Senate Budget and Fiscal Review—Mark Leno, Chair

SUBCOMMITTEE NO. 5 Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Curren D. Price, Jr.

Thursday, May 23, 2013
10:00 a.m.
Room 113

Consultants: Mark Ibele & Brady Van Engelen

Part A

OUTCOMES

DEPARTMENTS TO BE HEARD

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7350	Department of Industrial Relations
7501	Department of Human Resources
7503	State Personnel Board
7900	Public Employees' Retirement System
7920	State Teachers' Retirement System
9650	Health and Dental Benefits for Annuitants
9800	Augmentation for Employee Compensation
CS 3.60	Contribution to Public Employees' Retirement Benefits
CS 4.20	Contribution to Public Employees' Contingency Reserve Fund

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AGENDA – PROPOSED "VOTE ONLY" ITEMS

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Summary Chart of Issues Proposed for Vote Only:

#	Issue	Amount	Fund Source	Staff Recommendation
	Department of Human Resources (7501)			
1	Alternative Retirement Program: Extension of Reimbursement Expenditure Authority Budget Bill Language	BBL	N/A	Approve 3-0
	Public Employees' Retirement Fund (7900)			
2	Incorporate CalPERS Board Approved Budget into the Budget Act	Various increases and decreases	Public Employees Retirement Fund	Approve 3-0
	Public Employees' Retirement System/Contribution to Public Employees' Contingency Reserve Fund (7900/CS 4.20)			
3	Dependent Eligibility Verification Audit	$2,005,000	Various Funds	Approve 3-0
	State Teachers' Retirement System (7920)			
4	Revised 2011-12 Creditable Compensation	$2.1 million	GF	Approve 3-0
	Augmentation for Employee Compensation (9800)			
5	Updated Health Care Enrollment Figures	$3,609,000 $1,467,000	GF Other Funds	Approve 2-1
	Contribution to Public Employees' Retirement Benefits (CS 3.60)			
6	California State University Employer Pension Contribution to CalPERS Budget Bill Language	$49.7 million and BBL	GF	Approve adjusted amount 3-0
	Employment Development Department (7100)			
7	Unemployment Insurance Loan Interest Payment Amount Update	Decrease of $29.744,000	General Fund	Approve 3-0
8	May Revision Updates, Unemployment Insurance, Disability Insurance, and School Employees Fund Adjustments	Various increases and decreases	Other Funds	Approve 3-0
	Department of Justice (0820)			
9	Remote Caller Bingo	$48,000	Other Funds	Approve 3-0

VOTE:

Items Proposed for Vote Only – Issue Descriptions

Issue 1 – Department of Human Resources (7501): Alternative Retirement Program Extension of Reimbursement Expenditure-Authority Budget Bill Language

Governor's Budget Request. In a Spring Finance Letter, the Governor requests budget bill provisional language allowing the Department of Human Resources (CalHR) to extend the expenditure period for reimbursed funds, received from the administration of the Alternative Retirement Program (ARP) in 2013-14, until June 30, 2017.

Background. Prior to the enactment of Chapter 296, Statutes of 2012, the ARP was a retirement savings program that certain state employees were automatically enrolled in for their first two years of employment. The ARP provided up to two years of retirement savings, in place of retirement service credit under CalPERS. Chapter 296, the Public Employees' Pension Reform Act of 2012, effectively eliminated the ARP by specifying that no new employees will enter the ARP on or after January 1, 2013.

However, the ARP will still exist as state employees who enter the ARP up to December 31, 2013, will be "active" and making contributions until their two years are up (no later than December 31, 2014). Those final employees will then be "inactive" until December 31, 2016. The period goes two years past the end of the ARP program because once an employee enters ARP, they are in the program for four years; however, the employee's department only reimburses CalHR during the first two years while the employee is active; and does not pay for the employee once they reach the inactive status. The funds a department pays in the first two years is sufficient for the four years that employee will be in ARP (hence the reason for needing an extension on the availability of the funds, but not needing additional funds). The Administration added a six-month buffer to allow billing to be received, and be paid, beyond the time when the last employee will leave the ARP program.

Staff Comment. Staff has no concerns with this request.

Issue 2 – Public Employees' Retirement System (7900): Incorporate CalPERS Board Approved Budget into the Budget Act

Governor's Budget Request. In a May Revision Finance letter, the Governor requests various adjustments (both increases and decreases) to the CalPERS Board of Administration Budget, to reflect the request by the CalPERS Board to incorporate its approved budget into the 2013-14 Budget Act.

Background. The annual budget act displays, for informational purposes only, the CalPERS' Board of Administration budget, as CalPERS' has continuous appropriation authority. The Governor's January budget includes the estimated CalPERS' Board of Administration budget for the upcoming fiscal year. On April 17, 2013, the CalPERS Board adopted a final budget. Adoption of this request will ensure that the final 2013-14 Budget Act will accurately reflect the CalPERS Board approved budget.

Staff Comment. Staff has no concerns with this request. It represents a necessary technical adjustment to the January budget.

Issue 3 – Public Employees' Retirement System/Contribution to Public Employees' Contingency Reserve Fund (7900/CS 4.20): Dependent Eligibility Verification Audit

Governor's Budget Request. In a Spring Finance Letter, the Governor requests a one-time augmentation of $2.005 million to support CalPERS' Dependent Eligibility Verification Audit of state employees and annuitants with dependents enrolled in health plans. The request includes $169,000 to audit members of the California Association of Highway Patrolmen and the California Correctional Peace Officers' Association, who elected to enroll in their unions' Benefit Trust plans, instead of plans covered by CalPERS.

In a conforming action, the Spring Finance Letter also requests that Control Section 4.20, the administrative rate paid by employers, be increased from 0.30 percent to 0.33 percent in Fiscal Year 2013-14, to provide increased revenue to the Contingency Reserve Fund, to cover the one-time augmentation.

Background. This subcommittee heard the Dependent Eligibility Verification Audit at its March 7 hearing as an informational item. That agenda provides details about the audit parameters and schedule. The Spring Finance letter provides the necessary resources to support the audit. It is estimated that removing ineligible dependents from employees' plans could result in approximately $21.5 million in health claims cost avoidance.

Staff Comment. Staff has no concerns with this request.

Issue 4 – California State Teachers' Retirement System (7920, 6300, 6878 and 6305): Revised 2011-12 Creditable Compensation

Governor's Budget Request. In a May Revision Finance letter, the Governor requests an increase of $2.1 million GF, over the Governor's January budget level, due to an increase in the creditable compensation reported by the California State Teachers' Retirement System (CalSTRS) for fiscal year 2011-12, which increases the GF retirement contribution for fiscal year 2013-14.

Background. This May Revision proposal constitutes a technical correction regarding the amount of GF contribution to CalSTRS, based on a revision of creditable compensation as reported for 2011-12. The true-up is a percentage-driven calculation and is the result of a lag in reporting of actual compensation. The January budget estimated 2013-14 contributions of $1.358 billion, based on an October 2012 report of prior-year teacher payroll by CalSTRS. The actual amount is based on the April 2013 submission by CalSTRS, which updated the prior-year teacher payroll.

This request represents a necessary technical adjustment to the GF CalSTRS payment for 2013-14. The budgeted payment amount consists of four separate components, as dictated by state law. The revision in the creditable compensation results in a total increase in

funding of $2.1 million. This increase consists of $814,000 in the Defined Benefit payment, $310,000 in the Pre-1990 Defined Benefit Level payment, and $1,009,000 for Supplemental Benefit Maintenance Account contribution.

Staff Comment. Staff has no concerns with this request. It represents a necessary technical adjustment to the January budget.

Issue 5 – Augmentation for Employee Compensation (9800): Updated Health Care Enrollment Figures

Governor's Budget Request. In a May Revision Finance letter, the Governor requests an increase of $3.509 million GF ($1.467 million other funds); over the Governor's January Budget, level to reflect updated health care enrollment figures.

Background. This statewide budget item allows for adjustments in departmental budgets to account for changes in employee compensation, including salaries and health and retirement benefits, based on a determination regarding the required funding levels.

Additionally, the Subcommittee may consider a "like pay-like work" salary adjustment for 14 supervisory scientist classifications. Beginning in 2006, the supervisory division of the California Association of Professional Scientists has argued their members were performing similar work as certain engineering supervisors and should be paid similar salaries. The Department of Personnel Administration (DPA) held a hearing on the issue and on April 28, 2008 recommended salary increases for the supervisory scientist classifications.

Despite this ruling, the classifications have never received an increase. This salary adjustment has never been included in a Governor's January budget proposal. If the adjustment were made for Fiscal Year 2012-13, it would add $12.1 million in costs, with only $2.3 million coming from the General Fund.

Staff Comment. Staff has no concerns with this request. It represents necessary technical adjustments to the January budget.

With regard to the supervisory scientist classifications, litigation involving CAPS and the state over this issue led to a state Court of Appeals decision in May 2011. The court found that the Department of Finance has no obligation to fund DPA-approved budget changes, but that Government Code section 13337 states that the information should be provided to the Legislature to allow it to make additional appropriations to fund proposed salary changes.

To address the DPA ruling that is now more than five years old, staff recommends creating a new Budget Bill Control Section to allow the salary changes.

Staff Recommendation. Approve May Revision request and an additional $100,000 and approve a new Budget Bill Control Section to appropriate the funds necessary to adjust salaries for the 14 supervisory scientist classifications.

Issue 6 – Contribution to Public Employees' Retirement Benefits (CS 3.60): California State University Employer Pension Contribution to CalPERS Budget Bill Language

Governor's Budget Request. The January budget provided a GF increase to fund the annual increase in costs for the California State University's (CSU) required employer pension contribution to CalPERS. In future years, and under proposed budget bill provisional and trailer bill language, CSU will continue to receive annual GF adjustments based on the 2012-13 payroll level; however, if CSU chooses to increase payroll expenditures above that level, CSU would be responsible for the associated pension costs.

Background. Senate Budget Subcommittee No. 1 heard the Governor's proposal on March 14, 2013, and took action to approve the proposal in concept, withholding determination of the "base payroll", year pending receipt of further information from the Administration. Subcommittee No. 1 will revisit this issue post the May Revision.

Staff Comment. Staff recommends approval of $49.7 million increase as a 'placeholder' amount pending receipt of the final notification of the required amount. Given that rates have not been determined as yet, the funding 'placeholder' will allow for the adoption of the final amount once rates have been determined.

Issue 7 – Employment Development Department (7100): Unemployment Insurance Loan Interest Payment Amount Update

Governor's Budget Request. In a May Revision Finance letter, the Governor requests a decrease of $29.744 million, in the amount of the General Fund interest payment due to the federal government, for borrowing that has occurred to provide unemployment insurance (UI) benefits.

Background. The January budget proposed utilizing $291.2 million GF to make the third interest payment, due to the federal government, for the quarterly loans that the EDD has been obtaining from the federal government since January 2009, to cover the UI Fund deficit (estimated at $10.2 billion at the end of 2013). The January budget estimated a federal interest rate of 2.9430 percent, resulting in the payment amount of $291.2 million. The federal Department of Labor has since announced that the 2013 interest rate is 2.5765 percent. Consistent with prior years, the department has updated the estimated interest payment amount in the spring based on the new interest rate and the May 2013 Unemployment Insurance Fund Forecast which estimates UI revenue and payments.

Staff Comment. Staff has no concerns with this request as it represents a necessary technical adjustment to the January budget. The subcommittee approved the GF payment for the interest payment due to the federal government at its March 7, 2013, hearing.

Issue 8 – Employment Development Department (7100): May Revision Updates, Unemployment Insurance, Disability Insurance, and School Employees Fund Adjustments

Governor's Budget Request. In a May Revision Finance letter, the Governor requests to adjust funding for the new estimates of claims and payments for the Unemployment Insurance (UI) Program, the Disability Insurance (DI) Program, and the School Employees Fund, as follows:

- UI Program and Benefit Adjustments. The May Revision Finance Letter includes a request to decreased UI benefits authority by $351.1 million in the Current Year (2012-13), and that the UI benefits authority be decreased by $72.0 million for the Budget Year.

- DI Program. The May Revision includes a request for a reduction of 22.9 temporary help personnel years (PY) and a decrease of $2.3 million for administrative support funding for the current year. Additionally, this request includes an increase of $181.2 million in DI benefits authority for 2012-13. For 2013-14, the May Revision Finance Letter includes a request for a reduction of 42.5 temporary positions and a $3.8 million decrease in administrative support funding. Included in this request for the budget year, is a request for an increase of $153.1 million in DI benefits authority.

- School Employees Fund (SEF). The May Revision includes a request to decrease payments to the School Employees Fund by $4.0 million. The reduction is due to an improving economy and a reduced contribution paid into the program by public schools and community college districts. Additionally, this May Revision request includes a request to reduce Current Year benefit authority by $33.418 million.

Staff Comment. Staff has no concerns with this request. It represents necessary technical adjustments to the January budget.

Issue 9 – Department of Justice (0820): Remote Caller Bingo

Governor's Budget Request. The Governor's May Revise includes a request for $48,000 from the California Bingo Fund in order to complete backlogged workload from the Gambling Control Commission, and associated licensing and field enforcement oversight of remote caller bingo charitable organizations, manufacturers, distributors, and vendors as mandated by SB 1369 (Chapter 748, Statutes of 2008). This request also includes trailer bill that would increase annual licensing fees.

Background. The Gambling Control Commission assumed responsibility of procedures related to the licensing of vendors wishing to conduct remote caller bingo related activities. Those responsibilities have subsequently been transferred to the Department of Justice's Gambling Bureau of Gambling Control (Bureau).

The workload required of the bureau is as follows: three initial license applications, sixteen renewal applications and forty-five individual renewal license applications. The Bureau

estimates that the current workload of processing these applications could be completed on an overtime basis by utilizing existing staff.

Staff Comment: In 2011 the Gambling Control Commission (Commission) ceased processing all workload associated with the Remote Caller Bingo program due to fiscal constraints. However, the decision to cease the program was met with opposition by vendors who had already been licensed or had the desire to be licensed. Legal action was taken against the Commission to continue all activities associated with remote caller bingo under the statutory requirements of SB 1369. In May of 2012 the parties entered into a stipulation and order, thereby staying the program's cessation. A court ruled in favor of the plaintiffs and ordered the Commission to continue to regulate the remote caller bingo program and to renew any licenses.

In accordance the Governor's GRP No. 2 the Bureau will assume the background investigation related workload on July 1, 2013. The requested funds will the Bureau to process existing licensees and to review pending licenses seeking licensure as a manufacturer, distributor, or vendor in accordance with current statute.

Staff Recommendation: Approve May Revise Request.

Items Proposed for Vote - Discussion

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT

Issue 1: Unemployment Insurance Program Administration Augmentation

The Governor's May Revise requests a one-time increase of $29.7 million, from the Employment Development Department (EDD) Contingent Fund, to allow the retention of 297 positions in the Unemployment Insurance (UI) Program that otherwise would be lost, due to inadequate federal funding.

Background: The U.S. Department of Labor funds the state's costs related to UI Program administration, which includes processing UI claims, answering phone calls and collecting payroll taxes from employers. As discussed in the Subcommittee's March 12, 2013 hearing, EDD officials note that federal funding to administer the UI program has fluctuated dramatically in recent years, and funding levels have not matched the state's funding request in more than a decade. The amount of funding states receive to administer the program is based on a formula tied to unemployment levels and other data, but in practice there are not sufficient funds available to provide states with the funding levels that the formula would dictate. Thus, over the past seven years EDD has received about 20 percent less funding than it should have to administer the UI program. EDD officials state that their projected funding need is $628.7 million in 2013-14, but projected federal funding will be $457.6 million – a $171.1 million gap.

Federal sequestration will further exacerbate this problem. EDD states that, in addition to the annual underfunding issue, sequestration may cut another $31.2 million from projected federal funding for this program. In all, the department could expect to lose more than 1,100 positions in 2013-14, due to the shortfall in federal funding.

The EDD Contingent Fund is supported by penalty and interest payments from employers who have not been compliant in paying employment taxes. EDD has traditionally only used this fund to support other department programs, and then transferred remaining money to the General Fund. The January budget projected the transfer of $29.8 million to the General Fund for 2013-14.Instead, the administration proposes in the May Revise, to use $29.7 million from this fund to support 297 positions that otherwise would be lost due to the shortfall in federal funds.

Staff Comments: EDD is the frequent target of complaints from citizens seeking answers to questions about unemployment insurance. Further loss of federal funding could make this problem worse.

As discussed in the March hearing, the department is pursuing information technology projects to increase efficiencies in the administration of the program. Additionally, EDD notes that will undergo a zero-based budget analysis for the 2014-15 budget to attempt to identify other efficiencies.

Staff Recommendation: Approve May Revise Finance Letter request.

VOTE: 2-1

7350 DEPARTMENT OF INDUSTRIAL RELATIONS

Issue 2: Cal/OSHA Program, Enforcement of Workplace Safety and Health Standards

Prior Subcommittee Actions. On March 7, 2013, the subcommittee examined, on an informational basis, the adequacy of the current Cal/OSHA enforcement and inspection process and program for ensuring workplace health and safety. In addition, and in light of the August 6, 2012 Chevron Richmond refinery fire, the subcommittee focused some of its discussion on the Process Safety Management (PSM) Unit within Cal/OSHA, whose purpose is preventing or minimizing the consequences of catastrophic releases of toxic, flammable, or explosive chemicals.

On March 7, 2013, the subcommittee redirected $350,000 (special fund), and four positions previously associated with the collection of the high hazard assessment, to the PSM Unit within the Cal/OSHA program (the high hazard assessment was repealed in a separate action on March 7, 2013).

Background. Cal/OSHA is responsible for enforcing occupational safety and health standards, investigating occupational injuries, and inspecting and permitting elevators, amusement rides, and passenger tramways. Funding for Cal/OSHA has historically come from the General Fund, several special funds, and federal funds. Since 2009, Cal/OSHA no longer receives GF support (except for $431,000 in support of a federally-matched injury and illness program). As part of the Budget Act of 2009, GF was replaced with revenue from the Occupational Safety and Health (OSH) Fund, which is an employer assessment on an employer's total workers' compensation insurance premium or on total "indemnity" (workers' compensation losses) for self-insured employers. OSH funding represents roughly 60 percent of the total funding for Cal/OSHA, with the remaining percentage funded by the Targeted Inspection and Consultation Fund and federal OSHA dollars.

Cal/OSHA staffing levels have remained fairly constant since 2009, although they reflect several across-the-board workload (staffing) reductions between 2009 and 2012 and, as required by the Administration, including, but not limited to, the reduction of "salary savings" or "vacant" positions, which could not be filled in any case. The same can be stated about staffing in the Process Safety Management (PSM) Unit within Cal/OSHA. The subcommittee action on March 7 will add four positions to the PSM Unit which, at that time, had seven inspectors and one field manager.

The LAO reported in February 2013 that employer assessments are an appropriate funding mechanism for Cal/OSHA, on a policy, basis because it is appropriate for the costs of regulatory activities to be paid for by the regulated community that creates the societal need for the regulation, and benefits from the regulation (such as being issued a permit to operate a business). For most state programs, it has been the policy of the Legislature to fund regulatory activities from fees.

In January 2013, Cal/OSHA found that Chevron did not follow the recommendations, dating back to 2002, of its own inspectors and metallurgical scientists to replace the corroded pipe that ultimately ruptured and caused the August 2012 fire. Chevron also did not follow its own

emergency shutdown procedures when the leak was identified, and did not protect its employees and employees, of Brand Scaffolding, who were working at the leak site.

In January 2013, Cal/OSHA issued close to $1 million in fines against Chevron, the biggest penalty in the department's history, and the maximum allowable under current law, for failing to replace the corroded pipe, not implementing its own emergency procedures, and violating leak-repair procedures. Cal/OSHA issued 25 citations against Chevron, 23 of which were classified as “serious” due to the realistic possibility of worker injuries and deaths in the fire. Eleven of these serious violations were also classified as “willful” because Cal/OSHA found Chevron did not take reasonable actions to eliminate refinery conditions that it knew posed hazards to employees, and because it intentionally and knowingly failed to comply with state safety standards.

Staff Comment. Based on the testimony on March 7, 2013, as well as reports released since that date by a variety of regulatory and oversight agencies, including the U.S. Chemical Safety Board, legitimate questions have been raised about the adequacy of the state’s current PSM Unit inspection process.

The process hinges on industries implementing a comprehensive safety plan that includes a precise determination of what hazards exist and procedures to eliminate or reduce them. Employers must ensure that machinery and equipment are in good condition, that work procedures are safe, that hazards are controlled, and that workers are trained to safely operate the equipment, recognize hazards, and respond appropriately in emergency situations. Then, based on data the PSM unit gathers from its own research and from other agencies, a programmed Program Quality Verification (PQV) inspection is scheduled, typically for one particular unit or process within a refinery and one element of the PSM regulations, for each of the fifteen refineries in California each year. Given resource constraints, these PQV inspections are not “wall-to-wall” comprehensive inspections.

The issue before the subcommittee is not the Chevron Richmond refinery per se, but rather broader questions about the Cal/OSHA program, and the degree to which the existing enforcement and inspection process and program is adequate to ensure workplace health and safety, particularly with regard to the PSM unit. In this vein, an area of subcommittee’s focus on March 7, 2013, continues to be especially crucial. Specifically why the Department of Industrial Relations has not utilized its existing statutory authority “to fix and collect reasonable fees for consultation, inspection, adoption of standards, and other duties” related to process safety management standards for refinery and chemical plants (Labor Code 7850 et seq).

The U.S. Chemical Safety Board has noted that a standard process for inspecting refineries would be 1,100 hours, annually. California currently has only enough inspectors to conduct 100 hours of inspections, annually. The average state employee works 1,824 hours per year. Based on the number of recommended refinery inspection hours, nine inspectors would be required to provide adequate inspections for the state’s refineries. In addition, office staff and a manager may be needed, as well as additional inspectors to work with the state’s 1,680 chemical plants.

Labor Code Section 7870 states that the department "may fix and collect reasonable fees for consultation, inspection, adoption of standards, and other duties" in relation to process safety management at these hazardous sites. The department currently does not collect such a fee.

Based on the U.S. Chemical Safety Board report stemming from the Chevron refinery fire, it appears that the department currently does not have enough personnel to ensure worker and citizen safety within these industries. The subcommittee may wish to consider adopting trailer bill language requiring the department to implement a fee by March 31, 2014, to support these activities. It appears that 15 additional staff may be the minimum amount needed to handle all of the required duties.

Staff Recommendation: Adopt placeholder budget trailer bill language requiring the Department of Industrial Relations to utilize its existing statutory authority to implement a fee by March 31, 2014, that will support at least 15 new staff to perform process safety management throughout the state and ensure refinery safety, thus conforming to the Assembly action.

VOTE: 2-1

7501 DEPARTMENT OF HUMAN RESOURCES
7503 STATE PERSONNEL BOARD

Issue 3: Additional Appointments of Exempt Employees

Background. Recent media reports brought transparency to a state human resources practice whereby managers with a fixed salary assumed a secondary rank-and-file position, within the same department. The subcommittee heard this issue on March 7. CalHR testified that it would complete its initial review of additional appointments of exempt employees, and have initial findings, as well as the outline of a solution, by the May Revision. This issue was held open pending receipt of further information from the Administration.

Since that hearing, the State Controller's Office has provided new data runs, detailing exempt employees with additional appointments, over the past five years as displayed in Figure 1 below.

Figure 1: Count of Unique Employees with Additional Appointments within the Same Department

Date	Unique Employee Count
April 30, 2008	1,015
October 31, 2008	950
April 30, 2009	821
October 30, 2009	982
April 30, 2010	1,036
October 29, 2010	2,114
April 29, 2011	964
October 31, 2011	899
April 30, 2012	842
October 31, 2012	561

Source: State Controller's Office

As was the case with the October 31, 2012 data run, that was the focus of the March 7, 2013, hearing, during the reporting period the state departments that were the highest utilizers of additional appointments were: (1) Corrections and Rehabilitation; (2) State Hospitals; (3) Social Services; and (4) Motor Vehicles. Further, Corrections was consistently the highest utilizer, representing roughly 47 percent of all additional appointments. The data also shows a correlation to furloughs, as the peak use of additional appointments coincides with peak usage of furloughs.

The affected departments assert that Section 350 of the Personnel Management Policy and Procedures Manual (PMPPM), dated January 1979, sets forth standards and guidelines surrounding eligibility for an additional appointment. Departments also point to Government Code Sections 19050-19237, as the statutes pertaining to additional appointments.

On January 30, 2013, CalHR issued Policy Memo 2013-007, to prohibit departments from making any *new* additional appointments while it undertook a review of: (1) the relevant laws, rules, and prior procedures that have been applied to additional appointments; and (2) each exempt employee additional appointment.

CalHR testified on March 7, that it would complete its review of additional appointments of exempt employees and have initial findings, as well as the outline of a solution, by the May Revision.

On April 25, 2013, CalHR issued Policy Memo 2013-15 to officially ban "additional appointments" for managers and supervisors. This action was taken in advance of the aforementioned reviews being completed. The memo suggests several other established options to address workload and schedule deadlines, including using non-managers, mandatory overtime, shifting employees between similar job classifications, and limited-duration job and training assignments. Finally, the memo reminds departments that they can pay managers an "arduous pay" differential for working extreme hours (arduous pay ranges from $300 to $1,200 per month and is authorized under current statute).

The State Personnel Board (SPB) separately testified, at the March 7 hearing, that it planned to work jointly with CalHR to update and develop one comprehensive human resources manual for state departments.

Staff Comment. As discussed on March 7, the state lacks a consistent statewide policy as to the use of additional appointments. Rather, the recent use of additional appointments appears, in many ways, to have been an "underground" human resources policy, as it was based on the state's Personnel Management Policy and Procedures Manual which dates from 1979, that has not been updated or available since 2000. In the same vein, a "policy memo" which is only effective until it is rescinded and replaced with a new memo, is not a sound structure upon which to base human resources decisions in the long-term.

Current state law does not prohibit additional appointments. An additional appointment does not violate the federal Fair Labor Standards Act (FLSA). However, there are separate tests under the FLSA to ensure that the exempt status of the primary position is not compromised, and to determine whether employees were compensated properly. Additional appointments are also not necessarily out of the norm, as a human resources policy. For instance, at Stony Brook Medicine, the academic medical center affiliated with Stony Brook University, the State University of New York, "extra service/dual appointments" are utilized, but under strict conditions. These conditions create an "arm's length" transaction, in that the additional position is in a different department or unit from the primary position.

In light of the April 25, 2013, policy memo, the subcommittee may wish to consider interim reporting to ensure that the issue of additional appointments for exempt employees, and the identification of a permanent statutory solution, does not recede from the public eye. In addition, the subcommittee may wish to consider following up on SPB testimony about its plan to work jointly with CalHR to provide a comprehensive human resources manual for state departments.

Staff Recommendation: Adopt budget trailer bill language to: (1) require CalHR to report by November 30, 2013, the findings of its review of managers and supervisors additional appointments; and (2) require the Administration to submit to the Legislature, as part of the 2014-15 Governor's January Budget, a statutory solution to the issue of managers and supervisors additional appointments, and a plan for and SPB to update the state's human resources manual.

VOTE: 3-0

7501 DEPARTMENT OF HUMAN RESOURCES

Issue 4: Implementation of In-Home Supportive Services Employer-Employee Relations Act

Governor's Budget Request. The January Budget, as modified on March 1, 2013, requests $282,000 GF, $281,000 federal funds; and, four positions to implement Chapter 45, Statutes of 2012, a budget trailer bill pertaining to the In-Home Supportive Services (IHSS) Employer-Employee Relations Act.

The modified request also includes budget bill provisional language providing a GF "backstop", should the federal funds not materialize as projected, and requires notification to the Joint Legislative Budget Committee should this "backstop" be utilized.

This request was first heard by the subcommittee on March 7, 2013. It was held open due to concerns about timing/delays; and to allow further consultation with Senate Budget Subcommittee No. 3 because this issue is a very small part of the much larger Coordinated Care Initiative, which is in the jurisdiction of Subcommittee No. 3.

Background. The Budget Act of 2012 authorized the Coordinated Care Initiative (CCI), whereby persons eligible for both Medicare and Medi-Cal would receive medical, behavioral, long-term supports and services, and home- and community-based services coordinated through a single health plan in eight demonstration counties (Alameda, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, and Santa Clara). Chapter 45 contained the necessary statutory changes to implement the human services provisions related to the integration of services, including IHSS, into the CCI.

In 2012, there were around 380,000 IHSS providers with hourly wages, varying by county, and ranging from $8.00 to $12.20 per hour. Prior to July 1, 2012, county public authorities and nonprofit consortia were designated as "employers of record", for collective bargaining purposes, on a statewide basis, while the state administered payroll and benefits. Pursuant to Chapter 45, however, collective bargaining responsibilities in the eight counties participating in the CCI, will shift to an IHSS Authority administered by the state.

The resources in this request are based on an estimate that assumes in June 2014, collective bargaining responsibility will begin to transfer to the Statewide Authority and CalHR will be expected to bargain on behalf of the Statewide Authority. The Administration indicates that the four positions in this request will allow CalHR to begin to prepare a collective bargaining platform on behalf of the Statewide Authority, including examining current contracts, observing bargaining sessions, identifying bargaining complexities, building working relationships, and determining legal and health benefit complexities. These staff will also assess the resources needed to begin full implementation of this program in July 2014. Of the four positions, two are in the Labor Relations Division, one is in the Legal Division, and one is in the Benefits Division.

Staff Comment. The scheduled phasing for enrollment in the CCI in the eight pilot counties has been further delayed by five months, from the schedule the Administration presented in

January. It is now estimated that the only county moving to the statewide authority in 2013-14 is San Mateo, and not until February 2014 (previous estimate was September 2013).

Staff acknowledges that Chapter 45 presents new workload for CalHR and this workload is not absorbable within existing resources. However, it is clear that the Administration's schedule estimates continue to slip, which impacts workload drivers. As such, it appears the total resources requested in 2013-14 are no longer justified.

Staff Recommendation: ~~Approve two positions and $141,000 GF and $141,000 federal funds to begin implementation of Chapter 45.~~ Adopted Governor's proposal

VOTE: 2-1

Issue 5: Examination and Certification Online Systems Project

Governor's Budget Request. In a Spring Finance Letter, the Governor requests $468,000 General Fund, and $353,000 Central Service Cost Recovery Fund, and two positions, for the Examination and Certification Online System (ECOS) project in 2013-14. The ECOS project is intended to upgrade and expand the functionality of the current electronic exam and list certification systems, which are comprised of: Examinations; Certifications; Web Exam; Profile; State Restriction of Appointment and Reemployment; Vacant Position Online Search; and the manual Career Executive Assignment Examination and Certification systems.

Background. The seven legacy systems were built 30-plus years ago using then-current technology. Business needs and usage have significantly expanded over time, due to advancements in selection technology, the increase in the size of government and its human resource needs, and the decentralization of the selection process. To address these issues, in 2009, the State Personnel Board (SPB) implemented a modified Commercial-off-the-Shelf (COTS) product from JobAps to improve the administration of civil service examinations, the certification of hiring lists, and the review of appointments.

SPB subsequently determined that the JobAps system lacked major functionality and was not performing adequately. In 2011, the SPB submitted a feasibility study report (FSR) to replace the JobAps system with ECOS, an in-house custom application. The FSR was approved by the Technology Agency and work began on the ECOS project.

In July 2012, and pursuant to the Governor's Reorganization Plan No. 1, selection-related responsibilities were transferred from the SPB to the newly-created California Department of Human Resources (CalHR). Also in July 2012, CalHR began reviewing the original plan and found several issues with the ECOS project schedule, budget, and resources. CalHR reassessed the project and determined that the ECOS project had not been adequately staffed, the budget was underestimated by approximately $1.8 million, and the schedule was underestimated by 22 months.

In conjunction with the Technology Agency, CalHR submitted a Special Project Report (SPR) in an effort to put the ECOS project back on track. The Technology Agency approved the SPR on April 2, 2013; however, that letter reflected incorrect project cost figures. A revised approval letter was provided on April 26, 2013. Instead of a net $2.7 million increase, the correct increase in overall project costs was $5.2 million. The "missing" project cost

increases were those attributable to continuing project costs and annual maintenance and operation costs.

The request before the subcommittee is the resources the Administration indicates are necessary to support the ECOS project in 2013-14.

Upon completion in early 2017, the ECOS project will result in a new system that eliminates the current outdated manual processes, reduces the cost and time required for exam administration, creates real-time exam results for hiring departments, and mitigates risk by integrating seven disparate systems.

Staff Comment. Staff does not doubt that the current legacy examination and certification systems are outdated and require manual interventions that are inefficient. Staff does not doubt that the original FSR justified a need for a new system. However, given the developments in the past twelve months, it appears that the ECOS project is yet another example of a project that was initially under-scoped and under-resourced and now requires a substantial mid-course correction (111 percent increase in total project costs), to prevent project failure and loss of the state's investment to date. Further, SPB's original plan to cover all project costs from within budgeted resources has been abandoned, as CalHR is now requesting a budget augmentation and staff resources to support the project in 2013-14, and the following three fiscal years.

It is also worth noting that, while responsibility for this project moved from SBP to CalHR, one constant in this narrative is the Technology Agency. The developments with ECOS point to serious questions about the sufficiency of the Technology agency's oversight of technology projects. The Technology Agency is not within the jurisdiction of this subcommittee. However, in considering potential actions with regard to the ECOS request, the subcommittee may wish to share its concerns about Technology Agency oversight of the project with the Senate Budget Subcommittee No. 4.

This project presents a series of difficult questions for the subcommittee. How can the subcommittee be assured that the business plan and fiscal projections are *now* correct? Should the Administration instead be requested to go back to square, rebuild the entire project, and submit a new request in January 2014, as part of the 2014-15 budget? If the original plan was to fund this project entirely from existing resources, should that be the action here? Or, since that was SPB's original plan, should some portion of the 2013-14 request for funding and positions be redirected from SPB's budget? Or, should the Legislature only support the maintenance and operation costs at project completion?

Staff Recommendation: Reject the request and direct that the Administration return with a proposal for the ECOS project in January 2014, as part of the 2014-15 Governor's January Budget. Direct staff to communicate the subcommittee's concerns with Technology Agency oversight of the ECOS project with Senate Budget Subcommittee No. 4.

VOTE: 3-0

Issue 6: Career Executive Assignment Program

Governor's Budget Request. In a May Revision Finance Letter, the Administration is requesting $749,000 (427,000 General Fund), to provide additional funding for 8.5 two-year limited-term positions at the Department of California Human Resources, to meet the underlying goals of the Governor's Reorganization Plan No. one (GRP1), which delegated approval authority of the Career Executive Assignment Program; unlawful appointments, and classification and/or certification action requests to the department level.

Background. The GRP1 combined a number of human resources-related functions performed by the State Personnel Board with the Department of Personnel Administration, creating the Department of Human Resources (CalHR). Additionally, GRP1 states as a goal "more delegated decision-making to line agencies under a system of unified oversight, transparency and accountability". To address this, CalHR has proposed to delegate several functions to the department level including; the Career Executive Assignment Program, Classification and/or Certification Requests, and the Resolution of Unlawful Appointments.

CalHR has chosen to address this in a phased approach, with delegation provided to a limited number of departments, beginning on July 1, 2013. CalHR will still serve as the primary entity responsible for all Career Executive Assignment Program, Classification and/or Certification Requests, and the Resolution of Unlawful Appointment for line units that have not had the required training. CalHR will require monthly reports from line units that have been delegated control of the actions identified above. The reports will ensure that there is compliance in accordance with CalHR procedures.

Staff Comment: CalHR intends to delegate all of the functions associated with Career Executive Assignment Program, Classification and/or Certification Requests and the Resolution of Unlawful Appointments to the department level, within two years. CalHR intends on delegating authority to the Office of Statewide Planning and Development, the State Controller's Office, the Department of Justice, the State Compensation Insurance Fund, and internally during the first year. Staff does not have an issue with this request.

Staff Recommendation: Approve May Revision Finance Letter Request.

VOTE: 2-1

0820 DEPARTMENT OF JUSTICE

Issue 7 – Controlled Substance Utilization and Review System (CURES)

Background. The Department of Justice maintains the Controlled Substance Utilization and Review System (CURES), an electronic database of prescription drugs issued by doctors. In 1996, the Legislature initiated the development of the CURES system in an attempt to identify solutions addressed while utilizing an antiquated system of triplicate copying.

The implementation of CURES represented a significant improvement over the state's prior utilization of a triplicate copying system, however, it did not address the need for providing healthcare practitioners and pharmacists with access to timely information to proactively diminish and deter the use of controlled substances. To address this issue with CURES the DOJ initiated the Prescription Drug Monitoring Program (PDMP), which allows prescribers and dispensers to access data at the point of care. The PDMP system is utilized by the DOJ to collect and store data on the prescription of controlled substances (Schedule II through Schedule IV). State law mandates that the DOJ assist law enforcement and regulatory agencies with the diversion and resultant abuse of controlled substances.

The California Budget Act of 2011 eliminated all General Fund support of CURES/PDMP, which included funding for system support, staff support and related operating expenses. To perform the minimum critical functions and to avoid shutting down the program, the Department opted to assign five staff to perform temporary dual job assignments on a part-time basis.

Staff Comment. This item was originally heard in Senate Budget Subcommittee No. 5 on April 11. During that hearing it was unclear what, if any, funds would be available to support the development of an updated CURES database. Interested parties have since convened to identify an appropriate fund source for the development of a upgraded CURES database and the ongoing costs that will be required during the development phase of the new CURES database.

According to the DOJ, modernization costs will be approximately $2.09 million for the upgraded CURES database. The modernization would occur over a two-year period and the costs associated with maintaining the current system while the modernization occurs would be $1.8 million. Total modernization costs would be approximately $3.9 million.

Senate Budget and Fiscal Review Subcommittee No. 4 intends on taking action to direct the Department of Finance to coordinate with the Department of Consumer Affairs to determine if funds could be made available to support the modernization and sustainment costs associated with the development of the CURES database. Subcommittee No. 4 recommended an increase in expenditure authority of $3.35 million over fiscal year's 2013-14 and 2014-15 be provided to the licensing and prescribing boards within the Department of Consumer Affairs. Subcommittee No. 5 staff recommends that a similar action, an increase of $3.35 million in reimbursement authority to the DOJ be included in the budget to address the sustainment and modernization requirements of the CURES database. The $3.35 million takes into account that some of the boards have provide $296,000 in funding annually to the department to support CURES. Suggested budget bill language should include a provision

requiring the DOJ to consult, among others, the impacted DCA boards and to address any concerns and, or, specific requirements raised through this consultation process prior to any upgrades being made to the CURES database. Additionally, the language should include a provision increasing DOJ's reimbursement authority to total $3,941,000 which shall be used for the development of an updated CURES database. The language should also speak when reimbursements shall be made available, which shall be when an interagency agreement has been reached between the Department of Justice and the Department of Consumer Affairs regarding the development and implementation of an upgraded CURES database and approval of a Feasibility Study Report by the Department of Technology.

Staff Recommendation: Increase Department of Justice Reimbursement authority by $3.35 million over fiscal year's 2013-14 and 2014-15 to support the development and sustainment of the CURES database. And, adopt proposed budget bill language.

VOTE: 2-1