Senate Budget and Fiscal Review— Mark Leno, Chair

SUBCOMMITTEE NO. 4 Agenda

Senator Richard Roth, Chair
Senator Tom Berryhill
Senator Lois Wolk

Thursday, April 25, 2013
9:30 a.m. or Upon Adjournment of Session
Room 112

Consultant: Mark Ibele

Agenda Part A

State Administration and Local Finance

Overview of Redevelopment Agencies and Fiscal Impacts

Proposed Discussion / Vote Calendar:

Overview of Redevelopment Agencies and Fiscal Impacts

Presentation from the Legislative Analyst's Office and the Department of Finance, focusing on the process of the dissolution of redevelopment agencies, property tax distributions, and impacts on local agencies.

Legislative Analyst's Office
- Marianne O'Malley
- Brian Uhler

Department of Finance
- Chris Hill
- Andrea Scharffer

Background: Since the Governor initially proposed eliminating redevelopment agencies (RDAs) as a key component of the 2011-12 Budget, the Legislature has been grappling with the issues related to their dissolution and associated concerns regarding community development. The Governor's initial proposal was anchored by the perspective that the diversion of over $5 billion in property taxes to RDAs was no longer feasible and such resources should be more effectively channeled to cities, counties, schools and other local governments. After consideration of the Governor's proposal, the Legislature altered the approach by developing legislation that addressed the state's budgetary requirements while accounting for a continuing need for local economic tools.

The Legislature's approach, incorporated in the 2011-12 budget agreement, established an alternative voluntary redevelopment program pursuant to AB 27 X1, (Chapter 6, Statutes of 2011), but eliminated RDAs in AB 26 X1, (Statutes of 2011, Chapter 5) for communities that chose not to participate in the alternative program. RDAs could avoid elimination if the communities that formed them agreed to participate in the alternative voluntary redevelopment program and remit annual payments to K-14 education. The approach provided for significant budgetary relief, by allowing additional revenues to flow to K-14 education, but retained RDA functions for local governments in the long-term. The adopted budget assumed $1.7 billion in RDA payments would offset General Fund spending in the budget year and $400 million annually in subsequent years.

Following the passage of these complementary measures, the California Redevelopment Association challenged the constitutionality of both pieces of legislation. In its December 20011 ruling, the California Supreme Court held that AB 26 X1, allowing for the dissolution of RDAs was valid, but that the companion measure assuring their continuation was invalid. As a result, AB 26 X1 went into effect; RDAs were dissolved as of February 1, 2012, with their affairs, including the disposal of RDA assets, to be resolved by individual successor agencies. As a result of the court decision, property taxes that formerly went to RDAs were directed to existing 'pass-through' requirements for local agencies; successor agencies for the retirement of RDAs' debts and other obligations; and cities, counties, K-14 education and special districts.

The 2012-13 Governor's Budget incorporated the court decision, resulting in revised estimates for the General Fund offset for K-14 education funding requirements. The General Fund savings for 2011-12 was estimated at $1.1 billion (from $1.7 billion), but increased to $1.1 billion (from $400 million) for 2012-13 as a result of increased flow of property taxes. This resulted in a net gain over the two year period from the prior estimate. The 2012-13 Budget assumed that approximately $1.7 billion would be received by K-14 education and serve to offset the state's Prop 98 General Fund obligation, with an additional $1.4 billion to be received from freed-up former RDA cash and cash-equivalent assets during the budget year.

As part of the 2012-13 Budget, AB 1484 (Chapter 26, Statutes of 2012) provided additional tools for successor agencies, oversight boards, and the Department of Finance (DOF) to facilitate the orderly wind-down of RDA activities. AB 1484 created a process to: transfer former RDA housing assets to housing successor entities; require audits of various RDA funds and accounts to identify unencumbered funds that should be remitted to local taxing entities; and require the completion of a long-range property management plan to facilitate the disposition of RDA properties. The legislation also allowed local communities that received a 'finding of completion' from the DOF additional discretion regarding former RDA real property assets, loan repayments to the local community, and the use of proceeds from bonds issued by the former RDA. The finding of completion is an indication that all amounts determined to be due from the former RDA have been paid and satisfied.

Governor's Budget and Current Activities: The Governor's Budget includes no new initiatives regarding RDA dissolution or alternative community development approaches, but the ongoing procedures for existing policies represent a substantial commitment of resources. The process of winding-down a $5.0 billion plus annual program administered, controlled and implemented at the local level has proven to be exceedingly complex and time-consuming, in addition to being highly contentious. Thus, the central thrust of the Governor's proposal is to continue the process of unwinding the RDAs and facilitating the flow of additional property tax dollars to local governments, while maintain payments on existing obligations.

Ongoing workload related to the winding-down of RDAs involves the generation, submittal, and review of hundreds of so-called Recognized Obligation Payment Schedules (ROPS) each with a multitude of entries. Every six months, successor agencies must submit to DOF their ROPS, which indicates their proposed payments for the next payment cycle. The DOF reviews each ROPS to determine whether the identified payments are enforceable obligations. The successor agencies are then provided property tax allocations to pay the approved enforceable obligations. Any property tax revenue remaining after the enforceable obligations are paid is distributed to the affected taxing entities based on their property tax share. The additional property tax revenue received by local schools generally offsets the state's Proposition 98 General Fund costs.

As the background discussion suggests, accurately estimating the property tax revenue available for local governments has been a significant budgetary challenge. This is mainly because comprehensive information concerning the amount of property taxes required by RDAs for paying enforceable obligations was not available early on, nor was consistent data on cash assets available. Now that three payment cycles worth of information is available and cash assets are more apparent, more accurate estimates are possible. The Governor's Budget includes Proposition 98-related General Fund savings totaling $2.1 billion in 2012-13 and $1.1 billion in 2013-14. This is revised downward from the 2012 Budget Act estimate of $3.2 billion in 2012-13 and $1.6 billion in 2013-14, and accounts for both on-going revenues and the one-time distribution of cash assets. Going forward, the obligations of the former RDAs will continue to decline as debts are paid off and the ongoing savings to the state will increase. It is estimated that by 2016-17 approximately $1 billion in ongoing savings will be achieved.

Staff Comments: Many communities had significant numbers of complex projects currently funded by property tax revenues, as well as plans for additional redevelopment expenditures. A significant portion of former RDA funds are committed to the payment of existing obligations and, as a result, drafting a plan for local governments to unwind their RDA programs and successfully navigate the many legal, administrative, and financial factors has been complex. In particular, many communities have raised concerns regarding the completion of planned or partially finished projects.

RDA dissolution has prompted interest in developing a replacement program and a discussion of elements that such a program might contain. AB 1484 provided some additional tools for local communities, in that localities that comply with RDA dissolution requirements can retain and develop existing assets, as well as use bond proceeds from prior bond issues. Longer term solutions will require analysis on the proper roles—fiscal and otherwise—of state and local governments in supporting local government development efforts. There may be suitable options for programs that allow local discretion in community development efforts and provide accompanying fiscal tools, but eliminate the fiscal exposure to the state.

Proposed Discussion / Vote Calendar:

8885 Commission on State Mandates

Department and Budget Overview: The Commission on State Mandates (Commission) is a quasi-judicial body created for the purpose of determining the state mandated costs. The objective of the Commission is to impartially hear and determine if local agencies and school districts are entitled to reimbursement for increased costs mandated by the state consistent with Article XIII B, section 6 of the California Constitution. The Commission consists of the Director of Finance, the State Controller, the State Treasurer, the Director of the Office of Planning and Research, and a public member and two local government representatives appointed by the Governor and approved by the Senate.

For 2012-13, the Commission was budgeted at $1.6 million and 11 positions for state operations. This administrative support level is proposed to increase slightly to $1.8 million and 13 positions in the budget year. Costs associated with funding mandates proposed in the Governor's Budget are approximately $50 million in both the current and budget year.

Background and Detail: The Commission is responsible for determining whether a new statute, executive order, or regulation contains a reimbursable state mandate on local governments, and for establishing the appropriate reimbursement to local governments from a mandate claim. The Constitution generally requires the state to reimburse local governments when it mandates that they provide a new program or higher level of service. Activities or services required by the Constitution are not considered reimbursable mandates. The Constitution, as amended by Proposition 1A of 2004, requires that the Legislature either fund or suspend local mandates. Payments for mandate costs incurred prior to 2004 are one exception noted in the Constitution and such pre-2004 mandate costs can be repaid over time. Another exception in the Constitution is for mandates related to labor relations. In these cases, the state can defer payment of the mandates and still retain the mandates' requirements. In most cases, if the Legislature fails to fund a mandate, or if the Governor vetoes funding, the legal requirements are considered suspended pursuant to the Constitution.

Mandate reimbursement claims are filed with the Commission for the prior fiscal year—after that fiscal year is completed and actual costs are known. The state pays the mandate claims in the following fiscal year. For example, local costs incurred in 2011-12 are reported and claimed in 2012-13, and the state will reimburse locals for these costs as part of the 2013-14 budget. Suspending a mandate does not relieve the state of the obligation of reimbursing valid claims from prior-years, but it does allow the state to defer payment. For example, several elections-related mandates were suspended for the first time in the 2011-12 budget. This means the activities for locals were optional in 2011-12 and locals cannot claim reimbursement for any new costs incurred in 2011-12. However, the mandate claims for these costs in 2009-10 and 2010-11 are still due—either over time or all at once in the year when the mandate suspension is lifted. The state owes local governments approximately $1.8 billion in non-education mandate payments. Of this, about $900 million is associated with pre-2004 mandate claims.

Issues Proposed for <u>Discussion / Vote:</u>

1. **Mandate Reform (Discussion Issue).** Determining whether a particular requirement is a state-mandated local program and the process by which the reimbursable cost is determined is an extensive, time-consuming, and multi-stage undertaking. State and local officials have expressed significant concerns about the mandate determination process, especially its length and the complexity of reimbursement claiming methodologies.

   According to an LAO review a few years ago, it took the Commission over five years to complete the mandate determination process for a successful local government test claimant. The review of new mandates claims found that the Commission took almost three years from the date a test claim was filed to render a decision as to the existence of a state-reimbursable mandate. The Commission took more than another year to adopt the mandate's claiming methodology and almost another year to estimate its costs and report the mandate to the Legislature. Because of the current backlog, the delay can be even longer. The Commission has submitted a budget change proposal for 2013-14 to address the backlog issue and speed up the mandate process but the resulting improvements are still not expected to meet the statutory time frame.

   This lengthy period of review and determination presents several difficulties that affect both the state and local governments. Among the most important are flip sides of the same coin, specifically:

   - Local governments must carry out the mandated requirements without reimbursements for a period of some years, plus any additional time associated with development of the mandate test claim, appropriation of reimbursement funds, and the issuance of checks.

   - State mandate liabilities accumulate during the determination period and make the amount of state costs reported to the Legislature higher than they would be with an expedited process. Policy review of mandates is hindered because the Legislature receives cost information years after the debate regarding its imposition.

   In addition to the delays that characterize the review and determination process, there are other significant issues. On the cost determination side, since most mandates relate to expanding existing programs (rather than instituting completely new ones), local governments have difficulty in measuring the associated marginal costs. The complexity of the claiming methodologies means local governments' claimed costs frequently are not supported by source documents showing the validity of such costs or are not allowable under the mandate's reimbursement methodology. Accordingly, the State Controller's Office has disallowed a significant number of all reimbursement claims over the last few years, leading to frequent appeals, more uncertainty and mounting bills.

Staff Comment and Questions: The Administration indicates in the Governor's Budget that it will pursue policies to improve the mandate process, including deferring decisions to local government decision-makers and allowing for maximum flexibility. In addition, LAO has in the past recommended a 'best practices' approach for various local activities and requirements. The Legislature could consider these approaches and compare their advantages with policies adopted at the state level and the likely costs of such mandated programs. In addition, in some cases, reimbursement amounts for local government activities are well in excess of reasonable costs, which appear to warrant some additional oversight of reimbursement standards and practices.

<u>Questions:</u> (1) What suggested reforms do you have for the mandate process? (2) Absent fundamental reform, what are the best interim steps the Legislature can take to synchronize imposing requirements on local governments and awareness of cost imposed on the state? (3) What type of reforms are necessary to address incidents of high cost reimbursement claims by local governments?

Staff Recommendation: No action required. Information issue.

2. **Additional Staff for Timely Mandate Determinations (Governor's Budget BCP#1):** The Governor's Budget proposes an augmentation of $245,000 (General Fund) for additional staff for the Commission. The requested positions would be devoted to increasing the capacity of the Commission to better comply with statutory time frames and accelerate the reduction in the backlogs associated with various Commission activities, including: test claims, establishment and amendments to parameters and guidelines, statewide cost estimates, and incorrect reductions claims. The proposal is for one staff attorney and a senior legal analyst.

   Background: As noted in the discussion below, the mandate process suffers from a number of fundamental weaknesses. One of the areas of administrative shortfall is the timeliness of responses from the Commission with respect to the activities noted above. With limited resources, the Commission has made some progress in reducing the backlogs, and this proposal will further advance these efforts.

   Staff Comment: The proposal clearly does not address the more fundamental issues associated with mandate determination and cost reimbursement. Most of these issues must be addressed through legislation. Nevertheless, the proposal would result in additional progress to reducing the delays that are endemic in the current system.

Staff Recommendation: Approve the budget request.

Vote:

3. **Mandate Funding (Governor's Budget Proposal):** The Governor's mandate proposal is a continuation of the status quo in terms of mandates in effect and mandates not in effect**.** The Governor's Budget proposes expenditures of $48.4 million (General Fund) related to 13 non-education mandates. These 13 mandates are identical to those funded and kept in force during the current year, the payments on which constitute the bulk of the General Fund cost for this item. These mandates all relate to public safety or property taxes and are listed in the following table:

Mandate Funding in Governor's Budget
General Fund
(Dollars in Thousands)

Funded Mandate Title	Amount
Allocation of Property Tax Revenue	$520
Crime Victim's Domestic Violence Incident Reports	175
Custody of Minors-Child Abduction and Recovery	11,977
Domestic Violence Arrests and Victim's Assistance	1,438
Domestic Violence Arrest Policies	7,334
Domestic Violence Treatment Services	2,041
Health Benefits for Survivors of Public Safety Officers	1,780
Medical Beneficiary Death Notices	10
Peace Officer Personnel Records	690
Rape Victim Counseling	344
Sexually Violent Predators	21,792
Threats Against Police Officers	3
Unitary Countywide Tax Rates	255
Total	**$48,359**

Staff Comment: At the time the agenda was finalized, no concerns had been raised with this budget request. The mandates selected for funding continue the policy adopted in previous years by the Legislature.

Staff Recommendation: Approve the budget request for continued funding of selected local government mandates.

Vote:

4. Mandate Suspensions (Governor's Budget Proposal): The Governor's Budget proposes the suspension of numerous mandates in order to achieve budgetary savings. Many of these have been suspended for several years, typically as part of the budget process. In general, mandate suspension has not been subject to thorough policy review that would evaluate the costs and benefits of the mandate, but rather have been suspended solely for the purpose of budgetary savings. The policy decision to establish the mandate in the first place has not generally been a substantial component of the discussion.

Mandates proposed for suspension include mandates suspended in prior years (Group 1), immediate suspension of five new mandates with statewide cost estimates (Group 2), and four new mandates without statewide cost estimates (Group 3). These are discussed separately below.

<u>Group 1:</u> The mandates proposed for continued suspension are those mandates which have been previously suspended (Group 1). These are listed in the figure below.

Mandates Suspended in Governor's Budget
General Fund
(Dollars in Thousands)

Suspended Mandate Title—Group 1	Amount
Adult Felony Restitution	$0
Absentee Ballots *	49,598
Absentee Ballots-Tabulation by Precinct *	68
AIDS/Search Warrant	1,596
Airport Land Use Commission/Plans	1,263
Animal Adoption	45,321
Brendon Maguire Act*	0
Conservatorship: Developmentally Disabled Adults	349
Coroners Costs	222
Crime Statistics Reports for the Department of Justice & CSRDOJ Amended	160,705
Crime Victims' Domestic Violence Incident Reports II	2,010
Deaf Teletype Equipment	0
Developmentally Disabled Attorneys' Services	1,198
DNA Database & Amendments to Postmortem Examinations: Unidentified Bodies	310
Domestic Violence Information	0
Elder Abuse, Law Enforcement Training	0
Extended Commitment, Youth Authority	0
False Reports of Police Misconduct	10
Fifteen-Day Close of Voter Registration*	0
Firearm Hearings for Discharged Inpatients	156

Grand Jury Proceedings	0
Handicapped Voter Access Information*	0
In-Home Supportive Services II	444
Inmate AIDS Testing	0
Judiciary Proceedings (for Mentally Retarded Persons)	274
Law Enforcement Sexual Harassment Training	0
Local Coastal Plans	0
Mandate Reimbursement Process I	6,910
Mandate Reimbursement Process II (includes consolidation of MRPI and MRPII)	0
Mentally Disordered Offenders': Treatment as a Condition of Parole	4,909
Mentally Disordered Offenders' Extended Commitments Proceedings	7,215
Mentally Disordered Sex Offenders' Recommitments - Verify Name	340
Mentally Retarded Defendants Representation	36
Missing Person Report III	0
Not Guilty by Reason of Insanity	5,213
Open Meetings Act/Brown Act Reform	113,101
Pacific Beach Safety: Water Quality and Closures	344
Perinatal Services	2,337
Personal Safety Alarm Devices	0
Photographic Record of Evidence	279
Pocket Masks (CPR)	0
Post Conviction: DNA Court Proceedings	411
Postmortem Examinations: Unidentified Bodies, Human Remains	5
Prisoner Parental Rights	0
Senior Citizens Property Tax Postponement	481
Sex Crime Confidentiality	0
Sex Offenders: Disclosure by Law Enforcement Officers	0
SIDS Autopsies	0
SIDS Contacts by Local Health Officers	0
SIDS Training for Firefighters	0
Stolen Vehicle Notification	1,117
Very High Fire Hazard Severity Zones	0
Victims' Statements-Minors	0
Voter Registration Procedures*	2,481
	$408,703

LAO Perspective: LAO has raised questions regarding the six mandates slated for suspension by the Governor's Budget that deal with elections matters. The LAO recommended that these six mandates identified by an asterisk (*) in the table above not be suspended but rather funded in the budget, along with the direction that the Administration work with counties to explore alternative funding mechanisms.

Staff Comment: No concerns have been raised regarding the continued suspension of these mandates, other than issues noted by LAO. Staff notes that suspending the election mandates would not preclude the Administration from working with counties to explore alternative funding mechanism, as suggested by LAO. The selected mandates in the figure have been suspended in prior years.

Staff Recommendation—Group 1: Approve the continued suspension of all the mandates included in the table above.

<u>Vote:</u>

<u>Group 2:</u> The second group of mandates proposed for suspension is made up of five mandates with newly identified cost estimates. These comprise three mandates associated with elections—Modified Primary Election, Permanent Absentee Voter, and Voter Identification Procedures. These three mandates are considered by the committee as a separate agenda budget item. The remaining two mandates with statewide cost estimates are related to public safety—Domestic Violence Background Checks and Identity Theft—and will be considered in Senate Subcommittee #5. Note that these five mandates constitute the so-called “Reserve Builders”, the suspension of which generates $111.0 million in General Fund savings.

Staff Recommendation—Group 2: No action required in this item.

<u>Group 3:</u> The third group of mandates designated for suspension is made up of four mandates without statewide cost estimates, as yet. Two of these mandates—Tuberculosis Control and Interagency Child Abuse and Neglect Investigation Reports—will be addressed in Senate Subcommittee #3. The remaining two mandates in this group—California Public Records Act and Local Agency Ethics—are discussed below.

- **California Public Records Act.** The core provisions of the California Public Records Act (CPRA), relating to the right of residents to inspect public records and receive copies on request, are not reimbursable mandates. The reimbursable mandate portions of the CPRA relate to providing assistance to those seeking records, notification to the requestor regarding whether the records may be disclosed, and expunging home addresses and phone numbers of employees that relate to request. Suspension would not affect the obligations of local governments to comply with the core provisions of the CPRA. LAO recommends that the provisions of the law that constitute mandates be recast as optional ‘best practices.’ LAO indicates that the statewide costs—when they are provided—are likely to be in the tens of millions of dollars annually.

- **Local Agency Ethics**. The Commission determined that state law makes it mandatory for some local governments (largely general law cities, and certain special districts, that are required to pay compensation) to adopt policies relating to reimbursement of expenses and provide ethics training for officials who receive compensation. LAO points out the somewhat puzzling inconsistency of imposing the mandate on local governments (that are required to pay compensation) and not on others. LAO recommends changes in law that would make compensation optional for all local governments (thus removing the mandate) or exclude from the requirement those local governments that are obligated to pay compensation.

Staff Comment: There are important policy issues that are imbedded in each of the two mandate programs discussed in this item. LAO's proposal to recast the CPRA mandate as best practices makes policy sense, as it would require local governments to adopt the best practices or, alternatively, announce at the first public meeting that it was not going to adopt best practices. Similarly, for the Local Agency Ethics mandate, there are numerous issues associated with local government compensation and associated ethics that are best left to a policy discussion.

Staff Recommendation—Group 3: Approve suspension of Local Agency Ethics and California Public Records Act mandates.

<u>Vote:</u>

5. **Open Meeting Act Mandate (LAO Issue).** Most of the core requirements pertaining to California's Open Meeting Act preceded the 1975 operative date of mandate law and are thus not reimbursable. However, the Commission has determined that certain post-1975 procedural amendments to the Brown Act are a reimbursable state mandate. These "Open Meeting Act" mandates require local agencies to (1) prepare and post agendas 72 hours before a hearing, and (2) follow certain noticing and reporting procedures for items considered in closed session. The Open Meeting Act mandate has been suspended since 2011-12, and the Governor's budget proposes to suspend the Open Meeting Act mandate in 2013-14. Suspending this mandate would make local governments' compliance with provisions related to posting and preparation of agendas and closed session procedures optional in 2013-14.

   In November 2012, voters approved Proposition 30 which included language intended to prospectively exempt all provisions of the Open Meeting Act statutes from being considered a state-reimbursable mandate. However, the proposition did not explicitly set aside the Commission decision on the Open Meeting Act mandate. State law defines a process by which local governments and state agencies may request the Commission to issue a new mandate decision based on subsequent changes in law or other factors. Since Proposition 30 passed, no such requests have been filed with the Commission.

In the absence of a new Commission decision, the Legislature's requirement to fund, suspend, or repeal the Open Meeting Act mandate in 2013-14 is somewhat opaque. Although Proposition 30 states that the Open Meeting Act mandate statutes "shall not be a reimbursable mandate," it does not explicitly (1) set aside the Commission ruling on the Open Meeting Act or (2) modify the constitutional requirement that the Legislature fund, suspend, or repeal laws determined to be a reimbursable mandate.

LAO Perspective: In order to avoid the risk of litigation, LAO suggests the Legislature fund, suspend, or repeal the Open Meeting Act mandate in 2013-14, and direct DOF to file a request for a new Commission decision on the Open Meeting Act mandate as soon as possible.

Staff Comment: If the Open Meetings Act mandate were funded in the budget year, the fiscal impact would be significant. Suspension of the mandate allows the state to defer payment of prior year local government reimbursements of $113 million and avoid any additional annual cost.

Staff Recommendation: Direct DOF to file a request for a new Commission decision on the Open Meeting Act mandate as soon as practicable.

<u>Vote:</u>

6. **Repeal Selected Mandates (Governor's Budget—Proposed Trailer Bill).** The Governor has proposed trailer bill language that would effectively repeal five mandates by making them permissive. The proposal would make permissive five mandates that have been suspended since 1992. These mandates have been either pre-empted by federal law or state constitutional requirements or represent best practices that local governments have provided or should be providing to citizens without state involvement or reimbursement. The five mandates proposed for recasting as permissive are:

    - **Adult Felony Restitution**. The California Penal Code requires probation officers to recommend to the sentencing judge whether restitution to the victim should be a condition of a defendants' probation before a probation-eligible defendant is sentenced for felony conviction. The statute is now unnecessary. Victims have a right under the California Constitutional to restitution and courts must order restitution from the wrongdoer in every case where a victim suffers a loss—independent of probation's recommendation. The essential issue here, a victim's right to restitution, is protected by the Constitution. Therefore, making this statute permissive will have no effect on that core issue.

- **Victims' Statements-Minors.** The California Welfare and Institutions Code requires probation officers to obtain a statement from a victim of a felony committed by minor. The officer must include the statement in the officer's social study that is submitted to the court. Marsy's Law gives victims the constitutional right to give probation officers information regarding an offense's impact on them. These activities are part of a probation department's core responsibilities that by this time should be a "best practice" to conform to Marsy's Law.

- **Deaf Teletype Equipment.** The California Government Code requires counties, which provide any emergency services, to provide deaf teletype equipment at a central location within the county to relay requests for such emergency services. This mandate is preempted by federal law (Title II of the American with Disabilities Act (1990), and its implementing regulations, which prevent a public entity from denying a benefit to a qualified individual on the basis of his or her disability. Locals are potentially subject to an ADA lawsuit should they not provide this equipment.

- **Pocket Masks.** The California Penal Code requires law enforcement agencies to provide each peace officer a portable manual mask designed to prevent spread of communicable diseases when applying CPR. This should be a standard operating procedure that local agencies perform without regard to whether it is a reimbursable mandate, since local governments have an inherent interest to keep officers and the public safe by using such preventive measures.

- **Domestic Violence Information.** The California Penal Code imposes a reimbursable mandate by requiring the following from local law enforcement agencies: development and implementation of policies for officers' responses to, and recording of, domestic violence calls; preparation of a statement of information for domestic violence victims; monthly compilation of summary reports submitted to the Attorney General; and, development and maintenance of protection order records and systems to verify such orders at an incident scene. The statues that make up this mandate were enacted in 1984. Nearly 30 years later, society has a raised awareness of the seriousness of domestic violence crimes and enforcement of domestic violence-related offenses is a major part of local law enforcements' standard protocol. Consequently, the requirements in these statutes should be standard operating procedure without reimbursement.

Staff Comments: The mandates noted above have been suspended in excess of 20 years. During this time, local governments have not been required to carry-out the activity—based on state law. However, the first three mandates discussed are specifically pre-empted by federal law or the California Constitution. The latter two mandates should be carried-out by local governments as a matter of course.

Staff Recommendation: Approve the proposed trailer bill language.

Vote:

9210 Local Government Financing

Item Overview: The 9210 budget item includes several programs that make State subventions to local governments. In the current year the payments include $2.1 billion General Fund for constitutionally-required repayment of 2009-10 “Prop 1A” borrowing from local governments; a small subvention related to former Redevelopment Agencies (RDAs) to help retire a portion of outstanding debt that was backed by the personal property tax – (about $500,000), and a subvention of $1.5 million for Amador County and cities in the county.

Budget Overview: The proposed budget for the 9210 item is $1.8 million General Fund. Year-over-year comparisons show a major decrease in expenditures as Proposition 1A borrowing will be fully repaid in 2012-13. The amount proposed in the Governor’s Budget is for subventions to the Counties of Amador and San Mateo and the cities within these counties. The subventions are related to the so-called ‘Triple Flip’ and ‘Vehicle License Fee (VLF) Swap,’ both of which are described below. Since the Governor’s Budget, the administration now anticipates that the total subvention amounts for these counties may be closer to $1.6 million (approximately $200,000 for San Mateo and the remainder for Amador). However, there are also indications that Alpine County may be in a situation that could call for a state subvention. DOF indicates it will not know the final subvention amounts for each of these counties until following the May Revision.

Issues Proposed for <u>Discussion / Vote:</u>

1. **Subventions to Amador and San Mateo Counties (Governor’s Budget Proposal):** The Governor’s Budget proposes a General Fund subvention of $1.8 million to backfill Amador and San Mateo counties due to circumstances that reduced property tax directed to those county governments, and cities within those counties, in 2011-12. These circumstances also occurred in Amador County last year, and the state provided a subvention. The revenue losses will likely continue into 2012-13 and likely beyond, but the Administration indicates it has not determined at this time whether its proposal is one-time or ongoing.

   Background and Detail: Legislation enacted early in the Schwarzenegger Administration shifted local property tax from schools to cities and counties to accommodate two State fiscal initiatives. Schools were then backfilled with state funds for each of these initiatives. Overall, the fiscal changes resulted in a large net revenue gain for cities and counties as the replacement revenue streams have grown faster than the relinquished revenue streams. However, unique circumstances reportedly reversed this outcome in 2010-11 for Amador County and in 2011-12 for Amador and San Mateo counties, and it is possible this outcome could occur for a few additional counties in the future.

   In the 2004 primary election, voters approved Proposition 58, which allowed the state to sell Economic Recovery Bonds (ERBs) to pay its accumulated budget deficit. The local sales tax for cities and counties was reduced by one-quarter cent and the state sales tax was increased by one-quarter cent to create a dedicated funding source to repay the ERBs. Property tax was redirected from schools to cities and counties, and the state backfilled schools via the Proposition 98 funding guarantee. This financing mechanism is sometimes called the Triple Flip, and the process was intended to hold local governments harmless. At the time the ERBs are repaid (in 2016-17 or earlier), the local sales tax rate will be restored, and no flip—triple or otherwise—will be necessary.

Also in 2004, the Legislature enacted the VLF Swap. The measure was designed to provide a more reliable funding mechanism to backfill cities and counties for the local revenue decrease resulting from the action that the reduced the VLF tax on motor vehicle from 2.0 percent of a vehicle's value to 0.65 percent of a vehicle's value. Here again, the state redirected property tax from schools to cities and counties to make up for the VLF cut and backfilled schools for the property tax loses with state funds.

The backfill for the Triple Flip and the VLF Swap must originate from property taxes either shifted from the Education Revenue Augmentation Fund (ERAF) or from non-basic aid K-12 and community college districts (but not from so-called 'basic aid' schools). This funding mechanism stopped fully working for Amador County reportedly in 2010-11 due to all the schools in those counties becoming basic aid schools. Basic aid schools receive sufficient local property tax to fully fund the per-student amounts required by the Proposition 98 guarantee, and therefore, the state's funding is minimal. Due to this 'basic aid' situation, current law will not provide backfill for such schools for any property tax shifted to cities and counties. County auditors have reportedly reduced or discontinued the shift of property tax from schools to those cities and counties.

Staff Comments and Questions: The financing shifts and educational financing provisions are complex, and perhaps not entirely relevant to making a determination on this budget request. The subcommittee may instead want to focus on some broader ideas and issues:

- The funding shifts included revenue growth uncertainty and risk, as the relative growth of various revenue streams over many years was unknown. On a statewide basis, data suggests most counties, have received a net benefit from the shifts.

- There was no backfill guaranteed in the original legislation, although the Amador and San Mateo outcomes were also not anticipated. The enacting legislation did not include provisions for the state to backfill locals with new subventions if the baseline funding mechanism proved to be insufficient.

- At the time of the legislation, stakeholders were likely aware of the risk of variable levels of growth for different revenue streams, but may not have anticipated that outcome of all schools within the county becoming basic aid.

The committee may consider approving the budget request, with one-half the funding to be provided initially and the remainder to be disbursed upon a finding of necessity by the Department of Finance based on criteria established in budget bill language. Absent a finding by Department of Finance, the funds would revert to the General Fund.

<u>Questions:</u> *(1) Since the outcomes in Amador and San Mateo counties may not have been foreseen by the state or local governments at the time of bill enactment, does the state have a responsibility to backfill for this revenue loss? (2) Since many cities and counties are continuing to experience budget shortfalls, should the Legislature consider the fiscal conditions of the two counties relative to other counties as a factor in the determination? For example, has the decline in revenue for these counties since 2007-08 exceeded the statewide average?*

LAO Perspective: LAO suggests that the state could reimburse cities and counties for all triple flip and VLF swap funding shortfalls, as proposed in the Governor's Budget or, in recognition of the significant fiscal benefits cities and counties receive under the VLF swap, reimburse cities and counties only where necessary to replace actual sales tax and VLF revenue losses. Under this latter approach, no state funding would be provided to Amador and San Mateo counties for 2011-12 funding shortfalls. Either level of reimbursement could be accomplished through the budget or through a shift in property taxes. The former approach would be more revealing as to the cost, while the former would provide more revenue certainty for local governments.

Staff Recommendation: Staff recommends holding the item open, pending May Revision request. There is some indication that Alpine County may also require subvention.

<u>Vote:</u>

0509 Governor's Office of Business and Economic Development

Department Overview: The Governor's Office of Business and Economic Development (GO-Biz) was created to serve as a single point of contact for economic development and job creation efforts. The department offers a range of services to businesses including: business attraction, retention and expansion services; site location selection; permit assistance; regulatory filing and approval assistance; small business assistance; international trade development; and assistance with state government. Under the Governor's Reorganization Plan No. 2 (GRP 2), the Infrastructure Development Bank, the California Film Commission, the Office of Tourism, and the Small Business Loan Guarantee Program will be transitioned from the Business, Transportation and Housing Agency (BT&H) to GO-Biz, effective July 1, 2013.

Budget Overview: The department is budgeted for $20.1 million and 71 positions in 2013-14. This represents a significant increase in funding and positions, due largely to the shift of departments and programs from BT&H to GO-Biz. With the shift of programs and personnel, most of the funding (46 percent) is derived from California Infrastructure and Economic Development Bank Fund, with an additional 36 percent coming from the General Fund.

Issues Proposed for <u>Discussion / Vote:</u>

1. **Workload and Moving Expenses (Governor's Budget BCP #1):** The Governor's Budget calls for an additional three positions for activities associated with the GO-Biz program. The request calls for $564,000 in on-going funding and $286,000 in one-time funding. The three positions will provide for management of legal affairs, information technology and external affairs of the department. The positions include a deputy director for legal affairs, systems software specialist and a deputy director for external affairs.

   Background: On a temporary basis, the department has relied on other entities to assist with legal services, information technology and external affairs. Of the 28 positions received by the department in 2012-13, the areas addressed were small business, international trade, innovation, business attraction, business retention, legislation and administrative services. The original positions did not include staffing for the positions indicated in this budget request.

   Staff Comments: Staff has no concerns with this proposal.

   Staff Recommendation: Approve the budget request.

   <u>Vote:</u>