Senate Budget and Fiscal Review—Mark Leno, Chair

SUBCOMMITTEE NO. 4 Agenda

Senator Gloria Negrete McLeod, Chair
Senator Noreen Evans
Senator Doug La Malfa

Thursday, May 10, 2012
9:30 a.m. or Upon Adjournment of Session
Room 112

Consultant: Brady Van Engelen

Item Number and Title

1700	Department of Fair Employment and Housing
1705	Fair Employment and Housing Commission
2240	Department of Housing and Community Development
8840	California Commission on Uniform State Laws
0510	Office of Privacy Protection

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Vote Only Items

	Issue	2012-13 Amount	Fund Source	Staff Recommendation
	Department of Housing and Community Development (2240)			
1	Community Development Block Grant Funding Program	Reduction in Budget Authority		APPROVE
2	Transfer of Housing Assistance Program	Reduction in Budget Authority		APPROVE

2240 CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Issue 1 – Community Development Block Grant Program Funding

Governor's Budget Request: An April Finance Letter requests eliminating expenditure authority of $594,000 (federal funds) in State Operations and $31.9 million (all federal funds) in local assistance to reflect federal reductions to the Community Development Block Grant (CDBG) program.

Background: The reductions are requested to eliminate excess budget authority that has accumulated due to federal budget reductions. In the CDBG program, the amount of federal dollars that can be used for administrative costs is a percentage of the total cost, so when the grant is reduced, so are the dollars available to administer the program. This request aligns the budget with the federal resources actually available for the program.

Staff Recommendation: Approve the April Finance Letter

Issue 2 – Transfer of Housing Assistance Program

Governor's Budget Request: An April Finance Letter requests abolishing four positions associated with the Housing Assistance Program (HAP) and reducing HAP expenditure authority in the following three ways:

- $1.1 million in federal funds for State Operations
- $312,000 in General Fund for State Operations
- $5.5 million in federal funds for Local Assistance

Background: Due to reductions in both federal funds and General Fund support for the Housing Assistance Program the Department of Housing and Community Development (HCD) is transferring the HAP to local housing authorities. HCD has concluded that reduced funding has limited its ability to properly administer the program and found local housing authorities interested in continuing the program and providing services to Californians in need of Section 8 assistance for housing expenses.

This proposal would transfer the administration of 935 housing vouchers to the Stanislaus County Housing Authority, the Butte County Housing Authority, the Shasta County Housing Authority, and the Regional Housing Authority of Sutter and Nevada Counties. This transfer has been approved by the U.S. Department of Housing and Urban Development.

Staff Recommendation: Approve April Finance Letter.

Issues Proposed for Discussion / Vote

8840 CALIFORNIA COMMISSION ON UNIFORM STATE LAWS

Commission on Uniform State Laws: The California Commission on Uniform State Laws presents to the Legislature uniform laws recommended by the National Conference of Commissioners on Uniform State Laws and then promotes passage of these uniform acts.

The Commission consists of one Senator, one Assembly Member, six gubernatorial appointees, the Legislative Counsel, and life members based on service as a member of the Commission.

Issue 1 – Consolidation of California Commission on Uniform State Laws within the Legislative Counsel Bureau

Governor's Budget Request: The Governor's Budget proposes consolidating the Commission on Uniform State Laws within the Legislative Counsel Bureau. This consolidation would result in a savings of $148,000 General Fund.

Background: The California Commission on Uniform State Laws currently is staffed by the Legislative Counsel Bureau and works with the National Conference of Commissioners on Uniform State Laws to ensure that laws, particularly related to intrastate business, are uniform across the country.

Prior to the 2010 Budget, Act the Commission was supported by General Fund contributions. Since then, the commission has been funded through reimbursements provided by the Legislative Counsel Bureau.

Staff Comment: The original submission included the consolidation of the California Law Revision Commission in addition to consolidating the Commission on Uniform State Laws within the Legislative Counsel Bureau. However, there were some legitimate concerns raised regarding the consolidation of the California Law Revision Commission within the Legislative Counsel Bureau. Doing so would conflict with current statute, which states that “Neither the Legislative Counsel or any employee of the bureau shall oppose or urge legislation.” Consolidating the Law Revision Commission within the Legislative Counsel Bureau would have been in conflict with one of their primary responsibilities, which is to review state law and determine if there are areas within statute that can be more restructured to allow for a better understanding by the general public. The proposed consolidation of the California Law Revision has since been removed and the only consolidation included in the trailer bill language is the consolidation of the Uniform Commission on State Laws within the Legislative Counsel Bureau. Staff does not have any concern with the newly-proposed trailer bill language.

Staff Recommendation: Adopt trailer bill language to consolidate the California Commission on Uniform State Laws within the Legislative Counsel Bureau.

1700 & 1705 DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING AND THE FAIR EMPLOYMENT AND HOUSING COMMISSION

Department of Fair Employment and Housing: The Department of Fair Employment and Housing (DFEH) is responsible for protecting the people of California from unlawful discrimination in employment, housing, and public accommodations, and from the perpetration of acts of hate violence. The Department's jurisdiction extends to individuals, private or public entities, housing providers, and business establishments within the state.

The Governor's Budget proposes total spending of $21.6 million ($16 million General Fund) for the department in 2012-13, this would reflect a minor increase over spending in the current year. The proposed staffing totals 184 personnel years (PYs), a slight increase over the current year.

Department of Fair Employment and Housing 2012-13 Budget Overview

Fund Source	2010-11	2011-12	2012-13
General Fund	$14.38	$15.57	$15.98
Federal Trust Fund	$5.03	$5.43	$5.58
Total Expenditures	$19.41	$21.01	$21.57
Positions	178.1	183.3	184.0

(*dollars in millions*)

The Fair Employment and Housing Commission (FEHC): The Fair Employment and Housing Commission is a quasi-judicial body responsible for the promotion and enforcement of the state's civil rights laws concerning discrimination in employment, housing, and public accommodations; family, medical, and pregnancy disability leave; hate violence; and threats of violence. The seven members of the Commission are appointed by the Governor and confirmed by the Senate.

The Governor's Budget proposes total spending of $580,000 ($496,000 General Fund) for the Commission in 2012-13, this reflects a significant decrease to current year spending. The proposed staffing totals 2.5 personnel years (PYs), which is also a significant staffing decrease (50 percent).

The Fair Employment and Housing Commission Budget Overview

Fund Source	2010-11	2011-12	2012-13
General Fund	$0.79	$0.98	$0.49
Reimbursements	$0.04	$.17	$0.08
Total Expenditures	$0.83	$1.14	$0.58
Positions	5.0	5.0	2.5

(*dollars in millions*)

Issue 1 – Consolidation of Fair Employment and Housing Commission within the Department of Fair Employment and Housing

Governor's Budget Request: The Governor, through trailer bill language, proposes eliminating the Fair Employment and Housing Commission and transferring the Commission's adjudicatory and regulatory functions to the Department of Fair Employment and Housing. This would create a net savings of $391,000 to the General Fund in 2012-13.

The proposed trailer bill would eliminate the Commission on January 1, 2013, and shift its duties to the Department of Fair Employment and Housing. The proposal would shift .7 positions from the Commission to the Department in 2012-13, with that number growing to 1.5 positions in 2013-14, reflecting the consolidation for six months in 2012-13 and for the full year in 2013-14. The net impact would be General Fund savings of $391,000 in 2012-13, and $784,000 in 2013-14, and a reduction of 1.8 positions in 2012-13 and 3.5 positions in 2013-14.

Background: Currently, California has two state entities that can be utilized to minimize discrimination in housing and in the workplace.

The Department of Fair Employment and Housing receives complaints regarding discrimination and issues "right to sue" letters to complainants who wish to take their case to state Superior Court or investigates the complaint itself. After investigation, the Department can dismiss cases or acts as a conciliator, mediator or prosecutor and prosecutes cases before the Fair Employment and Housing Commission or in Superior Court. The Department received approximately 18,000 complaints during 2011.

The proposed trailer bill language would place the Commission's adjudication function within the Department, and the absorbed 1.5 positions would be Administrative Law Judges (ALJs) who would handle adjudicatory hearings. The proposed transfer of functions would require that the adjudication of employment and housing discrimination cases be handled by a *new* and distinct division within the Department of Fair Employment and Housing. This new entity would be called the Hearing and Mediation Division. The Department contends that an analogous system currently exists at the Division of Labor Standards Enforcement, where both adjudicatory and regulatory functions are carried out by one state agency.

According to the Department of Fair Employment and Housing, the department, after adding the 1.5 ALJ positions, would be able to absorb the added workload to conduct hearings and promulgate new regulations under the Fair Employment and Housing Act. DFEH notes that the number of accusations filed with the FEHC represent half of one percent of the complaints filed with the Department. Also, the additional Commission hearings that would be transferred to the Department represent less than one percent of the total Mediation Division workload at the Department.

The Fair Employment and Housing Commission is a quasi-judicial administrative agency which enforces California civil rights laws regarding discrimination in employment, housing, and public accommodations; pregnancy disability leave; family and medical leave; and hate violence. The Commission engages in five primary activities: administrative adjudication;

mediations; regulations; legislation; and public information and training. The Commission, which consists of seven members, are appointed by the Governor and with the advice and consent of the Senate.

Staff Comment: Various studies have shown that the Commission currently makes very few decisions, and, even fewer precedent setting decisions. The Administration has rightfully raised the question on the efficacy of a Commission that performs functions that could be absorbed by another equally qualified state entity.

However, as noted in the Assembly Budget Subcommittee No. 4 hearing, there are legitimate concerns with housing both the adjudicatory and the prosecutorial functions within the same department. The addition of safeguards, such as "firewalling" the Hearing and Mediation Divisions might not suffice in the future if there is a conflict of interest stemming from divided loyalties. Future administrations may take advantage of the proposed construct to their benefit.

While the caseload for the Commission has undeniably decreased, this proposal would remove the original intent of establishing the Commission; having an independent body determine the fate of complaints as an impartial decision maker.

Additionally, the dissolution of the Commission, and its Commissioners, would provide the Senate with less opportunity to conduct much needed oversight through the confirmation process. Staff would like to explore options that ensure the Senate still plays a role in the confirmation process, while also achieving General Fund savings.

Staff Recommendation: Hold Item Open

2240 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Department Overview: The mission of the Department of Housing and Community Development (HCD) is to preserve and expand safe and affordable housing opportunities and promote strong communities for all Californians. The HCD: (1) administers housing finance, economic development and community development programs; (2) develops housing policy and advocates for an adequate housing supply; and (3) develops building codes and regulates manufactured homes and mobile-home parks. The HCD also provides technical and financial assistance to local agencies to support housing development.

Budget Overview: The Governor proposes $275.3 million ($7.3 million GF) and 542.1 positions for the department – a decrease of $351.4 million. The precipitous decrease in funding is largely reflected in the agency expending nearly all of the proceeds of the Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C).

Fund Source	2010-11	2011-12	2012-13
General Fund	$8.48	$7.35	$7.37
Federal Trust Fund	$198.34	$189.45	$189.92
Other Funds	$269.62	$429.96	$78.06
Total Expenditures	$476.45	$626.77	$275.35
Personnel Years	522.7	543.5	542.1

(*dollars in millions*)

Issues Proposed for Discussion / Vote

Issue 1 – Housing Element Review

Background: State law requires each city and county to adopt a general plan containing at least seven mandatory elements including housing. Unlike the other general plan elements, the housing element is subject to detailed statutory requirements and mandatory review by a State agency, the California Department of Housing and Community Development. Housing elements have been mandatory portions of local general plans since 1969. This reflects the statutory recognition that housing is a matter of statewide importance and cooperation between government and the private sector is critical to attainment of the State's housing goals.

In 2007, the Legislature enacted SB 375 (Steinberg), Chapter 728, Statues of 2007, which sought to help the state achieve greenhouse gas emission goals outlined in AB 32 (Nunez), Chapter 488, Statutes of 2006, by reducing vehicle emissions. SB 375 requires regional greenhouse gas reduction targets, requires regional agencies to prepare land use plans for the regions that will help achieve the greenhouse gas reduction targets (known as a Sustainable Communities Strategy), and provides incentives for high-density, transit-oriented housing projects.

SB 375 changes the state Housing Element law in important ways – and, for the first time, links regional planning efforts for transportation and housing. Under the bill, all transportation and housing planning processes are put on the same eight-year schedule – that is, the housing plans must be updated once every eight years, which will now align with two 4-year Regional Transportation Plan planning cycles. The single largest sector of greenhouse gas emitters are cars and light trucks. While greenhouse gas emissions can be reduced by creating more fuel efficient vehicles, it is also a necessity to reduce the number of miles traveled to achieve the state's standards. Specifically, SB 375 integrated and aligned planning for housing, land use, transportation, and greenhouse gas emissions.

This change in timing will have a dramatic impact on HCD. Instead of receiving housing elements on a staggered schedule, SB 375's changes require that 85 percent of the state's 539 cities and counties will be submitting housing elements in calendar years 2013 and 2014. According to HCD, most jurisdictions submit a draft nine months prior to their due date. HCD spends, on average, 120 hours of staff time per element review. Further compounding time requirements spent on each jurisdictional review is the fact that most local governments submit at least four drafts prior to final submission of an element review.

Staff Comment: Currently, there are two personnel years dedicated to element review. Staff estimates have shown that this is far below the number of resources required to properly evaluate the impending element reviews that will be required in the next couple of years. Staff

fears that delays in the review process will inhibit much needed development from occurring at a time of economic fragility.

HCD has noted that they are in the process of forming a focus group comprised of key stakeholders and departmental staff to address the upcoming workload requirements. HCD has also noted that there are ways of streamlining the review process to ensure a timely response from the department. While there certainly are efficiencies to the review process that can be made, those efficiencies should not come at the expense of the Legislature's previous efforts to meet the needs of the public.

It is unlikely that efficiencies alone will achieve the needed response time to support local development. Therefore, staff recommends providing HCD with additional staff to support their element review efforts. Staff recommends augmenting the department's budget by $575,000 with disencumbered Prop 1C and 46 bond funds. While this does not represent a long term funding solution, it does provide the department with immediate support to address the pending workload increase that is expected in the next couple of months.

Staff Recommendation: Approve Budget Bill Language increasing Item 2240-001-0648 by $575,000, payable from the following accounts;

- Infill 2240-101-6069 (Prop 1C) $445,000
- Begin (Prop 46) 2240-101-6038 $35,000
- Begin (Prop 1C) 2240-102-6038 $95,000

Identified funding is to provide the department with five additional positions to support the element review process.

Vote:

0510 OFFICE OF PRIVACY PROTECTION

Office of Privacy Protection: The Office of Privacy Protection provides information and assistance to consumers on identity theft and other privacy issues and recommends policies and practices that protect individual privacy rights to business and government. The 2011-12 budget for the office includes $224,000 General Fund and $174,000 Special Fund and 3.3 positions.

Issue 1 – Proposed Elimination of the Office of Privacy Protection

The Governor's Budget proposes to eliminate the Office of Privacy Protection for a savings of $246,000 General Fund and $190,000 Special Fund. The Administration states that many other state, federal, and business resources exist that promote and protect the privacy rights of consumers.

Background: The Office of Privacy Protection is established in statute to "protect the privacy of individuals' personal information in a manner consistent with the California Constitution by

identifying consumer problems in the privacy area and facilitating the development of fair information practices…". The Office of Privacy Protection's mission is to be a resource and advocate on privacy issues. In addition to providing information and education for consumers, the Office of Privacy Protection also makes privacy practice recommendations to businesses and other organizations. The Office of Privacy Protection's primary activities are:

- Providing information and assistance to individuals on identity theft and other privacy concerns;
- Educating consumers, businesses, and other organizations on privacy rights and other practices;
- Coordination with law enforcement on identity theft, data breach, and other topics; and
- Providing recommendations to organization of privacy policies and practices that promote and protect the interests of California consumers.

The Administration first proposed eliminating this office in the 2011 May Revision. The subcommittee rejected that proposal.

Staff Comment: The Office of Privacy Protection performs a unique set of tasks in assisting consumers in understanding and addressing identity theft. Furthermore, the Office of Privacy Protection has been an integral component in assisting the Legislature in understanding the challenges facing consumers and law enforcement.

Staff Recommendation: Reject proposed trailer bill language and restore the Office of Privacy Protections funding.