Senate Budget and Fiscal Review—Nancy Skinner, Chair

SUBCOMMITTEE NO. 5 Agenda

Senator Maria Elena Durazo, Chair
Senator Shannon Grove
Senator Dave Cortese
Senator Josh Newman

Thursday, February 25, 2021
Upon Call of the Chair
State Capitol - Room 3191

Consultant: Anita Lee

Items Proposed for Vote-Only

Items Proposed for Discussion

Public Comment

ITEMS PROPOSED FOR VOTE – ONLY

7120 CALIFORNIA WORKFORCE DEVELOPMENT BOARD

Issue 1: Encumbrance Extensions

Summary. The Governor's budget proposes to extend the encumbrance periods for the Breaking Barriers to Employment Initiative, Prison to Employment, and Greenhouse Gas Reduction Fund to fund administrative costs and the continued implementation of the programs.

Background

Breaking Barriers to Employment Initiative. In October 2017, the California Legislature approved Assembly Bill 1111, (Garcia, E), Chapter 824, Statutes 2017, which established the Breaking Barriers to Employment Initiative. The initative created a grant program that provides individuals with barriers to provide employment the services they need to enter, participate in, and complete broader workforce preparation, training, and education programs aligned with regional labor market needs. The 2018 budget provided $15 million General Fund one-time to implement the grant program.

Prison to Employment Initiative. The 2018 budget provided $37 million General Fund over three fiscal years to establish the Prison to Employment Initiative. This initiative helped support regional planning efforts, fund regional plan implementation, and provide resources for direct services to the formerly incarcerated and other justice-involved individuals. It set aside specific resources for both supportive services and earn and learn activities which were identified as a major gap by current grantees and local service providers. The initiative sought to create a partnership between rehabilitative programs within California Department of Corrections and Rehabilitation (CDCR) and incorporating CDCR within the policy umbrella of the State Workforce Plan. The Budget Act of 2020 appropriated $1 million for an evaluation of the Prison to Employment program and to support departmental operational costs.

The Budget Act of 2019 re-appropriated $3.3 million General Fund for the administration of the Breaking Barriers to Employment Initiative and the Prison to Employment initiative and provided for the encumbrance or expenditure of those funds until June 30, 2022.

Cap and Trade Expenditures for High Roads Construction and High Roads Training Parnerships. The Budget Act of 2019 Cap and Trade Expenditure Plan included $35 million General Fund ($30 million Local Assistance for High Roads Training Partnerships and High Roads Construction, and $5 million State Operations funding), and identified an additional $120 million in Local Assistance Funds over the next four budgets in support of a suite of workforce development programs related to reducing greenhouse gas emissions. As a result of the current economic crisis and its impact on state revenues, CWDB's 2019-20 Local Assistance appropriation was reduced by approximately $4.4 million and the next planned $30 million in Local Assistance funding was not appropriated in 2020-21.

Governor's Budget Proposal

CWDB requests the following technical adjustment be made to allow for extended use of current appropriations:

- Breaking Barriers to Employment. Extend the encumbrance or expenditure of the 2019 reappropriation of $1.19 million General Fund until June 30, 2023, and the encumbrance or expenditure of the 2019 reappropriation of $1.19 million General Fund until June 30, 2024.

- Prison to Employment. Extend the encumbrance period of the $1 million allocated in Budget Act of 2020 for program evaluation to be available for encumbrance or expenditure until June 30, 2023.

- Green House Gas Reduction Fund. Extend the encumbrance period of $5 million appropriated in 2019 to be available through June 30, 2022.

The Administration states that it takes about a year to release funds and sometimes more than year for a new program that needs to be built from the ground up, and as a result programs experienced some delays. The Administration also notes that the grants for the Prison to Employment Initiative and the Break Barriers grants are already encumbered (by the end of fiscal year 2019-20) and GGRF contracts will be encumbered by June 30, 2021. The request to extend the related state operations funding for these programs are necessary to provide the CWDB staff resources to continue to administer and close out the grants.

Staff Recommendation. Approve as budgeted.

7350 DEPARTMENT OF INDUSTRIAL RELATIONS

Issue 2: Apprenticeships Federal Innovation Grant

Background

In July 2020, the US Department of Labor's Employment and Training Administration awarded the Department of Industrial Relations (DIR) Division of Apprenticeship Standards (DAS) the with $450,000 in Building State Capacity to Expand Apprenticeship through Innovation Grant funding to achieve the goals and associated deliverables outlined in the grant agreement including:

- The procurement and integration of data analysis software to properly assess current data and provide improved reporting. This analysis will provide insight into those programs which succeed in recruiting and graduating apprentices from underrepresented groups as well as those that struggle. In addition, this tool will be integrated into the DAS website to enable others to view and analyze data contained within the system in a secure manner that protects the privacy of apprentices.

- The creation of a digital apprenticeship and work-based learning Tool Kit, in a printable format, and distributed for use by educational and workforce development stakeholders.

- Partnering with established outreach programs. DAS will create and distribute updated educational resources and outreach materials targeting underrepresented populations, including high schools, community college students, women and veterans.

Governor's Budget Proposal

The Governor's budget proposes an increase of $240,000 in Federal Trust Fund authority for the 2021-22 fiscal year, for the DAS to effectively and efficiently complete the goals and all associated deliverables, set forth in the Building State Capacity to Expand Apprenticeship through Innovation federal grant agreement, with the U.S. Department of Labor's Employment and Training Administration.

Due to the schedule of deliverables agreed upon in the approved grant agreement, DIR submitted a Section 28 package, requesting a $210,000 budget augmentation in 2020-21, to enable DAS to start work immediately on the deliverables. This 2021-22 proposal will allow DAS to utilize the remaining $240,000 in funds and complete the deliverables outlined in the grant award. DAS will utilize the Federal funds awarded by the USDOL/ETA and meet its deliverables before the period of performance ends in June 2023.

Staff Recommendation. Approve as budgeted.

Issue 3: Schools' Occupational Injury

Background

Pursuant to existing law, the Division of Occupational Safety and Health (Cal/OSHA) civil or administrative penalties assessed to school districts, state universities, or other specified educational facilities are deposited into the Revolving Fund. Educational facilities may apply for a refund of their penalties within two years and six months from the date of the violation. The remaining funds are to be used by the Commission to assist schools in establishing effective occupational injury and illness prevention programs. The WCARF has accumulated approximately $370,000 and is expected to accumulate $140,000 per fiscal year on average. These funds can now be utilized to provide training and/or other assistance to more school districts.

Recent data from the U.S. Bureau of Labor Statistics indicate that nearly 40 percent of the 86,200 non-fatal occupational injuries and illnesses in California's local governments still occur in elementary and secondary schools. California elementary and secondary schools have occupational injury rates that are 1.7 times higher (6.1 cases per 100 full- time employees (FTEs)) than the overall injury rate for Californians injured at work (3.6 cases per 100 FTEs).

The 2018-19 budget provided the Commission $250,000 limited-term augmentation per year for three-years to extend the reach of the IIPP. The Commission contracted with the University of California (UC) Regents to develop a model training program for California schools, the School Action for Safety and Health Program (SASH). The SASH program provides free IIPP trainings to help school districts reduce the high rate of work-related injuries and illnesses among school employees. Once trainees complete the training, they are certified by the UC and the Commission as SASH coordinators, allowing them to develop, implement, and evaluate injury and illness prevention activities in their respective organizations. The SASH program conducts an average of nine SASH trainings each year. To date, SASH training classes have been conducted statewide for over 1,800 staff from nearly 500 school districts. In addition to the regular SASH IIPP trainings, trainings have been conducted that focus on prevention of specific hazards for relevant school occupation. The SASH program also provides educational materials, planning templates, webinars, factsheets, and other tools to help participants efficiently develop their IIPPs. In light of COVID-19, the program will be developing an online version of the SASH IIPP course, factsheets on COVID-19 and tips for addressing work related stressors faced by school employees, and updating the SASH curriculum to include information about any schools-related health and safety issues and recommended solutions.

Governor's Budget Proposal

The Governor's budget proposes $175,000 from 2021-22 through 2023-24 and an ongoing augmentation of $55,000 from the Workers' Compensation Administration Revolving Fund (WCARF) for the Commission on Health and Safety and Workers' Compensation (Commission) to assist schools in establishing effective occupational Injury and Illness Prevention Programs (IIPP).

Staff Recommendation. Approve as budgeted.

Issue 4: Elevator Public Safety Unit

Summary. The Governor's budget proposes an increase of 56.5 positions and $11.16 million from the Elevator Safety Account to be phased- in over two years at the Division of Safety and Health (DOSH) also known as Cal/OSHA. These positions seek to reduce inspection backlog, and to conduct mandated conveyance related activities that are currently unmet.

Background

The CAL/OSHA Elevator Unit (EU) protects the safety of the public who ride the over 115,000 conveyances (elevators, escalators, moving walkways and other lifts) operating in the State each year. Current law requires the EU to:

- Perform safety inspections each year for all conveyances;
- Prevent operation of conveyances with known safety deficiencies until necessary repairs or alterations are completed;
- Review and approve plans, and issue permits, for the construction of new conveyances;
- Review and approve various conveyance components required for safe operation of conveyances;
- Inspect the installation of new and altered conveyances (approximately 4,250 new and altered conveyance installations per year) prior to issuing a permit for operation,
- Witness approximately 38,000 periodic operational and functional tests in one and five year intervals;
- Investigate accidents, injuries and fatalities involving conveyances as expert advisors to CAL/OSHA workplace enforcement inspectors;
- Develop and propose standards to be adopted as regulations governing conveyance safety;
- Review applications and certify certified qualified conveyance companies;
- Review applications, administer a certification examination and certify qualified persons as certified competent conveyance mechanics; and
- Review, evaluate and advise the Chief of the Division and the Director of DIR on applications for temporary variances, temporary experimental variances and permanent variances from safety regulations and standards for conveyances.

There are currently 115,100 conveyances that require permitting each year. By comparison, in 2010 there were approximately 85,000 elevators in service. Each year, the number of new conveyances and altered conveyances have grown by 3,030 and 1,218, respectively. Each new and altered conveyance inspection requires approximately five times the amount of time it takes to complete the inspection of an existing conveyance. As a result, only about 50 percent of existing conveyances are inspected annually. Additionally, due to lack of available staff, only approximately 1.5 percent of the 37,589 Group III and IV (elevators built after October 1998) conveyances have had the periodic testing of safety systems witnessed by a CAL/OSHA EU inspector.

The 2015-16 budget added 27.5 positions to the EU to address inspection backlogs and to help the Division meet permitting mandates. Due to the increase in conveyances driven by new construction, the resources added in 2015-16 are insufficient to fully meet the annual inspection mandate.

Governor's Budget Proposal

The Governor's budget proposes an increase of 30.5 positions and $6.7 million in 2021-22 and 56.5 positions and $11.6 million ($11.2 million ongoing) in 2022-23 to reduce inspection backlog, and to conduct mandated conveyance-related activities that are currently unmet. The positions are as follows:

- 2021-22: six office technicians and 24.5 elevator safety engineers.
- 2022-23: 12 office technicians and 44.5 elevator safety engineers.

The Administration notes that in there were 18.1 vacant positions or a vacancy rate of 13.6 percent. The Administration notes that with this proposal the backlog of expired annual operating permits will be eliminated by the end of the fifth year. Additionally, "witnessing" periodic testing of conveyance safety systems can begin in year five.

Staff Recommendation. Approve as budgeted.

Issue 5: Enhanced Enforcement and Compliance (Various 2020 Legislation)

Governor's Budget Proposal

The Governor's budget proposes an increase of 43.0 positions and $8.7 million from various funds in 2021-22, 43.0 positions and $7.7 million in 2022-23, 41.0 positions and $7.3 million 2023-24, 38.0 positions and $6.7 million in 2024-25 and 2025-26, with 8.0 positions and $1.7 million in 2026-27 and beyond to implement the provisions of recently chaptered legislation.

- **Assembly Bill 685 (Reyes), Chapter 84, Statutes of 2020: COVID-19: Imminent Hazard to Employees - Exposure Notification.** This bill requires employers to provide written notice and instructions to employees who may have been exposed to COVID-19 at their worksite and enhances the Cal/OSHA ability to enforce health and safety standards to prevent workplace exposure to and spread of COVID-19.

  The bill provides that if, in the opinion of Cal/OSHA a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with COVID-19 so as to constitute an imminent hazard to employees, the performance of such operation or process, or entry into such place of employment, as the case may be, may be prohibited by Cal/OSHA. This provision sunsets on January 1, 2023.

  The bill also specifies that an employer cannot retaliate against a worker for disclosing a positive COVID-19 test, or diagnosis or order to quarantine or isolate. Workers who believe they have been retaliated against in violation of this section may file a complaint with the Division of Labor Standards Enforcement.

  The Governor proposes 8.0 positions and $1.8 million in 2021-22, and $1.7 million ongoing in Occupational Safety and Health Fund to implement the provisions of the bill. The Administration notes that these l resources will help enforce the provisions of AB 685 and enable Cal/OSHA to perform approximately 160 new inspections per year in addition to verifying compliance with AB 685 for all inspections related to COVID-19.

- **Senate Bill 275 (Pan), Chapter 301, Statutes of 2020: Health Care & Essential Workers Protection Act: Personal Protective Equipment (PPE).** This bill requires health care employers to maintain an inventory of unexpired PPE that is at least sufficient for 45-days of surge consumption, and provide inventories of their PPE to Cal/OSHA. Health care employers who violate either of these requirements would be assessed a civil penalty of up to $25,000 for each violation. SB 275 requires DIR, in consultation with the California Department of Public Health (CDPH) and in consideration of the recommendations of the PPE Advisory Committee establish requirements for determining 45-day surge capacity levels for health care employer inventories, including the types and amounts of PPE to be maintained. The regulations would also have to require that each health care employer maintain enough PPE for all health care workers.

  The Administration proposes two limited-term positions and $457,000 in 2021-22 and $431,000 in 2022-23 from the Occupational Safety and Health Fund to provide resources for Cal/OSHA and the Occupational Safety & Health Standards Board (OSHSB) to address the new requirements of SB 275. The Administration notes that these one-time resources are needed to develop and adopt regulations in consultation with CDPH. Additionally, once the regulatory time is established, DIR will submit another budget proposal next year for additional staff to enforce the new regulations.

- **Senate Bill 1159 (Hill), Chapter 85, Statutes of 2020: Workers' Compensation: Occupational Illness – COVID-19.** On May 6, 2020 the Governor issued Executive Order # N-62-20 providing that all California employees who worked outside their home at the direction of their employer between March 19, 2020 and July 5, 2020 and who were diagnosed with or tested positive for COVID-19 within 14 days of working at their jobsite are presumed to have contracted any COVID-19-related illness at work for the purpose of awarding workers' compensation benefits.

  SB 1159 codified the terms of EO # N-62-20 providing a workers' compensation presumption for workers with COVID-19 injuries occurring between March 19, 2020 and July 5, 2020. The bill also extends the presumption coverage to specified first responders and designated health care workers, who are injured on or after July 6, 2020. The bill also covers all other workers, whose employers have five or more employees, and who test positive for COVID-19 during an outbreak at their place of employment on or after July 6, 2020. The bill grants enforcement authority to the Labor Commissioner to cite employers who fail to report to their claims administrator when an employee has tested positive for COVID-19. SB 1159 provides that the presumption statutes will remain in effect until January 1, 2023, at which point they will be repealed.

  SB 1159 also requires the Commission on Health and Safety and Workers Compensation (CHSWC) to conduct a study on the impact of COVID-19 and these presumptions on the workers' compensation system and report the findings to the Legislature and the Governor by April 30, 2022. Based on work-related injury data reported to Division of Worker's Compensation's Workers' Compensation Information System (WCIS), 38,362 COVID-19 work-related injuries were reported between January and August of 2020. The overwhelming majority of these reported injuries occurred since March, with only 170 reported in January and February combined. During the 6-month period between March and August 2020, 38,192 COVID-19 injuries were reported, averaging out to approximately 6,365 claims per month. DWC estimates that an additional 26,000 claims will be reported from September through December. Half of the COVID-19 injuries were associated with public safety officers and employees in hospital, ambulatory care and nursing care settings.

  DIR requests 30.0 positions (8.5 Workers' Compensation Judge, 8.5 Senior Legal Typist, 8.5 Office Technicians, and 4.5 hearing reporters) and $5.8 million in 2021-22 and $5 million in 2022-23 through 202-26 from the Workers' Compensation Administration Revolving Fund to address an estimated increase of 6,202 claims. DIR requests an additional 3.0 positions (two Deputy Labor Commissioners I, and one Deputy Labor Commission III) and $584,000 in 2021-22 and $536,000 in 2022-23 and FY 2023-24 from the Labor Enforcement and Compliance Fund to address increased enforcement actions and to conduct the study required by the bill.

<u>Staff Recommendation. Approve as budgeted.</u>

7501 CALIFORNIA DEPARTMENT OF HUMAN RESOURCES

The Department of Human Resources (CalHR) is responsible for managing the state's personnel functions and represents the Governor as the "employer" in all matters concerning state employer-employee relations. CalHR is responsible for issues related to recruitment, selection, salaries, benefits, and position classification, as well as provides a variety of training and consultation services to state departments and local agencies. CalHR's main objectives are to:

- Manage examinations, salaries, benefits, position classification, training, and all other aspects of state employment other than those areas assigned to the State Personnel Board under the civil service provisions of Article VII of the California Constitution.
- Represent the Governor in collective bargaining with unions representing rank and file state employees.
- Set salaries and benefits for employees excluded from collective bargaining and employees exempted from civil service.
- Serve as the sole fiduciary and administrative body for the Savings Plus Program (defined contribution program for full-time and part-time state employees).
- Provide legal representation to state agencies for appeals of disciplinary actions and labor relations matters.
- Hold ex-officio membership to the 13-member Board of Administration of the California Public Employees' Retirement System.

Issue 6: Substance Abuse and Testing Program Alignment

Summary. The Governor’s budget proposes to permanently transfer the Controlled Substance Abuse Testing Program from the Benefits Division to the Pre-Employment Division of CalHR.

Background

CalHR is responsible for administering the Controlled Substance Abuse Testing (CSAT) Program. The CSAT Program provides state agencies access to testing of: 1) state employees for employment and pre-employment and 2) state employees subject to controlled substances testing under Federal Department of Transportation, Federal Highway Administration, United States Coast Guard regulations, California Peace Officer Standards and Training Commission regulations, and-random and reasonable suspicion testing under various collective bargaining agreements. Currently, 24 departments participate in CSAT.

To comply with federal and state CSAT requirements, CalHR has established separate master agreements with two third-party administrators/vendors who provide drug/alcohol testing and substance abuse treatment referral services. In addition, CalHR serves as the administrator for the consortium that provides CSAT services for federal and state mandated programs. CalHR manages CSAT testing services for departments participating in the CalHR CSAT Program. A departmental interagency agreement between CalHR and the participating department must be completed prior to obtaining CalHR CSAT Program services. Each participating department is billed for services and charged annual administrative fees to cover CSAT Program costs.

The Division of Benefits of CalHR currently administers the CSAT Program, and is also responsible for the statewide benefit plans for employees, retirees, and dependents designed to support the state in attracting and retaining a qualified workforce. This includes dental, vision, flexible spending accounts, employee counseling, wellness, employee recognition life insurance, long-term disability insurance, and legal and retirement services. In addition, Benefits oversees the state's master agreement for worker's compensation and advises the CalHR Director on the CalPERS pension and health plan and benefit policy topics related to bargaining, legislation, and benefit purchasing alternatives.

Governor’s Budget Proposal

To better align activities within the appropriate program, the Administration proposes to move the CSAT Program from the Benefits Division to the Pre-Employment Division, which is under the authority and purview of the State Medical Officer. CalHR notes that there will be one staff person transferring from the Benefits Division to the Pre-Employment Division.

The Administration notes that controlled substance abuse testing, as performed under the CSAT Program, is employer mandated medical testing—not an employee benefit. As such, it is more closely aligned with the purview of the State Medical Officer in Pre-Employment, who is responsible for conducting post-offer, pre-employment medical evaluations of employment candidates for state agencies and, if requested by the State Personnel Board, evaluations of candidates requesting medical reinstatement to a previous civil service appointment. Pre-Employment administers programs devoted solely to providing medical and psychological evaluations on behalf of state agencies. Transferring the CSAT Program to Pre-Employment fits within the scope of the State Medical Officer role to administer.

Staff Recommendation. Approve as budgeted.

Issue 7: Statewide Human Resources Support

Summary. The Governor's budget proposes an increase of five permanent positions and $836,000 in General Fund for 2021-2022 and ongoing to provide direct assistance and oversight in supporting departmental personnel units with complex workload, resolving audit findings, assisting with surge staffing for crises, and other human resources needs.

Background

CalHR is responsible for collective bargaining, employee salaries and benefits, job classifications, appointments consultations, civil rights, training, exams, and recruitment and retention. The Personnel Management Division (PMD) within CalHR provides 150 department personnel offices statewide with day-to-day expert technical consultative services related to statewide personnel management policy, and interpretation of applicable human resource (HR) laws and regulations. The CalHR Selection Division (SD) serves as the state's principle advisor on matters related to recruitment strategies and job branding, examination development, validation, administration, selection, and hiring for state and county civil service.

CalHR notes that the state uses a distributed HR system rather than a centralized model for HR. CalHR and State Personnel Board (SPB) set the overarching rules that departments must follow. Independent departmental HR offices make daily HR decisions for their own employees on everything from examinations and hiring to discipline and layoffs. However, they must follow rules and policies established by CalHR and SPB because these control agencies are vested with statutory control of the State's civil service system.

When an HR function is determined to be routine and it is in the best interests of state efficiency to delegate the decision-making for the function to the individual departments, then those departments are considered to have authority for the decision as an extension of CalHR and SPB's authority. As a result of the 2013-2015 Delegation Project, CalHR delegated certain previously restricted HR functions to departments. CalHR and SPB maintain control over these functions by monitoring and auditing department decisions.

When a department is found to be non-compliant with the laws, rules, policies and best practices, CalHR and SPB have discretion to revoke their various delegated authorities over HR functions from departments, meaning departments lose the ability to make their own decisions on that HR aspect. The control of the errant department's HR function then "reverts" to CalHR or SPB, and the errant department must seek CalHR or SPB pre-approval to make those HR decisions. This is highly undesirable for departments as the extra layer of review adds significant time to the process to complete the HR task (such as hiring). When departments lose their delegation authority for appointments, for example, it means that they cannot make any hires without submitting the hiring paperwork to CalHR for pre-approval, which typically adds 2-3 weeks to each hiring timeline. For CalHR, the removal of delegation from a department means additional work brought in house.

CalHR notes that there has been a growing volume of new, demanding, consultation work related to resolution of unlawful appointments and other inappropriate HR practices discovered during CalHR's routine delegation reviews, and revealed by formal audits and special investigations by other oversight entities such as the California State Auditor (CSA) and the SPB Compliance Review Unit (CRU). This results in departments losing aspects of delegated HR authority, which generates new workload for

CalHR as PMD must then take a hands-on role in helping departments to correct specific violations and their ongoing practices, this includes taking responsibility for all hiring at departments.

Currently, the Board of Equalization and the Department of Industrial Relations have lost their delegated appointing authority, the Department of Insurance has lost delegated Examination authority, and the State Compensation Insurance Fund has temporarily lost exceptional allocation delegation for the Staff Services Manager series. CalHR has not identified any departments for new loss of delegation. However, special investigations and whistleblower complaints continue to identify critical areas in need of improvement. As loss of delegation is typically a resolution at the conclusion of an investigation, CalHR works with other control agencies and the departments to determine if a full restriction is necessary.

In addition to the increased workload associated with restricted delegation or loss of delegation authority, CalHR has provided emergency HR assistance to departments in need:

- CalHR's PMD was mission tasked by the Office of Emergency Services to assist the Emergency Medical Services Authority and Health and Human Service Agency with a massive hiring surge for the California Health Corps in response to the COVID-19 pandemic. CalHR's PMD set aside the majority of its critical work for several weeks while more than 25 staff reviewed 5,400 applications so medical personnel could be hired quickly and deployed. PMD spent 4,100 hours helping other departments meet their missions in response to the crisis.
- CalHR's Selections Division was asked to assist the Employment Development Department with mass hiring to keep pace with demand as a result of the COVID-19- related spike in unemployment claims.

Governor's Budget Proposal

The Governor's budget proposes an increase of five positions to assume HR support, intervention work for departments with ongoing restricted delegation, as well as any departments anticipated to end up with restricted delegation in the future. These positions will enable CalHR's PMD and SD to effectively rehabilitate faltering departments and ensure that all operational and regulatory requirements are met without delay. These five positions are requested at the Personnel Program Advisor level to assist departments in the following areas:

- Providing program direction by advising and recommending policy and program changes on a wide variety of personnel management and selections issues.
- Providing hands-on consultation and direction to department HR shops and Executives in order to address current needs and anticipate types of HR services necessary.
- Oversee the day-to-day administrative activities of a department's team of HR resources, providing leadership, mentoring, and knowledge transfer.
- Promote use of "best practice" management principles and provide departments a strong foundation for a future of good-faith, merit-based hiring.
- CalHR also envisions leveraging an existing position in the Business Process Improvement Office to provide objective process improvement services to departments.

Staff Recommendation. Approve as budgeted.

0559 Labor and Workforce Development Agency

Issue 8: Labor Law Implementation and Interpretation Workload

Summary. The Labor and Workforce Development Agency (Labor Agency) requests four positions and $765,000 from the Labor and Workforce Development Fund for 2021-22 and ongoing to increase its capacity to ensure consistent implementation and interpretation of laws within the Labor Agency's jurisdiction. This consistency includes working with state departments and boards under its jurisdiction to issue regulations, opinion letters and outreach publications, internal training materials regarding the state's labor laws. The initial workload of the new positions will focus on implementing laws enacted in response to the COVID-19 pandemic and the ongoing implementation and interpretation of Assembly Bill 5 (Gonzalez), Chapter 296, Statutes of 2019 and its anticipated amendments. Moving forward, the Labor Agency will use the positions and funding on a permanent basis to support these functions for all laws within the Agency's jurisdiction.

Background

The Labor Agency's legal staff supervises the legal affairs of the Agency's constituent units, and have two full-time civil service attorney positions (1.0 Attorney V and 1.0 Attorney III) and a limited-term Retired Annuitant appointed as an Attorney IV. Along with the General Counsel, this staff provides direction and guidance to the Labor Agency's units on the implementation and interpretation of laws those units enforce and with which they must comply, and provides direction or guidance on litigation legislation, rulemaking, Public Records Act requests, audit responses, compliance matters, and communications activities. This work is in addition to the services the legal staff provides to the Labor Agency itself, such as supervising litigation against the Secretary in her official capacity, providing legal advice to Agency leadership on various matters, responding to Public Records Act requests directed to the Agency, and drafting legislation.

The Labor Agency seeks to create more inter- and intra- agency collaboration, and to create consistencies and uniformity in the implementation and enforcement of labor laws. Additionally, Labor Agency also consults with constituent units on the production of education materials on labor laws to ensure accuracy and consistency.

Governor's Budget Proposal

The Governor requests four positions (two Attorney IIIs, and two Associate Governmental Program Analysts) and $765,000 from the Labor and Workforce Development Fund for 2021-22 and ongoing.

The Administration notes these positions will help provide consistent implementation and interpretation to laws enacted in response to the COVID-19 pandemic, and laws like AB 5, which impact multiple state entities. For example, the COVID-19 pandemic has required the Labor Agency legal team to work closely with its entities to implement Executive Orders, develop public outreach and education campaigns, and advise policymakers on changes to existing laws. Although the pandemic's direct effects are expected to wane during the upcoming budget year, Labor Agency expects ongoing changes to laws and policies based on the pandemic, all of which will require implementation resources.

Labor Agency's ongoing implementation of AB 5 also demonstrates the need for additional legal resources. Implementing the law has required Labor Agency to coordinate the work of the Employment Development Department (EDD), the Labor Commissioner's Office, Cal/OSHA, and the Division of Workers' Compensation, each of which have a role in AB 5's implementation. Such coordination entails ensuring that each unit applies the law uniformly, which requires thorough supervision of each unit's enforcement, education, and engagement around the law. The tasks involved in such supervision include providing direction and guidance on public information provided on the law, internal staff training, and any other advice necessary to the unit's implementation of the law. This work is necessarily iterative and ever-continuing to respond to the public's needs around the law and any judicial interpretations of the law.

Staff Recommendation. Approve as budgeted.

ITEMS PROPOSED FOR DISCUSSION

7120 CALIFORNIA WORKFORCE DEVELOPMENT BOARD

The California Workforce Development Board collaborates with both state and local partners to establish and continuously improve the state workforce system. The Board also provides leadership for a unified state plan that works in partnership with other state entities such as the Health and Human Services Agency, the Departments of Social Services and Rehabilitation, the Community Colleges, and the Department of Education. The workforce system is comprised of state and local programs and services that prepare current and future workers to meet the ever-evolving demands of California's businesses and industries. These services include matching job seekers with career opportunities and jobs; supplying high-skill workers to business and industry; providing labor market and economic information necessary for state, local, and regional planning; preparing the neediest youth for advanced learning and careers; and encouraging the inclusion of special populations as critical elements of the workforce.

3-YEAR EXPENDITURES AND POSITIONS †

		Positions			Expenditures		
		2019-20	2020-21	2021-22	2019-20*	2020-21*	2021-22*
6040	California Workforce Development Board	34.3	36.5	33.7	$52,579	$97,100	$15,315
TOTALS, POSITIONS AND EXPENDITURES (All Programs)		**34.3**	**36.5**	**33.7**	**$52,579**	**$97,100**	**$15,315**

FUNDING		**2019-20***	**2020-21***	**2021-22***
0001	General Fund	$46,607	$39,156	$1,287
0890	Federal Trust Fund	3,956	6,564	6,474
0995	Reimbursements	811	260	4
3228	Greenhouse Gas Reduction Fund	1,008	31,456	2,550
3290	Road Maintenance and Rehabilitation Account, State Transportation Fund	197	19,664	5,000
TOTALS, EXPENDITURES, ALL FUNDS		**$52,579**	**$97,100**	**$15,315**

Issue 9: High Roads Training Partnerships

Summary. The Governor's budget proposes an increase of $25 million General Fund one-time in 2021-22 to expand Earn and Learn/Apprenticeship training programs through High Roads Training Partnerships.

Background

The CWDB high road training portfolio includes three main components: High Road Construction Careers (HRCC), High Road Climate Action Partnerships, and High Road Training Partnerships (HRTP).

High Road Construction Careers (HRCC). HRCCs are projects that prioritize partnerships that link local building and construction trades councils to workforce boards, community colleges and CBOs to create pathways to state-certified apprenticeships in a variety of crafts. From 2014-19, the CWDB invested $13.3 million of Proposition 39 funds to build 12 multi-craft pre-apprenticeship partnerships (five in the Bay Area, two in the Los Angeles metro area, one in Sacramento, San Diego, Fresno, Central Coast and northern Sacramento Valley, in the building and construction trades.

In addition, Senate Bill 1 (Beall), Chapter 5, Statutes of 2017 appropriated $5 million annually for five fiscal years from the Road Maintenance and Rehabilitation Account. In June 2020, the CWDB announced awards for the first round of SB 1 funding totaling over $13 million to 11 regionally-scaled training partnerships. The CWDB will issue the last two years' of funding at future date. SB 1 funding is available through June 2027.

Additionally, the 2019-20 budget provided $35 million in Greenhouse Gas Reduction (GGRF) 2019-20 ($5 million in State Operations to build the program, $20 million is intended for HRTPs and $10 million is intended for HRCCs); and $32.5 million for 2020-21, 2021-22, 2022-23, and 2023-24 ($2.5 million in State Operations to build the program, $20 million for HRTPs, and $10 million for HRCCs). However, due to the economic impacts of COVID-19, Cap and Trade auction proceeds dropped, and as a result the 2019-20 local assistance amounts for HRTPS and HRCCs was reduced to $25.6 million, and is not expected to receive any local assistance funding to support HRTPS and HRCCs for 2020-21 and 2021-22. Of the $25.6 million in 2019-20 GGRF, there will be three rounds of grant funding. The first awards totaling in $10.8 million were announced in December 2020.

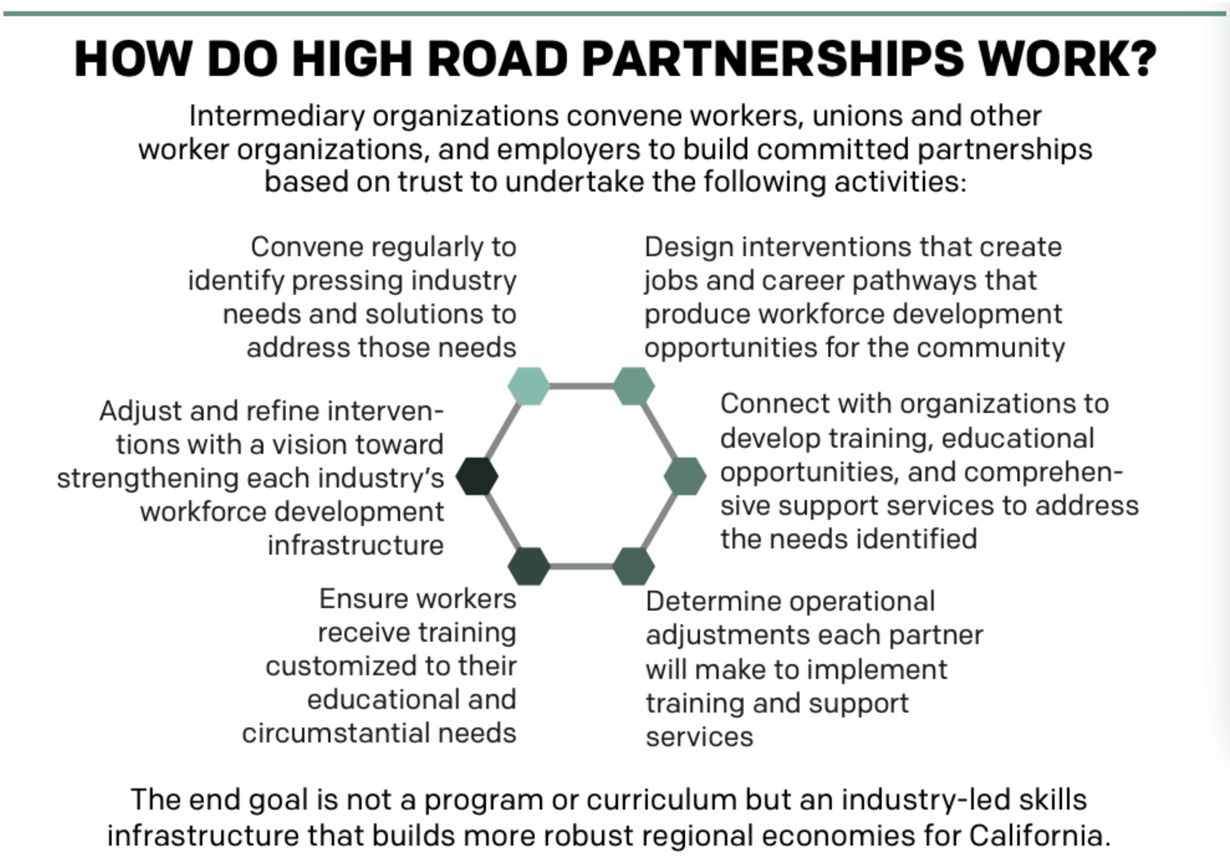
Project Name	Lead Applicant	Award Amount
High Road to Public Transit	California Labor Federation	$1,000,000
High Road to Janitorial	Building Skills Partnership	$939,134
High Road to Water	Jewish Vocational Services	$676,427
High Road to Public Service and Electric Bus Manufacturing	Worker Education and Resource Center	$998,455
High Road to Hospitality	Hospitality Training Academy	$1,000,000
High Road to Healthcare	Shirley Ware Education Center	$1,000,000
High Road to Energy Storage and Microgrids	California and Nevada IBEW/NECA Labor-Management Cooperation Trust	$1,250,000
High Road to Food Production	United Food and Commercial Workers Western States Council	$800,000
High Road to Agriculture	Equitable Food Initiative	$600,000
High Road to Public Utilities	Los Angeles Alliance for a New Economy	$500,000
High Road to Logistics, Manufacturing, Construction and Transportation	Inland Empire Labor Institute	$1,342,664
	Total	$10,106,680.00

Lastly, the state also received $12.5 million from the Federal CARES Act to support HRTPS and HRCCs for: manufacturing with the California Labor Federation, transit expansion with the California Labor Federation, construction pre-apprenticeship with the Fresno Workforce Development Board, tree trimmers with International Brotherhood of Electrical Workers, and water expansion to the inland region with Jewish Vocational Services.

High Road Climate Action Partnerships (HR CAP). HRCAP is an initiative to ensure that state investments in climate change mitigation lead to high quality jobs and greater access to jobs for disadvantaged communities. CWDB will develop formal partnerships with three to four agencies to advise and recommend changes in program guidelines, funding solicitations to ensure that state investments in climate mitigation result in high-quality jobs, and to participate in multi-agency taskforces and work groups to align policy research and planning.

High Roads Training Partnership (HRTP). Under the CWDB's HRTP framework, workers, labor and other worker organizations, and employers and work alongside community-based organizations and training institutions to provide custom workforce development solutions with pathways to quality jobs for all Californians, especially those from the most disadvantaged communities.

CWDB notes that the HRTP approach is beneficial for all parties involved: (1) workers gain access to training programs, on-the-job mentoring, and career pathways that help them achieve success on the job and economic security, such as stable pay, health benefits, pensions, physical safety, stable schedule (2) employers gain a high-performing and reliable workforce, (3) worker organizations and unions are able to set industry standards and secure higher wages when workers are trained to meet employer needs, and (4) communities become resilient by working alongside labor and worker organizations and employers to develop recruitment pipelines, equitable employment opportunities, climate mitigation strategies, and other worker-centered systems.



Prior Investments and Impacts. In 2016-17, the CWDB invested a $9 million from the Governor's discretionary federal Workforce Innovation Opportunity Act (WIOA) over three years in an HRTP demonstration project. Eight projects were awarded a total of $7.43 million, and $1.52 million was awarded for technical assistance and project evaluation. The eight projects were as follows:

1. **Transportation, Distribution and Logistics (TDL).** The West Oakland Job Resource Center (WOJRC) worked with the Northern California Teamsters Apprentice Training and Education Trust Fund, College of Alameda, Oakland Army Base and port employers to create a TDL Pre-Apprenticeship Training and Teamsters TDL Apprenticeship Program. The WORJC will also create a High Road Staffing Agency to help under-represented and low-income individuals secure decent commercial transportation jobs.

2. **Janitorial.** Building Skills Partnerships (BSP) is a statewide organization that provides vocational training in English language and green skills, financial and digital literacy, citizenship, higher education, and other workforce development and immigrant integration needs. Through the HRTP Initiative, BSP convenes industry leaders — including SEIU-United Service Workers West, the Building Owners and Managers Association of Los Angeles, the National Green Building Council, and California's leading janitorial service companies — to standardize the credentials, training, and professionalized career paths for property service workers. The Green Janitor Program will increase upward mobility for hundreds of immigrant workers with limited English proficiency.

3. **Healthcare.** The Shirley Ware Education Center (SWEC) will work with Kaiser Permanente, Dignity and Alameda Health Systems, and SEIU United Healthcare Workers West, to design and implement a multi-employer, multi- occupation pre-apprenticeship to provide entry-level health care workers with English proficiency, digital fluency, math, reading, and presentation skills. The pre-apprenticeship will also include an industry- recognized green-skills credential designed to meet the waste, water, and energy efficiency goals established as competitive benchmarks by California's major health systems. The training program will lead to a registered apprenticeship for nonclinical incumbent workers to transition into clinical positions. SWEC is also piloting a training program with two local educational partners: Merritt College and Sierra College-to create allied health career pathways for incumbent such as janitorial and dietary service workers and to train new workers from Oakland's low-income neighborhoods.

4. **Hospitality.** The Hospitality Training Academy (HTA) is the non-profit and training arm for UNITE HERE Local 11. Through the CWDB HRPT, HTA is launching the High Road to Hospitality Program to expand their training infrastructure to assist low-income, people of color, the LGBTQ community and residents with high barriers to employment in Los Angeles with training, employment readiness, and placement in union hospitality jobs, and to create pathways for incumbent workers to advance within the industry. HTA is designing and deploying an online and mobile-app-based roll call system that will place hotel room attendants on an availability list for shifts at other union hotels, thereby providing workers with the opportunity for full employment, and stable earnings.

5. **Port.** Through the CWDB HRTP initiative, the Port of Los Angeles (POLA) is creating the Port Workforce Training Center, designed for new and incumbent workers in the goods-movement industry. The center will promote more equitable hiring practices, provide training, and help the maritime goods movement workforce train and obtain the skills necessary to operate new equipment that will help the port meet its goal of zero emissions cargo handling equipment by 2030, and drayage trucks by 2035. The POLA created a new program to train entry-level lashers with the International Longshore and Warehouse Union (ILWU) Locals 13, 63, and 94 and the Pacific Maritime Association- the multi-port employer association that represents all 29 West Coast ports—with support from curriculum development experts.

6. **Public Sector.** Through CWDB HRTP the Worker Education and Resource Center (WERC) will prepare workers to fill entry-level jobs in several County departments in the County of Los Angeles. Prepare LA for County Employment will create hiring, training, onboarding, mentoring, and apprenticeship systems to increase the opportunity for residents with high barriers to employment, including a history of incarceration or homelessness, to obtain permanent county jobs.

7. **Public Transit.** The California Transit Works! (CTW) is a statewide consortium of transit agencies, labor unions, and community colleges that promotes high road training partnerships to address critical issues in public transit. The CTW and California Labor Federation will create the first formal "high road partnership of partnerships" model in California; and by extending access to online resources to develop and improve high road partnerships in public transit

8. **Water.** The Jewish Vocational Service (JVS) is a nonprofit organization in the Bay Area that provides education and training to residents with the skills employers need and connects them

with ready-to-hire employers in industries with in-demand occupations. JVS is partnering with BAYWORK, a consortium of 33 water and wastewater utilities, to create an HRTP that identifies in-demand occupations, training programs, and opportunities to build cross-sector recruitment pipelines for public utilities systems in the Bay Area. Through the Water Utilities Career Pathways Project (WUCPP), JVS is creating an industry partnership by helping BAYWORK increase its membership of public utility employers and by convening a consortium of water industry union leaders. Together, they partner with educational institutions, union-based pre-apprenticeship programs, career centers, and community-based organizations to recruit, train, and upskill job seekers and build new career pathways for workers in the water and wastewater industries.

The Administration notes that these HRTPS provided training, employment and career advancement to over 1,000 workers. The HRTPS also provided: (1) industry assessments, including research on occupations, pathways and current and future gaps, (2) new program designs and new curriculum, (3) formal workforce agreements among management, unions, workforce provides, and (4) new formalized apprenticeship programs.

Governor's Budget Proposal

The Governor's budget proposes $25 million one-time General Fund to support existing or new HRTPs, with up to five percent to support state operations and administrative costs. The encumbrance period will be until December 31, 2024. The Administration requests that this be a part of early budget actions. Priority sectors for immediate focus, based on projected hiring demand, will include:

- Construction: $8.5 million to expand access to the MC3 pre-apprenticeship programs for young adults, displaced workers and justice-involved individuals, including partnership with the Prison to Employment Initiative. The Administration estimates that 500 workers will be trained under this proposal.

- Forestry and Agriculture: $6.5 million to train tree trimmers, in partnership with the International Brotherhood of Electrical Workers Training Trust Fund, for jobs with PGE and other utility tree contractors for wildfire prevention, as well as new apprenticeship and earn-and-learn training in agriculture and food processing and sales, especially in the inland areas of the state and the Central coast. The Administration estimates that 500 workers will be trained under this proposal.

- Healthcare and Dental: $4 million to expand training for allied health roles to address COVID-related health care needs, including respiratory technicians and medical assistants, and to launch training for Registered Dental Assistants in partnership with the California Dental Association a recommendation of the Jobs and Recovery Task Force. The Administration estimates that 350 workers will be trained under this proposal

- Trade and Logistics: $4 million to pilot a training partnership with UPS and the Teamsters for opportunity youth in Ontario, Compton, Visalia, San Francisco and Oakland, through Youth Works, a recommendation of the Jobs and Recovery Task Force, as well as other training for high-road jobs in trade and logistics in the Inland Empire and Bay Area. The Administration estimates that 500 workers will be trained under this proposal.

- Information Technology: $2 million to expand cybersecurity training and apprenticeships with public and private employers, as well as other roles in information technology. The Administration estimates that 200 workers will be trained under this proposal.

Utilizing the High Road model of sector-led partnership development, CWDB and the Labor and Workforce Development Agency will work with the Division of Apprenticeship Standards, other state workforce development entities, employers, unions, local workforce boards and other community and labor partners to build bridges into good quality jobs, including across multiple employers with shared labor force needs.

The Administration notes that these sectors were chosen based on a combination of considerations, including geography, areas of current and projected job growth, areas important to economic and COVID recovery, and recommendations from the Governor's Task Force on Business and Jobs Recovery. The Administration notes that the intent for early action is to invest in existing and new projects that can scale up quickly. For example, the new projects proposed in dental and IT are already in development. Additionally, the healthcare HRTP proposal seeks to expand on a current HRTP with SEIU-UHW, Kaiser, Dignity Health and Alameda Health Systems. The Administration notes that many IT workers are employed in the public sector and have labor representation. Additionally, DIR has been working on building more IT apprenticeships for public and private sectors. The Administration notes that the dental project in partnership with the California Dental Association does not include organized labor at this time.

Staff Comments

The HRTP principles are to focus on quality jobs that provide a family sustaining wage; comprehensive employer provided benefits; values worker voice; provides security, fair scheduling, a safe and healthy work environment, and pathways to career advancement. The Administration notes while people who complete these programs are not guaranteed jobs afterwards, the HRTP model starts with jobs first, in industries driving employment, then connects workforce programs to these jobs, and provide up-skilling and backfilling of jobs. CWDB requires each training partnership to provide placement assistance to program graduates, and HRCC training partnerships have also created interim employment opportunities as graduates wait for apprenticeship slots or other employment opportunities to open.

The subcommittee may wish to consider some reporting requirements on the proposal including information on how funds were spent, for what purpose, information regarding grantees and awards, number of workers trained, demographics of the workers, outcomes for the workers, such as how many were able to be placed in jobs or apprenticeships related to the program, and types of industry and labor partnerships.

The subcommittee may wish to ask:

1. How will equity be considered in these partnerships? How will programs reach communities that are historically not included?
2. What are the expected outcomes for these investments and how will the Administration ensure accountability in these programs?

Staff Recommendation. Hold Open

0559 LABOR AND WORKFORCE DEVELOPMENT AGENCY

Established in 2003, the Labor Agency provides leadership on the issues relating to California workers and their employers. The Agency includes the Agricultural Labor Relations Board, the California Workforce Development Board, the Department of Industrial Relations and its various divisions and boards, the Employment Development Department, the Employment Training Panel, the Public Employment Relations Board, and the Unemployment Insurance Appeals Board. The Labor Agency is tasked with strengthening and improving the operation and management of programs and coordinating enforcement activities under its jurisdiction.

3-YEAR EXPENDITURES AND POSITIONS †

		Positions			Expenditures		
		2019-20	2020-21	2021-22	2019-20*	2020-21*	2021-22*
0350	Office of the Secretary of Labor and Workforce Development	37.2	39.2	38.2	$3,786	$44,719	$5,586
TOTALS, POSITIONS AND EXPENDITURES (All Programs)		**37.2**	**39.2**	**38.2**	**$3,786**	**$44,719**	**$5,586**

FUNDING		2019-20*	2020-21*	2021-22*
0001	General Fund	$1,014	$34,951	$1,618
0995	Reimbursements	2,701	2,616	2,751
3078	Labor and Workforce Development Fund	71	7,152	1,217
TOTALS, EXPENDITURES, ALL FUNDS		**$3,786**	**$44,719**	**$5,586**

Issue 10: COVID-19 Outreach, Training and Enforcement (Informational)

Background

Senate Bill 115 Outreach and Enforcement Funding. Senate Bill 115 (Committee on Budget), Chapter 40, Statutes of 2020, a 2020-21 budget bill, provided $32.5 million General Fund one-time to the Labor Agency to slow the spread of COVID-19 through employer and worker education and engagement, and enforcement. Of this funding: (1) $6 million is for the enforcement by DIR of anti-retaliation protections, employment maters related to employers' reopening or resumption of business operations during or after the COVID-19 state of emergency, and workplace health and safety protections, including enforcement of protections that assist hospitality workers in returning to work, and (2) $5 million is related to worker and employer training, which shall be available for liquidation until 2024. This item is intended to provide an update on the use of funds and associated activities.

As of January 21, 2021, the Administration notes that of the $6 million enforcement funding for DIR, $630,000 supported information technology and safety equipment and supplies for enforcement staff, and $1.4 million supported staffing over time, hiring of retired annuitants, and temporary inspection and enforcement staff loaned from the State Compensation Insurance Fund and the Department of Water Resources for Cal/OSHA enforcement. DIR estimates that an additional $1.6 million will be expended from February to June 2021.

In addition, DIR is working on automation initiatives that will support enforcement efforts and streamline internal processes. The online wage claim system will automate an existing paper driven process, that will improve access to filing wage claims. This will provide DIR staff with required information needed on the front end to ensure more timely and efficient responses to claimants and provide important enforcement information. DIR is also in the early stages of developing an interface tool for Cal/OSHA inspectors and staff to the Federal OSHA database that will allow more efficient access to information for inspectors in the field.

The Labor Agency has also conducted $25.9 million COVID-19 public education campaign, as follows:

- Public Awareness Media Campaign: $10 million through Runyon Saltzman, Inc. to conduct media campaigns to increase awareness about specific workplace protections to slow the spread of COVID-19 at worksites. Digital ads and PSA-style radio ads began in December with messages in English and Spanish on: workplace health an safety laws enforced by Cal/OSHA, paid sick leave enforced by the Labor Commissioner's Office, and anti-retaliation protections enforced by the Labor Commissioner's Office. In January and February, this will expand to new formats, languages and topics through June 2021.

- Community Engagement: $10 million through a contract with Sierra Health Foundation to select and administer subcontracts to 50 community-based organizations (CBOs) to conduct outreach to communities. The CBOs contract will run from February through July 2021 with awards ranging from $50,000 to $300,000. CBOs were selected based on their: (1) 501(c)(3) or 501(c)(5) status, (2) experience in conducting outreach to the identified communities, (3) contract experience with Census experience being prioritized, (4) past performance in contracts, (5) need, including COVID-19 rates and vulnerability by population and geography, capacity of other organizations within the same region, ability to conduct outreach in the primary language of the target population; appropriate staffing; operational budget.

  Labor Agency is targeting regions where high-risk/essential industries are concentrated. Based on workforce data, the following geographic regions have the highest concentrations of agriculture, food processing (including meatpacking), food service (restaurant and grocery), janitorial, warehouse/logistics, and manufacturing (including garment):

Region	Counties
San Francisco Bay Area	Santa Clara, San Mateo, Alameda, San Francisco, Contra Costa, Marin, Solano, Sonoma, Napa, Mendocino
Sacramento	Sacramento, Yolo, El Dorado, Placer, Yuba, Amador, Calaveras, Sutter
San Joaquin Valley	Kern, Tulare, Kings, Fresno, Madera, Merced, Stanislaus, San Joaquin
Central Coast	Ventura, Santa Barbara, San Luis Obispo, Monterey, San Benito, Santa Cruz
Los Angeles	Los Angeles, Orange, San Bernardino, Riverside
San Diego	San Diego, Imperial

In addition, Labor Agency provided $1.15 million for a contract with two vendors to design and develop a central platform/ data hub that will allow subcontracted CBOs to access online visual data mapping system that will inform outreach strategy. The map will incorporate public health data and workforce data to identify where target communities are located. In addition, this platform will enable organizations to upload their planned activities and report on their completed activities. The contractors also will provide research, project management and technical assistance to plan and execute the community engagement work.

- Worker and Employer Training Resources: $4.3 million to partners at the University of California and other contractors to develop training curriculum and conduct live virtual training opportunities to employers and workers on COVID-19 safety guidance and compliance with labor law protections. These trainings include: (1) $129,400 online courses on COVID-19 prevention, (2) $3.14 million for agricultural industry COVID-19 prevention training for supervisors, agriculture workers, and farm worker organizations, (3) $535,000 food sector COVID-19 prevention training for employers and workers in food processing, meatpacking, and grocery/retail industries, (4) $164,000 COVID-19 prevention training program for Los Angeles area organizations with a focus on garment and warehouse industries, and (5) $135,000 for training CBOs on leave rights and protections for workers affected by COVID-19.

Labor Agency Outreach. The 2020 budget also provided $20 million and 19 positions in 2020-21 one-time to be spent over three years for outreach efforts on COVID-19 workplace safety and labor laws. The Labor Agency will target outreach to low-wage immigrant workers, and support employers as they navigate how to re-open and operate. Departments will work with community-based organizations, and outreach will prioritize language access.

The subcommittee may wish to ask the Administration:

1. How were funds were used to enforce of protections that assist hospitality workers in returning to work?
2. Nearly 40 percent of all California jobs lost during the pandemic have been in the hospitality and leisure industry. Half of the women who are housekeepers are over the age of 50, and women over 50 only get a job interview 30 percent of the time. How can the state help ensure that hospitality workers who were laid off due to COVID-19 are able to recover their jobs?

Staff Recommendation. None. This is an informational item.

Issue 11: Department of Better Jobs and Higher Wages

Summary. The Governor's budget proposes to consolidate the California Workforce Development Board, workforce services at the Employment Development Department (EDD), apprenticeship programs at the Division of Apprenticeship Standards (DAS) within DIR, and employer-sponsored training programs at the Employment Training Panel into a new state department, the Department of Better Jobs and Higher Wages.

Background

The aforementioned four departments and divisions are under the jurisdiction of the Labor and Workforce Development Agency, and each offer various employment and training programs and services.

The California Workforce Development Board. CWDB was established by an Executive Order in response to the federal Workforce Investment Act (WIA) of 1998. In 2014, the federal WIOA was signed into law and superseded WIA. CWDB is responsible for assisting the Governor in performing the duties and responsibilities required by WIOA. WIOA requires the CWDB to develop, implement and modify the Unified or Combined State Plan in order to receive federal funding for WIOA core programs. The Unified State Plan is a four-year strategic state workforce plan that is modified every two years to account for changing economic conditions or updates to state strategies.

CWDB is also responsible for implementing strategies to support staff training and awareness, dissemination of best practices, and providing support for effective local boards. In addition, CWDB is responsible for local area allocation formulas, development of the statewide labor market information system, and development, review and recommendation of policies and guidance related to the appropriate roles and resource contributions of One-Stop partners also known as American Job Centers of California (AJCC). CWDB is also administers various workforce-related initiatives and special projects, including: Breaking Barriers to Employment, High Roads Construction Careers and High Road Construction Careers, Prison to Employment, and Workforce Accelerator Funds.

DIR's Division of Apprenticeship Standards (DAS). DAS administers California's apprenticeship law and approves apprenticeship standards for wages, hours, working conditions, and the specific skills required for state certification as a journeyperson in an occupation appropriate for apprenticeship. DAS also consults with program sponsors and monitors programs to ensure high standards for on-the-job training and supplemental classroom instruction. DAS consultants work locally with employers—and their collective bargaining partners where applicable—to develop new apprenticeship programs, determining the length of training and specific skills necessary to perform at the level required in the occupation.

Existing law also requires DAS to evaluate apprenticeship and pre-apprenticehsip programs to ensure that they comply with state standards and provide positive outcomes for their students. These evaluations must be public, and if there is a deficiency, DAS is required to recommend remedial actions within a specified time frame. DAS is required to annually report to the Legislature regarding information on the demographic breakdown of program participants, types of programs participants are registered in, program completion, remedial actions, applications received, reimbursement for related supplemental instruction pursuant to community college and school districts, among others.

Employment Development Department (EDD). The EDD administers the Unemployment Insurance, Disability Insurance, and Paid Family Leave programs, and provides employment and training programs under the federal WIOA and Wagner-Peyser Act. Under the Wagner-Peyser Act, EDD works with state and local agencies and organizations through America's Job Center of California (AJCC) locations. AJCC customers may access services through AJCC staff or the self-service CalJOBS website. These services include job search assistance, job referral, placement assistance for job seekers, re-employment services to Unemployment Insurance claimants, and recruitment services to employers with job openings. The CalJOBS website helps job seekers and employers navigate the state's workforce services, such as searching for jobs, build resumes, access career resources and gather information on education and training programs, while employers can enter job openings and find qualified candidates. In addition to the AJCCs, the a few other employment programs, including the national dislocated worker grant, veteran training programs and services, and national farmworker jobs administration.

EDD is also responsible for providing financial accountability for the WIOA program, such as collecting and reporting data to the U.S. Department of Labor for WIOA Adult, Dislocated Worker, and Youth program funds and participants, providing technical assistance to program operators, and ensuring that the programs operate in compliance with federal and state requirements.

EDD also has a workforce services branch and labor market information division. This division collects, analyzes, and publishes state and regional statistical data and reports on California's labor force, industries, occupations, employment projections, wages, and other labor market and economic data for the US Bureau of Labor Statistics.

The Employment Training Panel (ETP). The ETP provides financial assistance to California businesses for customized worker training for new and existing employees. These programs are for current employees and companies facing out–of–state competition, recipients of unemployment benefits, and employers that meet certain criteria, such as those that are located in regions with high unemployment rates. The ETP reimburses the cost of employer-driven training for incumbent workers and funds the type of training needed by unemployed workers to re-enter the workforce. The ETP is funded by California employers through a special payroll Employment Training Tax.

Department Reorganization Process

The Legislative Analyst's Office (LAO) released a report on February 7, 2020, which described various methods that government reorganizations can be implemented. Typically, government reorganizations have been pursued either through the formal executive branch reorganization process laid out in statute or through budget trailer legislation. Historically, most major reorganizations have gone through the formal executive reorganization process.

Executive Branch Reorganization Process. Through the California Constitution, the Legislature authorized the Governor to reorganize the functions of state agencies through the executive branch reorganization process. In establishing this process, the Legislature stated that the Governor should determine if such changes are necessary to accomplish one or more broad purposes, such as to reduce expenditures, increase efficiency, or eliminate duplications of effort. Since 1968, various Governors have submitted 37 reorganization plans through this process. The executive reorganization process can be used to transfer, consolidate, or eliminate agencies and programs. The process can also be used to establish new agencies to perform the functions of existing entities.

The major steps required in the executive branch reorganization process include:

- **Submission of Plan for Statutory Drafting.** Before initiating the reorganization process, the Governor must provide a copy of the reorganization plan to Legislative Counsel for statutory drafting so that it reflects the form and language suitable for enactment in statute and to ensure that the plan clearly and specifically expresses its nature and purpose.

- **Submission of Plan for Independent Review.** At least 30 days before submitting a reorganization plan to the Legislature, the Governor must submit the plan to the Little Hoover Commission—an independent state oversight agency tasked with reviewing and making recommendations to the Governor and Legislature on state operations and any proposed government reorganization plan.

- **Review by Legislative Committees.** Once the Governor submits the plan to the Legislature, (1) the Little Hoover Commission has 30 days to issue a report reviewing the plan and (2) the Legislature has 60 days to consider the proposal. Upon receipt, the plan is referred to policy committees of each house of the Legislature. The committees study and report on the plan no later than ten days prior to the end of the 60-day period.

- **Legislative Action on Plan.** Either house can reject the proposal by majority vote—but not until its policy committee has issued a report or the report's deadline has passed. The Legislature can only vote to approve or reject the plan, it cannot amend it. If neither house rejects the reorganization plan during the 60-day period, it goes into effect on the 61st day.

Budget Trailer Legislation Process. Budget trailer legislation is used to implement specific changes to state laws to effectuate the annual state budget. Generally, a separate a piece of budget trailer legislation is needed for each major area of budget appropriations, such as transportation, human services, or education. The provisions of these bills are usually proposed by the Governor and negotiated as part of the budget package for each fiscal year. In recent years, several government reorganizations have been pursued through budget trailer legislation. For example, in 2019, the Governor proposed removing the Division of Juvenile Justice from the California Department of Corrections and Rehabilitation and making it a new department under the California Health and Human Services Agency (CHSSA) after a one-year planning and transition period. This proposal was ultimately implemented through budget trailer legislation approved as part of the 2019-20 budget package.

Reorganizations pursued through budget trailer legislation are exempt from the procedures outlined in statute for the executive reorganization process. Instead, reorganizations pursued through this process must follow the current rules and regulations associated with passing budget trailer legislation. For example, budget trailer legislation (like all bills) must be made available to legislators and posted on the Internet for at least 72 hours before the Legislature can vote on them. In addition, budget trailer legislation takes effect immediately when signed by the Governor.

<u>Governor's Budget Proposal</u>

Governor Proposes to Create New Department Using Statutory Process. The Governor's budget for 2021-22 proposes to consolidate state workforce programs under a new Department of Better Jobs and Higher Wages. Specifically, the Governor proposes to consolidate employment, training, and data collection services currently conducted at various entities—workforce services at the EDD, workforce training at the California Workforce Development Board, apprenticeship programs at the Division of Apprenticeship Standards within the DIR, and employer-sponsored training programs at the

Employment Training Panel. Currently, these entities all reside within the state's Labor and Workforce Development Agency, which integrates policy to align the state's workforce programs. According to the Administration, the new department is needed in order to "integrate policy development and workforce innovation with existing employment, training, and data collection services."

The Governor proposes over 200 pages of trailer bill language to establish the DBJHW and to make conforming changes to transfer existing statutory provisions of the various programs to the new labor code and department. The proposed trailer bill language specifically provides the DBJHW jurisdiction over workforce development and training, job creation activities, business services, and apprenticeship standards. The bill specifies that the Director shall be appointment by the Governor with the advice and consent of the Senate. There will also be two deputy directors of the department who will be appointed by the Governor.

While the proposal does not provide new resources or positions for the DBJHW, the Administration notes that it will redirect $2.4 million from existing resources to support up to 10 executive leadership positions. These executive positions that will be redirected from existing programs and divisions to support the transition of the DBJHW.

The Administration notes that there are 1,755 staff that are associated with the current departments and divisions that will be shifted to the DBJHW. The chart below provides a breakdown of associated positions.

State Entity	Funded position in 19/20
California Workforce Development Board	36
Division of Apprenticeship Standards	93
EDD/Workforce Services Branch	1466
Labor Market Information Division	75
Employment Training Panel	85
Total Positions	**1755**

The Administration notes that during the 2021-22 transition, staff will technically continue to be staffed and funded by existing sources, however direction and control will be shifted to the new Director and executive staff of the DBJHW. If the Legislature approves the proposal, the Administration notes that in 2022-23, the DBJHW will submit a budget proposal to request to move all positions over from EDD and DIR. Moving forward, the Administration will then submit BCPs requesting position and budget authority tied to existing resources. As of 2020-21, the total funding associated with these state entities is $772 million.

The Governor first proposed to create the DBJHW last year as part of the 2020-21 budget process. At that time, Legislative budget subcommittee hearings were consolidated due to the COVID-19 pandemic. The Legislature rejected the proposal without prejudice due to concerns that the Legislature did not have sufficient time or ability to hear or discuss the proposal in the regular subcommittee process.

Legislative Analyst's Office Comments

Labor Agency Serves Similar Functions as Proposed New Department. According to the Administration's budget change proposal for the new department, released last year, consolidating the entities will (1) improve equity for all workforce participants, (2) provide efficiency by bringing the programs together, and (3) enhance customer service for workers and employers. However, each of these entities resides currently within the Labor and Workforce Development Agency (LWDA). The LWDA was created in 2002 to (1) improve accountability and access to services, (2) eliminate program duplication, and (3) achieve cost-effectiveness. Achieving the objectives identified for the new department appears well within the original and ongoing responsibilities of the LWDA.

Not Clear What Problem the Reorganization Is Intended to Solve. To the extent that problems exist within the current structure that prevent LWDA entities from aligning resources, decision-making, and policy, the LAO is unsure how creating a new department addresses these problems. Without a clear problem definition, the Legislature may find it difficult to judge the proposal or establish accountability and expectations for the new department.

Reorganizing EDD During Unemployment Insurance Challenges Poses Risks. To create the new department, the administration proposes to shift about 1,600 staff from EDD to the new department. These staff currently work within EDD's workforce services branch and therefore are not responsible for the day-to-day administration of the state's unemployment insurance program. Nevertheless, a reorganization presents logistical and personnel challenges that call for considerable focus from EDD and Labor Agency leadership at a time when the state's urgent goal is to eliminate the backlog of unemployment insurance claims and prevent further fraud. In the LAO's view, the Administration's decision to move forward with a complex reorganization during the pandemic poses a potentially serious risk to the state's ongoing efforts to eliminate the backlog of unemployment insurance claims.

Staff Comments

Administration Believes the Current Structure is Inefficient and Fragmented. The Administration believes that the current workforce programs are too fragmented across state government, which makes it difficult to collaborate. The Administration notes that there are multiple inefficiencies and duplications in the current structure which results to unnecessary confusion, delay, and cost. Specifically, the Administration notes that a single program or funding stream can have overlapping State administrative oversight and management. As a result, a local entity can receive conflicting guidance, legal and data reporting functions, or grant contracts can be delayed. The Administration believes that this duplication reinforces silos between funding streams and adds complexity that confuses job seekers and employers. Additionally, each workforce entity within the Labor Agency has its own legal, contracting, administrative and HR departments (CWDB currently contracts with EDD for these). The Administration believes a consolidated DBJHW will allow for the sharing of these capacities, and save resources.

The LAO notes that Labor Agency was created to address these types of issues. The subcommittee may wish to ask what barriers does Labor Agency have in addressing these problems.

High Roads Principles. Though not specified in the proposed trailer bill, the Administration notes that the High Road principles will be the core of the DBJHW. The DBJHW will focus on quality jobs that provide a family sustaining wage; comprehensive employer provided benefits; values worker voice; provides security, fair scheduling, a safe and healthy work environment, and pathways to career advancement. The Administration notes that the DBJHW will have the following branches that will help support high roads principles:

- The Industry Engagement Branch of the DBJHW will focus on consolidating and aligning employer outreach activities with the focus on the regional organizing of High Road employers that offer quality jobs in industry sectors that are driving employment.

- The Workforce Employment Services & Training Branch of the DBJHW will focus on aligning programs and funding streams, service cultures, performance outcomes, reporting and data collection, etc. The intent is to improve access to and the navigability of programs for job seekers who are low-income and from communities or groups that are disadvantaged. This Branch will work closely with the Industry Engagement team to connect workforce programs to quality jobs.

- The Policy, Research and Evaluation Branch of the DBJHW will align all workforce policy work with a focus on program and system evaluation and research, program analysis that makes certain investments are high quality and are achieving desired outcomes, and aligned grant making to drive innovative workforce approaches. The Policy team will work with the Industry Engagement and Workforce Employment teams to improve and integrate workforce programs. The Policy team will also collaborate with other State agencies and departments, including continuing the CAAL-Skills work of comparing data across workforce programs to understand the relative impacts of the various interventions. The intent is provide policy guidance on building a comprehensive High Road workforce system.

Current Programs and Operations. The Administration notes that there will be no programmatic disruptions as a result of the transition, and programs will continue to receive all the oversight, compliance monitoring, stakeholder engagement, and labor law enforcement that exists under the existing organizational structure. However, the subcommittee may wish to consider the timing of this transition. As the LAO notes, the state has ongoing challenges with EDD's unemployment insurance claims backlog, fraud and frozen debit cards. Lastly, as discussed earlier in the agenda, the Governor also has a budget proposal to provide $25 million to CWDB to expand and create additional high roads training partnerships. In light of all these changes and developments, the subcommittee may wish to consider the capacity of the departments and their staff to conduct their responsibilities, while also transitioning into a new department, and the potential impact that it may have on the programs.

The subcommittee may wish to ask the Administration:

1. What is the rationale for creating the DBJHW through the statutory process rather than the executive branch reorganization process?
2. How will the DBJHW expand job training and apprenticeships, particularly for historically excluded communities?
3. As currently drafted, the trailer bill does not specify high roads training partnerships or programs principles. How does the state define what a high roads program is?
4. How will the Administration provide updates to the Legislature regarding the progress of DBJHW, including organizational structure, programs, and governance?

<u>Staff Recommendation. Hold Open.</u>

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT

The Employment Development Department (EDD) connects employers with job seekers, administers the Unemployment Insurance, Disability Insurance, and Paid Family Leave programs, and provides employment and training programs under the federal Workforce Innovation and Opportunity Act. Additionally, EDD collects various employment payroll taxes including the personal income tax, and collects and provides comprehensive economic, occupational, and socio-demographic labor market information concerning California's workforce.

3-YEAR EXPENDITURES AND POSITIONS †

		Positions			Expenditures		
		2019-20	2020-21	2021-22	2019-20*	2020-21*	2021-22*
5900	Employment and Employment Related Services	1,331.7	1,331.7	1,331.7	$212,847	$224,134	$219,113
5915	California Unemployment Insurance Appeals Board	427.1	509.3	516.1	82,064	92,830	100,239
5920	Unemployment Insurance Program	2,691.3	9,286.2	6,366.7	50,563,549	109,545,911	34,620,935
5925	Disability Insurance Program	1,571.7	1,575.9	1,504.4	9,237,692	10,151,749	10,497,695
5930	Tax Program	1,818.7	1,728.3	1,728.3	244,644	455,522	381,872
5935	Employment Training Panel	85.1	85.1	85.1	105,839	100,760	81,299
5940	Workforce Innovation and Opportunity Act	202.2	202.2	202.2	419,669	404,363	402,021
5945	National Dislocated Worker Grants	1.5	1.5	1.5	45,000	45,000	45,000
9900100	Administration	701.0	701.0	701.0	400	400	400
TOTALS, POSITIONS AND EXPENDITURES (All Programs)		**8,830.3**	**15,421.2**	**12,437.0**	**$60,911,704**	**$121,020,669**	**$46,348,574**

Issue 12: EDD Unemployment Insurance Loan Interest Payment

Summary. The Administration proposes $555 million General Fund one-time to make an estimated interest payment on the federal loan that was necessary to pay benefits when the Unemployment Insurance (UI) Trust Fund became insolvent. The UI Trust Fund is the fund in which weekly UI benefits are paid to eligible claimants and the first interest payment is due by September 30, 2021.

Background.

The California labor market collapsed in late March and early April due to the COVID-19 pandemic. By April, 2.6 million California workers were unemployed and therefore eligible for state unemployment insurance (UI) benefits. For comparison, during the Great Recession, the number of unemployed workers peaked at 1.3 million. Due to this unprecedented level of unemployment, the state’s UI Trust Fund, which collects payroll taxes that fund UI benefits, became insolvent during the summer of 2020. To continue paying weekly UI benefits after the fund became insolvent, the state took on available federal loans. Under federal law, the state must make annual interest payments on outstanding loans until the loans are repaid.

UI Program Assists Unemployed Workers. The UI program provides weekly benefits to workers who have lost their jobs through no fault of their own. The federal government oversees state UI programs but the state has discretion to set benefit and employer contribution levels. Under current state law, weekly UI benefit amounts are intended to replace up to 50 percent of a worker's prior earnings, up to a maximum of $450 per week, for up to 26 weeks. In 2019, the average benefit amount was $330 per week.

UI Trust Fund. Each individual employer's state UI tax rate is calculated annually using an experience rating system based in part on the usage of the UI system by the employer's former employees. The tax rates on an employer range from a low of 1.5 percent to a high of 6.2 percent. Due to longstanding solvency issues, the state's UI tax rate has been at the maximum amount since 2004. The federal UI tax, known as the Federal Unemployment Tax Act (FUTA) is typically used to pay for state UI program administration costs.

The tax rate assigned to each employer is then applied to a taxable wage base to determine the amount the employer owes in UI taxes for a particular employee. Since 1984 and the taxable wage base used to calculate California employers' UI state taxes is the lowest allowed under federal law. The taxable wage base is currently $7,000, and only Arizona, Florida, Tennessee, and Puerto Rico currently use the same wage base. For California, the maximum tax is $434 per employee per year. In 2019, the state collected $5.9 billion in UI taxes from employers and issued about $5.5 billion in total UI benefits.

UI Trust Solvency and Loan. During periods of high unemployment, the UI taxes paid by employers are not sufficient to cover the full cost of UI payments to the unemployed. When this occurs, the state receives federal UI loans to continue paying out benefits. These loans must be repaid, with interest (currently 2.3 percent annually), at a later time. The loan principal is repaid by automatic increases in the federal UI tax rate that are set out in federal law. The loan interest typically has been paid from states' General Funds.

All employers pay the same FUTA tax rate of six percent. However, employers in qualifying states receive a tax credit of 5.4 percent, so the actual tax rate is reduced to 0.6 percent. This rate is also applied to a taxable wage base of $7,000. These federal taxes are collected by the Internal Revenue Service and are used to provide UI administrative grants to the states, to cover the costs when states pay federal-state extended benefits, and to provide loans to insolvent states.

UI Trust Loan Repayment. When federal loans are issued due to an insolvent UI Trust Fund, the federal government facilitates the repayment of this debt by reducing the 5.4 percent FUTA tax credit that employers typically receive in qualifying states. The federal unemployment tax credit is reduced by 0.3 percent each year (resulting in incrementally higher federal taxes for employers) until the loan is repaid, or until the entire 5.4 percent credit has been reduced to zero and employers are paying the full 6.0 percent federal tax rate. When the federal loans are repaid, the temporary increases to employers' federal taxes will cease. To date, the increases in federal taxes following the insolvency period of the Great Recession has resulted in California employers paying an additional $9.6 billion in FUTA taxes. California experienced a 0.3 percent credit reduction each year from tax years 2011 through 2017. The outstanding loan balance was fully repaid after March of 2018, therefore, no 2018 or 2019 reduction was assessed.

Interest Payment and Relief. In addition to repaying any outstanding federal loan, states are also required to pay interest incurred on the loan. The interest on the federal loans during the Great Recession was waived for the first two years because of the American Recovery and Reinvestment Act, but beginning in 2011, California had to begin paying the associated interest on the outstanding loan balance. During and after the Great Recession California borrowed in total about $64 billion and paid a total of $1.4 billion in interest. All of the interest ultimately was paid with General Fund, however for the first two years of borrowing loans were made from the disability insurance to the General Fund due to General Fund constraints. The loans were ultimately repaid, with interest, in 2016, 2017 and 2019.

Similar to what occurred during the Great Recession, the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act which was signed into law on March 27, 2020, waives all interest due from states for any advances taken in 2020. California's UI Trust Fund became insolvent briefly in late April 2020 and early May 2020, and the EDD began borrowing funds from the federal government in order to continue paying UI benefits to qualifying unemployed claimants. The UI Trust fund became insolvent again in early June 2020 and is projected to remain insolvent through at least 2021, based on EDD's May 2020 UI Fund Forecast. As of January 28, 2021, the outstanding balance is $18.6 billion.

The Continued Assistance to Unemployed Workers Act which was signed into law on December 27, 2020, waives all interest due from state for any advances through March 14, 2021.

2020-21 UI Loan. California has used these federal loans to continue paying benefits during the pandemic. As of February 2021, the state has received $18.6 billion in federal UI loans to cover state UI benefit costs. This state debt is only related to paying regular state UI benefits. The state does not need to borrow to pay for the temporary benefit increases and extensions that the federal government enacted during the pandemic because these benefits are 100 percent federally funded. California also received federal loans during the Great Recession.

Rarely Used Provision of Federal Law Allows States to Defer UI Interest Payments. Under federal law (42 United States Code Section 1322), states are eligible to delay upcoming interest payments on federal UI trust fund loans under certain circumstances. Specifically, if the average state unemployment rate exceeded 7.5 percent during the first six months of the prior calendar year (in this case, January through June 2020), the state may pay 25 percent of the interest due. The remainder (75 percent) would be repaid in three 25 percent portions over the next three years. Interest payments deferred under this provision do not accrue additional interest. To the LAO's knowledge, no state has ever used this provision to defer accrued interest payments, largely because the provision is not widely known. At the LAO's request, however, the Administration received confirmation from the U.S. Department of Labor that California currently is eligible for this interest deferral**.**

<u>Governor's Budget Proposal</u>

The Governor proposes $555 million General Fund to make an estimated first annual interest payment on the federal loan received during the pandemic. The budget bill language authorizes the Department of Finance to augment this amount based on the calculation of the actual interest due to the federal Government. The Administration must report any interest payment to the Joint Legislative Budget Committee within 30 days. Additionally, the budget bill language specifies any funds appropriated in excess of the amount required will be reverted to the General Fund on October 15, 2021.

<u>Legislative Analyst's Office Comments</u>

$555 Million Interest Payment Estimate Based on Outdated Economic Forecast. The Administration's interest payment estimate is based on underlying economic assumptions made by the Department of Finance in April, 2020. At that time, both the Administration and the LAO estimated that the economic consequences of the pandemic would be severe and prolonged. Since then, the actual consequences have become clear and, though substantial, were not nearly as severe as was anticipated. However, the Administration's interest payment estimate is based on these outdated forecasts. Specifically, the estimate is based on the assumption that the average state unemployment rate in 2021 will be 18 percent. The state's current unemployment rate is about half that level. As a result, the $555 million interest payment is based on a large projection of outstanding federal loans at the end of 2021—$48 billion. Taking updated economic conditions into account, the LAO believes the 2021 year-end federal loan balance is likely to be closer to $25 billion.

Does Not Reflect Extended Interest Waiver Under Recent Federal Law. The federal Families First Coronavirus Response Act, enacted in March 2020 in response to the COVID-19 pandemic, allows states to waive interest accrued during calendar year 2020 on federal UI loans. The Administration's interest payment estimate accounts for this waiver. However, after the Administration developed its estimate, the federal government, on December 27, 2020 extended the interest accrual waiver from the end of 2020 through March 14, 2021. As a result, the state's interest payment for 2021-22 will cover roughly six months of accrued interest (March 15 through September 30), whereas the Administration's interest payment estimate reflects nine months of interest. The Administration has stated that it plans to update their interest payment estimate as part of the May Revision to account for the recent federal law change.

As a Result, Governor's Budget Overstates Interest Payment by Roughly $300 Million. The LAO estimates the state's first interest payment on federal UI loans will total roughly $260 million. This amount is roughly $300 million less than the amount estimated by the administration. This lower estimate reflects a lower projection of federal loans outstanding (based on current economic conditions) and a shorter interest accrual duration period (based on the recently extended waiver).

Adopt Updated $260 Million Estimate of Federal Interest Payment Due. The LAO recommends the Legislature adopt an up-to-date estimate of the overall interest amount likely due in September. For planning purposes, the LAO suggests the Legislature adopt their estimate of $260 million. This estimate reflects current economic conditions and federal law. If the federal government takes further action to extend the interest waiver beyond March 14, this estimate would need to be revisited and likely reduced accordingly. The Administration and the LAO will provide an updated estimate as part of the May Revision.

Defer Interest Until Later Years. In addition to adopting an up-to-date estimate of the total interest payment, the LAO recommends the Legislature adopt provisional budget legislation to request an interest payment deferral from the U.S. Department of Labor, given that the deferral does not have the effect of increasing state payments. This would allow the state to pay one-quarter of this year's interest payment in 2021-22 and an additional one-quarter in each of the next three years. Should the Legislature pursue this course, the LAO estimates that the total interest due this year would be roughly $65 million.

<u>The subcommittee may wish to ask:</u>

1. A recent LA Times article found that residents who believe that their unemployment benefit claims have been wrongly denied are waiting on average 92 days for assistance. Please explain the cause of this, and how the state can help address this?

<u>Staff Recommendation. Hold Open.</u>

7350 DEPARTMENT OF INDUSTRIAL RELATIONS

The Department of Industrial Relations is responsible for enforcing the sections of the Labor Code that protect the health and safety of workers; promulgating regulations and enforcing laws relating to wages, hours, and workers' compensation insurance laws; adjudicating workers' compensation claims, and working to prevent industrial injuries and deaths. The Department also promotes apprenticeship and other on-the-job training, as well as analyzes and disseminates statistics measuring the condition of labor in the state.

3-YEAR EXPENDITURES AND POSITIONS †

		Positions			Expenditures		
		2019-20	2020-21	2021-22	2019-20*	2020-21*	2021-22*
6080	Self-Insurance Plans	22.8	22.8	22.8	$6,650	$6,440	$6,793
6090	Division of Workers' Compensation	928.6	991.0	1,021.0	242,758	248,524	265,967
6095	Commission on Health and Safety and Workers' Compensation	4.8	4.8	4.8	3,858	4,053	4,156
6100	Division of Occupational Safety and Health	727.7	738.7	779.2	172,173	172,772	186,102
6105	Division of Labor Standards Enforcement	605.9	658.9	671.9	122,531	129,247	130,583
6110	Division of Apprenticeship Standards	86.9	92.9	92.9	17,689	17,462	18,352
6120	Claims, Wages, and Contingencies	-	-	-	246,012	238,712	238,712
9900100	Administration	445.2	488.7	488.7	81,834	104,620	96,295
9900200	Administration - Distributed	-	-	-	-81,834	-104,620	-96,295
TOTALS, POSITIONS AND EXPENDITURES (All Programs)		**2,821.9**	**2,997.8**	**3,081.3**	**$811,671**	**$817,210**	**$850,665**

Issue 13: Division of Occupational Safety and Health (DOSH) or Cal/OSHA

Summary. The Governor proposes budget bill language to authorize the Department of Finance to provide up to an additional 70.0 positions in the 2021-22 fiscal year and up to $14.4 million ($13.3 million ongoing) from the Occupational Safety and Health (OSH) Fund to Cal/OSHA.

Background

The federal Occupational Safety and Health Act of 1970 provides that employers have a general duty to provide their employees with a place of employment that is free from recognized hazards that are likely to cause death or serious harm. Under the Act, the federal OSHA is responsible for setting specific standards related to workplace safety and health and has authority to inspect workplaces and enforce these standards. Federal law provides that states may, with federal approval and oversight, optionally assume responsibility for enforcement of federal occupational safety and health standards. States wishing to assume this responsibility develop "state plans" that must be at least as effective at enforcing federal occupational safety and health standards as the federal OSHA would be. In California, the Division of Occupational Safety and Health (DOSH) or Cal/OSHA is responsible for administering the state's responsibilities for occupational safety and health under the state plan.

Select Cal/OSHA Requirements in State Law

- Must investigate formal complaints made by employees or their representatives. Investigations into formal complaints of serious violations must begin within three working days, while investigations into formal complaints of nonserious violations must begin within 14 calendar days.
- Must reinspect at least 20 percent of business establishments with a serious violation.
- Must have a "high–hazard industry" inspection program that prioritizes planned inspections in industries with relatively high rates of workplace injury and illness.
- Must issue permits before certain high–risk projects can be undertaken (such as excavation of deep trenches, construction of tall structures, underground use of diesel engines, and others).
- Must dedicate certain budgetary resources for activities related to the Labor Enforcement Task Force, which targets coordinated enforcement activities of multiple state agencies, including Cal/OSHA, in business establishments participating in the "underground economy."

Cal/OSHA activities are primarily funded by (1) a federal grant and (2) an assessment levied on employers that is equal to a percentage of workers' compensation insurance premiums and is deposited into the Occupational Safety and Health Fund.

Federal OSHA and existing law requires the enforcement branch of Cal/OSHA have the staffing capability to receive and act upon complaints, accidents and referrals of health hazards in the workplace. Existing law requires Cal/OSHA to utilize as health inspectors, personnel with the competence, knowledge, and experience with industrial hygiene practices to recognize, evaluate, determine, and control health hazards in many different types of workplaces for the purpose of administrating and enforcing state law and regulations.

Cal/OSHA Staffing Levels. Over the past several years, Cal/OSHA has operated with a relatively high vacancy rate (above 20 percent) among its inspection staff, especially among inspection staff in its Bay

Area region offices. In 2019-20, Cal/OSHA had 73 vacancies, of which 50 were Safety Engineers (SE) and Industrial Hygienists (IH). As of December 2020, Cal/OSHA has 81 vacancies, of which 55 were SE and IH. The SE classification is responsible for identifying and evaluating safety hazards of the workplace. These inspections focus on workplace hazards that result in traumatic injury, such as equipment, machinery, guardrails on stairs, etc. The IH classification is responsible for identifying and evaluating health-related hazards as a part of inspections in workplace, such as airborne contaminants (lead, silica, organic vapors, wildfire smoke, etc.), physical and environmental agents (noise, heat) and pathogens, such as bloodborne pathogens, tuberculous, and COVID-19. Health can also include organizational systems related to root causes of injuries, such as workplace violence.

In 2018, there were only four IH state employees at Cal/OSHA. The Administration notes that as SE began to receive pay increases, it became harder to retain IH staff. In an effort to retain IH staff, historical IH positions were reclassified as SE staff. These staff continued to utilize their training to perform IH inspections. Over time, Cal/OSHA lost almost of these trained staff to attrition. The Administration will be working with CalHR to examine the pay scale of the IH classification and determine the best way to ensure staff retention.

The Federal OSHA has long criticized low staffing levels in the Cal/OSHA. In a recent evaluation report, Federal OSHA found that the state is delayed in issuing citations after a workplace has been inspected; understaffing is the cause for this problem, and for other enforcement shortcomings. Moreover, the Cal/OSHA plan failed to reach the benchmark established by Federal OSHA for the minimum number of health and safety inspectors, which prevents the CAL/OSHA from receiving final state plan approval and status.

Due to hiring infractions that occurred with the prior administration, in 2018-19, DIR was subject to a hiring freeze and also loss its hiring delegation authority. As noted in an earlier item in the agenda, when a department loses its hiring delegation authority, this function reverts to CalHR and the department must seek CalHR or SPB pre-approval to make those human resources (HR) decisions. This creates extra layers of review and adds significant time to the process to complete HR tasks. The DIR hiring freeze was not lifted until the last quarter of the 2018 calendar year. DIR also had to address barriers that prevented or delayed hiring. For example, many of Cal/OSHA’s entry-level examinations had expired and needed to be redesigned and re-implemented. Staff also had to re-trained on the correct hiring processes. The department believes that these factors contributed to delay in filing positions.

The 2014-15 budget provided funding to support 26 unfunded positions within enforcement (13 of which were inspector positions). The 2015-16 budget approved a Governor’s budget change proposal which provided an increase of 44 enforcement positions (18 of which were inspector positions). These previous budget actions did not increase the number of industrial health hygenist positions or provided additional resources for administrative staff to support operations or sufficient legal staff.

Industrial Hygienist (IH) and Safety Engineer (SE) Workload Study

Cal/OSHA entered into an agreement with CPS HR Consulting in March 2020 to conduct an independent workload and staffing analysis of the IH and SE classification groups and the required staffing to meet the mission-critical and mandated work of the Cal/OSHA staff, including but not limited to COVID inspections. This analysis includes a description of completed workload requirements, staffing gaps identified by unmet work requirements and work backlog based on 2018-19 activities and the identification of trends and new future work that may impact future workload. In 2018-19, there were a total of four IH and 171 SE (some SE staff conducted IH responsibilities).

Industrial Hygienist. The report reviewed and analyzed enforcement activities conducted by inspection staff in 2018-19. The report identified a total need of an additional 107.98 IH in 2020-21, 108.31 IH in 2021-22, and 108.66 IH in 2022-23 on net above existing vacancies and 2018-19 levels. These needs are based on three components:

1. **Health-Related Work Done in 2018-19.** The report found that of the industrial hygienist work conducted in 2018-19, 31.98 positions worth of work was conducted by non-industrial hygienist staff. At the time, there were only four authorized industrial hygienists staff, and as a result safety engineers conducted most of this work.

2. **Unmet Work Requirements.** The report found that in 2018-19, there was additional work worth 66.87 positions that was not completed. This uncompleted work included Department of Public Health lead notifications, additional workplace sampling and monitoring of 60 percent of health inspections, follow-up verification on non-serious and serious satisfactory complaint investigation letters, additional asbestos and lead notifications inspections, and follow-up inspections on 20 percent of health inspections resulting in serious violations.

3. **Increased Workload Projects.** The report projects the following workload increases: (1) 60 percent increase of workplace sampling and monitoring of health inspections, (2) 20 percent increase in accident and fatality inspections due to the increase in COVID-19 response, (3) indoor heat-related and wildfire smoke-related illness, (4) increase of 100 health complaints related to COVID-19 per month for the next few years, (5) increase in planned inspections for asbestos and lead, and (6) increase in follow-up, programmed and unprogrammed related inspections.

Safety Engineers. The study identified a need for an additional 34.17 SEs in 2020-21, 38.98 SE in 2021-22, and 43.97 SE by 2022-23 on net above existing vacancies and 2018-19 levels. These additional needed positions are based on three components: 1) safety-related work done in 2018-19; 2) annual unmet work requirements; and 3) additional work requirements based on anticipated trends, including COVID-19.

Cal/OSHA Response to COVID-19

With the COVID-19 pandemic, Cal/OSHA is being called upon for emergency response efforts fielding complaints of COVID-19 related hazards at almost 9,100 workplaces and providing compliance assistance to over 12,800 employers regarding COVID-19 hazards (as of mid-December 2020), while investigating over 600 serious illnesses and fatalities, with the number of investigations growing each day.

Cal/OSHA’s lack of technical capacity in the field of industrial hygiene has frustrated the speed and scope of their response to the pandemic. Additional safety training is being provided to staff on an ongoing basis so they can assist without being exposed to the virus, but qualified staff are limited, and statutory mandates are not being met.

The Administration notes enforcement of health and safety regulations has been minimal to non-existent due to the lack of occupational health inspectors. As a result, workers in California continue to be exposed to COVID-related and other health hazards, and sustain serious illnesses and injuries, including death.

The Administration notes that in the past year, in general, the average length of time to respond to complaints by onsite inspections has been 15 workdays; the average length of time to respond to complaints by investigations by letter has been 11 workdays; the average time to issue citations as result of safety inspections has been 83 workdays, and as result of health inspections, 90 workdays.

In Response to COVID-19, Cal/OSHA Issued Industry Guidance and Adjusts Complaint Response. Cal/OSHA has taken two primary steps to respond to the COVID-19 pandemic. First, Cal/OSHA has prepared specific COVID-19 workplace guidance for high-priority frontline industries. Second, in anticipation of increased workload, Cal/OSHA temporarily adjusted how it responds to workplace safety and health complaints. Under the new protocol, in response to complaints, Cal/OSHA conducts fewer inspections and instead responds to a larger share of complaints by sending a letter to the employer. The employer letter directs the employer to address the alleged workplace safety or health violation.

Typical Cal/OSHA Complaint and Complaint Inspection Workload. Cal/OSHA normally receives between 11,500 and 13,000 complaints each year. Typically, Cal/OSHA conducts an inspection in response to about 20 percent of the complaints it receives. Between January 2020 and February 7, 2021, Cal/OSHA received roughly 11,000 COVID-19 safety and health complaints. Cal/OSHA conducted on-site inspections in response to 5.5 percent (600) of the COVID-19 complaints it received. Cal/OSHA also conducted 800 inspections due to fatal and non-fatal COVID-19 illnesses, and 700 other types of inspections were conducted. For over 6,500 complaints that did not trigger an inspection, Cal/OSHA sent letters to employers requiring the employer to address the workplace safety and health concerns raised in the complaint. DIR notes that the health care and social assistance, retail trade, manufacturing and accommodation and food services received the most complaints and violations.

Since August, Cal/OSHA Has Issued $3.4 Million in COVID-19 Related Citations. Cal/OSHA began issuing citations related to COVID-19 violations in August and has issued 147 citations as of February 5, 2021.

<u>Governor's Budget Proposal</u>

The Governor proposes budget bill language to authorize the Department of Finance to augment Cal/OSHA's budget by up to $14.4 million from the Occupation Health Safety Fund and 70.0 positions to help the workload demands of the Cal/OSHA program. The Department of Finance shall notify the Joint Legislative Budget Committee within 10 days of an augmentation pursuant to this provision. The chart on the following page provides a breakdown for the proposed 70 positions.

Classification	Positions
REGIONAL MGR	1.0
DIST MGR	3.0
SR SAFETY ENGR-INDUSTRIAL	2.0
ASSOC SAFETY ENGR	9.0
SR INDUSTRIAL HYGIENIST	10.0
ASSOC INDUSTRIAL HYGIENIST	12.0
STAFF SERVICES ANALYST-GEN	8.0
OFFICE TECH-TYPING	9.0
ATTORNEY IV	8.0
ATTORNEY III	2.0
LEGAL SUPPORT SUPVR I	1.0
LEGAL SECRETARY	4.0
OFFICE ASST-TYPING	1.0
Total Positions	70.0

The Administration notes that this is the first phase single year approach, which will allow for an ongoing evaluation of economic and other condition before additional phases of expansion are proposed or funded. That the new positions will be assigned to regions where there are the highest volume of complaints, accidents, occupational illnesses, and where industries with the highest risk of undetected occupational illness, as well as where workers are the most vulnerable in enforcement. The new positions will be assigned to respond to complaints that are not currently addressed within the timeframe mandated by statute. The Administration expects that these additional 70 positions will lead to 1,000 additional onsite inspections, of which 300 will be in response to worker complaints.

Staff Comments

In light of the COVID-19 pandemic, it is critical to ensure that employers and employees are following workplace health and safety practices and protocols to prevent the spread of COVID-19. The Legislative Analyst's Office produced a handout in November 17, 2020, which provided an overview of workplace safety and health during COVID-19. The LAO noted that certain workers—so-called "frontline workers"—regularly interact with the public or work in close proximity with their colleagues. As a result of COVID-19 these workers now may face heightened risks while performing their work and have had to take extra precautions in light of these heightened risks.

The LAO figure on the following displays information about workers in the state's frontline industries, as designated in the California Department of Public Health's July 14 guidance on coronavirus testing priorities. Leading up to the pandemic, about 5.7 million Californians typically worked in frontline industries, representing about 30 percent of all workers.

Overview of Frontline Industries in the State

Frontline Industry	Number of Workers	Average Annual Pay
Healthcare	1,640,000	$50,000
Restaurants and bars	1,260,000	19,000
Grocery, convenience, and drug stores	720,000	26,000
Childcare, homeless, food, and family services	500,000	23,900
Trucking, warehouse, and postal service	430,000	35,000
Agriculture	330,000	24,000
Public safety and corrections	310,000	80,000
Building cleaning services	230,000	16,000
Food and meat processing	120,000	30,000
Public transit	90,000	57,000
Garment manufacturing	50,000	25,000
Totals	**5,680,000**	**$30,000**

As shown above, the average annual pay of frontline workers is $30,000, and many of these workers are from vulnerable or underserved communities. Staff notes that it is laudable that the Administration acknowledges the additional need for IH and SE workers to inspect the states workplaces. However, the subcommittee may wish to seek additional clarification on how this proposal will be implemented.

The subcommittee may wish to ask:

1. DOF: What is the criteria DIR needs to meet in order to be authorized to hire the additional 70 positions outlined in BBL? Will DIR be authorized all these positions and classifications at once, or is it on a classification-by-classification basis?

2. DOF: In other DIR BCPs, it appears that that DOF is approving additional positions prior to eliminating the vacancy rates. What is the rationale for applying a different standard for the Cal/OSHA inspectors?

3. DOF: The Cal/OSHA work load study notes that 108 additional IH and 39 additional SE are needed in 2021-22 to meet current and future inspection needs, however, the BBL only provides 22 IH and 11 SE. Given that only 5.5 percent of COVID-19 complaints were inspected, can you please provide the rational for not making additional progress towards this benchmark? Does DIR have the capacity to hire these additional inspectors?

4. DOF and DIR: What changes to the hiring and recruitment/retention have been made or is being contemplated to help address Cal/OSHA's vacancy rates? When will these changes be implemented?

Staff Recommendation. Hold Open.

Issue 14: Garment Manufacturer's Special Account (Informational Only)

Background

Garment manufacturing continues to be one of the largest employment sectors in California and across the country, which has historically led to certain abuses of workers including wage theft, unsafe working conditions and the use of undocumented immigrant labor. In late 1999, AB 633, also known as the Garment Worker Protection Act, was chaptered and attempted to curb some of the more abusive practices within the garment manufacturing industry. Under this law, garment workers who are not paid for their work may file claims against the contractor who hired them, as well as the manufacturers whose garments they produced. In some cases, retailers may also be responsible for garment workers' unpaid wages. The law designated these manufacturers and retailers as "guarantors" and ordered that they be responsible for guaranteeing that garment workers receive their wages.

A 2016 study by the UCLA Labor Center found that garment workers in Southern California made an average of only $5.15 per hour, less than half the minimum wage. The report further noted, "60 percent [of workers] reported excessive heat and dust accumulation due to poor ventilation that rendered it difficult to work, and even to breathe." Additional studies at the federal level seem to confirm these trends. A 2016 Department of Labor survey found that 85 percent of garment shops in Southern California failed to pay minimum wage and in 2019 Labor Department investigators recovered more than $2 million for Southern California garment workers.

Due to the spread of COVID-19 in early March of 2020 demand for protective masks surged, sending ripples through the garment manufacturing industry. An article in the Los Angeles Times entitled "The claims outnumbered the registration fees and workers faced a years-long waiting list for restitution. To help temporarily shore up the account, Governor Newsom included more than most of the account's history, the wage $16 million in the 2019 state budget to clear the wait list. Future claims remain in question, as these funds were only included as a one-time payment. Sweatshops Are Still Open. Now They Make Masks" followed several low-wage garment workers as they adjusted to changes in their work brought on by the pandemic. Their accounts revealed that in addition to being stiffed on minimum wage and overtime payments, these workers are being asked to work in violation of statewide social distancing orders and against the recommendations of the CDC. The CDC recommends a boundary of 6 feet of distance from others and calls on companies to "increase ventilation by opening windows or adjusting air conditioning". Workers reported not having room to comply with these guidelines and complained of continued poor ventilation.

Unpaid Wage Fund. In 1975, the Unpaid Wage Fund (UWF) was established for all wages or benefits collected by the Labor Commissioner, to be remitted to the worker or the worker's lawful representative. This revenue is a result of monies collected from employers for workers who were victims of wage theft, who could not be located by the Division of Labor Standards Enforcement (DLSE). In general, after six months (the length of time may vary depending on circumstances) if a worker cannot be located the wages collected on behalf of that worker are transferred to the UWF. Beginning in 2005-06, at the end of each fiscal year, the unencumbered balance remaining in the Unpaid Wage Fund is transferred to the General Fund. The practice of depositing the remaining unencumbered balance into the General Fund was a result of concerns over General Fund solvency. The UWF transfers between $2 million to $6 million of unencumbered funds to the General Fund every year.

Garment Manufacturers Special Account. The Garment Manufacturers Special Account (GMSA) is administered by the Labor Commissioner and funds from this account are dispersed to persons to have been damaged by the failure of a garment manufacturer to pay wages and benefits. Most referrals for payment to the garment restitution fund derive from claims processed by the AB 633 Unit/Garment Enforcement Unit after a hearing is held and a final administrative decision is rendered in favor of a worker, which is subsequently converted to a judgment. In addition, citations issued by the Bureau of Field Enforcement for unpaid wages may be referred to the garment restitution fund for payment to workers that were included in the citation.

Existing law and regulations sets the fee structure for the GMSA, applicable to garment contractors and garment manufacturers based on their gross sales receipts. Fees for garment contractors range from $250 for contractors with $100,000 or less in gross sales to $1,000 for contractors who earn over $1 million in gross sales. In addition, $75 of each registration is deposited into the GMSA. This account has been insolvent since 2015-16 because the amount of new claims is greater than the account's annual revenue. The Administration notes that this is due to several factors, including more effective labor law enforcement, a decline in the number of garment manufacturers registration, and increased claims. In 2017-18, this resulted in over $4.5 million of claims that could not be paid. Before the end of the 2018-19 fiscal year, the outstanding garment claim grew to more than $18 million. In past years, the GMSA received an average of $300,000 each year from fees but expended $800,000 to $1.5 million to unpaid wage claims, as a result, the GMSA was short $500,000 to $1.2 million to meet the needs of all wage claims each year.

Recent Budget Acts. The 2018-19 budget included budget bill language to authorize the transfer of any remaining unencumbered balance of the UWF into the GMSA, the Farmworker Remedial Account, or the Car Wash Worker Restitution Fund for the 2018-19 fiscal year only. The Administration did not anticipate an additional need in the Car Wash Fund or the Farmworker Account and included them in the budget bill as a precautionary measure in case there was a need.

In 2018-19, $5.7 million was transferred from the UWF to the General Fund, and $9 million was transferred from the UWF to the GMSA. For the 2019-20 fiscal year, UWF transferred $8.9 million from the UWF to the GMSA. In addition, the 2019 budget act also provided $7.3 million General Fund for this purpose.

The 2018-19 budget also included supplemental reporting language that required DIR to report by February 1, 2020 regarding: (1) a description of the historical information on the registration and fee structure, revenue, number of claims, (2) discussion of the causes for insolvency, (3) information on fund transfers, (4) recommendations on how to address fund solvency, and (5) recommendations on outreach efforts to improve labor law compliance in the garment manufacturing industry.

The report was submitted to the Legislature on July 17, 2020. The report notes that from July 2019 through June 2020 the department paid 567 garment claims, totaling $16.2 million. At the time, the report noted that there was another 270 claims in process, totaling $8.9 million. The report noted that there was over $11 million in unencumbered cash on deposit in the UWF. An Executive Order was processed to transfer monies from the UWF to the GMSA to pay all 270 claims in process. The report also noted that in order to address the structural solvency of the GMSA in the future, any change in the fee structure or fee amount needs to be discussed in an appropriate policy committee.

The report notes that the garment manufacturing industry has shifted from primarily existing in downtown Los Angeles and is spreading to the San Gabriel Valley, East Los Angeles, and South Central Los Angeles. This decentralization has put workers further away from the center of outreach efforts organized by advocate organizations and further away from the primary Labor Commissioner's Office. It is well documented that the garment manufacturing workforce is primarily immigrant labor from Mexico, Central America and Asia. Workers often experience multiple vulnerabilities in their employment; often are undocumented, monolingual non-English speakers, unfamiliar with their workplace rights, earn subminimum wages and have to provide for their family. The above shifts in the industry are further exacerbated by the prior Federal Administration's consistent attacks on immigrant communities with workplace and general immigration raids. These consistent attacks have a chilling effect on an already vulnerable population, further silencing them from exercising basic protections to earn minimum wage, overtime, meal and rest breaks, timely payment and many others. In an effort to address the operational shift of the industry, the Labor Commissioner's Office has initiated an effort with the UCLA Downtown Labor Center to evaluate industry trends and identify additional strategies to rebuild trust with the garment worker communities. The Labor Commissioner's Office is also engaging key community partners, such as the Garment Worker Center and Bet Tzedek House of Justice.

Update on the GMSA. As of February 5, 2021, there was $1.4 million in the GMSA compared to $7.3 million in claims (205 cases) pending referral or currently under review. The Administration notes that there is currently $11.6 million in the UWF, which will be processed for transfer pursuant to the 2020 budget act.

The Administration notes that the oldest are from 2015, which likely include an initial referral to GMSA that was rejected by the State Controller's Office and needs to be resubmitted. The average time for claims to be paid is 1.5 to 2 years, approximately. This average time frame spans the life of the claim, from the date the claim is received until the claim is decided/adjudicated and referred to GMSA. The Administration notes that the requests to pay from the GMSA are made on a first come first serve basis after all of the required documents are received from the worker, and after all claims filed where the responsible entities fail to pay become part of a final administrative decision or judgement.

Since February 1, 2020 to February 7, 2021, Cal/OSHA has received 21 complaints regarding the garment industry, addressed 16 of them through investigations by letter and two through onsite inspections. Additionally, Cal/OSHA opened four inspections in response to reports of fatalities, for a total of six onsite inspections. As result of one of the inspections (Los Angeles Apparel, Inc.), citations with penalties over $100,000 were issued.

Staff Recommendation. None. This item is informational.

7900 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
7920 CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM
VARIOUS DEPARTMENTS

Issue 15: State Retirement Liabilities

State Has Large Retirement Liabilities. The state has significant unfunded liabilities associated with retirement benefits for state employees and teachers. An unfunded liability occurs when the assets that have been set aside during a retiree's working years are insufficient to pay their future benefits As of June 30, 2019, the state has $186 billion in unfunded liabilities associated with retirement benefits—$92 billion for state retiree health benefits, $61 billion for state employee pension benefits administered by CalPERS, and $33 billion for teacher pension benefits (the state's share of the total $106 billion CalSTRS unfunded liability).

State Retiree Health. The state provides health benefits to retired state employees. Prior to 2015, the state essentially put no money aside to pay for this benefit while the eventual retiree was still working. As a result, the state accrued a significant unfunded liability associated with retiree health. In 2015-16, the state began a policy to prefund this benefit by setting aside funds annually. Over the last few years, the state's General Fund costs of prefunding have been paid using Proposition 2. Under the new policy to prefund retiree health, the state and employees each pay a percent of pay intended to equal one-half of the normal cost so that the entire normal cost is paid each year. Normal cost is the amount that actuaries estimate is necessary to be invested today to pay for the benefit in the future.

State Employee Pensions. The California Public Employees' Retirement System (CalPERS) administers pension benefits for state employees, state judges, certain elected state officials, and employees of local governments that contract with CalPERS (and their beneficiaries). Under the Constitution, CalPERS has "full rate setting authority," which means the board has authority to require employers to contribute an amount of money that the board determines is necessary to fund the system. With full rate setting authority, contribution requirements might change year over year in response to actuarial changes. This rate setting authority is important because it allows the system to (1) make up for losses that occur when actuaries determine that more funds are necessary to pay for benefits than what has already been set aside (that is, to address an unfunded liability over time) and (2) not charge employers more than is necessary for the system to become fully funded.

Teacher's Pensions. The California State Teachers' Retirement System (CalSTRS) administers pension and other retirement programs for current, former, and retired K-12 and community college teachers and administrators, as well as their beneficiaries. Under state law, currently about one-third of these liabilities are the responsibility of the state ($33 billion) and about two-thirds are the responsibility of school districts.

Prior to 2014, base contribution rates paid by districts, teachers, and the state were established in statute, and the CalSTRS board had limited authority to set a supplemental contribution rate for the state. Given its constraints, CalSTRS projected those losses would result in the system running out of assets in the mid-2040s. In 2014, the Legislature approved a plan AB 1469 (Bonta), Chapter 46, Statutes of 2014, to fully fund the CalSTRS defined benefit program by 2046. The funding plan scheduled increases to the contribution rates paid by districts, teachers, and the state to the system for several years and—after that point—granted the CalSTRS board limited rate setting authority. Specifically, the funding plan phased in increases to the state's contribution rates until 2016-17, after which the funding plan gave the CalSTRS board limited authority to adjust those rates. In particular, the board may increase the state's rate by 0.5 percent of pay each year

Policies in 2020-21 Grew Retirement Liabilities. As described below, policies enacted in 2020-21 to generate General Fund savings during the COVID-19 emergency directly contributed to growth in state retirement liabilities that will be reflected in future actuarial valuations.

- **Pensions.** The state and employees each contribute to CalPERS a specified percentage of pay to fund pension benefits. During 2020-21, state employees are subject to a Personal Leave Program (PLP), which reduces state employee pay in exchange for time off. During PLP, state and employee contributions to CalPERS are based on the reduced pay levels; however, the benefits earned by state employees are based on their full salary, systematically creating an unfunded liability.

- **Retiree Health.** The state and employees each contribute about one-half of normal cost—expressed as a percentage of pay—to prefund retiree health benefits. Labor agreements between the state and state employees suspended employee contributions to prefund retiree health benefits for the duration of PLP. The suspension of employee contributions combined with lower state contributions being made because of lower salary levels during PLP resulted in growth in retiree health unfunded liabilities.

- **CalSTRS.** The state, school employers, and teachers each contribute a percentage of pay to fund teachers' pension benefits. CalSTRS' board holds limited authority to adjust these contribution rates each year, pursuant to the provisions of the CalSTRS funding plan (AB 1469). In 2020-21, as a way to reduce state costs, the budget suspended the board's ability to increase the state's rate, holding the state's rate flat for one year. This budget action resulted in (1) General Fund savings of $169 in 2020-21 and (2) beginning in 2021-22, the state's contribution rate starting at a level that is lower by 0.5 percentage points relative to what it would have been in the absence of this action. The lower state contribution rate increases state unfunded liabilities over the long term. The Administration has proposed a one-time additional payment to CalSTRS in 2021-22 using General Fund dollars *outside* of the Proposition 2 requirement, which would offset the 2020-21 rate suspension for one year, but not on an ongoing basis.

Supplemental and Supplanting Payments. Over the last few years, the Legislature has made over $7 billion General Fund, Proposition 2, and loan from the Surplus Money Investment Fund (SMIF) in supplemental pension payments CalPERS state plans and the state share of the CalSTRS unfunded liability. In addition, the state has also provided $3.10 billion in supplanting payments to the school employers payments for CalSTRS and CalPERS schools pool. As a result of these supplanting payments, school district CalSTRS contribution rates decreased from 19.10 percent in 2020-21 to 16.15 percent, and the 2021-22 rate will be decreased from 18.10 percent to 15.92 percent.

Proposition 2 Debt Payments Vary From Year to Year. Proposition 2 (2014) contains a formula that requires the state to spend a minimum amount each year to pay down specified debts. The formula has two parts. First, the state must set aside 1.5 percent of General Fund revenues. Second, the state must set aside a portion of capital gains revenues that exceed a specified threshold. The state combines these two amounts and then allocates half of the total to pay down eligible debts and the other half to increase the level of the rainy-day fund (the Budget Stabilization Account). Because capital gains revenues can vary significantly from year to year, the annual amount of the Proposition 2 required debt payment has varied by hundreds of millions of dollars each year.

Administration Estimates Sizeable Capital Gains for 2021-22, Resulting in Large Debt Payment Requirements. Under the Administration's revenue estimates for 2021-22, the state will be required to set aside roughly $3 billion for debt payments. This is substantially higher than the debt payment requirement has been since Proposition 2 passed in 2014. Typically, the requirement is in the range of $1.5 billion to $2 billion. The key reason the estimate is significantly higher this year is that the Administration is estimating revenues from capital gains taxes will be high in 2021-22.

Governor's Budget Proposal

Governor Proposes Using Proposition 2 Funds to Accelerate Pay Off of Retirement Liabilities. The Governor proposes that the state use Proposition 2 funds in 2021-22 to accelerate pay off of all three of the state's retirement liabilities through one-time payments totaling $2.8 billion. Specifically, the Governor proposes one-time payments of:

1. $1.5 billion as a supplemental pension payment to CalPERS state pension plans (apportioned across the plans based on the annual General Fund contributions to each plan). The Administration estimates a net savings of $1.9 billion.

2. $926 million toward the state's retiree health unfunded liabilities ($616 million of this would be intended to make up for employee contributions that were suspended during PLP in 2020-21),

3. $410 million as a supplemental pension payment to CalSTRS to help pay down the state's share of unfunded liabilities. The Administration estimates a net savings of $313 million. The proposed payment to CalSTRS is equal to the difference between the statutorily-required state contributions and the actuarial need for state contributions.

Legislative Analyst's Office Comments

The LAO notes that the proposed use of Proposition 2 funds is consistent with past LAO recommendations. In March 2020, the LAO recommended that Proposition 2 funds be used to keep existing funding plans for CalSTRS and retiree health benefits on track to pay off the unfunded liabilities by the mid-2040s. In a 2019 analysis, the LAO also noted that additional capacity in Proposition 2 could be directed toward CalPERS because that would achieve the highest chances of state savings over the next few years. The proposed payment to CalPERS is also consistent with that consideration.

The total amount of Proposition 2 payments made in a given year depends on revenue levels. Accordingly, although the Administration's proposal's structure has merit, the LAO recommends that the Legislature hold open all proposals related to Proposition 2. At the time of the May Revision, the state will have some more information about revenues from capital gains taxes in 2021-22. At that time, the Legislature could consider all Proposition 2 proposals as one proposal when revenue outlook is slightly clearer.

Staff Recommendation. Hold Open.