff recommends, as a technical matter, that new 2010-11 funding should be appropriated instead of a reappropriation of 2009-10 funds.

Staff Comment: SB X2 4 removes any numerical limits on the number of P3 projects that state and local sponsors may adopt. It does not speak to the Caltrans budget for hiring consultants to develop P3 candidates – that is dependent on the annual budget. The basic question for the subcommittee is how many P3 development projects should be funded in 2010-11. Given data from the Doyle Drive project, it might be expected to cost about \$1.5 million for consulting services

up to the point of CTC approval and an additional \$1 billion through contract implementation. Since Caltrans decided to pursue the availability payment approach to P3, which was not authorized with SB X2 4 (according to Legislative Counsel) and the future direction of the Administration in this regard is unclear, the Subcommittee may want to consider a robust reporting requirement that would again include JLBC notification prior to accessing project funding.

Staff Recommendation: Reject the reappropriation, but add budget bill language to allow a budget augmentation of up to \$3.0 million with JLBC reporting (this would fund about two P3 projects to be developed through the CTC approval process).

Action: *Approved funding of \$4.5 million to support P3 development on 3 toll-financed projects. Adopted budget bill language to specify the three projects that will receive this funding. Action on a 2 – 1 vote with Senator Cogdill voting no.*

5. Proposition 1B Summary: The January Governor’s Budget requests a total of \$4.0 billion for Proposition 1B in all categories for 2010-11. This issue was heard on March 11, 2010, and left open for further review. The third column below indicates the Governor’s January request (dollars in millions):

Proposition 1B Category	Total 1B Amount	2010-11 Gov Jan10 Requested Amount	2010-11 Suggested Adjustment	2010-11 Legislature Suggested Amount	Budget Entity
Transportation Categories appropriated within the Caltrans Budget:					
Corridor Mobility Improvement Account (CMIA)	\$4,500	\$1,148	(\$570)	\$578	Caltrans
State Transportation Improvement Program (STIP)	\$2,000	\$525	\$0	\$525	Caltrans
State Highway Operations and Preservation Program (SHOPP)	\$500	\$178	(\$159)	\$19	Caltrans
State Route 99 Improvements	\$1,000	\$311	(\$237)	\$74	Caltrans
Local Bridge Seismic Retrofit	\$125	\$23	(\$15)	\$8	Caltrans
Intercity Rail	\$400	\$72	(\$72)	(\$0)	Caltrans
Grade Separations	\$250	\$76	\$141	\$217	Caltrans
Traffic-Light Synchronization	\$250	\$80	\$102	\$182	Caltrans
Trade Infrastructure	\$2,000	\$674	(\$380)	\$294	Caltrans
State/Local Partnership	\$1,000	\$201	\$40	\$241	Caltrans
Transportation Categories appropriated in other Departments:					
Local Streets & Roads	\$2,000	\$0	\$0	\$0	Shared Revenues
Transit	\$3,600	\$350	\$1,150	\$1,500	State Transit Assistance
Air Quality and Transportation Security Categories appropriated in other Departments:					
School Bus Retrofit	\$200	\$0	\$0	\$0	Air Res. Board
Trade Infrastructure Air Quality	\$1,000	\$230	\$0	\$230	Air Res. Board
Port Security*	\$100	\$0	\$0	\$0	Emerg Mgt Agency
Transit Security*	\$1,000	\$103	\$0	\$103	Emerg Mgt Agency
TOTAL	\$19,925	\$3,971	(\$0)	\$3,971	

Additional JLBC authority if projects are delivered early

\$285

Total budget authority including JLBC

\$4,256

Prop 1B Budget Request Detail. While the Administration is requesting new appropriations totaling \$4.0 billion, the budget also reverts \$1.9 billion in unallocated Prop 1B appropriations from 2007-08 and 2008-09. None of the 2009-10 appropriation is proposed for reversion, but about \$800 million would be unallocated and carried over into 2010-11. The Administration also requests to extend 75 limited-term positions approved for Prop 1B workload in prior budgets. These positions are fully funded with Prop 1B funds. April Finance Letter 12 requests various net-zero shifts across items of appropriation to tie to the CTC's adopted program and project delivery.

Funding Adjustments to Reconcile to Project Delivery: The LAO indicated at the March hearing that the requested appropriation may exceed the number of projects ready-to-go in 2010-11, and recommended Caltrans reconcile the funding request to project lists. Caltrans has since provided that reconciliation and it indicates that, with the 2009-10 carryover considered, the January Budget request exceeds the project need for several categories. The adjustments indicated on the table on the prior page show the budget adjustments necessary to conform funding to the updated project delivery plan – staff understands that the Administration supports the funding adjustments to conform the budget to the project plan.

Funding Adjustment for State Local Partnership (SLP): The staff recommendation for SLP funding is higher than the Administration's numbers due to the unique nature of the program. SLP is intended as a five-year program with \$200 million allocated per year. The Administration proposes to revert \$40 million in unallocated SLP funding – staff recommends that \$40 million be added to the 2009-10 appropriation to keep pace with the five-year plan.

Funding Adjustment for Transit: The staff recommendation for transit funding is higher than the Administration's numbers due the unique nature of the program. Transit is allocated on a formulaic basis using the State Transit Assistance program in statute. Locals may swap allocations across years when mutually agreeable. The Administration proposes to fund at the level of \$350 million, although Caltrans indicates about \$700 million in projects are ready to go. Because of the formulaic nature of the program and limited ability of the locals to swap allocations, a higher level of appropriation – even higher than \$700 million – would be needed to move that level of projects. Staff recommends that the Legislature consider appropriating three years of expenditures (\$1.5 billion) for this Prop 1B program. Actual bond expenditures will likely be about \$700 million, more projects would get to advance, and the unallocated portion would carry-over to 2011-12.

Prop 1B Reappropriation - Transit and Local Streets and Roads (April Finance Letter Issues, Budget Items 2640-490 and 9350-490): The Administration requests to reappropriate 2007-08 and 2009-10 Prop 1B funds for transit and 2007-08 and 2009-10 funds for Local Streets and Roads. Due to the unique nature of these programs – these are formulaic grants – the reappropriation may be more appropriate than a reversion with a new appropriation.

Prop 1B Trailer Bill Issues: Two trailer bill issues have been brought to staff's attention that are not currently proposals of the Administration:

- Local Streets and Roads Use-or-Lose – current statute allows three years for cities and counties to expend their Prop 1B funding or they are required to return the funds. Due to deferrals of Highway User Tax Account (HUTA) and statutory allowance to use Prop 1B for local cashflow purposes, the California Association of Counties (CSAC) is requesting that the use-or-lose period be extended to four years for any year that the Prop 1B funds were originally received in a HUTA deferral year.
- Trade Corridors Improvement Fund - Current statute requires one-time reporting on or before February 18, 2009, on any memorandum of understanding (MOU) between a railroad company and state or local government concerning Prop 1B funds. Since new MOUs may be implemented going forward and there is continued interest in the railroad's expenditure of these funds, trailer bill language has been suggested by policy staff to require the California Transportation Commission to report to the Legislature on any new MOUs and to semiannually report to the Legislature on the status of the railroad projects.

Jobs, Jobs, Jobs: The infrastructure investments funded by general obligation bonds that voters approved in 2006 are a major tool for the state in job creation. As was indicated in issue #1, the favorable bid environment is resulting in huge costs savings for the state. Typically, every billion dollars in transportation spending is expected to create 15,000 jobs. So the amount of Prop 1B funding under the Legislature's consideration in this agenda, should result in approximately 60,000 jobs in the California economy.

Staff Comment: The Subcommittee may want the LAO to summarize all these Prop 1B issues and provide recommendations. Staff is not aware of any forthcoming May Revision Letters related to Proposition 1B, but should any be provided, the Subcommittee can consider those when submitted and reopen any Prop 1B action if warranted. While the level of Prop 1B appropriation in the staff recommendation matches that of the January Governor's Budget overall, the shifts across categories will result in more projects and more jobs because the funding is better directed to categories where projects are ready to go to construction.

Staff Recommendation:

- Approve the funding level for each Prop 1B category as indicated in the summary table – including conforming changes to budget bill language and technical adjustments as required.
- Approve the reappropriations for Transit and Local Streets and Roads as requested in April Finance Letters.
- Approve the continuation of limited-term Prop 1B staff resources as request in BCP # 5.
- Approve the placeholder trailer bill language fixes indicated above.

Action: Motion #1 – Staff recommendation excluding \$1.5 billion appropriation for transit, approved on a 3 – 0 vote.

Motion #2 – Staff recommendation to appropriate \$1.5 billion for transit, approved on a 2 – 1 vote with Senator Cogdill voting no.

- 6. Americans with Disabilities Act (ADA) Lawsuit (BCP #16 & April FL #9).** The Administration requests one-time funding of \$8.5 million (State Highway Account) to pay attorneys' fees in the ADA lawsuit that was settled in December 2009 (BCP #16). The request indicates that the exact amount of the payment is still undetermined, but the settlement agreement sets it between \$3.5 million and \$8.5 million. Final court approval of the settlement agreement is expected later this year. The Administration also requests \$3.6 million for three limited-term positions and contract resources to implement its ADA compliance program for 2010-11 and 2011-12 (April FL #9). The resources included in this request would provide staffing to develop and begin implementation of the department's new ADA compliance program, and contract resources to handle an increased number of complaints that the department expects under the new program.

Detail on ADA expenditures: While the budget requests only deal with the one-time attorneys' fees and program implementation resources, it should be noted the settlement includes agreement from the Administration to spend \$1.1 billion over 30 years to make sidewalks and other pedestrian facilities ADA-compliant. The settlement defines minimum expenditures per year as follows:

- Baseline funding is about \$10 million per year.
- Funding would increase to \$25 million per year beginning in 2010-11.
- Funding would increase to \$35 million per year beginning in 2015-16.
- Funding would increase to \$40 million per year beginning in 2025-26.
- Funding would increase to \$45 million per year beginning in 2035-36.

This funding would be accomplished within the State Highway Operations and Protection Program (SHOPP) funding. Since the funding for increased ADA construction investments is part of the SHOPP item, no separate action is necessary for that activity.

Staff Comment: For the attorneys' fees BCP, Caltrans indicates the final settlement is still pending. Absent a specific settlement figure, the Subcommittee may want to appropriate at the bottom of the range (at \$3.5 million) and add budget bill language (BBL) to allow for an augmentation of up to \$5.0 million with Joint Legislative Budget Committee (JLBC) reporting as needed to conform to the final settlement.

LAO Recommendation: The Analyst recommends approving the April Finance Letter for ADA settlement implementation by approving the \$3.6 million, but with the addition of the following Supplemental Report Language (SRL):

The California Department of Transportation (Caltrans) shall report annually for three years to the fiscal and policy committees of the Legislature, and the Legislative Analyst's Office, information about the department's American's with Disabilities Act (ADA) compliance program and efforts related to the settlement of lawsuits regarding violations of the act. The first report shall be provided no later than 12 months after the final settlement has been approved by the presiding court. Two

subsequent reports shall be provided annually thereafter. The reports shall provide the following:

- An overview of the department's ADA compliance program, and how the program fulfills each of the requirements of the lawsuit settlement.*
- A description of recent changes made to the department's ADA program that have been implemented due to requirements or recommendations from the ongoing implementation of the lawsuit settlement agreement.*
- The first report shall include total level of resources that the department has allocated to its ADA program for the preceding three fiscal years and the current year, including, (1) staff resources, (2) contract resources and, (3) capital outlay or other funds. The two subsequent reports shall include the current-year estimated and past-year actual level of these resources. All three reports shall include the total level of resources the department plans to allocate to the program in the budget year. Information should be broken down into major categories of work performed (such as program management, transition plan, complaints, and capital outlay). Approved and proposed budget changes should be referenced as applicable.*
- The first report shall include the number of ADA complaints received and investigated during the preceding three fiscal years, and the estimated number of complaints in the current year. The two subsequent reports shall include the current-year estimated and past-year actual numbers of complaints.*
- A summary of the capital outlay projects that have been completed, or are currently under development, to fix non-compliant facilities owned by the department, including the number of projects and their associated costs.*
- A summary of the capital outlay projects that are planned for future years in order to fix identified non-compliant facilities owned by the department, including the number of projects and their associated costs.*

Staff Recommendation:

- For BCP #16 for attorney fees: reduce funding from \$8.5 million to \$3.5 million, but add budget bill language to allow an augmentation of up to \$5.0 million with JLBC reporting and a 30-day review period.
- For April FL #9 for settlement implementation: Approve request plus LAO's supplemental reporting language.

Action: Approved staff recommendation on a 3 – 0 vote. Caltrans will update the Legislature once the court issues its final ruling, and the Legislature may consider reopening and adjusting this issue as warranted and as the budget timeline allows.

7. Project Initiation Documents – Workload & Funding (BCP #17 & April FL #2):

In the January Budget, the Administration requested to shift 96.5 positions and \$12.5 million from State funding (State Highway Account) to local reimbursement for department workload associated with Project Initiation Documents (PIDs), or initial planning documents, for locally-funded projects. In April FL #2, the Administration requests to modify the request by reducing the shift to reimbursements by 29.5 positions and \$5.0 million. The April letter additionally requests 14 new two-year limited-term positions and \$1.7 million in reimbursement authority to perform workload for the High Speed Rail Authority (HSRA) and the Natural Resources Agency. Finally, the April letter requests to shift two existing positions from Planning to Traffic Operations to better align the funding with the activity.

Updated Administration Proposal (through April Finance Letter)				
	Existing Staff Resources		New Staff for HSRA & Resources Agency	
	Positions	Funding (1,000s)	Positions	Funding (1,000s)
State Highway Account	-67.0 positions	-\$7,438		
Reimbursements	+67.0 positions	+\$7,438	14.0 positions	\$1,683
Net Change	0 positions	\$0 dollars	14.0 positions	\$1,683

Issue Background: This proposal is consistent with an LAO recommendation from last year to shift funding to local reimbursement for the preparation of PIDs by Caltrans on locally-funded projects on the state highway system. A primary criticism of the current approach is that locals request more PIDs than is optimal because they incur none of the cost. The shift was rejected last year and budget bill language required Caltrans to establish a workgroup with local agencies to identify cost sharing options. Staff understands this workgroup was unable to achieve consensus.

Staff Comment: The Subcommittee should hear from the LAO, the Administration, and the public, on this issue. Another option for consideration would be a cost-sharing option with locals – for example, 20-percent local cost sharing for PIDs. This would achieve the goal of locals internalizing the costs of PIDs before requesting a study, but also retaining the incentive to utilize Caltrans for PIDs work. Trailer bill language is necessary to implement the Administration’s proposal or any other level of reimbursement shift.

Staff Recommendation: Approve BCP #17 as modified by April FL #2. However, the positions related to HSRA should conform to the final action on the HSRA budget.

Action: *Left open pending responses by Caltrans to LAO questions.*

- 8. Advertising on Changeable Message Signs (January Governor's Budget).** The Administration requests budget trailer bill language to allow advertising on highway Changeable Message Signs (CMSs). No Budget Change Proposal was provided to explain or justify this request. No revenue is scored in the Governor's budget for this proposal, and no revenue estimate has been provided by the Administration.

Information from the Administration trailer bill language: According to the Administration trailer bill language, "the department would obtain private sponsors and advertisers who would provide additional transportation funding in return for the right to place advertisements on the updated emergency message signs in a manner that does not detract from the signs' public-service announcement function." The language indicates the proposal would require either a waiver from the Federal Highway Administration or a change in federal law. The language indicates the private sponsor and Caltrans would share advertising revenue, but the language does not specify what the state share would be. The language specifies Caltrans would not be required to adopt regulations, but would rather post guidelines on its website.

Staff Comment: The Administration should update the Subcommittee on this proposal and indicate if it has a revenue estimate, or if there has been any response from the federal government with regards to a waiver. There are traveler information and safety concerns with this proposal. Some CMSs are used to display travel times from one destination to another (which is not necessarily a safety issue, but is valuable information to travelers) – would this content be replaced with advertising? The signs would also pose concerns related to distracted driving and highway beautification. Finally, the Administration's proposal does not appear to provide any benefit to the state General Fund and would therefore not be a budget solution.

Staff Recommendation: Given the policy concerns and no General Fund benefit, reject this proposal.

Action: *Left open for further review.*

- 9. Roadway Design Software (RDS) IT Project (BCP #11):** The Administration requests an amendment to the multi-year funding plan for the RDS, which will replace the department's design software. This project was previously approved by the Legislature, but procurement issues have delayed the project. The total cost is \$10.1 million (State Highway Account). In the original Finance Letter for the 2008-09 budget, the department indicated: *"The selected RDS will replace the current software; Computer Aided Civil Engineering (CAiCE), which is antiquated in today's technology, will be discontinued, no longer enhanced, nor supported or updated by the vendor"*.

Issue Background: This issue was approved on the vote-only calendar at the March 11 hearing. Subsequent to that hearing, the vendor for the current system has indicated to Committee staff that they do have an enhanced product called "Civil 3D" that could be used by Caltrans as an upgrade under the current contract at no cost. However, the existing contract ends in early 2011, so some type of contract extension at an unknown cost would be necessary after that date to continue to use the updated product of the current vendor. Caltrans counters that the information from the vendor on upgrades has changed over time and that it would violate procurement statutes to continue to contract and substitute the Civil 3D product for CAiCE without competitively bidding the procurement because Civil 3D is a replacement product of CAiCE versus an upgraded version and, therefore, it is necessary to issue an request for proposal (RFP) which competitively bid the changed scope of work.

Suggested Questions: Given this new information and continued uncertainty over procurement options, the Subcommittee may want to hear from Caltrans, the Department of General Services (DGS) and the Office of the Chief Information Officer (OCIO) on the following issues:

- Could the existing system be upgraded for free by the vendor within the existing contract, and consistent with state contract law and regulation?
- Caltrans indicates a \$4 million cost of the switch to Civil 3D even if acquired for free due to training and other costs – what are the components of this cost?
- If the system is upgraded and Caltrans staff are trained for the upgrade, what would be the likely cost of the contract extension in early May 2011?
- Can the existing RFP process be used to evaluate the option of a contract extension with Civil 3D versus a new contract with other vendors?

Staff Comment: The Subcommittee should not be placed in the position of judging the quality of one vendor's product over another. However, the Subcommittee should have complete knowledge of the procurement constraints and options as it makes the funding decision.

Staff Recommendation: Contingent on testimony at the hearing.

Action: *No action taken (March 11, 2010, approval of BCP #11 remains the action).*