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## DISCUSSION

### 3960 DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)

#### Issue 1: DTSC Governance and Fiscal Reform (BCP and TBL)

**Governor's Proposal.** The Governor's budget requests for the following:

- \$3 million one-time General Fund and 15 positions to establish the Board of Environmental Safety (BES) and Ombudsperson Office within DTSC.
- Statutory changes to: (1) revise the Environmental Fee rates and the hazardous waste fee rates and structure and (2) authorize the BES to set future fee rates under a capped fee-setting authority, based on appropriations by the Legislature.
- \$22.5 million one-time General Fund backfill for the Hazardous Waste Control Account (HWCA).
- \$13 million one-time General Fund backfill for the Toxic Substances Control Account (TSCA).
- \$300 million General Fund one-time to investigate and clean up brown fields across the state, with a special focus on remediation sites to develop new housing.

This proposal is complex. The Legislative Analyst's Office (LAO) provides more details about the main components of the Governor's proposal (BES, HWCA, TSCA, and brownfields cleanup), as follows:

#### **Board of Environmental Safety (BES)**

**BES.** The budget trailer legislation to establish the BES within DTSC includes a five-member board composed of a full-time chairperson and four part-time paid members. Additionally, the board would be supported by 12 staff performing a combination of technical and administrative duties. Beginning in January 2022, the BES would be required to conduct no fewer than six public meetings per year. The Governor's proposed budget trailer legislation specifies the board's responsibilities, including the following functions:

- *Set Annual Charges for HWCA and TSCA Based on Budgeted Appropriations.* BES would adopt regulations to establish a schedule of charges for (1) hazardous waste facilities, generators, and handlers subject to HWCA charges and (2) entities subject to the tax that supports TSCA. The board would be authorized to update these charges annually beginning in 2023-24, based on legislative changes to appropriation levels.
- *Hear and Decide Permit Appeals.* BES would hear and decide appeals of hazardous waste facility permit decisions made by DTSC.
- *Provide Opportunities for Public Hearings.* BES would be required to hold public hearings on DTSC's actions pertaining to individual permitted or remediation sites.
- *Provide Direction to DTSC.* BES would review and approve the director's annual priorities — including performance metrics — for each of DTSC's programs. The director would provide

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annual updates to the board on the department's progress towards meeting these priorities.

- *Develop a Multiyear Schedule for Discussion of Long-Term Goals.* BES would discuss long-term goals for various components of DTSC's operations, including improvements to (1) the efficiency of DTSC's hazardous waste facility permitting process, (2) DTSC's ability to meet its duties and responsibilities, (3) the site mitigation program and how contaminated properties are prioritized for cleanup, and (4) DTSC's implementation of its enforcement activities.
- *Provide Ombudsperson Services to the Public and Regulated Community.* The legislation would establish an Office of the Ombudsperson within the board to (1) receive complaints and suggestions from the public, (2) evaluate complaints, (3) report findings and make recommendations to the director and the board, and (4) provide assistance to the public when appropriate.
- *Annual Report to Secretary of California Environmental Protection Agency (CalEPA).* The board would be required to transmit to the Secretary of CalEPA an annual review of the department's performance.

***Governor's Proposal Includes Several Policy Changes.*** The Governor's proposed trailer bill legislation also includes several policy changes for the department. These changes would implement the following: (1) require the department to update a state hazardous waste management plan by March 2027 and every three years thereafter; (2) accelerate time lines for the department to complete hazardous waste facility permit renewals, as well as implement other accountability measures; and (3) strengthen financial assurance requirements for entities that handle hazardous waste.

### **HWCA**

***General Fund Transfer to Address HWCA Shortfall in 2021-22.*** The Governor's budget proposes to transfer \$22.5 million from the General Fund in 2021-22 to keep HWCA solvent. This would allow DTSC to continue its regulatory activities at existing levels in the budget year. Short-term funding is needed since the proposal to raise HWCA charges would not take full effect in the budget year, resulting in a lag before sufficient new revenues materialize. With the proposed augmentation, HWCA would begin 2021-22 with an estimated fund balance of \$8.6 million and end the year with an estimated balance of \$1.3 million.

***HWCA Charge Restructure and Increases to Take Effect in 2022-23.*** The Governor proposes budget trailer legislation that would make four significant changes to the existing HWCA fee structure:

- Replace the existing generator, disposal, Environmental Protection Agency (EPA) identification verification, and manifest user fees with a new generation and handling fee. The new generation and handling fee would be based on a price-per-ton model — instead of the current tiered model — and set at \$46 per ton.
- Increase the existing facility fees. The primary facility fees would more than double under the Administration's proposal.
- Eliminate various exemptions for which entities are subject to paying the charges.
- Revise the timing of payments to coincide with the fiscal year in which the Legislature appropriates DTSC's funding (rather than by calendar year, which is how current payments are structured).

These changes would take effect in 2022 and provide additional revenue for 2022-23. The Administration estimates that its proposal would provide an additional \$49.6 million for HWCA starting in 2022-23, more than doubling the amount of revenue from the existing fees, enough to close the structural deficit and to accommodate new spending.

***Eliminates Some Exemptions, but Continues to Exempt Smaller Generators From Paying.*** The Governor's proposal would eliminate various exemptions that currently exist for both the facility and generator fees. For example, current exemptions for entities that handle used oil would be eliminated under the new generation and handling fee. However, the proposal would continue to allow entities that generate less than five tons of hazardous waste per year to be exempt from paying the generation and handling fee. This is a change from the Governor's 2020-21 proposal, which would have removed that exemption. DTSC's states it is proposing to retain this exemption to minimize the economic impact on small businesses that are recovering from the pandemic. Moreover, DTSC indicates that the administrative costs associated with collecting payments from these smaller generators would outweigh the revenues it estimates it could collect. Because the proposal retains this exemption, the Administration believes that a vote on the HWCA reform package would require a two-thirds vote of the Legislature.

***Revenue Increases Address Structural Deficit and Provide for Additional Program Spending.*** The Administration intends to use the additional \$49.6 million in new HWCA revenues to (1) address the structural deficit in the fund (\$22.5 million), (2) provide additional funding to address resource gaps identified in the department's workload analysis (\$22.5 million), (3) build reserve levels within the fund (\$3.1 million), and (4) provide ongoing funding for administrative costs related to the new board (\$1.5 million). The amounts intended to be used for increased programmatic expenditures and the board reflect the department's current estimates. However, the use of these funds would need to be authorized in the 2022-23 budget based on proposals submitted to and approved by the Legislature. That is, the proposal currently before the Legislature would authorize charge increases to *generate* an additional \$22.5 million for the workload expansions but not the authority to *spend* those revenues.

***New Board Would Establish Future HWCA Charge Levels According to Appropriation Authority Set by Legislature.*** The Governor would grant the proposed BES with authority to set charge levels for HWCA in future years beginning in 2023-24. This would allow revenues to keep pace with growth in DTSC's regularly workload. Specifically, the board would set charges annually to align HWCA's revenues with the amount of expenditures authorized by the Legislature through the annual budget act. The Administration indicates that the board would hold public meetings following the release of the Governor's January budget and May Revision to discuss how proposals would affect the level of charges, with adjustments officially being made in the fall after the budget act is passed. While the board would have the authority to set these charges annually, the Administration's proposed language sets a maximum level for each charge. These caps would be set two times higher than the rates being proposed in 2022-23. For instance, the initial rate for the generation and handling fee would be set at \$46 per ton, and the maximum charge level would be set at \$92 per ton. The caps would be adjusted annually for inflation according to the Consumer Price Index beginning in 2024-25. If in some future year BES has set a charge levels at the maximum allowable amount and finds that revenues are insufficient to meet DTSC's regulatory workload and legislatively authorized expenditure levels, then the Legislature would need to take additional action to authorize higher charges.

### **TSCA**

***General Fund Transfer to Address TSCA Shortfall in 2021-22.*** The Governor's budget proposes to transfer \$13 million from the General Fund to keep TSCA solvent while the proposed tax increase is being implemented. Short-term funding is needed due to a lag between when the proposed changes to

the environmental fee would take effect and when the revenues will materialize. With the proposed funding, TSCA would begin the 2021-22 fiscal year with an estimated balance of \$13.4 million and end the year with estimated reserves of \$3.1 million.

***TSCA Tax Restructure and Increase to Take Effect in 2022-23.*** The Governor proposes budget trailer legislation that would make two significant changes to the environmental fee to take effect in 2022: (1) exempt businesses with fewer than 100 employees from paying the tax (extending the existing exemption to businesses with 50 to 99 employees) and (2) increase tax rates for businesses with more than 500 employees. The Governor would maintain existing tax rates for businesses with 100 to 499 employees. Additionally, the proposal would revive the timing of payments to coincide with the fiscal year in which the Legislature appropriates DTSC's funding (rather than being charged on a calendar-year basis). The Administration estimates that the resulting changes would provide an additional \$54.6 million for TSCA beginning in 2022-23.

Certain components of this proposal differ from what the Governor proposed for TSCA in 2020-21. Specifically, the previous proposal included rate increases for all businesses that currently pay the tax. The Administration has indicated that the decision to exempt smaller businesses from paying the environmental fee and to maintain existing rates for midsized businesses primarily is to reduce their economic impacts as they are recovering from the effects of the pandemic.

***Revenue Increases Address Structural Deficit and Provide for Additional Program Spending.*** The Administration intends to use the additional \$54.6 million in new TSCA revenues to (1) provide additional funding to address resource gaps identified in the department's workload analysis (\$36.5 million), (2) address the structural deficit in the fund (\$13 million), (3) build reserve levels within the fund (\$3.6 million), and (4) provide ongoing funding for administrative costs related to the new board (\$1.5 million). The amounts intended to be used for increased programmatic expenditures would need to be authorized in the 2022-23 budget based on proposals submitted to and approved by the Legislature.

***New Board Would Establish TSCA Tax According to Appropriation Authority Set by Legislature.*** As with HWCA, the Administration would task the new BES with ongoing authority to set future tax rates for TSCA beginning in 2023-24. The board would adjust the tax annually to align TSCA's revenues with the expenditure authority the Legislature includes in the budget act. The Administration indicates that BES would hold public meetings following the release of the Governor's January budget and May Revision to discuss how proposals would affect the environmental fee, and the board would make adjustments in the fall after the budget act is passed. The Administration's proposed language also sets a maximum level for the tax. The caps would be set two times higher than the initial rates being reposed for 2022-23. For instance, the initial rate for businesses with more than 1,000 employees would be \$56,000 per year, but the maximum level would be set at \$112,000 per year. The cap would be adjusted annually for inflation according to the Consumer Price Index beginning in 2024-25. Once the cap is reached, the Legislature would have to take action to authorize additional tax increases to align with higher expenditure levels.

### ***Brownfields Cleanup***

***\$300 Million for Brownfield Activities and Workforce Development.*** The Governor's proposal includes one-time General Fund resources to address brownfields, to be allocated in the following ways:

- ***State Investigations and Brownfield Cleanups (\$220 Million).*** DTSC would use these funds to investigate and clean up various projects where no financially viable responsible party can be

found. The department estimates this funding would enable it to take action on 170 additional sites over the next four years.

- ***Brownfield Grant Program (\$76 Million)***. The Governor proposes to establish a new competitive grant program to provide funding to local governments, tribes, nonprofit organizations, and private entities primarily to investigate as well as clean up brownfield sites. The department estimates it could provide 130 grants over the next four years with this funding.
- ***Workforce Development (\$4 Million)***. The proposal would establish a new workforce development program. The funding would go to various organizations (such as technical schools and community-based organizations) to train individuals to perform environmental remediation work, such as site sampling technicians.

***Funding Would Focus on Communities That Are Disproportionately Burdened by Contamination.*** The proposal indicates that funding for all three components will be targeted for “environmental justice (EJ) communities” that are burdened by multiple sources of pollution and are disproportionately vulnerable to their effects. Because the state has not defined EJ communities in statute, DTSC indicates that it will develop a working definition for such neighborhoods for the purposes of targeting this funding.

***Proposal Seeks to Address State’s Housing Shortage.*** DTSC indicates that its proposal has two primary goals—(1) to investigate and clean up contaminated sites in EJ communities and (2) to develop these sites for future housing. The latter is to help address the state’s severe shortage of affordable housing.

***Funding Would Be Contingent on Adoption of Governance and Fiscal Reform Package.*** The Administration has indicated that it views funding for this proposal to be contingent upon the enactment of the Governor’s governance and fiscal reform package for DTSC. That is, the Governor indicates that he will support inclusion of this \$300 million for addressing brownfields only if the Legislature also approves his proposals to add a new governing board and increase the HWCA and TSCA charges.

***Background. DTSC Has Three Major Program Areas.*** DTSC is responsible for protecting public health and the environment by overseeing the state’s response to releases of hazardous substances and disposal of hazardous waste. DTSC investigates, removes and remediates contamination as part of that mission. DTSC operations fall under three major program areas:

1. ***Site Mitigation and Restoration Program.*** This program is responsible for the cleanup and restoration of contaminated sites throughout the state; including legacy landfills (e.g., Stringfellow Acid Pits and the BKK Landfill), the Santa Susana Field Lab, military bases, former industrial properties, and school sites. It is funded primarily by TSCA.
2. ***Hazardous Waste Management Program.*** This program is responsible for several important DTSC functions. It issues permit decisions for proposed new hazardous waste facilities and the approximately 110 existing hazardous waste facilities in California that treat, store, and dispose of hazardous waste. The program’s staff conducts inspections and takes enforcement actions to ensure compliance with hazardous waste laws and regulations. This program oversees the hazardous waste generator program. In addition, it provides hazardous waste management-related policy support, regulatory and statutory interpretation, financial assurance, and data management support for internal and external stakeholders. The program also provides emergency response support for hazardous materials-related emergencies throughout California.
3. ***Safer Consumers Products and Workplaces Program.*** This program is responsible for reducing toxic chemicals in consumer products, creating new business opportunities in the emerging green

chemistry industry, and helping consumers and businesses identify what chemicals are in the products they buy. Through this program, DTSC identifies and prioritizes chemicals of concern in consumer products, evaluates alternatives, and specifies regulatory responses to reduce chemicals of concern in products.

***Funding Sources for DTSC.*** DTSC's funding comes primarily from HWCA and TSCA:

- HWCA is a repository for revenues from cost recovery activities and fees paid by various hazardous waste generators, transporters, and facilities. With the exception of the Activity Fee for Permitting, the rest of the fees were last amended in statute in 1998 or earlier. The fees collected and deposited into HWCA are:
  - Generator fee (constitutes 45 percent of HWCA)\*
  - Disposal fee (constitutes 10 percent of HWCA)\*
  - Facility fees (constitutes 9 percent of HWCA)\*
  - EPA ID Verification (constitutes 9 percent of HWCA)\*\*
  - Manifest fees (constitutes 4 percent of HWCA)\*\*
  - Transportable Treatment Unit fee\*\*\*
  - Cost recovery activities
  - Fee for service for Permitting

*\*These fees are subject to an annual CPI adjustment and are collected by the California Department of Tax and Fee Administration.*

*\*\*These fees are not subject to an annual CPI adjustment and are collected by DTSC.*

*\*\*\*This fee is subject to an annual CPI adjustment and is collected by DTSC.*
- TSCA is a repository for revenues from cost recovery, penalties, interest, and the Environmental Fee. Revenues from the Environmental Fee constitutes 80 percent of TSCA with the rest making up the remaining 20 percent. The Environmental Fee was established in 1989 and is subject to an annual CPI adjustment.

***Both HWCA and TSCA Have Been Operating With a Structural Deficit.*** Expenditures out of HWCA and TSCA has exceeded revenues for many years. HWCA became insolvent in fiscal year 2018-19 and TSCA became insolvent in fiscal year 2019-20. A number of factors contribute to the operating structural deficit in both accounts. They include increasing legislative mandates, an outdated fee structure that no longer corresponds to the proportion of waste generated or disposed, increasing costs relating to the state obligated cost share for National Priority List sites, and a backlog of unresolved response costs worth approximately \$194 million at over 1,600 cleanup sites over a 25-year period.

***General Fund Backfills for Both Accounts.*** The Budget Act of 2019 provided HWCA with \$27.5 million in General Fund to backfill the shortfall and maintain existing operations. The Budget Act of 2020-21 included \$12 million in General Fund for TSCA to backfill the shortfall and maintain existing operations. In the Governor's proposed budget for 2021-22, \$22.5 million in General Fund is proposed to backfill HWCA and \$13 million in General Fund is proposed to backfill TSCA.

***In Addition to Its Fiscal Deficiencies, DTSC Has Been Criticized for Lack of Transparency and Ineffective Implementation of Its Statutory Mandates.*** Specific incidents across California have exposed and continue to expose failings in DTSC's implementation of its core programs, as well as its support programs. Such incidences include the mishandling of the hazardous waste facility permitting and enforcement of Exide and the Quemetco battery recycling facilities; delayed site remediation; failed public participation and transparency activities; and personnel issues have all led to decreased

stakeholder confidence and public trust in DTSC's ability to meet its mandate to protect public health and the environment.

In August 2014, the State Auditor issued a report citing DTSC's neglected cost-recovery efforts. According to the audit, DTSC failed to collect an estimated \$194 million in cleanup costs from polluters since 1987, failed to send out nearly \$142 million in bills, and for the \$52 million in assessments the DTSC did mail, but never collected.

Furthermore, community groups that live near hazardous waste facilities are concerned that DTSC is not properly enforcing state and federal law and is allowing facilities that have numerous violations of state law and regulation, or have an expired permit, to continue to operate. Due to a growing backlog of applications to renew hazardous waste permits, many facilities are operating on "continued permits." These facilities operating on a continued permit are likely using outdated technologies, practices, and safeguards and are potentially releasing hazardous wastes into the environment.

Over the past five years DTSC has sought to reduce the permit backlog for hazardous waste facilities. In 2014 the Legislature appropriated additional limited-term staff to help reduce the permit backlog, noting there were 24 continued permits. Despite those limited-term positions, as of January 2019, there were 29 continued operating permits – with four of those being expired for a decade or more.

Additionally, the regulated community is concerned about the length of time it takes DTSC to process a permit, with processing a permit extending years beyond the expiration date of their permit, which impacts the costs associated with processing a permit.

**DTSC Conducted a Workload Analysis to Establish the Resources Needed to Meet DTSC's Statutory Mandates.** To support discussions on the activities DTSC should be performing to increase its protection of public health and the environment, DTSC analyzed its resources for core programs and released a report on its findings in January 2021. The data include current staffing levels, available employee hours, and program deliverables, such as total number of permits issued, facilities investigated, and sites cleaned. The analysis also identifies areas where DTSC has made significant improvements in how it delivers its programs. The analysis provides transparency on how DTSC is using its current resources and where it is insufficiently resourced to deliver on its mission and statutory authorities. The following activities were identified in the Executive Summary of the Workload Analysis as the highest priority activities that are under-resourced:

- Pollution Prevention
- Hazardous Waste Transporter Inspections and Oversight
- Permitted Facilities and Violation Scoring Procedures
- Enforcement
- Orphan Site Cleanup and Site Discovery

One of the primary challenges for the department has been adequate funding for these activities. As noted in the report, DTSC's responsibilities have grown significantly since 1991, but the department's staffing levels have remained relatively stagnant. The report states that over time, DTSC's ability to carry out its mission has been compromised by the combination of unfunded additional statutory and regulatory authorities, fiscal constraints, and a static fee structure — Most of the fees that support DTSC's programs were last updated in statute in 1998, yet 92 statutory authorities and mandates have been adopted since that time. Because the existing fee structure was not developed to cover DTSC's current responsibilities and program costs, the department has struggled to deliver services aligned with its statutory duties.



**Brownfields Cleanup.** The LAO has provided the following background on brownfields cleanup:

***Likely Tens of Thousands of Brownfields Across the State.*** The term brownfield generally describes a property that is underutilized due to the presence or potential presence of a hazardous substance, pollutant, or contaminant. Common examples of brownfield sites are former dry cleaners, gas stations, and chemical storage facilities. According to a report from DTSC, there are roughly 15,000 known contaminated sites across California. However, these numbers likely underestimate the number of brownfields in the state given the difficulty in estimating the number of properties that are underutilized as a result of *suspected* contamination. Some research estimates that this number could be between 150,000 to 200,000 sites.

***Brownfields Have Disproportionate Impact on Low-Income Communities of Color.*** Studies have shown that brownfield sites are disproportionately located in neighborhoods that have lower average incomes and more people of color. Brownfields negatively impact these communities in two ways. First, brownfields can affect public health in surrounding communities if contamination is able to spread through air or water. Second, the presence or even perception of contamination at brownfield sites often hinders redevelopment because parties interested in developing a property are concerned with its associated cleanup costs—which can reach hundreds of thousands of dollars or more—and potential liability issues. This results in these sites being underutilized—particularly in economically disadvantaged communities that already struggle to receive private investment.

***DTSC Addresses Brownfields Through a Variety of Programs.*** DTSC administers several programs to address brownfields, some of which are supported by funding from the United States Environmental Protection Agency (US EPA). DTSC’s major brownfield programs include the following:

- ***Site Mitigation and Restoration.*** DTSC investigates sites with known or suspected contamination and ensures removal or control when contamination is found. DTSC has the authority to issue orders to require responsible parties to cooperate with site investigations and remediation. State and federal funds are used when a site lacks a known or financially viable responsible party.
- ***Voluntary Cleanups.*** Voluntary cleanups are initiated by motivated parties, such as developers, local agencies, or nonprofit organizations, to investigate and remediate brownfield sites and reimburse DTSC’s oversight costs.
- ***Grants and Loans.*** DTSC offers loans and grants—largely supported by US EPA funding—to assist with addressing environmental investigations and cleanups at properties throughout the state. Grants can provide up to \$200,000, while loans can provide up to \$2.5 million. Funding is generally available for local governments, tribes, nonprofit organizations, and private entities.

### ***Related and Past Legislation.***

SB 42 (Wieckowski) establishes a Board of Environmental Safety within DTSC. This bill is pending before the Senate Environmental Quality Committee.

AB 1 (Garcia) creates the Board of Environmental Safety within the CalEPA to provide policy direction to and oversight of DTSC and raises and recasts existing fees within the Hazardous Waste Control Account (HWCA). This bill is pending before the Assembly Environmental Safety and Toxic Materials Committee.

AB 995 (Garcia, 2020) would have created the Board of Environmental Safety within the CalEPA to provide policy direction to and oversight of DTSC and would have raised and recast existing fees within HWCA. This bill was vetoed by the Governor.

AB 2094 (Kalra, 2018) would have required DTSC to, on or before January 1, 2021, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities; hazardous waste generators; and, transporters. This bill was held in the Senate Appropriations Committee.

AB 2345 (Reyes, 2018), as it was heard before the ESTM Committee, would have made statutory changes to improve the process for the permitting of hazardous waste facilities. This bill was later amended to require the California Energy Commission to require each large electrical corporation to establish a tariff or tariffs that provide for bill credits for electricity generated by eligible renewable generating facilities and exported to the electrical grid. This bill was held in Senate the Rules Committee.

AB 2606 (Fong, 2018) would have required DTSC to process a hazardous waste facility renewal permit in an expedited manner if DTSC determines certain conditions apply. This bill was held in the Senate Appropriations Committee.

AB 248 (Reyes, 2017) would have made statutory changes to improve the permitting process for hazardous waste facilities. This bill was vetoed by the Governor.

AB 1179 (Kalra, 2017) would have required DTSC to, on or before January 1, 2020, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities and for hazardous waste generators and transporters. This bill was vetoed by the Governor.

SB 774 (Leyva, 2017) as it was heard before the ESTM Committee, would have created the California Toxic Substances Board within DTSC to provide oversight of California's hazardous waste management and the remediation of contaminated sites. This bill was later amended to require the California State University Trustees to oversee a competitive process to award funds to the Wildland and Wildland Urban Interface Wildfire Research Grant Program and appropriate \$5 million from the General Fund to the Trustees in order to oversee the program. This bill was vetoed by the Governor.

SB 812 (De León, 2014) would have modified the permitting process and public participation requirements for hazardous waste facilities. Would have established a Bureau of Internal Affairs to oversee DTSC and investigate departmental misconduct and a DTSC Citizen Oversight Committee to receive and review allegations of misconduct. This bill was vetoed by the Governor.

**LAO Comments.** The LAO provides the following assessments about this proposal:

### **BES**

***Concept of Establishing a Board Has Merit.*** A board that holds regular public meetings could improve transparency around DTSC's operations and provide the public and stakeholders with a regular venue to raise issues and discuss their concerns. The board structure could also help to promote greater accountability by requiring the DTSC director to regularly report on the department's progress towards meeting annual priorities and long-term goals.

***Governor's Proposed Board Differs Somewhat From Legislature's Approach.*** While largely mirroring the board structure the Legislature would have established through AB 995 (C. Garcia), which was

vetoed last year, the board proposed by the Governor would differ from the Legislature's approach in the following ways:

- ***Board Would Establish Future Charge Levels for HWCA and TSCA.*** The Legislature's approach required the Secretary of CalEPA to convene a task force to review the revenue structures that support HWCA and TSCA and to report recommendations to the Legislature for future changes through the budget process. In contrast, the Governor's proposal empowers the board to make future changes based on legislative appropriation levels.
- ***Board Would Be Under DTSC, Not CalEPA.*** The Legislature's approach would have had the board report directly to the Secretary of CalEPA, whereas the Governor proposes having the board housed within DTSC.
- ***Board Member Appointments Would Not Require Legislature's Approval.*** The Governor would not require any of the five board members to be appointed by the Legislature or receive Senate confirmation, whereas the Legislature's approach would have required that three board members be subject to Senate confirmation, one member be appointed by the Senate Rules Committee, and one member be appointed by the Speaker of the Assembly.
- ***Board Member Qualification Requirements Slightly Different.*** The Governor would require one board member to be selected from the general public, whereas the Legislature's approach would have required professional qualifications for all members.
- ***No Annual Report to the Legislature.*** Assembly Bill 995 would have required the board to transmit to the Legislature and the Secretary of CalEPA an annual review of the department's performance measured against the board's objectives, whereas the Governor's proposal only requires reporting to the Secretary of CalEPA.

***Governor's Proposal Excludes Components That Could Increase Transparency and Accountability to Legislature.*** Three of the AB 995 provisions that the Governor's proposal leaves out could provide opportunities to increase the proposed board's accountability and transparency to the Legislature. Specifically, the Governor's approach denies the Legislature the opportunity to (1) appoint board members, (2) vet and approve the Governor's board appointees through the Senate confirmation process, and (3) be provided a required annual report on DTSC's performance. Given that increasing oversight over DTSC has been a high priority for the Legislature, these differences contained in the Governor's proposal would limit the extent to which a new board would reflect *legislative* priorities and enable the Legislature to stay informed about DTSC's progress.

***Governor's Proposal Now Reflects Some Other Legislative Priorities.*** The Governor's 2021-22 proposal incorporates many of the policy changes that were adopted in AB 995 that were not included in the Administration's approach from last year, such as requiring DTSC to update the statewide hazardous waste management plan. The inclusion of these changes better aligns the Administration's proposal with priorities that the Legislature has previously identified as being important reform measures for DTSC.

## **HWCA**

***HWCA Primarily Funds DTSC's Regulatory Activities.*** HWCA is one of the department's two major special funds. The fund primarily supports the department's Hazardous Waste Management Program, which regulates the generation, storage, transportation, and disposal of hazardous waste through permitting, compliance monitoring, and enforcement of noncompliance.

***HWCA Receives Revenues From Several Fees.*** HWCA currently receives revenues from various fees levied on hazardous waste generators, waste disposal entities, and other facilities that handle hazardous waste. The amounts charged ranges due to differing rate structures. For instance, the generator fee is an

annual charge that is tiered based on the amount of hazardous waste an entity generates. While these charges generally are applied to the different categories of businesses displayed in the figure, in some cases exemptions apply. For example, hazardous waste generators that generate fewer than five tons of waste annually are not required to pay the generator fee. Major revenue sources for HWCA totaled about \$47 million in 2019-20 and are anticipated to be roughly the same amount in 2020-21. Combined with revenues from other sources, such as cost recovery charges, total revenues for HWCA were roughly \$56 million in 2019-20—not including the General Fund backfills.

***HWCA Faces Structural Imbalance.*** In recent years, the growth in expenditures from HWCA has outpaced the growth in revenues, creating a structural imbalance in the fund. The Administration indicates these trends are primarily due to increasing statutory requirements and responsibilities for the department, as well as increasing operational costs that have exceeded inflationary adjustments to the fees that support HWCA. For instance, SB 673 (Lara), Chapter 611, Statutes of 2015, required DTSC to establish and implement new permitting criteria to improve enforceability, transparency, and equity in permit decisions. The total costs associated with DTSC's activities supported by HWCA are estimated to be about \$77.5 million in 2020-21. To meet its costs and keep the fund solvent, DTSC received General Fund backfills for HWCA totaling \$27.5 million in 2019-20 and \$19.5 million in 2020-21.

***Both Governor and Legislature Sought to Address HWCA Imbalance in 2020-21.*** The Governor's 2020-21 budget included a proposal to restructure and increase charges that support HWCA. The proposed HWCA reform ultimately was not included in the budget package approved by the Legislature. AB 995 also included a HWCA reform component that would have restructured and increased charges in a way that was nearly identical to the Governor's proposal. AB 995 also would have required the Secretary of CalEPA to convene a task force to review the charges under HWCA and to provide recommendations to the Legislature on additional reform options for the future. As noted earlier, AB 995 was vetoed by the Governor.

***DTSC's Workload Analysis Indicates Resource Gaps.*** In January 2021, the department released a workload analysis that provided information on DTSC's current staffing, funding, and workload, as well as a discussion of identified resource gaps for high-priority programs and activities. The analysis identified roughly \$20 million in resource gaps within the Hazardous Waste Management Program—the program primarily supported by HWCA—of which a significant portion was related to shortcomings in the department's ability to inspect hazardous waste facilities and to pursue enforcement cases for violations. This assessment suggests that even with the recent General Fund backfills, HWCA is not providing sufficient resources to enable DTSC to meet its statutorily required regulatory workload.

***General Fund Support Would Keep HWCA Solvent in 2021-22.*** The proposed one-time General Fund backfill of \$22.5 million would keep HWCA solvent in the budget year and allow DTSC to continue undertaking its existing level of activities. Because of the delay in when the restructured charges and increases go into effect, providing short-term funding for the fund likely is necessary if the Legislature wants DTSC to continue performing its regulatory function at existing levels in 2021-22.

***Proposal Would Solve Existing Shortfall.*** The Governor's proposal would address the structural problems within HWCA on an ongoing basis starting in 2022-23. Specifically, the proposed increases would provide sufficient new revenues for HWCA to address the fund's current operating imbalance and cover DTSC's existing workload on an ongoing basis, as well as build up a prudent level of operating reserves.

***Incorporating Revenue Increases to Expand Programmatic Expenditures in 2022-23 Is Reasonable.*** The LAO finds the Administration's proposal to also incorporate estimated costs for future programmatic expansions into its new charges to be justified. The LAO finds that the programmatic expenditures anticipated for 2022-23 appear reasonable based on DTSC's workload analysis of existing regulatory requirements and funding deficiencies. Additionally, the Legislature will be able to conduct

further oversight over the specific proposed expenditures when the department submits budget requests next year to authorize the use of these funds in 2022-23.

Moreover, authorizing the proposed charge increases to go in effect in 2022 is reasonable because doing so would make sufficient resources available to support the new activities beginning in 2022-23. Absent such action, the board would not be able to raise charges to generate increased revenues until 2023-24, resulting in an additional year wait before DTSC would be able to increase staffing levels and commence the additional work proposed.

***New Generation and Handling Fee Has Several Benefits.*** The proposal includes eliminating several existing fees and replacing them with a new generation and handling fee. The LAO finds that the new charge would have several advantages over the current structure. First, the new charge structure would distribute costs across hazardous waste generators more equitably when compared to current fees. For instance, the generator fee's current tiered structure allows businesses that generate different amounts of hazardous waste to pay the same annual charge. For example, an entity that currently generates 500 tons of hazardous waste would pay the same amount as one that generates 900 tons. The new generation and handling fee would correct this by charging businesses based on a price-per-ton model. Second, the new charge could encourage reductions in hazardous waste in the long run. This is because the model of placing a charge on every ton of hazardous waste generated creates an incentive for businesses to pursue innovative ways to reduce their waste and thereby lessen their regulatory costs.

***Retaining Exemption for Small Generators Is Reasonable.*** The LAO also finds that the Administration's decision to retain the exemption for generators that generate less than five tons to be reasonable. The exemption does not completely align with the "polluter pays" principle under which entities who engage in regulated activities should be responsible for paying regulatory and oversight costs. However, assessing the charge on small generators would not make fiscal sense because the administrative cost to collect from these entities would be greater than the estimated revenues generated. According to the department, there are 67,000 small generators—making up about 90 percent of generators—but which produce only 2 percent of the total hazardous waste in the state. The LAO also finds that retaining this exemption could provide some relief to smaller businesses that are struggling due to the pandemic. (However, as we discuss in more detail related to TSCA changes below, these types of exemptions are not necessarily the most effective way to provide fiscal relief to pandemic-impacted businesses.)

***Allowing New Board to Adjust HWCA Charge Levels Is a Reasonable Approach.*** While the Governor's approach differs from AB 995, the LAO finds that allowing the new board to set future charge levels annually has some key benefits and still would allow for ample legislative involvement. First, it creates more stability for HWCA by establishing a way for revenues to annually align with expenditure levels established by the Legislature through the budget act. For instance, if revenues were to decline or grow more slowly than expenditures, the board could adjust charges—up until the maximum level—to prevent a structural deficit from occurring. Second, this approach provides the Legislature with greater confidence that it can assign necessary responsibilities to the department without placing excessive pressure on HWCA. For example, approving ongoing positions or augmentations for the department could ultimately be funded through the board's ability to increase charges. Given that HWCA is largely used for the department's regulatory responsibilities, creating this type of alignment between authorized expenditures and revenues that are collected from regulated entities is reasonable. Third, since the board will discuss charge adjustments at public meetings that align with the budget process, the Legislature will be able to weigh prospective impacts on rates before making decisions on new expenditure proposals.

## **TSCA**

***TSCA Funds Several DTSC Programs.*** TSCA is the department's other primary special fund source. TSCA largely funds DTSC's activities related to investigating and cleaning up contaminated sites. The fund also supports the department's Safer Consumer Products program, which attempts to reduce human and environmental exposure to toxic chemicals by working with industry to develop safer alternatives.

***TSCA Funded by Tax on Businesses.*** Major sources of revenue for TSCA include various charges, fines, and penalties. Roughly 80 percent of TSCA's revenues come from an annual tax levied on most businesses with 50 or more employees. (The remaining amount comes from cost recovery revenues, penalties, and interest.) The amount of the tax applied is scaled based on the number of employees and is adjusted annually for inflation. For example, in 2021, businesses with between 50 and 74 employees pay \$357 whereas larger businesses with between 500 and 999 employees pay \$4,985. (While the charge is generally referred to as an environmental fee, it aligns with the State Constitution's definition of a tax.) The underlying premise for the widespread nature of the tax is that all businesses contribute to hazardous waste through the use of basic products that were either manufactured using chemical processing techniques or that become hazardous waste after they have been discarded. In 2019-20, the tax generated about \$56 million for TSCA, and is anticipated to be roughly the same amount in 2020-21.

***TSCA Faces Structural Imbalance.*** In recent years, the growth in expenditures from TSCA has outpaced growth in its revenues, creating a structural imbalance in the fund. According to the administration, these trends are due, in part, to additional operational costs to implement expanded responsibilities the department has been assigned since 2000. For example, SB 509 (Simitian), Chapter 559, Statutes of 2008 established the Safer Consumer Products program, which is currently funded at about \$16 million annually, mostly from TSCA. Additionally, California faces increasing cost pressures related to required state contributions to federal cleanup projects, which typically are funded out of TSCA. In contrast, the tax that funds TSCA has not been increased—apart from inflationary adjustments—since 1997. Expenditures from TSCA in 2020-21 are anticipated to total \$63.1 million. (This does not include expenditures related to the former Exide Technologies facility, which is largely supported by General Fund loans to TSCA.) To keep the fund solvent in 2020-21, the budget provided TSCA with a General Fund backfill of \$7.8 million.

***Governor and Legislature Proposed Differing Approaches for TSCA.*** The Governor's 2020-21 budget included a proposal to increase the tax that supports TSCA. Like the Governor's board and HWCA proposals, the proposed increase was also ultimately omitted from the final budget package adopted by the Legislature. In contrast to the board and HWCA—for which the Legislature and the Governor had somewhat similar proposals—AB 995 did not include a specific TSCA proposal. However, the legislation did include a requirement that the Secretary of CalEPA convene a task force to review the funding structure that supports TSCA and to provide recommendations to the Legislature on potential reform options through the budget process.

***Department's Workload Analysis Indicates Resource Gaps.*** As discussed earlier, the department recently released a workload analysis on DTSC's existing staff and funding, as well as identified resource gaps for its programs and activities. In this assessment, the department identified resource gaps related to cleanup activities associated with identifying contaminated sites, site inspections and establishing initial remediation actions. The additional costs associated with these activities were estimated to be between \$43.5 million and \$138.2 million annually, depending on how many additional contaminated sites the state chooses to address.

***General Fund Support Would Keep TSCA Solvent in 2021-22.*** The Governor's proposed \$13 million General Fund transfer would keep TSCA solvent and allow DTSC to continue its current program expenditures as the tax increase is implemented. Providing short-term funding for the fund is necessary if the Legislature wants DTSC to continue performing its existing level of activities in 2021-22.

***Proposal Would Solve Existing Shortfall.*** The Governor’s proposal would address the existing structural problems with TSCA. Specifically, the proposed increases would provide sufficient new revenue for TSCA to address the fund’s current operating imbalance and cover DTSC’s existing workload on an ongoing basis, as well as build up a prudent level of operating reserves.

***Amount of Tax Increase Should Be Driven by Legislature’s Programmatic Priorities.*** The LAO finds that the department’s estimated programmatic expansions for 2022-23 seem reasonable and are based on its workload analysis. For instance, the amount provided for site cleanup staff—the majority of estimated ongoing spending beginning in 2022-23—would allow the department to conduct 50 to 150 site discoveries and 60 to 130 site initiation actions annually. However, determining the “right” level of funding needed for TSCA is somewhat more subjective than for HWCA. In contrast to HWCA—for which a strong nexus exists between charges and DTSC’s regulatory workload—TSCA is largely supported by a broad-based tax that can fund a wide variety of department activities. That is, the workload to be supported by TSCA is driven by the Legislature’s decisions for what activities it wants DTSC to perform with the fund, rather than by what is needed to enforce regulatory requirements. For example, the Legislature has added new responsibilities to the fund in recent years, such as the Safer Consumer Products program. Therefore, the process of establishing a new tax increase should include an assessment of which activities the Legislature believes TSCA should support, a determination of the corresponding amount of revenues needed to support these activities, and the impact on the businesses paying the environmental fee. Should the Legislature determine that the specific activities and service levels proposed by the Governor align with its priorities, then it may find the proposed level of tax increase to also be reasonable. However, should the Legislature believe that TSCA should support a different mix of activities with higher or lower associated costs, then a tax structure generating a different level of revenue might be more appropriate.

***Merits of Pandemic Relief Measures Are Unclear.*** The Administration indicates that its decision to include relief measures for smaller businesses—by exempting small business and maintaining the existing rate for midsized businesses—is related to the pandemic. The LAO finds that this approach likely is not the best way for the state to provide pandemic relief. For instance, the size of a business—the basis on which the environmental fee is assessed—does not necessarily indicate the degree to which a business has faced financial losses due to the pandemic, which is more likely to vary based on the business’ industry. The LAO notes as well that the state and federal government have provided direct fiscal relief to small businesses through a variety of other programs. Moreover, we note that the Governor’s proposal would be implemented on an ongoing basis. It is unclear why the proposal does not include any provisions to sunset these changes or to revisit them at some point in the future—for example, after the state has entered into an economic recovery—which would ensure that the tax is more evenly borne by the wide array of businesses that contribute to hazardous waste.

***Allowing New Board to Adjust Tax Is a Reasonable Approach.*** As discussed with regard to HWCA, the LAO believes the Administration’s approach of allowing the new board to set the tax annually would provide some important benefits—establishing a mechanism for revenues to keep pace with annual expenditure levels set by the Legislature and providing confidence that the department can be tasked with future responsibilities without placing excessive cost pressures on TSCA. Additionally, because the board will meet to discuss tax adjustments at public meetings that align with the budget process, the Legislature will be able to understand how future TSCA expenditure proposals would affect tax rates as it deliberates their merits.

### ***Brownfields Cleanup***

***Legislature Need Not Consider Proposal as Being Contingent on Reform Package.*** While the Governor has presented this proposal as being contingent upon the enactment of the governance and fiscal reform package for DTSC, the proposals are not fiscally linked. Because the Governor would fund

this proposal using General Fund, the existing structural imbalances in HWCA and TSCA would not preclude the Legislature from appropriating funds to clean up brownfields, regardless of what it decides to do with the Governor's proposed governance and fiscal reform package.

***Additional Support for Brownfield Investigations and Cleanups in EJ Communities Has Merit.*** Because they could provide multiple benefits to EJ communities, we find that the funding being proposed for state cleanup projects and the brownfield grant program have merit. For instance, cleaning up brownfield sites can reduce the health and environmental risks that stem from contamination in communities that can least afford to remediate the contamination themselves. Moreover, the cleanup *also* could help to encourage economic development in struggling areas by making more land available for housing and commercial activity. In this way, targeting funding for projects in EJ communities can help alleviate the disproportionate environmental and economic burdens that these communities experience.

***Could Be Difficult to Prioritize Both Environmental and Housing Goals.*** The Governor's stated dual goals of reducing health and environmental risks associated with contaminated sites and increasing the supply of housing are both worthwhile endeavors for the state. However, meeting both could be difficult, as site selection might differ depending on which goal is prioritized. For instance, sites that may have high levels of contamination might be in areas that are not zoned for or would not be feasible to build housing. For example, many sites of former dry cleaners likely are located in areas zoned for commercial, not residential, development. Conversely, prime locations for developing additional housing are not necessarily the sites of the most significant environmental risks for nearby residents and, therefore, might not be the highest priority for improving public health. It is unclear at this time on how the department plans to prioritize between these two goals when selecting state projects and when designing grant guidelines. Given the significant number of brownfield sites across the state, the proposed one-time funding would not allow the department to address all known needs in all communities. This makes understanding and having confidence in the administration's plan for how it will prioritize funding for both state investigations and the grant program all the more important.

***Additional Coordination Could Assist Housing Goals.*** DTSC's core mission is to protect people and the environment from the harmful effects of toxic substances by restoring contaminated resources—yet this proposal is also seeking to develop new housing. The department likely is not the most suitable agency to best achieve this second goal—at least not on its own. Selecting sites that have the best potential to be developed for housing would require significant coordination between DTSC and other state and local entities. While the current proposed budget trailer legislation requires the department to consult with HCD to develop guidelines for the grant program, it does not include language governing how HCD will be involved in selecting sites for DTSC's own cleanup and investigation actions. Clarifying how exactly DTSC and HCD will coordinate—potentially through statutory language—could provide the Legislature with greater confidence that housing goals will be met.

***Grant Portion of the Proposal Might Be Duplicative of Other Housing Proposals.*** In addition to the proposed funding for DTSC, the Governor has proposed \$500 million for HCD to develop housing-related infrastructure, including for environmental remediation. Given that DTSC's proposed grants would also be for cleanup activities, these efforts could be somewhat duplicative. Additionally, having similar grants administered by two separate departments could cause confusion amongst departments and applicants. How these two programs would be coordinated under the Governor's proposal is still somewhat unclear.

***Need for Workforce Development Program Is Unclear.*** The Administration has not yet provided evidence that the state is lacking a sufficient pipeline of environmental remediation workers to justify the need for this new program. Moreover, funding a workforce development program would be problematic if there are not enough ongoing job opportunities to support those who do become trained



by the program. The department has indicated that workforce development funding will be distributed according to where cleanup projects will be undertaken with the proposed new funding. Given that this funding is proposed on a one-time basis, the associated cleanup project workload will be limited-term in nature. Whether the job market could sustain newly trained workers over the long run is unclear.

**LAO Recommendations.** The LAO recommends the following:

### **BES**

***Approve Proposal to Establish Board, but Include Components That Increase Legislative Oversight.*** The LAO recommends the Legislature establish a board in order to improve DTSC's transparency and accountability, and thereby help restore confidence in the department within the regulated community and the public. However, the LAO recommends that the Legislature require that (1) the Senate and Assembly each have the opportunity to appoint a board member, (2) gubernatorial board members be subject to Senate confirmation, and (3) the board report annually to the Legislature on the department's performance. These changes would strengthen the Legislature's ability to oversee the board and department and ensure that the reforms being implemented are resulting in performance and outcome improvements.

### **HWCA**

***Approve One-Time General Fund Augmentation in 2021-22.*** The LAO recommends that the Legislature approve the Governor's proposed \$22.5 million in one-time General Fund to backfill HWCA. Providing the backfill would keep HWCA solvent and allow DTSC to continue its existing programmatic workload in the budget year.

***Adopt HWCA Charge Restructure and Increases.*** The LAO recommends that the Legislature approve the Governor's HWCA charge restructure and increase, which would solve HWCA's structural deficit and provide additional revenues to enable the department to address several of the resource gaps it has identified.

***Approve Governor's Proposal to Grant Board With Ability to Adjust Charge Levels in Future Years.*** The LAO recommends that the Legislature approve the Governor's proposal to provide the new board with the ongoing ability to adjust charge levels. Allowing the board to set charges annually would create more stability for HWCA and help ensure that revenues will be able to keep pace with legislatively approved expenditures. Additionally, because the board would discuss adjustments during the legislative budget process, the Legislature would be able to weigh the merits and associated charge impacts of proposals requesting funding from HWCA before approving them.

### **TSCA**

***Approve One-Time General Fund in 2021-22.*** Because it would keep TSCA solvent and allow the department to continue with its current expenditure levels, the LAO recommends that the Legislature approve the proposed \$13 million General Fund backfill for TSCA in the budget year.

***Design a TSCA Package That Reflects Legislative Priorities.*** As the Legislature deliberates over how it will increase taxes for TSCA, the LAO recommends that it consider the following questions:

- ***What Programs and Activities Should TSCA Support?*** Does the Legislature want the new tax rates to cover just existing activities, or are there additional high-priority activities it wants to

fund from TSCA? Do the Governor’s proposed activity expansions align with the Legislature’s priorities?

- ***How Much Funding Should Be Provided to Support These Activities?*** How much revenue needs to be raised in order to meet the Legislature’s priorities? What level of additional taxes is the Legislature comfortable requiring businesses to pay?
- ***Should Pandemic Relief Measures Be Included?*** Should the tax exemption be extended to businesses with 50 to 99 employees? Should rates be maintained for businesses with 100 to 499 employees?
- ***Should Pandemic Relief Measures Be Revisited in Future Years?*** If included, should pandemic relief measures be continued on an ongoing basis as proposed by the Governor, or should there be some mechanism to revisit these measures in the future? For example, should there be a sunset date for tax exemptions on midsized businesses?

***Adopt a Tax Package That Raises Sufficient Revenues to Pay for Desired Expenditures.*** To address the ongoing structural imbalance, the LAO recommends the Legislature adopt a tax structure for TSCA that aligns with its expenditure priorities. This could include adopting rates that are lower or higher than what the Governor is proposing, but that ultimately align with the Legislature’s spending priorities for TSCA.

***Approve Governor’s Proposal to Grant Board With Ability to Adjust Tax in Future Years.*** The LAO recommends the Legislature approve the Governor’s proposal to provide the new board with the ongoing ability to adjust tax levels. Allowing the board to set the tax annually would create more stability for TSCA and help ensure that revenues will be able to keep pace with legislatively approved expenditures. Additionally, information from the board on how annual budget proposals would affect tax rates would allow the Legislature to consider whether the merits of a proposed activity justify imposing a higher tax on the business community.

### **Brownfields Cleanup**

***Consider the Merits of This Proposal Independently From Reform Package.*** The LAO recommends that the Legislature evaluate whether or not this proposal is worthy of adopting on its own merits and not view this proposal as being contingent on the Governor’s reform package for DTSC.

***Consider Key Policy Questions When Evaluating Proposal.*** Overall, the LAO believes that the Governor’s proposal has merit given the significant number of brownfields and their disproportionate impact on low-income communities of color. However, the LAO believes there are several key questions that the Legislature should consider in designing a spending approach for these funds.

- ***What Intended Goal Is the Highest Priority for Funding?*** The Legislature may want to identify a clear primary goal to ensure that funding is well-targeted and aligns with its highest priorities. For example, this could include indicating whether addressing serious environmental contamination should take precedence over developing sites for new housing, or vice versa. Identifying a clear goal—such as through budget bill language—would also allow the Legislature to better track the success of the program against its expected outcomes.
- ***How Will Grant Funding Complement and Support Other Proposals?*** The Legislature will want to consider how the proposed grants interact with other housing proposals in the Governor’s budget—such as funding in HCD’s budget for housing infrastructure, including environmental remediation—as well as any legislative housing initiatives. This proposal should complement and support other efforts and not create a complicated or duplicative program for departments and applicants.

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***Request Additional Information at Budget Hearings.*** The LAO recommends the Legislature require DTSC to report at budget hearings on how the department will coordinate with the appropriate housing entities and the state's current needs for additional workforce training. Specifically, the LAO believes it would be beneficial for DTSC to report on the following:

- ***How Would Department Ensure Housing Objectives Are Met?*** If the Legislature believes that an important goal for this funding is to spur housing development at brownfield sites, it will want to ensure DTSC has developed an effective plan for how it will coordinate with the appropriate agencies to ensure that state cleanup projects are targeted at sites where housing development is most feasible. Based on the department's responses, the Legislature could also consider adopting additional budget bill language to help guide and ensure coordination across departments.
- ***Does Demonstrated Need Exist for Developing Remediation Workforce?*** In deciding whether to fund this component, the Legislature will want the department to show that there will be enough ongoing jobs to employ trainees once they finish the program.

**Staff Recommendation. Hold open.**

## SENATE BUDGET PLAN ON DROUGHT, SAFE DRINKING WATER, WATER SUPPLY RELIABILITY, AND RATEPAYER ASSISTANCE

### Issue 2: Senate Budget Plan on Drought, Safe Drinking Water, Water Supply Reliability, and Ratepayer Assistance

**Senate Proposal.** The Senate proposes the Senate Budget Plan on Drought, Safe Drinking Water, Water Supply Reliability, and Ratepayer Assistance for a total of \$3.41 billion in one-time state and federal funds (Federal “American Rescue Plan” funds, one-time state General Fund, and appropriation of general obligation bonds (Propositions 1 and 68), as follows:

#### *Immediate Community Assistance for Water and Drought Relief: \$500 million.*

- Establish the California Community Water Emergency Investment Fund at the Department of Water Resources (DWR), consisting of \$500 million to provide one-time grants to smaller communities for the purposes of making immediate drinking water, water quality, and water supply investments in those communities.

These funds would be allocated on a competitive basis, capped at \$5 million per community, and be prioritized for lower income and disadvantaged communities that can spend the funds for projects such as cisterns and local onsite water storage, connections to larger water systems, well deepening and consolidation programs, and water efficiency for community gardens and other water consumptive uses. Funds can be used to provide technical assistance to low-income and disadvantaged communities.

#### *Emergency Drought Water-Use Efficiency: \$500 million.*

- \$500 million to DWR for grants to water agencies to implement residential, commercial, and agricultural water efficiency projects. Projects include replacement of high water consumption landscapes and other water efficiency investments.
  - \$250 million to DWR for competitive grants to local water agencies to implement residential and commercial water-use efficiency projects. Priority shall be given to low-income households and disadvantaged communities.
  - \$250 million to DWR for competitive grants for agricultural water-use efficiency projects including building and upgrading irrigation and treatment ponds. \$40 million of which shall be allocated for purposes of the State Water Efficiency and Enhancement Program (SWEET) at the California Department of Food and Agriculture.

SWEET provides financial assistance in the form of grants to implement irrigation systems that reduce greenhouse gases and save water on California agricultural operations. Eligible system components include (among others) soil moisture monitoring, drip systems, switching to low pressure irrigation systems, pump retrofits, variable frequency drives and installation of renewable energy to reduce on-farm water use and energy.

***Sustainable Groundwater Management: \$350 million.***

- \$300 million to DWR for competitive grants that support implementation of the Sustainable Groundwater Management Act (SGMA) (Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code).
- \$50 million to the Wildlife Conservation Board (WCB) for grants pursuant to the Ecosystem Restoration on Agricultural Lands Program for groundwater sustainability projects that create, protect, or restore wildlife habitat and support implementation of SGMA.

***Resilient Water Infrastructure Projects: \$200 million.***

- \$200 million to DWR for competitive grants for projects that provide multiple benefits, including water supply reliability, ecosystem benefits, system reliability benefits, groundwater management and enhancements. Eligible projects include conjunctive use projects; groundwater recharge; well rehabilitation or other well improvements in support of groundwater banking or recharge; transfers of water for environmental purposes; restoration of upper watersheds that are a significant source of water supply for the state; and other projects that provide improved regional resilience to climate change and drought conditions.

***Recycled Water: \$200 million.***

- \$200 million to the State Water Resources Control Board (SWRCB) for competitive grants for projects related to water reuse and water recycling, and other purposes pursuant to Chapter 9 (commencing with Section 79765) of Division 26.7 of the Water Code.

Examples of eligible projects include: treatment, storage, conveyance, and distribution facilities for potable and nonpotable recycling projects; contaminant and salt removal projects; dedicated distribution infrastructure to allow use of recycled water; pilot projects for brew potable reuse and other salt and contaminant removal technology; multibenefit recycled water projects that improve water quality; and technical assistance and grant writing assistance for disadvantaged communities.

***Stormwater Management: \$200 million.***

- \$200 million to SWRCB for competitive grants for multi-benefit stormwater management projects. Eligible projects may include, but shall not be limited to, green infrastructure, rainwater and stormwater capture projects, and stormwater treatment facilities. Development of plans for stormwater projects shall address the entire watershed and incorporate the perspectives of communities adjacent to the affected waterways, especially disadvantaged communities.

Priority for grant funding shall be given for multi-benefit stormwater projects within disadvantaged communities that include waterways identified on SWRCB's 303(d) list of impaired waters prepared pursuant to 33 USC 1313(d) and California Water Code Section 13191.3(a). At a minimum, 40 percent of funding shall be allocated for projects that directly benefit and occur within a disadvantaged community.

Section 303(d) of the federal Clean Water Act authorizes the US EPA to assist states, territories, and authorized tribes in listing impaired waters and developing Total Maximum Daily Loads (TMDLs) for these waterbodies. A TMDL establishes the maximum amount of a pollutant allowed in a waterbody and serves as the starting point or planning tool for restoring water quality.

California Water Code Section 13191(a) requires SWRCB to prepare guidelines for the purpose of listing and delisting waters and developing and implementing the TMDL program and TMDLs pursuant to the federal Clean Water Act.

***Protecting Fish & Wildlife from Drought Impacts: \$285 million.***

- \$100 million to WCB for grants pursuant to the guidelines of the Streamflow Enhancement Program for the purposes of protecting fish and wildlife from them impacts of drought including for short-term acquisition and construction of transfer of water.
- \$100 million to WCB for grants pursuant to the Inland Wetlands Conservation Program to protect fish and wildlife from the impacts of drought including for wildlife friendly agriculture and to improve conditions on wildlife revues and wetland habitat areas to achieve full compliance with the terms of subsection (d) of Section 3406 of the Central Valley Project Improvement Act (Public Law 102-575) and other Central Valley managed wetlands.

Section 3406(d) pertains to the Central Valley refuges and wildlife habitat areas and supports the objectives of the Central Valley Habitat Joint Venture by directing the Secretary of the Interior to provide water supplies of suitable quality to maintain and improve wetland habitat areas in specified areas of the Central Valley.

- \$35 million to the Department of Fish and Wildlife (DFW) to protect fish and wildlife from immediate drought impacts.
  - \$20 million to DFW to support real-time management of drought response and to process regulatory approvals for drought management actions consistent with the findings in the report pursuant to Section 51 of SB 839 (Committee on Budget and Fiscal Review), Chapter 340, Statutes of 2016, which requires the California Natural Resources Agency to produce a report summarizing lessons learned from the state’s response to drought.
  - \$15 million to DFW for the Coastal Monitoring Program (CMP) to monitor the effects of drought on coastal salmon populations.

The CMP is a comprehensive program that provides a better understanding of California’s salmon and steelhead populations, utilizing modeling in combination with a variety of in-river sampling and survey methods. DFW and the National Oceanic and Atmospheric Administration (NOAA) Fisheries lead the implementation of this program in coastal watersheds. Nearly all of California’s salmon and steelhead populations have been listed under the California and Federal Endangered Species Act due to drastic declines in recent decades. The CMP is designed to document salmonid status on a statewide scale using standardized methods, with data centralized in a statewide database.

- \$50 million to the Department of Parks and Recreation (Parks) for drought-related projects on Parks-managed lands to preserve and protect the state’s fish and wildlife resources.

***Water Quality: \$100 million.***

- \$50 million to SWRCB for competitive grants for groundwater remediation, including perfluoroalkyl substances (PFAS) contamination, and other purposes pursuant to Chapter 10 (commencing with Section 79770) of Division 26.7 of the Water Code, which pertains to groundwater sustainability.
- \$50 million to SWRCB for grants and loans to public agencies or public-private partnerships for projects that will improve water quality. Eligible projects include, but are not limited to, septic to sewer conversions and wastewater treatment.

***Water Data and Forecast Improvement: \$75 million.***

- Funding to DWR/SWRCB for water management technology equipment — such as remote sensing for snowpack and precipitation gauges for real-time operations of reservoirs — to improve ability to manage/forecast runoff and for monitoring of key drought-related measures of water and water quality including:
  - \$20 million to SWRCB to implement Water Code Section 144, which requires the DWR and SWRCB to develop a plan to establish a network of stream gauges, and deploy prioritized stream gauges to improve water management and respond to the impacts of drought on fish and wildlife.
  - \$15 million to DWR for projects that improve precipitation forecasting for use in forecast informed reservoir operations, groundwater recharge, and flood risk management, including, but not limited to, projects under Article 8 (commencing with Section 347) of Chapter 2.5 of Division 1 of the Water Code, which pertains to atmospheric rivers research, mitigation, and climate forecasting.
  - \$15 million to DWR for projects that support advanced technologies to measure snowpack and forecast runoff.
  - \$15 million to the Division of Water Rights at SWRCB to support real-time management of drought response and to process regulatory approvals for drought management actions consistent with the Water Rights Drought Effort Review (WARDER) Report.

The report is a compilation of comments and recommendations that were collected as part of the WARDER effort, which included a series of interviews with water users and managers to gather input on SWRCB’s Division of Water Rights actions during the previous drought, and to solicit recommendations for Division priorities during a future drought. Comments and recommendations related to issues such as communication (e.g., communicating watershed conditions, legal and policy considerations (e.g., SWRCB authority and role during a drought, the water rights system, curtailments, and water transfers and exchanges), and data (e.g., reporting, data systems, estimating a watershed’s

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supply, determining water demand and availability), and interagency collaboration.

- \$10 million to SWRCB for monitoring, reporting and developing means to reduce harmful algal blooms in the Delta.

***Helping Ratepayers, Community Water Systems, Waste Water Treatment Works, and Public Utilities Recover from COVID-19 Economic Impacts. (\$1 billion)***

- Appropriate federal American Recovery Act funds to the Department of Community Services and Development (CSD) to help utility customers and utilities address backlogged bills and arrearages associated with COVID economic impacts. The action will include trailer bill language that designates the agency and process for disbursement of ratepayer relief funds, cutting “green tape” for environmentally beneficial projects.

***Other Actions***

- Accelerate appropriation of existing water bond priorities Propositions 1 and 68 funds where demand is still high (stormwater management projects, water recycling, and drinking water capital projects).
- Urge the Water Commission to convene and reallocate \$145 million in existing Proposition 1 funds originally set aside for Temperance Flat Dam for other sustainable water storage investments in the Central Valley.

***Funding Sources.*** The details regarding funding sources for each program are pending but with the intent of using a significant amount of one-time General Fund moneys. In addition to funding that may be available from the federal American Recovery Act, Congress is currently working on an infrastructure package, which could provide potentially increased federal dollars for water infrastructure projects.

***Background.*** Much of California is in drought or near-drought. This is the second year in a row of dry conditions — and the eighth year in the last 10. The snowpack is less than half of normal this year and areas throughout the state are well below normal precipitation — San Francisco has had 37 percent of normal precipitation, San Diego at 30 percent, Sacramento at less than 40 percent, and Los Angeles at 39 percent.

On April 21, 2021, the Governor proclaimed a state of emergency to exist in Mendocino and Sonoma counties due to drought conditions in the Russian River Watershed where reservoirs are at record lows. The proclamation also directs additional actions to coordinate with California Native tribes; accelerate funding for water enhancement, conservation and species protection projects; work with counties to encourage and track reporting of household water shortages including dry residential wells; provide technical and financial assistance for water systems at risk of water shortages; support the agricultural economy and food security; and evaluate and take action to protect terrestrial and aquatic species.



***The 2012-2016 Drought.*** The state last experienced a severe drought for five years between 2012-2016. That drought was the second time that a statewide emergency proclamation for drought impacts was issued.

***Drought Impacts.*** According to the Legislative Analyst’s Office (LAO), the 2012-2016 drought affected various sectors in different ways. Sector-specific water needs and access to alternative water sources led to notable distinctions in the severity of the drought’s impacts across the state.

For example, while the drought led to a decrease in the state’s agricultural production, farmers and ranchers moderated the drought’s impacts by employing short-term strategies, such as fallowing land, purchasing water from other, and — in particular — pumping groundwater. In contrast, some rural communities — mainly in the Central Valley — struggled to identify alternative water sources upon which to draw when their domestic wells have gone dry.

Multiple years of warm temperatures and dry conditions had severe effects on environmental conditions across the state, including degrading habitats for fish, water birds, and other other wildlife, killing millions of the state’s trees, and contributing to more prevalent and intense wildfires. For urban communities, the primary drought impact was a state-ordered requirement to use less water, including mandatory constraints on the frequency of outdoor watering.

According to the LAO, the state funded both short- and long-term drought response activities and deployed numerous resources — fiscal, logistical, and personnel — in responding to the 2012-2016 drought. LAO has provided the following figure outlining \$3.4 billion in the state’s drought response appropriations from 2013-14 through 2016-17:

<b>State Drought Response Appropriations</b>	
<i>2013-14 Through 2016-17 (In Millions)</i>	
<b>Activity</b>	<b>Amount</b>
<b>Water Supply</b>	
Support groundwater management and clean-up	\$843
Improve/increase water recycling, wastewater treatment, stormwater management, and desalination	609
Fund Integrated Regional Water Management projects	473
Improve drinking water infrastructure	311
Subtotal	(\$2,235)
<b>Emergency Response</b>	
Expand/enhance fire protection	\$379
Provide food and other assistance to drought-affected communities and farmworkers	99
Provide emergency drinking water	68
Conduct statewide drought assistance, monitoring, and response	55
Make emergency improvements to drinking water systems	47
Remove and dispose of dead trees	41
Monitor/enforce water rights and conservation regulations	20
Various other activities	21
Subtotal	(\$730)
<b>Water Conservation</b>	
Increase urban water efficiency and conservation	\$166
Increase agricultural water efficiency and conservation	122
Fund innovative water efficiency technologies	30
Conduct conservation outreach and public messaging	23
Increase water efficiency at state facilities and wildlife refuges	28
Subtotal	(\$369)
<b>Environmental Protection</b>	
Emergency fish and stream activities	\$70
Eradicate water hyacinth	4
Study and model flows	3
Subtotal	(\$78)
<b>Total</b>	<b>\$3,410</b>
LAOA	

**Report to the Legislature on the 2012-2016 Drought.** Pursuant to SB 839 (Committee on Budget and Fiscal Review), Chapter 340, Statutes of 2016, California Natural Resources Agency (CNRA) released, “Report to the Legislature on the 2012-2016 Drought,” in March 2021 outlining the lessons learned from the 2012-2016 drought.

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According to the report, since the last drought, several legislative and regulatory changes were enacted, including:

- Enactment in 2014 of the Sustainable Groundwater Management Act to require local agencies to bring overdrafted groundwater basins into sustainable conditions by 2042.
- Legislation to establish new standards for indoor, outdoor, and industrial use of water.
- Funding for disadvantaged disadvantaged communities lacking access to safe drinking water through the Safe and Affordable Drinking Water Act.
- Increase the frequency of water use reporting.
- Give the state authority to order failing public water systems to consolidate with better-run systems.
- Tighten landscape efficiency standards for new developments.

Implementation of these laws and regulations are intended to help with extended dry conditions in the future.

According to the report, effective response depends heavily on capacity built before drought deepens. This includes reducing the drought vulnerability of water users and ecosystems, making key policy decisions in advance, improving hydroclimate forecasting to provide longer lead times for decision-making, having at hand the information necessary to make well-informed decisions, and creating the capacity to communicate effectively across governments and to the public about a rapidly changing situation.

The report provides the following recommendations on state action:

- Provide longer lead times for State financial assistance to local agencies.
- Dedicate staff to ongoing drought preparedness and response work.
- Improve accounting for Wildlife needs before and during drought.
- Improve the quality and timeliness of forecasting and data.
- Restore forest health in upper watersheds.

These recommendations are intended to address long-standing water problems and strengthen the state's ability to cope with a changing climate.

*Funding.* According to the report, a major legislative response action during the 2012-2016 drought was providing emergency funding in the state budgets of 2014 and 2015. In March 2014, a budget amendment for 2013-14 authorized \$687.4 million for drought relief, with \$549 million for accelerated expenditure of Proposition 84 and Proposition 1E bond funds for grants to local agencies for integrated regional water management projects. In March 2015, an amendment for the 2014-15 budget authorized more than \$1 billion for additional relief, including water conservation and recycling assistance, emergency food aid, and small drinking water emergencies. Also, SB 88 (Committee on Budget and Fiscal Review),

Chapter 27, Statutes of 2015, authorized SWRCB to require consolidation of water systems consistently failing to provide an adequate supply of safe drinking water as well as provide for more thorough measurement and reporting of diversions to SWRCB.

**Water Use.** According to the Public Policy Institute of California (PPIC) (*Water Use in California*, May 2019), water use is shared across three main sectors — statewide, average water use is about 50 percent environmental, 40 percent agricultural, and 10 percent urban, although the percentage of water use by sector varies dramatically across regions and between wet and dry years.

PPIC states that California needs to adapt to increasing drought intensity. Agriculture relies heavily on groundwater during droughts — particularly in the Central Valley — but more sustainable groundwater management is needed to maintain this key drought reserve. An increase in tree and vine crops — which need to be watered every year — is making farming more vulnerable to water shortages. State law now requires water users to bring their groundwater basins into long-term balance by the early 2040s. This will likely require farm water use to fall in regions that have been over-pumping, including the southern Central Valley and the Central Coast. In urban areas, the greatest potential for further water savings lies in long-term reductions in landscape irrigation — a shift requiring changes in plantings and watering habits. Finally, state and federal regulators need new approaches to reduce harm to fish and wildlife during increasingly intense droughts. This will require better drought planning, investments in new habitat, and setting aside water during wet years for ecosystem uses in dry years.

**Staff Comments.** After the second dry winter in two years, California is again facing severe drought conditions as we transition into the summer and fall months. Communities will likely go without, or ration, water, our farms and the state’s agriculture sector will suffer, and California’s ecosystems are degraded with species on the brink of extinction.

Water managers throughout the state are bracing for very dry conditions and are scrambling to ensure water supply and water quality throughout the state. State and federal water agencies already have announced water supplies for urban areas, agriculture, and the environment will be a fraction of their usual amounts.

These extremely dry water conditions, coupled with COVID-19 and its impacts on all sectors of the California economy, suggest immediate actions and investments that can be made to help state, regional, and local water needs are critically important.

At the same time, California is fortunate with the remarkable amounts of one-time federal funds from the American Rescue Plan and from a one-time amount of General Fund available for immediate investments to help the state.

Water is the life blood of California and its economy. Due to climate change and other factors, the state is once again facing a historic challenge over water supply and water quality due to drought.

This proposal incorporates the following key guiding principles:

- Focus on the here and now. Immediately appropriate available federal (American Recovery Act) funds, one-time state General Funds, and available, existing bond funds for drought relief across sectors, for ratepayer assistance for debt and unpaid bills during the pandemic, and for water supply reliability.
- Focus on off-the-shelf, one-time expenditures that can occur as soon as possible.

- Focus on consensus. This is a package that should unite water users, conservation groups, agriculture, and water agencies.

Putting these one-time funds out for “no regrets” water investments is both essential to the state’s health and significantly beneficial for the state’s residents and businesses.

**Staff Recommendation. Approve as proposed.**