Senate Budget and Fiscal Review—Nancy Skinner, Chair
SUBCOMMITTEE NO. 2 **Agenda**

Senator Bob Wieckowski, Chair
Senator Brian Dahle
Senator Mike McGuire
Senator Henry I. Stern

Tuesday, May 3, 2022
9:00 a.m.
1021 O Street, Room 1200

Consultant: Joanne Roy

Item **Department** **Page**

VOTE-ONLY

DISCUSSION

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VOTE-ONLY

3900 CALIFORNIA AIR RESOURCES BOARD (CARB)
3930 DEPARTMENT OF PESTICIDE REGULATION (DPR)
3940 STATE WATER RESOURCES CONTROL BOARD (SWRCB)
3960 DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)

Issue 1: CalEPA: Technical Adjustments (SFL)

Governor's Proposal. A Spring Finance Letter (SFL) requests various reappropriations, technical, and baseline adjustments to continue implementation of previously programs, as follows:

CARB: Community Air Protection Staffing from Air Pollution Control Fund (APCF) (SB 170). It is requested that Item 3900-001-0115 (APCF) be increased by $4.165 million ongoing to provide funding authorized by SB 170 (Skinner), Chapter 240, Statutes of 2021, for AB 617 program operations. The Governor's budget inadvertently excluded this approved funding and the proposal will align funding levels that were previously approved.

DPR: Reappropriation of Transition to Safer, Sustainable Pest Management Funds. It is requested that specified unencumbered balances in the 2021 Budget Act be reappropriated with funding available for encumbrance or expenditure until June 30, 2023. This funding supports activities to facilitate the state's transition to safer, sustainable pest management, including expansion of DPR's integrated pest management program and enhanced community engagement.

SWRCB: Technical Adjustements. It is requested that Item 3940-001-0890 be increased by $28.58 million and Item 3940-001-6083 be decreased by $580,000 ongoing to facilitate the receipt and disbursement of federal grants for the Overflow and Stormwater Grant program. It is also requested that Item 3940-491 be added to extend the liquidation period of specified provisions within Item 3940-101-0001, Budget Act of 2018 until June 30, 2026.

DTSC: Biomonitoring Program Reimbursement. It is requested to increase reimbursement authority for the Toxic Substances Control Account by $435,000 one-time to fund the Biomonitoring Program work activities per a reimbursement agreement with the Department of Public Health. This is a technical adjustment that is needed as a result of a new, two-year interagency agreement that will require DTSC to provide analytical and consulting support to the California Department of Public Health consistent with the mission of the department's existing Biomonitoring California program.

Staff Recommendation. Approve as proposed.

3900 CALIFORNIA AIR RESOURCES BOARD (CARB)

Issue 2: Certification and Compliance Fund Expenditure Authority (SFL)

Governor's Proposal. An SFL requests to shift existing positions and authority to the Certification and Compliance Fund (CCF). This request shifts existing positions in various Divisions starting in 2022-23.

Background. Since the 1990 adoption of Health and Safety Code (HSC) Section 43019 to assess a fee for the certification of on-road motor vehicles and engines (generally cars, trucks, and motorcycles), emission standards and certification requirements have expanded to include the numerous categories of off-road vehicles and engines used in the state. CARB currently issues over 3,700 approvals, also known as executive orders (EOs) annually, which allow manufacturers to sell their products in this state. This is approaching a tenfold increase from the 430 EOs issued by CARB in 1990. CARB now issues approvals for all types of vehicles and engines, including automobiles and heavy-duty trucks, as well as large off-road equipment and small lawn and garden engines, evaporative systems, and aftermarket components that are used in automobiles, trucks, and off-road engines. Each product is certified by CARB according to the regulations and test procedures based on the product's specific equipment classification or operating category.

The amount of fees collected per year, which was capped in HSC Section 43019 at $4.5 million for 1989-90 but was allowed to increase annually with California Consumer Price Index (CPI), is currently capped at roughly $10 million a year. The fees are deposited in the APCF to implement CARB's Mobile Source Certification and Compliance (MSCC) programs.

In 2018 and 2019, legislation required CARB to develop new fee schedules to cover the reasonable costs of the MSCC programs to ensure engines and vehicles meet emission control requirements. These emission control requirements are applicable to all types of mobile source vehicles and engines, including automobiles and heavy-duty trucks, as well as large off-road equipment and small lawn and garden engines, evaporative systems, and aftermarket components that are used in automobiles, trucks, and off-road engines.

A new fund, the Certification and Compliance Fund (CCF), was established for the deposit of existing and new mobile sources fees. These fees are designed and intended to directly support the MSCC programs. In April 2021, CARB adopted regulations to establish fees to be assessed at the time of application for certification of 35 different mobile source categories, replacing the existing fee structure. These fees, approved by the Office of Administrative Law on January 18, 2022, will be assessed beginning April 1, 2022, and will be deposited into the CCF to support the MSCC Program.

Staff Recommendation. Approve as proposed.

Issue 3: Implementation and Enforcement of the Cargo Tank Vapor Recovery Program (SFL)

Governor's Proposal. An SFL requests one-time authority to spend $1.225 million for 2022-23 on enforcement equipment and IT system development to be funded by Cargo Tank Certification Fees that are currently collected and deposited into APCF for the Cargo Tank Vapor Recovery Program (CTVRP) and $196,000 in annual indirect costs as agreed upon by the Department of Finance and the US Environmental Protection Agency under Code of Federal Regulations, Title 2, Part 200, effective 2022-23. Additionally, CARB requests $524,000 for three permanent ongoing positions.

CARB also requests an annual ongoing amount of $350,000 for enforcement equipment and information technology maintenance costs effective 2023-24. These resources are intended to enable CARB to meet the requirements set forth in Health and Safety Code (HSC) Section 41962, ensuring compliance of the Certification of Vapor Recovery Systems on Cargo Tanks Regulation (California Code of Regulations, Title 17, Section 94014) and keeping the program revenue neutral.

Background. Cargo tanks transfer gasoline from bulk terminals to gasoline stations. The CTVRP imposes technology requirements to minimize vapor emissions from these tanks and requires tank operators to have specialized control equipment, and through annual testing demonstrate that the control equipment is operational. The CTVRP requires any cargo tank operating in California to be certified annually for vapor tightness. The CTVRP oversees the certification process that requires the submittal of a 48-hour test notification to CARB, completion of the annual test procedures, the submittal of passing test results, and the submittal of a completed certification application with a certification fee. In addition, CARB assures such systems are operated in compliance with CARB standards and procedures adopted by the Board pursuant to HSC section 41962. The vapor recovery system needs to be tested annually to ensure all components are functioning properly to prevent excess Volatile Organic Compound (VOC), and Toxic Air Contaminant (TAC) emissions from venting to the atmosphere during the loading or unloading of gasoline. CARB certifies approximately 6,000 cargo tanks each year and is responsible for enforcing compliance of the Program's requirements.

Staff Recommendation. Approve as proposed.

Issue 4: Low Carbon Fuel Standard Registration (SFL)

Governor's Proposal. An SFL requests a one-time incremental increase of $5.5 million Cost of Implementation Fund phased-in over four years (through 2025-26), for technical and administrative services for coordinated implementation of the Low Carbon Fuel Standard (LCFS).

CARB will procure these services using applicable state contracting requirements. This request is intended to provide secure registration, reporting and credit exchange services for the LCFS among participating entities.

Staff Recommendation. Approve as proposed.

Issue 5: Transport Refrigeration Units (SFL)

Governor's Proposal. An SFL requests $596,000 Motor Vehicle Account (MVA) for six permanent positions in 2022-23, $1.1 million MVA and $1.1 million Certification and Compliance Fund (CCF) for 13 permanent positions in 2023-24, and $2.75 million ongoing CCF for three permanent positions in 2024-25.

These resources would be used to implement and enforce the requirements of the proposed amendments to the "Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate" (California Code of Regulations, Title 13, Section 2477) (Proposed Amendments) and support multiple state policies and plans directing CARB to achieve additional diesel emission reductions and to protect public health, particularly in disadvantaged communities. The Proposed Amendments introduce a new fee requirement, with new fees collected to be deposited into CCF. Beginning January 1, 2024, CCF would fully fund this proposal on an ongoing basis and temporary funding from MVA would no longer be needed.

Staff Recommendation. Approve as proposed.

3940 STATE WATER RESOURCES CONTROL BOARD (SWRCB)

Issue 6: Implementation of the Sustainable Groundwater Management Act (SGMA) (BCP & TBL) (SFL)

Governor's Proposal. An SFL requests $1.657 million General Fund ongoing to support seven new permanent positions and one existing position to carry out critical, statutorily mandated oversight responsibilities under SGMA. This includes placing groundwater basins that have been found deficient into probationary status and managing them to protect drinking water users and other users.

The included proposed Budget trailer bill language (TBL) would exempt SWRCB's adoption and amendment of interim plans from the California Environmental Quality Act, as follows:

SECTION 1. Section 10736.2 of the Water Code is amended to read:

10736.2. <u>(a) Except as provided in subdivision (b),</u> Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any action or failure to act by the board under this ~~chapter, other than the adoption or amendment of an interim plan pursuant to Section 10735.8.~~ <u>chapter.</u>

<u>(b) Notwithstanding subdivision (a), Division 13 (commencing with Section 21000) of the Public Resources Code applies to the construction activities of a physical solution of an interim plan, adopted pursuant to Section 10735.8, when those construction activities may have a significant effect on the environment.</u>

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Background. ***SGMA.*** Established in 2014, the purpose of SGMA is to halt overdraft and bring groundwater basins into balanced levels of pumping and recharge. The long-term planning required by SGMA is intended to provide a buffer against drought and climate change and contribute to reliable water supplies regardless of weather patterns. SGMA requires local agencies to form groundwater sustainability agencies (GSAs) for the high and medium priority basins. GSAs develop and implement groundwater sustainability plans (GSPs) to avoid undesirable results and mitigate overdraft within 20 years of implementing their plans.

SGMA: State Oversight (Department of Water Resources (DWR) and SWRCB). DWR serves two roles to support local SGMA implementation: (1) regulatory oversight through evaluation and assessment of GSPs; (2) providing ongoing assistance to locals through the development of best management practices and guidance, planning assistance, technical assistance, and financial assistance.

DWR is required to assess each GSP within two years of its submittal and is required to classify the GSP as approved, incomplete, or inadequate. After its initial reviews, DWR will review annual reports and conduct five-year reviews of GSPs. Some GSPs are tens of thousands of pages long and can only be evaluated in the context of complex information sets.

SWRCB must also review GSPs. Specifically, SGMA allows SWRCB to intervene where GSAs are unable or unwilling to sustainably manage groundwater. The lack of GSAs, insufficient coordination among GSAs in a basin, inadequate GSPs, or inadequate implementation of GSPs can each trigger SWRCB's intervention authority.

Phases of State intervention. State intervention has two phases: (1) probation; (2) interim plan. If GSAs do not adequately resolve deficiencies in their GSPs in 180 days, SWRCB may begin the process to put basins in probation.

In the first phase, "probation," SWRCB collects data and fees from pumpers while GSAs work on addressing deficiencies in their GSPs. These data will be critical for the second phase of State intervention and will also be helpful for the GSAs as they correct their GSPs: many GSAs have been relying on rough, generalized estimates of groundwater extraction rather than getting information directly from extractors. More precise water budgets will help GSAs understand what actions they will need to take to achieve sustainability.

If the GSPs are still deficient after some period of time, SWRCB may develop an "interim plan" and move on to the second phase: active management of pumpers in the basin. In this second phase, SWRCB will likely require pumping cutbacks, among other potential actions, to correct overdraft.

Staff Comments. ***Senate Survey on State Agency CEQA Compliance and Litigation.*** In 2017, the Senate Committee on Environmental Quality conducted a survey of state agencies regarding CEQA in order to gain a better understanding of CEQA compliance and litigation. The survey covered a period of five years, fiscal years 2011-12 to 2015-16. In regards to projects of which SWRCB was designated the lead agency, SWRCB reported the following number of projects that were subject to CEQA and the type of environmental review conducted:

Type of CEQA Review	# of Projects
• Categorical Exemption	315
• Statutory Exemption	109
• ND/Mitigated ND	54
• EIR	3
TOTAL Projects:	**481**

SWRCB reported that 12 CEQA cases were filed during this time period — This was equal to two percent of SWRCB projects subject to CEQA, which is consistent with other CEQA studies documenting CEQA litigation in a variety of sectors.

BCP Alternative 3. This budget change proposal (BCP) offers four feasible alternatives for consideration. Alternative 3 does the following:

> Allocate resources from the General Fund to fund eight positions (seven new and one existing position) for three fiscal years in some cases and permanently in other cases. Rather than include the proposed language in the Budget Trailer Bill, allocate $6 million from the General Fund for a contract for CEQA compliance. Consider shifting costs to SGMA fee revenues through a subsequent budget change proposal, as appropriate.

In order to allow SWRCB to perform its SGMA duties and comply with CEQA, staff recommends approving Alternative 3 in lieu of the original request.

Staff Recommendation. Approve Alternative 3 as noted above.

3960 DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)

Issue 7: Santa Susana Field Lab Cleanup Team (SFL)

Governor's Proposal. An SFL requests 14 permanent positions, $2.1 million Hazardous Waste Control Account, and $1 million Federal Trust Fund in 2022-23 and annually thereafter to establish and support the Santa Susana Field Laboratory (SSFL) Cleanup Implementation Team. The cost of the positions will be funded through cost recovery from three responsible parties for SSFL (i.e. the US Department of Energy (DOE), the National Aeronautics and Space Administration (NASA), and the Boeing Company (Boeing)).

Background. The SSFL is a former rocket engine testing and nuclear power research facility located on approximately 2,900-acres in the hills of Ventura County, California above Simi Valley. The SSFL is surrounded a number of communities, most located less than two miles away, including the city of Simi Valley located on the north, the residential community of Bell Canyon located directly south; and San Fernando Valley communities, including Canoga Park, West Hills, and Chatsworth, in the city of Los Angeles, located to the east of the SSFL.

Several tributary streams to the Los Angeles River have headwater watersheds on the SSFL site, including Bell Creek (which provides the majority of the site drainage from the SSFL site), Dayton Creek, and Meier Creek. Open space (i.e., land that is generally undeveloped and accessible to the public) associated with the Upper Las Virgenes Canyon Open Space Area and Cheeseboro/Palo Comado Canyons is located to the west of the SSFL.

The parties responsible for contamination at the SSFL site include three parties, the DOE, NASA, and Boeing. Two primary operational activities were conducted at SSFL. From the early 1950s to 1998, DOE and its predecessor agency, the Atomic Energy Commission, sponsored nuclear and non-nuclear energy research and development projects at the Energy Technology Engineering Center. From 1950 to 2006, testing and development of rocket engines and rocket engine components were conducted by Boeing and its predecessor, North American Aviation and Rockwell International, along with the US Air Force and NASA. The majority of non-nuclear activities conducted at the SSFL included testing and development of rocket engines and rocket engine components. Additional activities conducted by Boeing and its predecessors included military anti-satellite lasers, munitions, and related technologies.

Staff Recommendation. Approve as proposed.

DISCUSSION

3900 California Air Resources Board (CARB)

Issue 8: Oil and Gas Enforcement and Community Protection (SFL)

Governor's Proposal. An SFL requests $677,000 ongoing from the Oil Gas and Geothermal Administrative Fund and three permanent positions. (This fund is supported by fees on oil and natural gas production.) Also, CARB requests $685,000 APCF ongoing and three other permanent positions. This request includes $10,000 in ongoing contract funds to form a new initiative focused on providing oversight to air districts on ensuring compliance to minimize emissions from the oil and gas industry. CARB states that the contract funds are intended to support health and safety training or staff working exclusively at oil and gas extraction facilities.

Three positions will focus exclusively on oil and gas extraction facilities in California. The other three staff will focus on oil and gas importation, refining, and distribution facilities.

Through the initiative, staff will inspect oil and gas facilities for compliance with regulatory requirements, and coordinate with state and local agencies to assess if the level of emissions control at facilities can be strengthened to protect public health. While inspections and reviews will continue indefinitely to provide a permanent state air quality presence at these facilities, staff in consultation with relevant regulatory agencies will produce a summary report detailing compliance status, recommendations for programmatic improvement, and opportunities for additional emission reductions.

This work is intended to help protect disadvantaged communities by supporting compliance with federal air quality attainment standards and California's greenhouse gas goals for this sector and more broadly.

Background. Recent academic studies indicate emissions from oil and gas facilities may be underestimated. These studies are echoed by community complaints regarding emissions, odors, and health. These facilities are in disadvantaged communities such as Wilmington and Carson in south Los Angeles, Richmond, Benicia, and Crockett in the Bay Area, and Shafter, Arvin, and other communities in the San Joaquin Valley. These communities want emissions controlled and minimized, to better understand the nature of emissions, and greater transparency on both regulatory programs and facility operations. Emission reductions are also critical for attaining federal ambient air quality standards and the state's GHG targets.

The oil and gas industry is complex and often also have multi-media impacts. CARB staff regularly work with staff in the Department of Toxics Substances Control, water boards, and the Geologic Energy Management Division of the Department of Conservation (CalGEM).

The oil and gas industry in California is comprised of oil and gas production, import/export activities, distribution, refining, and retail sales in California. These facilities and operations are regulated through state and local requirements, including CARB's Oil and Gas Rule, and local air district regulatory requirements.

Many parts of the industry are near low income and disadvantaged communities. Community members raise concerns to CARB and local air districts, through existing complaint processes and through AB 617 Community Steering Committees regarding odors, excess emissions, health impacts, flaring, and other issues caused by these facilities.

As a stationary source, the primary responsibility for regulating oil and gas facilities is at the local level, through implementation of permitting and emission control programs defined by the Federal and California Clean Air Acts. CARB retains authority to review permitting and enforcement programs at these facilities to ensure they are reasonable and adequate to protect public health but, due to a lack of resources, CARB's reviews of such programs have been limited.

CARB contends that an initiative is needed at the state level to review and oversee air district inspections at these facilities to assess compliance with state and local requirements, respond to complaints, and to collaborate with other state and local agencies to ensure regulations are delivering on their purpose.

LAO Comments. ***CARB Oil and Gas Enforcement and Community Protection.*** CARB requests a total of $1.4 million and six permanent positions to establish a new unit focused on oversight and enforcement related to oil and gas extraction facilities and refineries. In general, the LAO thinks ensuring CARB has adequate resources to monitor compliance with regulations intended to reduce greenhouse gases and air pollution, particularly in heavily polluted communities, has merit. However, this proposal raises some important questions for the Legislature to consider. For example, the LAO recommends the Legislature ask the Administration to report at budget hearings on the following issues:

- *Why Oil and Gas?* Why should the state focus its limited resources on monitoring oil and gas extraction facilities, rather than other sources of pollution? For example, in many heavily-polluted communities, mobile sources, such as diesel trucks and equipment, are the primary sources of air pollution. Why does the Administration focus on oil and gas facilities as such a high priority with this proposal?7

- *Why a New Program?* Why is an entirely new unit needed? CARB already has existing programs and staff resources dedicated to similar activities. For example, CARB staff are already implementing the "Study of Neighborhood Air near Petroleum Sources" to characterize air quality in communities near oil and gas facilities, the Criteria and Toxics Reporting Regulation, and other research efforts to better understand emissions from oil and gas facilities. The Legislature might want to ask CARB to explain why existing programs and resources are insufficient to meet its goals.

- *Why CARB?* If more resources are needed to provide oversight of oil and gas facilities and refineries, why is CARB the best entity to conduct these efforts? Generally, local air districts have the primary responsibility for regulating stationary sources of air pollution. Why are more resources needed at CARB, rather than local air districts?

Staff Recommendation. Hold open.

3970 DEPARTMENT OF RESOURCES RESOURCES AND RECOVERY (CALRECYCLE)

Issue 9: Beverage Container Recycling: Strengthening the Circular Economy with Consumer Recycling Credits and Market Incentives (SFL)

Governor's Proposal. An SFL requests $330 million in 2022-23 from the Beverage Container Recycling Fund (BCRF) to provide consumer recycling credits for returning beverage containers, provide funding for enhanced bale quality of Beverage Container Recycling Program (BCRP) material, provide market incentives for clean collection and the remanufacturing of material recycled through the BCRP, provide grants for innovative recycling mechanisms such as Automatic Recycling Machines (ARMs), and establish a mobile recycling program to serve rural areas in California. A breakdown of the $330 million proposal is as follows:

Proposed Activity/Item	Cost in 2022-23
• New Consumer Recycling Credit	$100 million
• Mobile Recycling	70 million
• High SchoolColleges On-Campus Redemption Program	50 million
• ARMs at Supermarkets	50 million
• Quality Incentive Payments for better sorting of plastic & glass	50 million
• Startup Costs and Incentives for Recycling Processors	2 million
• Smartphone App and Fiscal Transparency Website	1 million
• Local Workforce Development Groups	5 million

This proposal also includes specified provisional language such as:

- Authorizes CalRecycle to adopt emergency regulations to implement this proposal and specifies that the emergency regulations shall not be repealed by the Office of Administrative Law and shall remain in effect until revised by CalRecycle.

- Exempts grants and contracts from contracting requirements pursuant to Public Contract Code, Division 2, Part 2, Chapter 2 (commencing with Section 10290); and authorizes CalRecycle to award those contracts on a noncompetitive bid basis.

- Authorizes CalRecycle to adopt guidelines and exempts them from the requirements of the Administrative Procedure Act.

- Allows for the encumbrance or expenditure of these funds to June 30, 2025, for support and local assistance.

The table below provides a brief description of the proposed program funding:

Table 1: Proposed Program Funding

Proposed Activity/Item	**FY 2022-23 Cost**
In addition to the existing California Refund Value (CRV), this proposal will provide a new Consumer Recycling Credit on a limited-term basis (between approximately 4 – 8 weeks), equal to the amount of CRV (5 or 10 cents), for beverage containers returned to recycling centers to further incentivize consumers to return beverage containers purchased during the pandemic.	$100,000,000
Establishes mobile recycling programs to serve rural and unserved areas in California.	$70,000,000
Provides funding for high schools or colleges to establish on-campus redemption programs, including using ARMs. This dollar amount may cover the costs of approximately 1,000 machines.	$50,000,000
Provides funding authority for supermarkets subject to Public Resources Code section 14571.6 that have submitted an affidavit for takeback containers on-site to receive grant funds to support their use of ARMs in the redemption of CRV containers for consumers. This dollar amount may cover the costs of approximately 1,000 machines.	$50,000,000
Increases funding and expands opportunities for inclusion with the current QIP for plastics and glass from its current level and adds $50 million. (Glass is currently at $10 million and Plastic at $10 million set to expire June 2022)	$50,000,000
Provides funding authority to incentivize the establishment of recycling infrastructure by providing up to $2 million in startup loans for processors that locate in regions without a certified processor in a 50-mile radius. These loans would be forgiven if the processor remains operational for at least 3 years and maintains a history of operational compliance.	$2,000,000
Provides funding authority to incentivize the establishment of redemption opportunities by providing up to $2 million in startup loans for redemption opportunities that locate in regions without a certified recycling center or approved pilot project in a 10-mile radius. These loans would be forgiven if the redemption opportunity remains operational for at least 3 years and maintains a history of operational compliance.	$2,000,000
Increased technology including: Consumer Computer/SmartPhone App Development and Maintenance, and a Fiscal Transparency Website.	$1,000,000
CalRecycle will contract with local workforce development groups located in or near a county to provide additional assistance from the workforce development group. The goal would be to help with activities that sustain the community's redemption needs, including monitoring the ARMs and pickup when full, servicing the ARMs, separate small bag drop service, etc. Workforce development groups would be operated by government entities, local education agencies, non-profits, university sponsored groups, and community colleges. Groups could include, but not be limited to Corps, programs helping developmental disabilities, parole, and probation programs.	$5,000,000
Total	**$330,000,000**

Source: Department of Finance

This BCP does not provide any further details about the proposed activities/items than what is listed in the chart above.

Background. ***Beverage Container Recycling Program (BCRP).*** Established in 1986, the purpose of BCRP, commonly referred to as Bottle Bill, is to be a self-funded program that encourages consumers to recycle beverage containers, reduce litter, and achieve a recycling rate of 80 percent for eligible containers. According to LAO, the BCRP promotes beverage container recycling and reduced litter by using the California Refund Value (CRV) deposit and return system.

- Consumers pay the CRV — 5 cents or 10 cents per container — when purchasing beverages in containers subject to the program. The CRV deposit is returned to consumers when they redeem the empty beverage container at a certified recycling center.

- State law requires CalRecycle to designate "convenience zones" located within a half-mile radius from most supermarkets. Each convenience zone must be serviced by at least one certified recycling center in order to provide consumers convenient opportunities to redeem beverage containers near places where beverages are purchased.

- If there is no recycle center within the convenience zone, it is considered unserved. Beverage dealers in unserved zones must either redeem containers in-store or pay a daily $100 fee.

Challenges Facing BCRP. Over the years, various concerns about the program have been raised such as susceptibility of structural deficit, the effectiveness of some supplemental programs supported by BCRP, fraud, and whether some offsets support the goals of the program.

For example, the number of recycling centers has reduced dramatically. In August 2019, rePlanet closed all 284 of its recycling centers in California. Before its closure, rePlanet was the largest recycling network in the state. Following the closures, rePlanet stated, "With the continued reduction in State fees, the depressed pricing of recycled aluminum and PET plastic, and the rise in operating costs resulting from minimum wage increases and required health and workers compensation insurance, the Company has concluded that operation of these recycling centers is no longer sustainable." In total, over 1,000 recycling centers have closed since 2013. According to CalRecycle, as of February 2021, there were 1,224 recycling centers in the state. Some counties, such as Humboldt, Trinity, Sierra, and Alpine, have no recycling centers. 42 percent (over 1,600) of statewide convenience zones were unserved.

Several factors contributed to the closures of these recyclers. Commodity prices have dropped significantly, causing low scrap value for recycled materials. In 2011, PET plastic scrap prices were at a peak of $500/ton and have steadily declined. By November 2020, the price dropped to $101/ton.

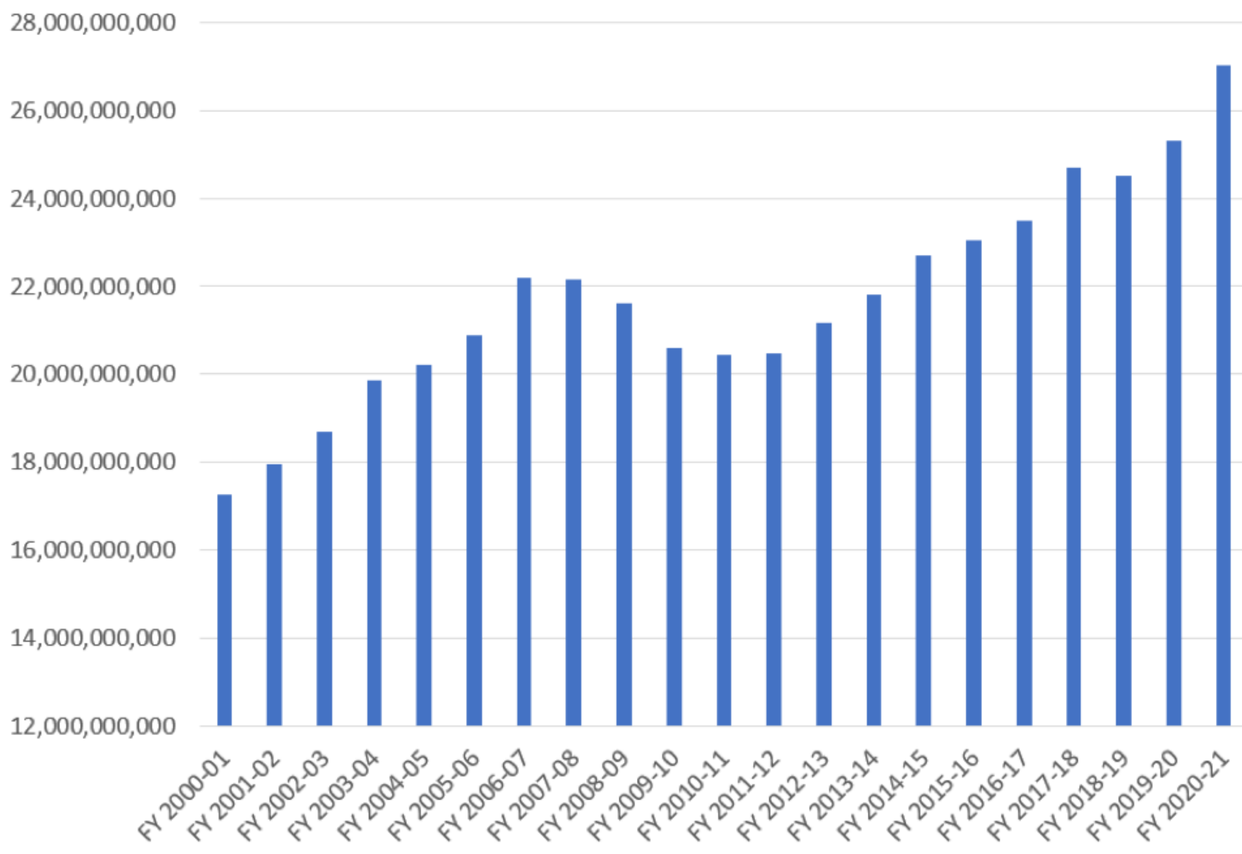
Additionally, the methods to determine processing payments do not accurately reflect the cost of recycling or provide a reasonable financial return. Processing payments also lag behind the steady between a container's scrap values. Processing payments are intended to cover the difference between a container's scrap value and the cost of recycling it (including a reasonable rate of return). The calculation to determine the "cost of recycling" does not consider things like transportation costs, putting rural recyclers at a significant disadvantage. Large recyclers that process high numbers of containers generally have lower costs, on average, than smaller centers. Current statute requires CalRecycle to use the average cost of all recycling centers, which results in some centers receiving higher payments than are necessary, while other centers do not receive enough support to remain in business.

The Bottle Bill includes a back-up to convenience zone recycling centers; it requires dealers to either take back containers in-store, or pay a fee of $100 per day in lieu of providing take-back. This provision was intended to ensure that consumers would continue to be able to redeem their beverage containers in zones unserved by a recycling center. In spite of this requirement, CalRecycle's enforcement was lax and very few stores complied with this requirement for decades. Over the last few years, CalRecycle has stepped up efforts to enforce this requirement, and more stores have come into compliance. For example, in 2019, CalRecycle issued a $3.6 million fine against CVS Health Corporation for failing to meet its obligation to redeem beverage containers. While more stores are now in compliance, the vast majority opt to pay the in lieu fee rather than take back containers, which leaves consumers without convenient redemption opportunities.

Containers Sold, Containers Recycled. According to CalRecycle, Californians recycled 18.5 billion bottles and cans from July 2020 through June 2021, an increase of roughly 800 million containers from the previous fiscal year, (approximately 68 percent recycling rate). However, sales grew even more during that same time.

Below is a figure showing the increase in beverage containers sold in the state annually since fiscal year 2000-01.

Beverage Containers Sold by Fiscal Year



Source: CalRecycle

CalRecycle states that during the pandemic, the BCRP has seen an unexpected surplus of revenue. As shown above, beverage sales increased to historic levels in 2020 and 2021.

On the other hand, CalRecycle states that returns decreased in 2020 as stay at home and social distancing orders were in effect. The department notes that while returns have increased in 2021, they have not increased at the same rate as sales.

BCRF Surplus and Reporting. The BCRF has a significant fund balance of $635 million in the current fiscal year, as noted in the Fund Condition Statement that was provided in this Budget Change Proposal, below:

California Beverage Container Recycling Fund, BCRF (0133)			
	FY 2020-21	FY 2021-22	FY 2022-23
Beginning Balance	**$ 274,320,000**	**$ 529,228,000**	**$ 635,482,000**
Prior Year Adjustment	124,831,000	-	-
Adjusted Beginning Balance	**399,151,000**	**529,228,000**	**635,482,000**
Beverage Container Redemption Fees*	1,491,585,000	1,513,090,000	1,520,496,000
Income from Surplus Money Investments	1,650,000	3,869,000	3,869,000
Escheat of Unclaimed Checks & Warrants	227,000	32,000	32,000
Miscellaneous Revenue	13,199,000	3,229,000	3,229,000
Settlements/Judgements	331,000	82,000	82,000
Penalty Assessment	185,000	61,000	61,000
Total Revenues	**1,507,177,000**	**1,520,363,000**	**1,527,769,000**
Transfer to Glass Processing Fee Account*	(57,908,000)	(62,931,000)	(62,306,000)
Transfer to PET Processing Fee Account*	(72,721,000)	(61,797,000)	(44,528,000)
Total Transfers	**(130,629,000)**	**(124,728,000)**	**(106,834,000)**
Total Resources	**1,775,699,000**	**1,924,863,000**	**2,056,417,000**
State Operations	49,197,000	59,367,000	59,367,000
Handling Fees*	47,755,000	49,179,000	49,227,000
CRV Out*	1,091,381,000	1,097,740,000	1,098,998,000
Curbside Supplemental	15,000,000	15,000,000	15,000,000
Plastic Mkt Development	10,000,000	10,000,000	-
Local Conservation Corps	9,343,000	10,000,000	10,000,000
Payments to Cities and Counties	9,137,000	10,500,000	10,500,000
Grants - other	1,321,000	1,500,000	1,500,000
Public Education	4,627,000	5,000,000	2,500,000
Quality Incentive Payment	7,312,000	10,000,000	10,000,000
Pilot Project Grants	-	10,000,000	-
Circular Economy Package	-	10,000,000	-
SFL: Recycling Credits and Market Incentives	-	-	330,000,000
Local Assistance	1,195,876,000	1,228,919,000	1,527,725,000
Pro Rata	303,000	-	-
Supplemental Pension Payments	1,095,000	1,095,000	1,095,000
Total Expenditures	**1,246,471,000**	**1,289,381,000**	**1,588,187,000**
Fund Balance	**$ 529,228,000**	**$ 635,482,000**	**$ 468,230,000**

Source: CalRecycle

The *San Francisco Chronicle* article, "California bottle deposit program sitting on at least $100 million more than it told lawmakers," (Dustin Gardiner, January 30, 2022), called attention to CalRecycle's reporting discrepancies of the BCRF reserve, stating:

> "The program is now sitting on a surplus of more than $529 million, money that comes from the nickel and dime deposits consumers pay every time they buy a can of soda or bottle of beer in the state.
>
> CalRecycle, the state department that runs the deposit program, said the amount of the surplus jumped because of an accounting backlog that delayed actual totals during the pandemic. But some recycling advocates say the department has in the past downplayed the scope of its flush coffers to distract from its plummeting bottle recycling rate…
>
> …[T]he size of its reported balance has fluctuated widely: About a year ago, the department projected it would begin the current year, which started on July 1, with a $369 million surplus.

> Then, CalRecycle estimated the surplus was about $428 million in a report to the Legislature last fall. CalRecycle later filed a memo with the state Department of Finance stating the surplus was actually over $529 million.
>
> CalRecycle Director Rachel Machi Wagoner, who took the department's helm in December 2020, said the jump was in part the result of a 'massive hiccup' that occurred when its accounting staff was suddenly forced to work remotely during the pandemic. Several employees quit around the same time, she said, and the department got far behind in tracking the money coming into its account…
>
> …Two other factors also caused the surplus to grow faster during the pandemic: Beverage sales skyrocketed as people spent more time at home. Meanwhile, more recycling centers continued to close…
>
> Machi Wagoner said it's also not unusual for the program's surplus to fluctuate by large amounts because the department can't predict exactly how many containers will be returned. She said, however, that the department doesn't plan to go back and revise any of the prior estimates because the fund balance it reported in the governor's proposed budget released this month is correct.
>
> But some recycling advocates say they are troubled by the situation. They contend CalRecycle has a long history of providing low estimates about its surplus to legislatures. Susan Collins, president of the Container Recycling Institute advocacy group, said she's baffled that CalRecycle won't go back and fix its flawed projections…It's ridiculous that people in government can't just manage this the way it's supposed to be managed and produce an accurate and timely report…We can't improve the recycling program when there's misinformation.'…
>
> …Machi Wagoner said CalRecycle has traditionally been conservative with its estimates because if it runs out of money in the fund, it would be forced to cut the subsidies it pays to help recycling centers cover their costs.
>
> But she acknowledged that the program has more money than it needs to cover its operations — cash that could be used to try to improve recycling rates."

At the time of the article, which was published in January of this year, the BCRF reserve was reported at $529 million. The Fund Condition Statement above, which was included in the Budget Change Proposal in April, states the 2021-22 reserve at $635 million in the current fiscal year.

Limitations of the Bottle Bill Program. According to a 2017 CalRecycle publication, BCRP is limited in its abilities to adapt to changes in consumer products and behavior, developments in recycling systems, and fluctuations in the global commodities market. These limitations have created challenges and missed opportunities to maximize the benefits of recycling beverage containers, especially climate change benefits. To that end, CalRecycle proposed a policy framework five years ago outlining key components of reform and based on the following principles:

- *Improving Recycling and Remanufacturing.* According to CalRecycle, the program has been successful in its initial goal of reducing litter by providing recycling collection opportunities for consumers. However, collection does not ensure that a product is recycled into a new commodity. Future investments should be dedicated to creating clean, recyclable streams of material to facilitate recycling and manufacturing. To facilitate recycling and manufacturing, CalRecyle will focus on reform efforts on maintaining redemption opportunities for consumers and increasing the stream of clean recyclable materials.

- *Sharing Responsibility*. According to CalRecycle, historically, the consumer has shouldered most of the financial burden to sustain the program. Program responsibilities and financing should be rebalanced among all program participants. Under the current program, consumers pay $0.05 to $0.10 on each beverage container purchased, and in order to get their money back, consumers must travel to a recycling center to return the container. In contract, beverage manufacturers pay $0.00024 for each polyethylene terephthalate (PET) container they sell in the state.

- *Enhancing Adaptability and Sustainability*. According to CalRecycle, increases in the recycling rate have resulted in a structural deficit in BCRF. In addition, the program does not respond quickly to fluctuations in the global commodities market. The program must be both nimble and fiscally sustainable to advance the state's economic and environmental goals. The program needs to become more fiscally stable and include a mechanism preventing structural deficits.

The Legislature, Administration, and stakeholders have attempted to collaborate on Bottle Bill reforms to align with the state's climate change goals and the state's 75 percent solid waste reduction, recycling, and composting goal, as well as creating long-term fiscal sustainability. However, legislative policy and budget proposals intended to accomplish these goals through substantial program reforms have been unsuccessful.

Recent Legislation Authorized Pilot Programs to Test Different Redemption Options. SB 458 (Wiener), Chapter 648, Statutes of 2017, authorized CalRecycle to develop a Beverage Container Recycle Pilot Program, which allowed up to five pilot projects to provide new approaches to providing convenient beverage container redemption options in areas that lack recycling opportunities. Subsequently, AB 54 (Ting), Chapter 793, Statutes of 2019, allowed for greater flexibility for where pilot projects could operate — specifically allowing pilots to operate outside of convenience zones — and extended the sunset date from January 1, 2022 to July 1, 2022. The Legislature also appropriated $5 million on a one-time basis from BCRF to support the pilots.

The 2020 Budget Act appropriated $126,000 BCRF in 2020-21 and $124,000 annually for two years to develop, implement, and provide oversight of the pilot project grant program.

The 2021 Budget Act appropriated $10 million BCRF to provide grants for the Beverage Container Recycling Pilot Project Program. The budget included trailer bill language to extend the sunset date for the recycling pilot program from January 1, 2023 to January 1, 2027. This trailer bill language also increased the number of pilot projects from five to ten and the maximum number of operating years from three to five.

The 2021 Budget Act also included one position and appropriates $129,000 BCRF in 2021-22, an additional five positions and $805,000 BCRF in 2023-24, and an additional three positions and $1.2 million BCRF in 2024-25 and ongoing, for a contracted biennial study. The funds will be used to implement AB 793 (Ting), Chapter 115, Statutes of 2020, which requires beverage manufacturers to include a minimum amount of postconsumer recycled plastic in all plastic beverage containers subject to the California Refund Value (CRV).

LAO Comments. ***Beverage Container Recycling Program.*** CalRecycle requests $330 million one-time BCRF for various activities intended to increase beverage container recycling rates and access, including both new activities and expansions of existing activities. In our view, given recent declines in recycling rates and the substantial BCRF fund balance, providing one-time funding to improve program outcomes could have merit. However, the Governor's specific package of proposals currently lacks key details and raises important policy questions for the Legislature to consider. Based on the LAO's initial review of the proposals, some of the key questions the Legislature might want to consider and ask the Administration in budget hearings include:

- *Does the proposal address a well-identified problem?* The Legislature will want to ensure any proposed spending addresses a well-identified problem. For example, many of the proposals seek to increase opportunities for consumers to redeem containers, including Automatic Recycling Machines and establishing mobile recycling programs. These proposals aim to address a well-established problem, as a large number of recycling centers have closed over the last several years. However, in other cases, the administration has not clearly identified the challenge it is trying to target and/or explained how the proposed spending would address the issue. For example, the administration proposes to allocate $100 million to a temporary Consumer Recycling Credit, which would double the existing California Refund Value (CRV) for several weeks. According to CalRecycle, this proposal is intended to encourage consumers to return beverage containers purchased, but not returned, during the pandemic. First, it is not clear that consumers are currently storing a substantial number of beverage containers that were purchased during the pandemic. It is possible that, instead, those unrecycled beverage containers are somewhere else (such as in a landfill). Second, even if consumers are storing an abnormally large number of containers, it is unclear how a temporary increase in the CRV would encourage consumers to redeem beverage containers that would not otherwise be redeemed. Presumably, many consumers storing beverage containers are likely doing so with the intent to redeem them in the future. If so, a temporary increase in the CRV could simply shift the date these containers are redeemed, but have very little impact on the overall number of containers that are eventually recycled.

- *How effective is the proposal at addressing the problem?* So far, the Administration has provided limited information about the degree to which each proposal would achieve key recycling goals, such as increasing recycling rates and/or expanding access to recycling opportunities in underserved areas. The Legislature might want to direct the administration to report at budget hearings on the degree to which each program is expected to help achieve these goals and what evidence it can provide to substantiate those anticipated outcomes.

- *How have results from pilots informed this proposal?* CalRecycle and local governments are currently implementing five pilot projects aimed at exploring alternative redemption options, such bag drop sites, at-home pick up, and mobile recycling trucks. After receiving an additional $10 million BCRF in the 2021-22 budget, CalRecycle plans to initiate another five pilot projects in the coming months. To our knowledge, the administration has not conducted a preliminary evaluation of the existing pilot projects. The Legislature might want to direct the administration to report the progress of the pilot programs, including preliminary outcomes, key lessons learned, and how these pilots have informed the development of this spring proposal. If results from the pilots are not yet available, the Legislature could consider delaying at least some of the funding until it has more information about which pilots were most effective.

- *Does the proposal have ongoing benefits?* The Legislature might want consider ways to target funding to activities that are likely to improve ongoing recycling rates and access, rather than providing one-time benefits. Some of the administration's proposals have the potential to increase recycling on an ongoing basis, such as supporting automatic recycling machines in supermarkets and providing loans to recyclers that may be forgiven if the recycler operates at least three years. In other cases, such as the proposed Consumer Recycling Credit, the proposal would likely yield only the limited-term results. The Legislature might want to direct the administration to report on which programs are most likely to have long-term recycling benefits and focus funding primarily on those efforts.

Staff Comments. As noted above, this $330 million BCP does not provide details on the proposed activities/items beyond the brief description in the chart. Although some of the concepts may have merit, it is difficult to assess the adequacy of the individual activities/items, especially considering that many of them are new. The BCP leaves the reader with more questions than it provides answers, such as the key questions noted by LAO.

Because of the minimal information provided, the Chair requested CalRecycle program staff to be available for questions at this hearing. As of May 2, 2022, CalRecycle has chosen not to do so.

Staff Recommendation. Reject.