

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Lois Wolk



Thursday, May 10, 2012
9:30 a.m. or upon adjournment of session
Room 113

Consultant: Kris Kuzmich

PART B

<u>Item</u>	<u>Department</u>	<u>Page</u>
PROPOSED VOTE ONLY ITEMS		
7100	Employment Development Department	2
	Issue 1 – Unemployment Insurance Loan Interest Payment.....	2
7350	Department of Industrial Relations	3
	Issue 2 – Compliance Monitoring Unit Cash Flow	3
	Issue 3 – Minor’s Temporary Entertainment Work Permit Program..	3
DISCUSSION / VOTE ITEMS		
0559	Labor and Workforce Development Agency	4
	Issue 4 – Labor Enforcement Task Force Reporting Language	4
7100	Employment Development Department	6
	Issue 5 – California Unemployment Insurance Appeals Board Restructuring Second Level Appeals	6
	Issue 6 – Single Client Database Data Center Costs	8
	Issue 7 – Disability Insurance Automation Project	9
7350	Department of Industrial Relations	10
8320	Public Employment Relations Board	10
	Issue 8 – Transfer of State Mediation and Conciliation Service to the Public Employment Relations Board.....	10

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-324-9335. Requests should be made one week in advance whenever possible.

Vote Only Items (Items Originally Heard on March 8, 2012)**EMPLOYMENT DEVELOPMENT DEPARTMENT (7100)****Issue 1 – Unemployment Insurance Loan Interest Payment**

Governor’s Budget Request. Similar to the approach taken in the 2011 Budget Act, the January budget requests a loan of \$417 million from the Unemployment Compensation Disability (DI) Fund to the GF to pay the September 2012 interest payment due to the federal government for the quarterly loans the Employment Development Department (EDD) has been obtaining from the federal government since January 2009 to cover the Unemployment Insurance (UI) Fund deficit and make payments to unemployment insurance (UI) claimants without interruption. This portion of the request includes budget bill provisional language.

To fund future interest payments for funds borrowed from the federal government to pay UI benefits, and to repay the funds borrowed from the DI Fund in both 2011 and 2012, the January budget requests to increase, through trailer bill language that requires a two-thirds vote (effective January 1, 2013), the employer surcharge payable to the Employment Training Fund by a total of \$472.6 million (\$39 per employee). The surcharge would be eliminated once the UI debt to the federal government is fully repaid and there is no longer a need to pay interest payments. Until that point is reached, the Administration indicates that this proposal would increase taxes on nearly every California employer by between \$40 and \$61 per employee per year, fluctuating each year to fully fund the interest costs due to the federal government.

In conjunction with the employer surcharge, and through trailer bill language, the January budget proposes to increase the minimum monetary eligibility to qualify for UI benefits to account for increases in employee wages that have occurred since the requirements were last adjusted in 1992. Under current law, to meet monetary eligibility requirements, a claimant must have earned: (1) at least \$900 in a single quarter and total base period earnings of \$1,125 or (2) at least \$1,300 in any one quarter in the base period. The budget increases the minimum eligibility to: (1) \$1,920 in the highest quarter and total base period earnings of \$2,400 or (2) at least \$3,200 in any one quarter in the base period. With these changes, approximately 40,000 individuals would no longer be eligible for UI benefits, saving \$30 million per year.

Staff Comment. This item was heard before this Subcommittee on March 8. Testimony was taken, but the item was held over for a vote due to a lack of quorum. Please see the March 8 agenda for detailed background information and LAO comments regarding this budget request.

Staff Recommendation: Approve the loan of \$417 million from the Unemployment Compensation Disability Fund to the GF to pay the September 2012 unemployment insurance loan interest payment due to the federal government, including the budget provisional language. Reject the other aspects of the request, including proposed trailer bill language, pertaining to: (1) the Employment Training Fund surcharge and (2) income eligibility for UI benefits.

DEPARTMENT OF INDUSTRIAL RELATIONS (7350)
--

Issue 2 – Compliance Monitoring Unit Cash Flow

Governor’s Budget Request. The January budget requests budget bill provisional language to allow the State Public Works Enforcement Fund (SPWEF) to borrow from the Uninsured Employers Benefits Trust Fund, Labor Enforcement and Compliance Fund, and/or the Construction Industry Enforcement Fund, for cash flow purposes.

Staff Comment. This item was heard before this Subcommittee on March 8. Testimony was taken, but the item was held over for a vote due to a lack of quorum. Please see the March 8 agenda for detailed background information and comments regarding this budget request.

Staff Recommendation: Approve the budget bill provisional language to allow the State Public Works Enforcement Fund (SPWEF) to borrow from the three specified funds for cash flow purposes, as modified, to specify legislative intent that the annual assessments for the Uninsured Employers Benefits Trust Fund and Labor Enforcement and Compliance Fund shall not increase as the result of any loan made to the SPWEF.

Issue 3 – Minors’ Temporary Entertainment Work Permit Program (AB 1401; 2011)

Governor’s Budget Request. The January budget requests increased expenditure authority of \$583,000 (Entertainment Work Permit Fund-EWPF) and four positions in 2012-13, and \$307,000 on-going, to comply with the requirements of Chapter 557, Statutes of 2011 (AB 1401), related to the minors’ temporary entertainment work permit program. Of the resources requested in 2012-13, \$250,000 is one-time to create an on-line application and payment system.

Staff Comment. This item was heard before this Subcommittee on March 8. Testimony was taken, but the item was held over for a vote due to a lack of quorum. Please see the March 8 agenda for detailed background information and comments regarding this budget request.

Staff Recommendation: Approve the request on a two-year limited-term basis.

VOTE:

0559**LABOR AND WORKFORCE DEVELOPMENT AGENCY (LWDA)*****Issue Proposed for Discussion / Vote*****Issue 4 – Labor Enforcement Task Force Reporting Language**

Governor’s Budget Request. The January budget removed budget bill provisional language requiring the LWDA to report on the progress of the Economic and Employment Enforcement Coalition (EEEC), a federal-state multi-agency partnership formed to combat the worst violators of federal and state labor, licensing, and tax laws operating in the underground economy.

Prior Budget Actions. The initial EEEC budget request was approved as three-year limited term in the 2005 Budget Act; the 2008 Budget Act extended the EEEC for two additional years. The 2010 Budget Act permanently established the EEEC, with 66 positions and on-going funding of \$7.208 million (special fund and reimbursements). Those positions were allocated as follows: LWDA – one position; Department of Industrial Relations (DIR) – 29 positions; EDD – 25 positions; and Contractors State License Board (CSLB) – 11 positions. The 2011 Budget Act required LWDA to report by January 1, 2012, on the progress of the EEEC and transferred authority and one position for the EEEC from the LWDA to the DIR, as part of a larger reorganization of LWDA.

Background. The goal of the EEEC is to target violators who operate in the underground economy and assist legitimate businesses that do comply with California law. Within the underground economy, employers utilize various illegal schemes to conceal their true tax liability, as well as reduce their operating costs associated with insurance, payroll taxes, licenses, employee benefits, safety equipment, and safety conditions.

In January 2012, as reported in the *SF Chronicle*, the EEEC was reconstituted and renamed the Labor Enforcement Taskforce (LETF). The Administration indicates that the changes were made in this time of scarce resources so the effort would be directed closely by the two key programs that enforce labor law issues. The Administration reports that all partner agencies of the EEEC are part of the reconstituted LETF, and that the Board of Equalization and Department of Insurance are new secondary partners. The Administration also reports that the LETF will be focusing more on labor law violations, specifically in low wage industries, with targeting of employers empirically based. The Taskforce also intends to evaluate the effectiveness of its efforts.

The LWDA submitted the required January 1, 2012, EEEC progress report on February 28, 2012. An additional LETF interim report was submitted on April 28, 2012, containing updated information from January 1, 2012. The interim report also provided detail on the value added of each entity’s participation in the LETF (versus the entity’s baseline accomplishments).

Staff Comment. When this issue was heard before this Subcommittee on March 8, it was noted that because the EEEC was a budget creation there is no statutory citation that delineates program priorities or parameters. Therefore, by eliminating the budget reporting requirement, venues to ensure legislative oversight were effectively limited. Since that

hearing, the Administration has provided a LETF interim report, detailing work since January 1, 2012. To ensure continued oversight of the LETF, and consistency with the original mission to combat the worst violators of federal and state labor, licensing, and tax laws operating in the underground economy, the Subcommittee may wish to consider reinstating a periodic reporting requirement through the annual budget act.

Staff Recommendation: Adopt the budget provisional language, instituting a biennial reporting requirement for the Labor Enforcement Task Force beginning on March 1, 2013, by adding the following provision to Item 7350-001-0001:

The Department shall report to the Director of Finance and the Joint Legislative Budget Committee by March 1, 2013, and biennially thereafter, on the accomplishments of the Labor Enforcement Task Force and its enforcement activities regarding labor, tax, and licensing law violators operating in the underground economy. The Task Force is funded at \$7.2 million and 66 positions (30 positions within the Department, 25 positions within the Employment Development Department, and 11 positions within the Contractors' State Licensing Board). Secondary partners of the Task Force include the Bureau of Automotive Repair, the Department of Alcoholic Beverage Control, and the State Board of Equalization. The report shall include, but is not limited to, the following information:

- a) The "value added" by the Task Force; i.e., distinct reporting of the baseline accomplishment(s) of each participating entity versus the additional accomplishment(s) achieved by virtue of its participation in the Task Force, and efforts to increase collaboration and coordination of the inter-agency enforcement efforts of the Task Force.*
- b) Efforts by the Task Force to develop targeting and statistical reporting methods that facilitate empirical identification of non-compliant employers.*
- c) Any recommended statutory changes to improve the operation of the Task Force, including data sharing across participating agencies.*
- d) Detailed objectives of the Task Force for the next reporting period and a description of how it intends to achieve those objectives.*

VOTE:

7100**EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)*****Issues Proposed for Discussion / Vote*****Issue 5 – California Unemployment Insurance Appeals Board: Restructuring Second Level Appeals**

Governor’s Budget Request. The January budget requests, effective January 1, 2013, the elimination of the California Unemployment Insurance Appeals Board (Board) and proposes a restructured second level appeals process for half-year savings of \$600,000 (\$3,000 GF, \$552,000 federal funds, and \$45,000 other funds) in 2012-13 and full-year savings of \$1.2 million in 2013-14 and on-going. The restructuring results in a net reduction of two positions (one position in 2012-13).

The request also includes the elimination of four vacant administrative law judge positions (two positions in 2012-13) due to declining workload. Finally, the request includes proposed budget trailer bill language.

This request was initially heard on March 8, 2012. Please see that agenda for additional background information.

Background. The Board was established in 1943 to provide due process for California claimants and employers who dispute unemployment and disability insurance benefit and payroll tax determinations made by the EDD. The Board consists of a seven-member board; five of these members are appointed by the Governor, with Senate confirmation, and the other two members are legislative appointees. Current law requires that two of the seven members be attorneys and that the Governor select the Chair. Current law also requires that each member of the board devote his/her full time to the performance of his/her duties. Members are compensated \$128,109 a year; the Chair is compensated \$132,179 per year.

The first, or lower appeal, is an appeal to an Administrative Law Judge (ALJ) in California Unemployment Insurance Appeals Board (CUIAB) Field Operations. The second, or higher level, is an appeal of the decision made by the Field Operations ALJ. These appeals are submitted to CUIAB Appellate Operations where each appeal is reviewed by a second level ALJ who then prepares a proposed written decision which is sent to two Board members. The Board members review the case and the second-level ALJ’s decision and decide the appeal case as a panel. If the two Board members cannot agree, then the Board Chair resolves the impasse. The Board additionally has the responsibility of designating decisions as precedent decisions, establishing regulations governing the CUIAB operations, and approving CUIAB’s operating budget.

The restructuring proposal in this request would eliminate the Board, add a Bureau Director who would be a Governor’s appointee subject to Senate confirmation, and would have four second level ALJ positions, which currently act as board authors, reclassified as “Presiding” ALJS (PAJLS) authorized to independently review and decide cases. To ensure impartiality, quality, and consistency, CUIAB would implement a quality control practice for decisions. The Board’s other duties would be assigned to permanent civil service staff. Finally, the

Board would be changed to a Bureau; in addition to the new Director, five additional upper-level management positions would be established.

Staff Comment. The Administration provided follow-up information in response to various questions and concerns that were raised at the March 8, 2012, hearing. Nonetheless, outstanding concerns remain. Under the current process, all parties, i.e., employers, claimants, and the EDD, benefit from a third party arbitrator. It is not clear that the restructured process would provide the same level of benefit. It is also not clear how replacing a Board where the majority of the members are subject to Senate confirmation, with a Bureau where only the director is subject to Senate confirmation, provides the same level of legislative oversight and checks and balances. This is crucial for several reasons, including that the Board is responsible for designating decisions as precedent decisions. The proposal does very little to improve the performance of the second level appeals process; it reduces the processing time of claims not randomly selected for quality control review by one to two days. However, in return for that decrease of one to two days, the restructured Bureau would not provide 100 percent review of the second level ALJ decisions (under the current structure, 100 percent review is provided). This potentially affects the quality and consistency of decisions over time and could also increase caseload (and costs and delays) in the civil court system, a system which has seen extensive budget reductions in recent years.

The LAO noted many of these same concerns with the Administration's proposal, and provided an alternative set of actions for the Subcommittee to consider. Staff concurs with the majority of the LAO's alternative, except for the components that would: (1) transfer the responsibility for issuing decisions on second-level appeals to ALJs and (2) reduce the compensation of Board members to align with the compensation of ALJs. With regard to the former, and similar to the Governor's January proposal, this approach would include random quality control reviews, which would result in less than 100 percent review. With regard to the latter, the point of the LAO alternative was to align Board compensation with that provided to ALJs. However, upon further review, staff finds that the current compensation of the Board is on par with ALJs, due to the fact that ALJs receive, in addition to their base salary, a pay differential for completing Judicial College. Further, senior level ALJs also receive an annual recruitment and retention bonus.

Staff Recommendation: Adopt a refined LAO alternative that retains the Board level review of the appeals caseload, including placeholder budget trailer bill language, as follows:

1. Eliminate two vacant ALJ positions in the budget year and four vacant ALJ positions in 2013-14, for savings of \$354,000 in the budget year and \$710,000 in the out years.
2. Maintain the Board but reduce its size and modify Board member qualifications, resulting in annual savings of \$360,000, as follows:
 - a) Reduce the size of the Board from seven to five members, with the Legislature retaining its authority to appoint two members and the Governor having authority to appoint the remaining three members, subject to legislative confirmation.
 - b) Align the required qualifications of the Board members with those of ALJs to, at a minimum, require Board members to be an attorney and have one year of experience in conducting judicial hearings or five years of experience in the practice of law.

VOTE:

Issue 6 – Single Client Database Data Center Costs

Governor’s Budget Request. An April 1 Finance Letter requests the addition of budget bill provisional language to authorize DOF to increase the appropriations in the Unemployment Administration Fund (UI Admin Fund) and the Unemployment Compensation Disability Insurance Fund (DI Fund), up to a cumulative total of \$2 million, should the efforts to reduce anticipated costs associated with the DB2 environment within the Single Client Database (SCDB) prove not to be entirely successful.

Background. Both the Unemployment Insurance (UI) and Disability Insurance (DI) programs are supported by a centralized database. EDD first automated this centralized database in the 1980s utilizing an Integrated Data Management System (IDMS) platform. Since that time, the database grew to be one of the largest of its kind in the world, managing 1.2 billion records for 17 million clients. However, in the three decades since adoption of the IDMS platform, other technologies were developed offering better support for critical UI and DI business functions, data, and transaction volumes. In 2009, EDD began plans for the SCDB Modernization project, and with support provided in subsequent Budget Acts, moved from the IDMS platform to a DB2 relational database management system platform which went live on November 28, 2011.

Since November 28, 2011, EDD has been involved in post-conversion activities, resulting in a better understanding of the DB2 platform technical environment and operations. Initially, the central processing unit (CPU) processing time in the DB2 environment was more lengthy than originally estimated. This caused increased costs for EDD. EDD has been working with Office of Technology Services (OTech) and the California Technology Agency to make the DB2 environment more efficient, including the collection and in-depth analysis of online job performance measurements, including evening batch workload. The Administration also reports that OTech will be releasing a new rate structure in the near future that may lower ongoing data center costs. However, if neither of these efforts results in the necessary savings, the UI and DI programs could be negatively impacted by the higher CPU costs.

Since its submittal of the April 1 Finance Letter, the Administration has modified the proposed budget bill provisional language. The Administration indicates that there is \$3.3 million that EDD will be able to absorb/redirect from OTech savings in 2012-13. The provisional language is intended to provide the ability to augment if actual costs realized are beyond the \$3.3 million. The revised language includes a cap of \$660,000 DI fund and \$1.32 million UI Admin Fund. This split is reflective of the historical funding for this project, whereby two-thirds was funded by the UI Admin Fund and the remaining one-third was funded by the DI fund.

Staff Comment. Staff agrees with the need for this provisional language to ensure EDD’s costs in the DB2 environment are covered. The proposed language includes notification to the Joint Legislative Budget Committee and a cap on the appropriation authority; these aspects of the request ensure appropriate legislative oversight. The Subcommittee may also wish to consider asking the Administration to informally provide periodic updates to the JLBC as to the status of the ongoing effort to manage costs within the DB2 environment.

Staff Recommendation: Approve the April 1 Finance Letter, including the Administration-modified budget bill provisional language.

VOTE:

Issue 7 – Disability Insurance Automation Project

Governor’s Budget Request. An April 1 Finance Letter requests a one-time augmentation of \$33.787 million (Disability Insurance Fund-DI Fund) to fund a net of 68 positions to support the fourth year of development, testing, and implementation of the Disability Insurance Automation (DIA) project.

Background. The DIA project was initially funded in the 2006 Budget Act. The DIA project will provide greater access to services for claimants, medical providers, and employers by allowing these individuals to use the Internet to submit claims data using a direct electronic interface or through web-based intelligent forms. This will simplify and automate the numerous manual work processes involved when a Disability Insurance claim is filed with EDD. Further, scanning/optical character recognition will be implemented to convert remaining paper claims to electronic format. Automated business logic will allow “in pattern” claims to be paid automatically, further increasing service delivery. The DIA project is scheduled for “Go Live” in summer 2012.

Of the positions contained in this request, 27 are new positions, 70 are existing positions, and 29 positions were eliminated due to a reduction in Key Data Operators, for a net of 68 positions. The reduction in Key Data Operators is a result of the DIA project providing Web-based intelligent forms, which removes key data entry tasks from Disability Insurance branch employees, thus saving on the amount of staff required to administer the program.

Staff Comment. The resources in this request are consistent with Special Project Report (SPR) 3, which was approved by the Technology Agency in November 2011. SPR 3 reflects a number of changes relative to SPR 2, including the project end date being extended from August 2012 to June 2013, scope changes to provide for an interface with the Single Client Database (SCDB) DB2 system. These changes are necessary, particularly with regard to the interface with the SCDB. As discussed in the prior agenda item, as of November 2011 EDD is operating in a DB2 environment, so it was necessary to revise the DIA project to ensure compatibility.

SPR 3 also reflects a total cost of increase of \$38.6 million (DI Fund) over SPR 2. While this is an accurate figure, it is potentially misleading given the extension of the project completion date. In addition, SPR 3 includes *possible* additional vendor support. The more meaningful figure is that one-time costs increased by \$6.1 million and annual support costs increased by \$2 million once the project is fully implemented. Additionally, should EDD become vendor independent sooner than expected, the additional resources may not be required.

On the point of vendor independence, staff notes that EDD is in a difficult position. As the Subcommittee is aware, EDD has simultaneously pursued a number of large information technology projects. Through various budget acts, the Legislature supported these myriad efforts to modernize EDD’s operations. As the projects, including DIA, collectively reach completion EDD faces a challenge to acquire, train, and deploy sufficient state resources to transition to support of the projects and terminate its need for vendor support. In this vein, the Technology Agency has required EDD to provide an enterprise wide resource plan by January 31, 2013, outlining how EDD will provide sufficient state resources to these projects.

Staff Recommendation: Approve the April 1 Finance Letter.

VOTE:

7350 DEPARTMENT OF INDUSTRIAL RELATIONS
8320 PUBLIC EMPLOYMENT RELATIONS BOARD

Department of Industrial Relations Overview. The objective of the Department of Industrial Relations (DIR) is to protect the workforce in California; improve working conditions; and advance opportunities for profitable employment. The DIR enforces workers' compensation insurance laws and adjudicates workers' compensation insurance claims; works to prevent industrial injuries and deaths; promulgates and enforces laws relating to wages, hours, and conditions of employment; promotes apprenticeship and other on-the-job training; assists in negotiations with parties in dispute when a work stoppage is threatened; and analyzes and disseminates statistics which measure the condition of labor in the state.

	2010-11 (actual)	2011-12 (estimated)	2012-13 (proposed)
Expenditures	\$359,739,000	\$412,395,000	\$425,114,000
General Fund	\$4,235,000	\$4,556,000	\$4,392,000
Personnel Years	2,449.9	2,701.8	2,717.3

Public Employment Relations Board Overview. The mission of the Public Employment Relations Board (PERB) is to administer and enforce California public sector collective bargaining laws in an expert, fair, and consistent manner; to promote improved public sector employer-employee relations; and to provide a timely and cost effective method through which employers, employee organizations, and employees can resolve their labor relations disputes.

	2010-11 (actual)	2011-12 (estimated)	2012-13 (proposed)
Expenditures	\$5,775,000	\$6,233,000	\$6,310,000
General Fund	\$5,763,000	\$6,221,000	\$6,298,000
Personnel Years	35.6	40.0	40.0

Issue Proposed for Discussion / Vote

Issue 8 – Transfer of State Mediation and Conciliation Service to the Public Employment Relations Board

Governor's Budget Request. An April 1 Finance Letter requests to transfer the State Mediation and Conciliation Service (SMCS) program, currently housed within the Department of Industrial Relations (DIR), to the Public Employment Relations Board (PERB). This request has a net-zero budget impact between the two budget items and a reduction of one limited-term position. This request includes proposed budget trailer bill language.

Background. The SMCS was established in 1947, beginning as a service to help employers and unions in the private sector avoid strikes and other disruptions to commerce through the use of neutral mediators. In the 1970s, the law was changed to have SMCS take on the responsibility of mediating labor disputes in the schools, community colleges, public higher education, local government, state government, transit, and (in recent years) the trial courts.

The Federal Mediation and Conciliation Service took over most of the private sector mediation work.

While the core of SMCS' public interest mission, to provide dispute resolution mediation services to labor and management parties, remains free to the parties, in 2009 statute was changed to authorize SMCS to charge fees for certain services. The 2009 Budget Act authorized two limited-term positions for two years based on the inauguration of SMCS' reimbursed services program. The 2011 Budget Act extended one of these positions through June 30, 2013. This request eliminates that position effective June 30, 2012. The Administration reports that reimbursement revenue is estimated at \$140,000 per year and there is no current data indicating that the amount of reimbursements can be increased above this level.

The Labor and Workforce Development Agency initiated this request, indicating that SMCS is a better organizational fit under PERB. Further, the Administration indicates that the proposal is consistent with other efforts to streamline state government through consolidations and operational efficiencies.

Staff Comment. Unlike the other consolidations and operational efficiency proposals that have been submitted to this Subcommittee by the Administration, this proposal does not include any projected savings. The Administration indicates that there are programmatic efficiencies that can be gained, as well as improved outcomes, by merging the SMCS into PERB. For instance, by having these entities work more closely together, the Administration indicates that improved communication could streamline the process for handling disputes and result in increased usage of alternative dispute resolution forums as opposed to more costly and time-consuming adjudicatory processes. If this proves correct, PERB could improve its caseload turn-around time, resulting in potential future budget savings. Further, it is worth noting that transition costs of roughly \$100,000 are being absorbed. Finally, because this is a transfer of budget authority and positions, without substantive policy changes (the proposed trailer bill consists of conforming, technical changes to the SMCS statutes), it is appropriate to pursue these changes through the budget process.

Staff Recommendation: Approve the April 1 Finance letter, including the proposed budget trailer bill language.

VOTE: