

Senate Budget and Fiscal Review—Mark Leno, Chair
SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
Jean Fuller
Alan Lowenthal



Part II
Wednesday, May 23, 2012
9:00 am—Upon Adjournment of Part I (Transportation)
Hearing Room 2040

Consultant: Catherine Freeman

Items Proposed for Vote-Only (Including Spring Finance Letters)

<u>Item</u>	<u>Department</u>	<u>Page</u>
0540	Secretary for Natural Resources	2
3500	Department of Resources Recycling and Recovery	2
3600	Department of Fish and Game	2
3860	Department of Boating and Waterways	3
3900	California Air Resources Board	3
7300	Agriculture Labor Relations Board.....	3
8570	California Department of Food and Agriculture.....	3

Departments Proposed for Discussion (Open Issues and May Revision)

<u>Item</u>	<u>Department</u>	<u>Page</u>
3360	California Energy Commission	4
3540	Department of Forestry and Fire Protection	7
3790	Department of Parks and Recreation	10
3860	Department of Water Resources	15
3680	Department of Boating and Waterways	20
3960	Department of Toxic Substances Control	21
3980	Office of Environmental Health Hazard Assessment.....	21
3900	Air Resources Board	25
3940	State Water Resources Control Board	29
8660	California Public Utilities Commission	35

Resources—Environmental Protection—Energy—Transportation

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ITEMS PROPOSED FOR VOTE-ONLY**0540 Secretary for Natural Resources**

1. **Extension of Repayment Dates of Existing Loans.** The Secretary requests reappropriation of funds for the River Parkways grant program to allow ongoing projects to be completed and remaining funds to be awarded in the final round of program funding.

3500 Department of Resources Recycling and Recovery

2. **May Revision Proposed Trailer Bill Language—Redemption Payments.** The department requests trailer bill language to amend Section 14574 of the Public Resources Code to require beverage container distributors to submit redemption payments by the last day of the first month following the sale. This proposal will better align revenue cash flow with expenditure cash flow. This is a revision to the Senate Action on April 25.
3. **AB 341 Cleanup.** Chapter 476, Statutes of 2011 (AB 341, Chesbro), a bill related to implementation of AB 32 Scoping Plan for recycling, inadvertently defined the “volume threshold” triggering when a commercial enterprise must implement recycling inadvertently transposed the phrase “four or more” with “more than four.” Because four cubic yard dumpsters tend to be an industry standard, this may prove to be a substantial distinction and impact local compliance with the law. This proposal is to clarify that Public Resources Code Section 42649 applies to “four or more” cubic yards.

3600 Department of Fish and Game

4. **Updated Oil Spill Response Program:** The Governor proposes the addition of 16 permanent positions in 2012-13 and funding of \$2.9 million in the budget year (\$2.0 million ongoing) from the Oil Spill Prevention and Administrative Fund (OSPAF). These positions are requested to implement Chapter 583, Statutes of 2011 (AB 1112, Huffman) that establishes a risk-based monitoring program for inspecting vessels that are loading and unloading fuel in California waters. These positions are subject to elimination should the funding expire. This updates an April 25 action of the Subcommittee given new information from the Administration.
5. **Trailer Bill Language—Suction Dredge Cleanup Language:** The Resources Omnibus Trailer Bill of 2011 included an item regarding the use of Suction Dredge equipment in waterways of the state. The language inadvertently created a confusing requirement both to create a temporary moratorium and require an environmental review of the practice, with an arbitrary timeframe for both. Trailer Bill Language is necessary to clarify that the department shall produce an environmental review per statute prior to the use of any vacuum or suction dredge equipment in any river, stream, or lake in the state that is certified by the director of Fish and Game to the Secretary of State under Section 5653.1 of the Fish and Game Code.

3680 Department of Boating and Waterways

6. **Boating Infrastructure Grant Increases:** The May Revision requests an increased appropriation to the Federal Trust Fund (Sport Fish Restoration Account) for the Boating Infrastructure Grant program. The request is for an additional \$250,000 in the budget year in addition to the baseline appropriation of \$100,000. The additional \$250,000 is the federal cost-share for the County of San Mateo—Oyster Point Visitor Dock Project.

3900 Air Resources Board

7. **Extension of Liquidation: Lower Emission School Bus Funds.** Proposal to extend the liquidation of Lower Emission School Bus Funding. In 2006, the voters approved Proposition 1B which authorized \$200 million in bond funding to replace and retrofit older, high-polluting buses. A total of \$194 million in funds were distributed to local air districts over a period of several years, as bonds were issued and funds became available. Funds were allocated according to the population of school buses to ensure that the oldest, most polluting buses were replaced first. This language requires air districts to transfer remaining funds that are not committed by an executed contract by June 30, 2012, to another local air district that has demonstrated the ability to expend funds by January 1, 2014.

7300 Agriculture Labor Relations Board

8. **Technical Cleanup—Budget Allocation:** The January budget proposal, approved by the subcommittee, includes \$500,000 for General Counsel staff augmentation. Adequate funding of the General Counsel should also include a \$200,000 baseline shift to this item.

8570 California Department of Food and Agriculture

9. **Unallocated General Fund Reduction:** The May Revision requests a \$2.5 million unallocated reduction to the department's General Fund programs. The proposal also includes budget bill language to allow appropriate flexibility to allocate the reduction between state operations and local assistance. The administration will use a similar stakeholder process as was utilized when previous budget reductions were proposed.
10. **CDFA Milk and Dairy Trailer Bill Language:** The Governor requests trailer bill language necessary to implement the General Fund reduction adopted in 2011-12. This trailer bill will minimize the impact to the Milk and Dairy stakeholders. The reduction and trailer bill proposals were developed in a multi-stakeholder process in the current year.

Recommendation: APPROVE Items 1-10.

Vote:

*ITEMS PROPOSED FOR DISCUSSION***3360 Energy Resources Conservation Development Commission (California Energy Commission)**

The Energy Resources Conservation and Development Commission (commonly referred to as the California Energy Commission or CEC) is responsible for forecasting energy supply and demand; developing and implementing energy conservation measures; conducting energy-related research and development programs; and siting major power plants.

Governor's Budget. The Governor's Budget includes \$393 million (no General Fund) for support of the CEC, a decrease of approximately \$161 million, due primarily to the phasing down of the Public Interest Energy Research (PIER) Program and the Renewable Resources Trust Fund (RRTF) as a result of the failure to reauthorize the Public Goods Charge.

Items Proposed for Vote-Only

- 1. Establishing an Audit and Investigation Unit.** Request to redirect three existing permanent positions funded from the Siting Division to establish an audit and investigation unit. This unit will provide audit oversight to ensure federal and state funds across all programs are spent in accordance with applicable federal and state requirements and guidelines to prevent fraud, waste, and abuse.
- 2. Implementation of Renewable Energy Development Grants Under ABx1 13.** The budget requests two limited-term positions for one year to develop and administer \$7 million in grants mandated by Chapter 10, Statutes of 2011 (ABx1 13, Perez). Grants would be issued to qualified counties for the development or revision of rules and policies that facilitate the development of eligible renewable energy resources and their associated electric transmission facilities, and the processing of permits for eligible renewable energy resources.
- 3. Alternative and Renewable Fuel and Vehicle Technology Fund Loan Repayment Extension.** The Governor's budget requests to change the date of the \$8.3 million loan repayment from June 30, 2012 to fiscal year 2014-15. The program does not require repayment before that date.

Recommendation: APPROVE Items 1-3.

Vote:

ITEMS PROPOSED FOR DISCUSSION**Electricity Procurement Investment Charge (EPIC)**

Background. This issue was heard as an informational item on April 25 under the California Public Utilities Commission. In December 2011, funding for the state's Public Goods Charge (PGC) on electricity ratepayers expired. Efforts to continue the surcharge, which requires a 2/3 vote of the Legislature, failed. The PGC funded energy efficiency research and development and renewable energy programs. The charge constituted about a quarter of the total energy efficiency programs funded by the state and energy utilities. Funds were collected on a volumetric basis (per kilowatt-hour) by customer class from all utilities (public and investor-owned). The benefits of these programs were then distributed generally, thus the surcharge was considered a tax for voting purposes.

In September 2011, the Governor sent a letter to the CPUC requesting that the Commission take action under the commission's authority to ensure that programs funded like those funded under the PGC would be continued, but with respect to modifications legislators discussed during the PGC renewal deliberations. In December 2011, the CPUC initiated a rulemaking (essentially started a pathway to a new policy) to attempt to continue the programs of the PGC with a sole focus on the investor-owned utilities (IOUs). The Commission plans a two-phased deliberation. The first phase addresses the appropriate funding levels for renewables and research and development. The second phase will create a detailed program.

Budget Proposal. The Governor's CEC budget requests nine new positions and \$2.2 million for the initial year buildup to develop and administer \$127.8 million from off-budget, investor-owned utility ratepayer funds under the California Public Utilities Commission EPIC program. Funding for the proposal will be derived directly from Investor Owned Utilities and paid to the Energy Commission (bypassing the CPUC).

Staff Comments. The subcommittee raised several concerns regarding the forthcoming proposal at its April 25 hearing including: (1) lack of legislative oversight; (2) potential violation of Proposition 26 by approving funding that should appropriately be a tax; (3) vagueness and lack of specificity of the funding proposal itself.

The submitted budget proposal does little to answer these questions. For example, the budget proposal states that despite the fact that the public goods charge was not reauthorized, the policy case for public and/or ratepayer support of clean energy technology development remains strong. While this may be true, ratepayers already pay for multiple energy efficiency programs including potentially those forthcoming in the Cap and Trade program administered by the Air Resources Board. In addition, the programs proposed to be funded would be determined by a CPUC Triennial Investment Plan developed outside of the legislative process. The use of the funds would be reported by the CPUC through an annual program status report and used to develop an appropriation plan for the Energy Commission.

The LAO, and others, have raised concerns about the nature of this program, including the potential violation of Proposition 26, the circumvention of the Legislature in the development of the program, the lack of legislative oversight over the program in general, and finally a lack of understanding of the consequences to ratepayers for the multiple energy efficiency related programs currently being developed and implemented by the State.

LAO Comments:

The original PGC enabling legislation required approval of a 2/3 vote of both houses of the Legislature because it changed state taxes for the purposes of increasing state revenues. The legislation included a provision which expressly terminated the CPUC's authority to collect funds on January 1, 2012 unless reauthorized by the Legislature. During the 2011-12 legislative session, while several bills were proposed to extend the PGC, none received the requisite 2/3 super majority vote needed to pass. Thus, authorization to collect the PGC expired on January 1, 2012.

Based on our initial analysis of the Governor's proposal, we have identified two serious concerns. First, given that the above authority for the PGC expired, it is unclear whether the CPUC has the legal authority to collect this surcharge (absent a two-thirds vote of the Legislature). We are in the process of consulting with Legislative Counsel on this issue and will share its findings with you. Second, under the Governor's proposal, the CPUC and CEC would have complete control over how the funds for the EPIC program would be allocated. In other words, the Legislature would have very little opportunity to provide guidance and oversight over how the funds are used for R&D and renewable energy programs. Given these concerns, we recommend that the Legislature not approve the Governor's proposal at this time. To the extent that the Legislature wants to approve the EPIC program, we believe it would be more appropriate to specifically authorize the collection of the charge and the implementation of the program (including guidelines and parameters on the use of the funds) in statute.

Recommendation: DENY Proposal. Adopt the following draft budget bill language:

The Legislative Analyst's Office shall, with the full cooperation of the administration, develop a report listing all energy-efficiency, climate change and AB 32-related activities in state government including their funding sources. The list shall include but not be limited to: funding directed by the California Public Utilities Commission to its regulated Investor Owned Utilities (including the Electricity Procurement Investment Charge); AB 118 funds; California Energy Commission funds; Air Resources Program funds (both existing and future Cap and Trade Programs). The report shall list all programs funded by these multiple resources and shall include a preliminary assessment of priority, overlap and redundancy. The report shall be submitted to the relevant Policy Committees and Joint Legislative Budget Committee by January 1, 2013.

Vote:

3540 Department of Forestry and Fire Protection

The California Department of Forestry and Fire Protection (DFFP) or “CalFIRE,” under the policy direction of the Board of Forestry, provides fire protection services directly or through contracts for timberlands, rangelands, and brushlands owned privately or by state or local agencies. In addition, DFFP: (1) regulates timber harvesting on forestland owned privately or by the state and (2) provides a variety of resource management services for owners of forestlands, rangelands, and brushlands.

Governor’s Budget. Excluding capital outlay, where the amount of carryover makes year-to-year comparisons less meaningful, the Governor’s Budget includes \$1.1 billion, which represents an overall decrease of \$11.3 million and 41 positions from the 2011-12 budget. Decreases in funding are largely the result of re-benching the department’s Emergency Fund (E-Fund).

ITEMS PROPOSED FOR DISCUSSION

Timber Harvest Plan Reform

Governor’s May Revision Proposal. The Governor’s May Revision proposes a comprehensive change to the timber harvest plan review process that includes the following elements:

- **Lumber Assessment**—the new assessment will be collected on retail sales of certain wood products sold in California and will be collected by the Board of Equalization. The assessment will generate approximately \$30 million annually and will be used to support the regulatory activities of CalFIRE, Department of Fish and Game, Department of Conservation, and the State Water Resources Control Board related to timber harvest plan review. The assessment will provide a sustainable, long-term funding stream that does not disadvantage the California timber industry, fully funds the regulatory agencies, and provides opportunities for restoration of California forests.
- **Extension of the Current Timber Harvest Plans**—Certain timber harvest plan documents are currently effective for three years with two one-year extensions. This proposal would extend that timeframe to five years with one two-year extension and would include plans approved in 2012. This timeframe will optimize the length and scope of standard timber harvest plans while retaining appropriate protective measures for fish and wildlife.

- **Limit damages from wildfire liability**—California law allows recovery of up to double the cost for damages related to wildfires. This leads to claims for damages far exceeding restoration costs. This proposal will limit the scope of damages for fire cases and prohibit double damages in order to better align state law with current state policy goals. This would apply to public entities.
- **Redding Pilot Project**—Development and implementation of a year-long pilot project to test procedures to improve the efficiency of a multi-agency Timber Harvest Plan review team.
- **Timber Harvest Plan Documentation Review**—A review of the current content and organization of the Timber Harvest Plan application document to improve ease of preparation, continuity of plan content, and reduction of applicant errors. The review will also explore the ability to use e-forms.

The proposal was developed in a multi-year multi-stakeholder working group along with the administration and all of the departments involved in forest practice activities, including CalFIRE. The proposal is designed to promote and encourage sustainable forest practices consistent with statute; replace the current piecemeal funding structure with a single funding source; support in-state production of timber; and promote transparency in regulatory costs through the creation of performance measures and accountability.

Staff Comments. Staff concurs with the administration’s assessment of the proposal. The proposal follows a lengthy stakeholder process that vetted multiple revisions to the Timber Harvest Plan review process. This subcommittee raised the issue of funding timber harvest plans multiple times over the past several years and this proposal goes a long way toward satisfying those issues.

Recommendation. APPROVE Budget Proposal and Trailer Bill Language.

Vote:

Bargaining Unit Settlements at CalFIRE

Previous Subcommittee Actions. The Subcommittee heard an introduction to this issue at its May 9 Open Issues hearing. The item was held open in part to determine if there were other ways to negotiate these settlements with the Bargaining Units, and to get a full update on the total amount of required settlements the Administration has made related to these proposals. The three issues are listed below:

- 1. Spring Finance Letter (Firefighter 1 Separation Costs).** The department requests an increase of \$2.1 million (General Fund) to cover an increase in costs as a result of a negotiated settlement in the lawsuit described on May 9. This will cover lump-sum buyout costs associated with the annual separation of the department's seasonal Firefighter I staffing. This amount may increase in future years.
- 2. May Revision Proposal (Extended Duty Week Compensation Lump-Sum Buyouts).** The Administration requests a one-time General Fund augmentation of \$15.7 million to cover the retroactive Extended Duty Week Compensation lump-sum buyout costs associated with the separation of the Department's Bargaining Unit 8 fire protection employees, as required by a class action settlement.
- 3. May Revision Proposal (Firefighter 1 Compensation).** The Administration requests a two-year General Fund augmentation to account for the increased costs associated with maintaining a five percent differential between steps for the Department's seasonal Firefighter classification of the last minimum wage increase, as required by the current Bargaining Unit 8 Memorandum of Understanding.

Staff Comments. Staff has met with the Administration and concurs with the need for these proposals. However, since these MOUs will expire at the end of the budget year, staff recommends that the ongoing proposals be limited to a two-year term to allow for a baseline discussion when future MOUs are determined. This would be in keeping with the status of the overall state General Fund condition, and the unprecedented budget reductions facing the department should the tax initiatives fail.

In addition, there may be existing budget authority in the current year to accommodate these proposals since they were unanticipated increases in personnel expenses.

Recommendation.

1. APPROVE Items 1 and 3 as budgeted for two years.
2. APPROVE Item 2 with modifications. Direct DOF to budget this item in the current year under Item 9840-001-0001.

Vote:

3790 Department of Parks and Recreation

The Department of Parks and Recreation (Parks) acquires, develops, and manages the natural, cultural, and recreational resources in the state park system and the off-highway vehicle trail system. In addition, the department administers state and federal grants to local entities that help provide parks and open-space areas throughout the state.

The state park system consists of 277 units, including 31 units administered by local and regional agencies. The system contains approximately 1.4 million acres, which includes 3,800 miles of trails, 300 miles of coastline, 800 miles of lake and river frontage, and about 14,800 campsites. Over 80 million visitors travel to state parks each year.

Governor's Budget. The Governor's Budget includes \$423 million, a decrease of \$745,933 and 18 positions from the 2011-12 budget. The decreases are mainly related to bond expenditures (\$654,851 million), reductions in Off-Highway Motor Vehicle Division (\$10 million) and General Fund (\$10 million).

Items Proposed for Vote-Only (May Revision Capital Outlay and Open Issues)

- 1. Capital Outlay (Non-Off-Highway Vehicle Projects)—\$16.9 Million.** Request reappropriation of funds for ongoing capital projects within the State Parks system working drawings and construction. Examples of projects include restoration of buildings, completion of interpretive centers, environmental compliance, and recreational trails programs.
- 2. Off-Highway Vehicle and State Vehicular Area Capital Outlay—\$15.2 Million.** Request reappropriation of funds including for the following specific State Vehicular Area projects: Prairie City State Vehicular Recreation Area (SVRA), Oceano Dunes SVRA, Carnegie SVRA, and Hollister Hills SVRA.

Recommendation: APPROVE Items 1-2.

Vote:

ITEM PROPOSED FOR DISCUSSION

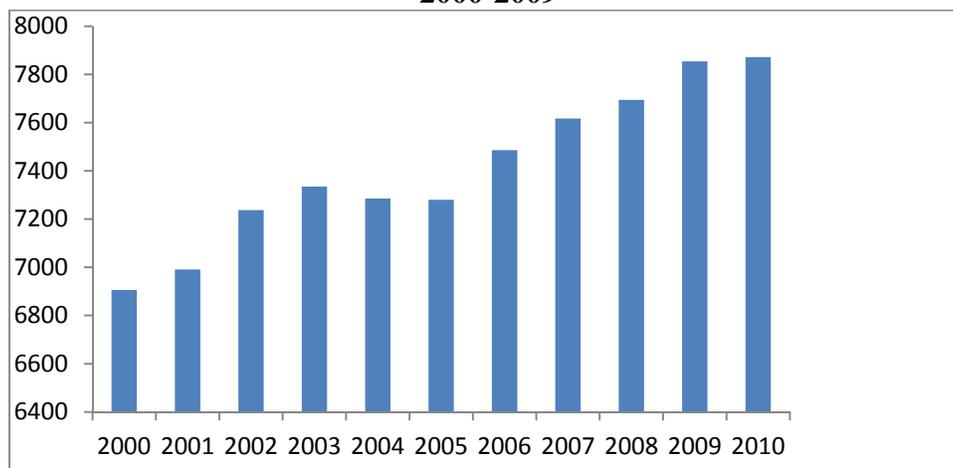
State Parks and Recreation—Ongoing Sustainable Funding Proposal

Previous Subcommittee Actions. The Senate Budget Subcommittee #2 heard proposals from the Department of Parks and Recreation on March 7 of this year. On May 9, the Subcommittee presented an eight part plan to develop ongoing sustainable funding for the department. The proposal was vetted and responses were received from the Administration, Legislative Analyst’s Office (LAO) and the public.

The LAO had questions about potential availability of funds for park purposes rather than General Fund relief after May Revision, the potential to go further than the proposal in the agenda regarding concessions, and the need to reclassify positions at the department. The administration withheld recommendation pending further review. In general however, neither the LAO nor the administration voiced strong opposition to any one element of the proposal.

Public testimony was taken on a number of issues. A good deal of support for liability relief for nonprofits operating state parks was heard. Concerns were raised about the potential pressures on the Motor Vehicle Account funding and the use of this money for law enforcement and transportation-related expenditures at State Parks. Legislative Counsel has confirmed that the proposed use of the funds is Constitutional. Also, while growth in California Highway Patrol (CHP) was presented as “flat,” the LAO has confirmed that in fact over the past ten years, CHP positions have grown by nearly 1,000 positions. This does not discount the likelihood that there will be requests for funding for law enforcement activities from this source in the forthcoming years.

**California Highway Patrol Uniformed Officers Authorized Positions
2000-2009**



Staff also determined that State Parks law enforcement has issued over 6,100 citations for violations of various sections of the Vehicle Code, and an additional nearly 26,000 citations related to other vehicle-related regulations.

Concerns were raised regarding the idea of requiring the department to reprioritize local assistance funding (including funding directed to local off-highway vehicle recreation areas) to maximize re-opening of all state parks. However, the Subcommittee was also provided with multiple reports citing the loss of local funding and local business dollars should any one state park close. In addition, the department has requested reappropriation of funding for multiple state and local off-highway vehicle park projects that is not subject to reprioritization, and would keep the program moving for several years.

Senate Ongoing Sustainable Parks Proposal—Recommendations

The following are a series of seven specific proposals to address problems identified by the department, the Legislative Analyst's Office (LAO), the Legislature and the Administration. The actions highlighted constitute the refined staff recommendation as actions for the budget.

Item 1: Department needs funding flexibility to become more entrepreneurial.

Solution: Approve Administration's two-year pilot proposal for continuous appropriation authority including trailer bill language requiring the department to report uses of the fund, and to require at least 50 percent of the funding received from district entrepreneurial projects to remain within that district.

Item 2: Personnel structure at the department restricts ability for the department to direct peace officers to the highest priorities.

Solution: Approve LAO recommendation (trailer bill language) in part to add position authority to allow non-peace officers to administer certain non-law enforcement tasks. This proposal would be phased-in over a period of two years.

Item 3: The department should be collecting entrance fees in more locations and utilizing concession agreements in as many areas as practical.

Solution: Approve LAO recommendation to approve entrance fee proposals and concession agreements. Require a percentage to remain in the district for revenue-related projects (budget bill language).

Item 4: Department needs more varied funding sources and Parks supporters need a more visible way to show support for the department.

Solution: As mentioned in the LAO report, approve trailer bill language for both (1) an opt-in fee for vehicle renewal and (2) a specialty plate for parks alone.

Item 5: According to a report by the department in May 2011, at least 20 parks were put on the closure list in part due to water, wastewater, and septic system problems. Many of these are due to both aging facilities and increased visitor-ship beyond the capacity of these older systems.

Solution: Approve budget bill language appropriating \$10 million annually as long-term loans from the Clean Water Revolving Loan Fund for five years to replace the State Parks and Recreation Funding and to complement bond funding for water quality and septic system repairs. Recommend funding be prioritized to allow for re-opening of parks and directed to lower income areas to the extent possible.

Item 6: Local nonprofits who step up to take over parks may be subject to additional liability risk which could deter their efforts to help support State Parks.

Solution: Approve trailer bill language to extend limited liability coverage to local and nonprofit agencies who partner with State Parks to take over functions or management of parks or park properties.

Item 7: Restrictive funding streams and categorical allocations reduce the flexibility of the department to more creatively apply state dollars while maximizing both federal and local matching funds.

Solution: Approve trailer bill language to extend the eligible uses of funds for trails, multi-purpose off-highway vehicle funds (with the exception of direct fees), and local assistance dollars. The intent is to allow greater flexibility for decision-making across the entire State Parks system. This includes amending the Local Assistance Program proposal to allow the department to utilize these funds more broadly for state purposes, so long as federal matching funds and constitutional requirements are not jeopardized.

Item 8: State Parks has an ongoing gap of up to \$15 million for roads and trail maintenance, and for service provided by Park Rangers related to motor vehicles.

Solution: Approve provisional budget bill language to utilize only a portion of the reserve of funding related to proceeds of the Motor Vehicle Account annually. Up to \$10 million of this item shall only be expended in units of the State Park System and only for enforcement of traffic laws on public roads, construction and maintenance of public roads and their fixed facilities, and any other purpose allowable by Article XIX of the California Constitution.

Staff Comments. In order to provide a more robust plan with as broad consensus as possible, staff was directed to meet with policy and budget staff in the Assembly, budget, and department staff at the Administration and multiple stakeholders on the proposal set forth by Senators Simitian and Evans. In general, there is a great deal of support for a long-term solution to parks funding. There have been a number of good suggestions to improve the proposal that incorporate ideas currently being considered by the Legislature and the Administration. These are listed in the following recommendations section (next page).

Staff Recommendation. Adopt Senate ongoing sustainable Parks proposals 1-8 with the following amendments.

Item 2: Personnel Classifications: This language shall be drafted as intent in order to accommodate the personnel administration process currently undertaken by the department that compliments this action.

Item 3: Increasing Park User Fees and Entrance Fee Collections: In conjunction with Assembly budget and policy staff, modify the department's reappropriation proposal from April to instead shift \$10 million from bond funds to pay for the capital costs of this proposal (including increasing park user fees and entrance fees) and other revenue generating projects. This would be deposited in a proposed Enterprise Fund in coordination with Item 1. As part of this proposal the department shall develop a prioritized action plan to increase revenues and collection of user fees and report back to the Legislature on the plan by January 10, 2013.

Item 4: 1) Opt-In Fee: In coordination with the State Parks Foundation, Assembly budget and policy staff, and other stakeholders, considered alternatives to an opt-in fee for discussion in the 2013-14 budget cycle including such ideas as regional park passes and alternative ways to purchase annual parks passes.
2) Vehicle License Plates: In coordination with Assembly budget and policy staff, this language should be drafted per AB 1589 (Huffman).

Item 7: Local Assistance Funding: To address concerns raised by stakeholders, this item should be amended to allow for the shift of up to \$21 million from the Motor Vehicle Fuel Account prior to deposit into the Off-Highway Vehicle Trust Fund (OHVTF). The Local Assistance proposal should be reduced by \$11 million, and \$10 million should be made available from the OHVTF fund balance (currently projected at over \$60 million) for high priority law-enforcement related local assistance grants. The department will be required to consult with the OHV Division prior to taking this action. This item also should sunset after five years.

The Department will explore to what extent funding from the AB 32 Cap and Trade funding may be appropriately used for restoration projects on Off-Highway Vehicle use lands (local assistance) in an amount up to \$10 million.

Vote:

3860 Department of Water Resources

The Department of Water Resources (DWR) protects and manages California's water resources. In this capacity, the department maintains the State Water Resources Development System, including the State Water Project (SWP). The department also maintains public safety and prevents damage through flood control operations, supervision of dams, and water projects. Historically, the department was also a major implementing agency for the CALFED Bay-Delta Program, tasked with putting in place a long-term solution to water supply reliability, water quality, flood control, and fish and wildlife problems in the San Francisco Bay Delta. As noted above, that program was abolished with SBx7 1, and CALFED responsibilities were transferred to new entities, including the Delta Stewardship Council.

Additionally, the department's California Energy Resources Scheduling (CERS) division manages billions of dollars of long-term electricity contracts. The CERS division was created in 2001 during the state's energy crisis to procure electricity on behalf of the state's three largest investor owned utilities (IOUs). The CERS division continues to be financially responsible for the long-term contracts entered into by the department. (Funding for the contracts comes from ratepayer-supported bonds.) However, the IOUs manage receipt and delivery of the energy procured by the contracts.

Governor's Budget. The Governor's Budget includes \$2.5 billion (including infrastructure expenditures) and 3,405 positions for support of the department. The department's proposed program budget is \$2.2 billion, which represents an overall decrease of \$2.6 billion and an increase of 144 positions from the 2011-12 budget. This decrease is mainly attributed to a decrease in bond funds (\$1.5 billion) and a decrease in the CERS division (\$832,887). The decrease in bond expenditures is mostly because the Governor's budget did not include any new bond expenditures in anticipation of the release of the Governor's five-year infrastructure report in the spring of 2012.

ITEMS PROPOSED FOR VOTE-ONLY

- 1. Implementation of the Delta Stewardship Council's Delta Plan.** The budget requests \$1.05 million from Proposition 1E bond funds and the State Water Project funds as well as six positions to implement mandated programs and projects within the areas of the state affected by the Delta Stewardship Council's Delta Plan.

Staff Comments: Staff has received assurances from the Delta Stewardship Council, Department of Finance, and Department of Water Resources that this proposal is not necessary in the budget year.

Recommendation: DENY Item 1.

Vote:

ITEMS PROPOSED FOR DISCUSSION**OCAP (Operations Criteria and Plan) Biological Opinions Habitat Restoration Implementation**

Background. The Governor's budget requests 10 new full-time and permanent positions in the Division of Environmental Service to implement habitat restoration required by state and federal agencies biological opinions, also called the "BiOps." These requirements identify habitat restoration, as well as other actions, to address impacts on salmon, steelhead, green sturgeon, delta smelt, and longfin smelt impacted by the operations of the State Water Project Delta Pumping Facilities.

Previous Subcommittee Actions. The Legislature approved 12 new full-time positions for implementation of the biological opinions in the previous year's budget. These positions were intended for similar activities as those proposed in this year's budget request. According to the department, the workload necessitating these new positions stems from two projects, the Prospect Island/Suisun Marsh sub-tidal habitat and Sacramento River seasonal fish rearing habitat projects.

Staff Comments. This item was held open in order for the department to continue working with the Legislative Analyst's Office and budget staff on the final workload analysis, the OCAP Habitat Plan, and the need for the positions. Staff concurs with the need for the positions.

Recommendation: APPROVE.

Vote:

Delta Habitat Conservation and Conveyance Program (DHCCP)

Background. The DHCCP was established in 2008 to implement a gubernatorial directive to address both water supply issues and environmental concerns related to the Delta. Specific goals of DHCCP include protecting and restoring Delta habitat and studying improved methods to reduce the impact of water conveyance on the Delta.

Governor's Proposal. The Governor's budget requests 117 new positions to work on the Delta Habitat Conservation and Conveyance Program (DHCCP). This includes converting 18 limited-term positions to permanent.

The DHCCP's planning stage is currently being carried out by 18 limited-term positions in the Department of Water Resources (DWR) that are set to expire in June 2012. The Governor's January budget proposal requests that those positions be made permanent to complete the DHCCP planning and to maintain staff continuity through the program's implementation stages. The planning stage was originally scheduled to be completed by December 2010, but has been pushed back until the end of 2012-13 due to delays in completion of the Bay Delta Conservation Plan (the Bay Delta Conservation Plan is a document that will provide the basis for the issuance of endangered species permits for the operation of the State and federal water projects, on which DHCCP's environmental impact reports depend).

Staff Comments. This item was held open in order to get further information on the positions and to develop appropriate contingencies related to the forthcoming Delta Plan. Given the uncertainty regarding the number of temporary and permanent positions needed, it seems reasonable that the Committee approve a limited mix of temporary and permanent positions and adopt budget bill language to direct the Department to move forward with preliminary design and construction work associated with the DHCCP after:

1. The public draft of the DHCCP Environmental Impact Report/Environmental Impact Statement is released;
2. The Department has provided notice to the Joint Legislative Budget Committee (JLBC) of the release of the public draft and the Department's intent to begin filling the positions; and,
3. 30 days has passed from the date of the notice to the JLBC.

This allows the department to return to the Legislature for additional position authority after the DHCCP EIR/EIS received final certification.

Recommendation: 1) **APPROVE 37 permanent positions and 38 2-year, limited-term positions.** 2) **APPROVE proposed budget bill language.** 3) **REJECT remaining 60 positions.**

Vote:

Salton Sea Program Habitat Restoration: Species Conservation Habitat Implementation.

Proposal. The Governor requests \$9 million (reimbursement authority) over three years for a continuation of the previously approved Salton Sea Restoration Program. This project is being produced in coordination with the Department of Fish and Game.

Background. The Department describes the proposed actions that would be funded from the requested reappropriations and reimbursements as “no-regrets” projects that would be consistent with any plan to restore the Salton Sea, including a no-action alternative. However, according to the LAO in 2011, it is unclear what the need is for immediate action on these projects. The majority of benefits of any restoration plan are likely to be realized only after the completion of the restoration many years from now, and as such, a temporary delay is unlikely to have significant negative consequences on fish and bird species.

Previous Actions. Last year, the Subcommittee rejected the Governor’s proposal for Salton Sea Restoration funding under the Department of Fish and Game. According to the LAO, the Legislature has yet to formally adopt a restoration plan for the Salton Sea that clearly lays out the state’s obligations and funding plan for the Sea. Ultimately, however, the Legislature approved a request for \$4.2 million in reimbursement authority for the Salton Sea Restoration Program.

Staff Comments. This item was held open to allow a continued dialogue with the Administration on its long-term plan for the Salton Sea restoration efforts.

Recommendation: APPROVE

Vote:

Davis-Dolwig Act (Funding Recreation at the State Water Project)**Joint Item—Department of Boating and Waterways (3680) and Department of Water Resources (3860)**

Background. The Davis-Dolwig Act, passed in 1961, states the broad intent of the Legislature that State Water Project (SWP) facilities be constructed “in a manner consistent with the full utilization of their potential for the enhancement of fish and wildlife and to meet recreational needs.” The LAO, Department of Finance, and legislative staff have raised concerns in the past four years about the administration of the Act by the department, and the role of the Legislature in ensuring oversight and accountability of state general purpose funding. For a background on the act, see the LAO report “Funding Recreation at the State Water Project.”

Budget Proposal. The department proposes a \$10 million annual appropriation from the Harbors and Watercraft Fund (HWRCF) for continued recreational costs at SWP facilities and statutory changes to clarify legislative authority for allocation of the state’s share of Recreation, Fish and Wildlife Enhancement. This is consistent with the primary recreational use at state water project facilities of boating and watercraft. This proposal will require the Department of Boating and Waterways to reprioritize its funding.

Staff Comments. The working group met over the course of the year and discussed varying amounts of funding that would be required to provide both ongoing funding for the State Water Project under the current contract requirements as well as repayment of obligations. The funding options ranged from \$3 million to \$15 million annually as well as proposals for future capital projects. The proposal by the administration attempts to address as many of the concerns raised in the working group meetings as is possible during this budget. The proposal does require the administration to reprioritize HWRCF funding. Therefore, staff recommends denying the proposal for Private Marina Funding to allow for a prudent reserve in the fund. This program would be eligible for funding again in the 2013-14 budget year.

Recommendation: APPROVE Budget Proposal including trailer bill language proposed by the administration. DENY Department of Boating and Waterways proposal for Private Marina Funding. ADOPT additional trailer bill language (draft):

Consistent with Attachment D of the Monterey Agreement Settlement, as part of the Department’s public process for review of the long-term water supply contracts (for project-wide contract amendments and contract amendments), the department shall conduct at least one of the required public hearings in an informational Legislative hearing of the policy and budget committees of both houses. The public contracts shall be submitted to the Joint Legislative Budget Committee for review at least 60 days prior to final approval by the parties to the contract.

Vote:

3960 Department of Toxic Substances Control 3980 Office of Environmental Health Hazard Assessment

ITEMS PROPOSED FOR DISCUSSION

Special Fund Reductions and Fund Restructuring from the Toxic Substances Control Account

Background. The Department of Toxic Substances Control (DTSC) funds several programs out of the Toxic Substances Control Account (TSCA) including the Site Mitigation and Brownfields Reuse Program, Pollution Prevention and Green Technology Program, California Environmental Biomonitoring Program (including programs at the Office of Environmental Health Hazard Assessment and Department of Public Health), and the Green Chemistry Program. Over the past five years, the revenues into the TSCA have declined by \$14 million annually while expenditures have increased by about \$5 million. In addition to this, several new programs including Green Chemistry have yet to be fully funded as they are not past the regulatory phase of development. Historically, DTSC has used carry-over reserves and reduced expenditures to address immediate imbalances in the fund. However, a more thoughtful approach to future funding is necessary and has been anticipated by the Legislature.

Budget Proposal. The Governor's May Revision proposes a series of fund shifts and reductions to align expenditure authority in the Toxic Substances Control Account (TSCA) with projected revenues. Specifically, the department proposes four major funding changes.

- 1. Department of Toxic Substances Control (DTSC) Toxic Substances Control Account Reduction Proposal:** The May Revision proposes to: 1) shift \$2.3 million and 18 positions to the Federal Trust Fund to support federal grants funded by the Department of Defense and the US Environmental Protection Agency; 2) shift \$780,000 and 6 positions to reimbursements; 3) shift \$3 million and 28.3 positions to the Hazardous Waste Control Account; 4) shift \$167,000 to support the California Environmental Contaminant Biomonitoring Program to the Childhood Lead Poisoning Prevention Fund (\$45,000), Birth Defects Monitoring Program Fund (\$45,000), Department of Pesticide Regulation Fund (\$39,000), and Air Pollution Control Fund (\$38,000); 6) decrease \$2.9 million and 24 positions in fiscal year 2012-13; and 7) decrease an additional \$3.5 million and 36 positions in fiscal year 2013-14.

2. **Office of Environmental Health Hazard Assessment Funding Shift from Toxic Substances Control Account to Other Special Funds:** The May Revision proposes a funding shift through a reduction of \$461,000 from the Toxic Substances Control Account (TSCA) and an augmentation of \$125,000 from the Childhood Lead Poisoning Prevention fund; \$106,000 from the Department of Pesticide Regulation Fund; \$105,000 from the Air Pollution Control Fund; and \$125,000 from the Birth Defects Monitoring Program Fund. This fund shift will not change OEHHA's overall expenditure authority and will continue to support the California Environmental Biomonitoring Program.
3. **Department of Toxic Substances Control Hazardous Waste Special Fund Reductions.** The May Revision proposes to shift Hazardous Waste Control Account (HWCA) funded positions to federally funded projects and reduces other HWCA funded positions and operating expenses. Specifically, DTSC proposes to: 1) shift \$735,000 and 6 positions to the Federal Trust Fund to support federal grants funded by the Department of Energy and National Aeronautics and Space Administration (NASA); and 2) decrease \$2.3 million and 12 positions.
4. **Trailer Bill Language to Eliminate Un- and Under-utilized Programs.** The department proposes to eliminate seven programs that are underutilized, have had no grant or loan requests, or have been replaced by updated programs and revised statutes. The trailer bill language is required to clean up these programs in statute.

Staff Comments. Staff concurs with the need for the anticipated budget proposal. Reducing funding pressures overall will allow the department to move forward with higher priority programs. However, staff have concerns with the proposal to shift funding from the Air Pollution Control Fund (APCF) to the Biomonitoring Program. This program, while broad-based, can appropriately be funded by a mix of fee and tax funding. However, staff are still reviewing the proposed funding from the APCF and the expenditures proposed for the Biomonitoring Program and as such should not be approved in this budget cycle.

Staff Recommendation: APPROVE proposals as budgeted less the following changes to the California Environmental Biomonitoring Program:

1. DENY fund shift of \$38,000 from the Toxic Substances Control Account to the Air Pollution Control Fund in the Department of Toxic Substances Control.
2. DENY fund shift of \$105,000 from the Toxic Substances Control Account to the Air Pollution Control Fund in the Office of Environmental Health Hazard Assessment.

Vote:

Green Chemistry: Ensuring Safer Consumer Products

Background. The Legislature, after years of considering individual chemical bans and broader chemical policies, developed a broader, more comprehensive approach to chemicals policy. Two bills, Chapter 559, Statutes of 2008 (AB 1879, Feuer) and Chapter 560, Statutes of 2008 (SB 509, Simitian) require the department to create a comprehensive and public approach to chemicals policy and lead to the development of the Green Chemistry Program at DTSC. Specifically, AB 1879 requires DTSC to adopt regulations to identify and prioritize chemicals of concern in consumer products, to evaluate alternatives, and to specify regulatory responses to reduce exposure to chemicals of concern in products. AB 1879 also created the Green Ribbon Science Panel to provide consultation to DTSC on the development of the regulations. SB 509 provides specific mandates to DTSC concerning the creation of an online, public Toxics Information Clearinghouse that includes science-based information on the toxicity and hazard traits of chemicals used in daily life.

Governor's Proposal. The Governor requests approval to redirect positions and funding for the department to implement the Safer Consumer Products regulations mandated by the two statutes. The Safer Consumer Products regulations provide a systematic and consistent approach for DTSC to evaluate chemicals in products sold in California to identify product-chemical combinations that are of high concern because of the potential for exposure to the chemical in the product and the potential for adverse public health or environmental impacts resulting from such exposures.

This process will lead to the identification/listing of products as Priority Products. Manufacturers of products listed as Priority Products will be required to conduct an alternatives analysis to compare the existing product with potential alternatives (e.g., chemical substitution or product redesign) using 13 factors evaluated at each stage of the product's life cycle. Upon conclusion of the alternatives analysis, the manufacturer will select an alternative chemical ingredient or alternative product design, or decide to retain the existing product-chemical. At this point, DTSC will evaluate the chosen alternative, or the existing product if no alternative is selected, using the information contained in the alternative analysis and other sources of information. The purpose of DTSC's evaluation will be to determine if there are adverse public health or environmental impacts associated with the product that can and need to be ameliorated by one or more regulatory responses.

Specifically this proposal is requesting to permanently redirect positions and funding identified below. Funding to support these redirections is from the Toxic Substances Control Account.

- Redirect 39.0 positions and \$4.8 million associated with these positions.
- Redirect \$1.4 million for contracts and laboratory equipment and supplies.

Staff Comments. Staff concurs with the need for the proposal. However, the proposal does not provide for a long-term stable funding source for the Green Chemistry Program. Existing law requires the department to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products, to establish a process for evaluating chemicals of concern in consumer products and their potential alternatives for the purposes of limiting exposure or to reduce the level of hazard posed by chemicals of concern identified in the required alternative analysis, and to specify a range of regulatory responses that the department may take following the alternatives analysis.

Staff recommends adoption of trailer bill language that would require the department to impose a fee on those who, in accordance with the regulations implementing the alternatives process, are required by the department to prepare and submit to the department for review an alternatives analysis, to cover the reasonable costs to the department in reviewing the submitted alternatives analysis and formulating and imposing a regulatory response. The trailer bill would require the department to adopt regulations establishing a fee schedule and would allow the department to reduce the amount of the fee based upon the size and market share of the fee payer.

Staff Recommendation: APPROVE the budget proposal with proposed Trailer Bill Language outlined in the Staff Comments.

Vote:

3900 California Air Resources Board

The Air Resources Board has primary responsibility for protecting air quality in California, as well as implementation of the California Global Warming Solutions Act of 2006 (AB 32). This responsibility includes establishing ambient air quality standards for specific pollutants, administering air pollution research studies, evaluating standards adopted by the US Environmental Protection Agency and developing and implementing plans to attain and maintain these standards. These plans include emission limitations for vehicular and industrial sources established by the Board and local air pollution control districts.

The Governor's Budget proposes \$555 million and 1,223 positions for support of the board. This is an increase of 19 percent over current year expenditures. This does not include proposed expenditures of up to \$1.5 billion related to the auction of greenhouse gas emissions under the Cap and Trade Program (discussed further below).

Items Proposed for Vote-Only

- 1. Project-Level GHG Assessment Program.** The budget includes a request for four limited-term positions and \$643,000 (Air Pollution Control Fund) to meet increased workload from two new state requirements: AB 900 (Buchanan) and SB 292 (Padilla), Statutes of 2011. These statutes direct the ARB to evaluate greenhouse gas (GHG) emissions' impact of certain development projects to help determine eligibility for a streamlined judicial review process of California Environmental Quality Act (CEQA) challenges. The ARB has stated that they do not currently review project-level emissions analyses and does not have the resources to assess GHG emissions' impacts of individual developments at this time. The policy analysis of this issue indicated that workload for this proposal would be absorbable, and indeed given the first test of this bill, the ARB did absorb the workload and evaluated the GHG impacts using existing resources.

Staff Comments. This item was held open at the April 25 hearing to give further time for review of the workload analysis. The administration has not yet justified the need for further positions for this proposal which is consistent with the policy analysis of the bill as it moved through the Legislature.

Recommendation: DENY Proposal.

Vote:

ITEMS PROPOSED FOR DISCUSSION**AB 32 and Cap and Trade Funding**

Background. On April 25, the subcommittee heard extensive testimony from the Board and Administration on its plans for the use of, and management of, cap and trade funding. As background, the ARB plans to begin auctioning GHG emission allowances as part of its market-based compliance measures in 2012. The ARB estimates that fee revenues from the first set of auctions will be \$1 billion in the first year of the program which is included in the budget. These auction revenue estimates vary widely making specific budget expenditures uncertain. Actual revenues are not anticipated to be certified until late in 2012-13. A General Fund offset of \$500 million is also included in the budget; however, there is no specific proposal for this expenditure. Rather than a detailed budget proposal, the budget provides general categories of spending from the proceeds of the auctions. These include:

- Clean and efficient energy
- Low-carbon transportation
- Natural resource protection
- Sustainable infrastructure development

Western Climate Initiative and Linkage Issues. The Administration continues to move forward with a proposal to “link” auctions to the Quebec Cap and Trade system. This would allow for more credits to be auctioned in multiple jurisdictions however it poses a number of questions about the intent of the state program. In order to facilitate this multi-government auction, the ARB assisted in the creation of the Western Climate Initiative, Inc. (WCI), an independent nonprofit that would develop compliance, tracking, and market monitoring functions for jurisdictions participating in the auctions. The WCI is incorporated in Delaware and both the Executive Director of ARB and Secretary for Cal-EPA sit on the board of WCI. According to ARB, no funding was paid by the state to WCI over the past several years, however this is not accurate. Through the Western Governors Association, funding was directed specifically from the State of California to WCI to facilitate this startup agency. The Administration proposes to direct \$3.7 million to this agency through December 2013.

It has also come to the attention of the subcommittee that the ARB has begun to direct funding to the WCI, Inc., for contracting outside of the state contracts rules. In addition, recent information from WCI, Inc., would suggest that it intends to engage in activities outside of the parameters that were initially described to the Legislature, including delving into policy recommendations for specific offset protocols.

Previous Subcommittee Actions. The subcommittee acted on April 25 to:

1. Reject Control Section 15.11 which allows the Administration to expend up to \$1 billion from auction allowance proceeds with now fewer than 30-day notification to the Legislature.
2. Approve language in concept (Air Pollution Control Fund, auction revenues):
 - a. Authorize spending of Cap and Trade revenues for purposes of AB 32 greenhouse gas emissions reduction activities to achieve at least \$500 million in General Fund savings.
 - b. Stipulate that any additional expenditure related to greenhouse gas emissions reductions be made pursuant to future legislation.

Staff was directed to work with appropriate policy and budget staff to begin drafting language related to concerns about the Western Climate Initiative, Inc., legislative oversight, fee nexus issues, a proposed audit of the AB 32 implementation fee, and the control sections related to the overall expenditure of funds from cap and trade revenues.

Staff Comments. Staff recommends a series of actions in response to the subcommittee's direction. To the extent possible, language is included in this agenda, however, some pieces will need to be developed with Legislative Counsel in coordination with actions taken by the Assembly Budget Subcommittee for final approval in the budget and trailer bills.

Recommendations:

1. APPROVE Trailer Bill Language (in concept):

- a. (Government Code) There shall be created in the state treasury the Greenhouse Gas Reduction Fund as a separate Fund for the collection of monies derived from the sale of greenhouse gas emission allowances.
- b. Include findings that all expenditures related to Cap and Trade revenues must meet both AB 32 and Sinclair fee nexus.
- c. Absent legislation directing the use of Cap and Trade revenues in statute, the Administration shall submit on January 10, 2013, a proposed statute for the expenditure of funds under this item.
- d. The department shall provide notice to the Joint Legislative Budget Committee of any funds over \$25,000 provided to the Western Climate Initiative, Western Climate Initiative, Inc., or its derivatives or subcontractors no later than 30-days prior to transfer or expenditure of these funds.
- e. No person employed by the State of California shall be a board member of the Western Climate Initiative, Inc., without approval by the California State Senate. Appointments shall be made by the Governor and subject to Senate approval.
- f. The State of California, California Air Resources Board, and California Environmental Protection Agency, including its contractors (specifically Western Climate Initiative, Inc.) shall not allow for linkage under the Cap and Trade program with any other state, province or sovereign nation until November 30, 2013, unless approved by the California Legislature in future statute.

- g. Additional reporting regarding the administrative record related to the expenditure of funds as determined by both the Assembly and Senate budget and policy committees.
- h. Direct the ARB and the California Public Utilities Commission, upon delivery of auction credits to the Investor Owned Utilities, to rebate any cap and trade revenues collected by the utilities (those off-budget funds) to be refunded to ratepayers in the form of a "climate dividend" rebate.

2. APPROVE the following Control Section 15.11:

SEC. 15.11. (a) Notwithstanding any other provision of law, the Director of Finance may allocate or otherwise use an amount of up to \$500,000,000 from monies derived from the sale of greenhouse gas emission allowances, which are deposited to the credit of the Greenhouse Gas Reduction Fund. These funds shall be available to support the regulatory purposes of AB 32.

(b) Not fewer than sixty days prior to allocating any funds pursuant to (a), the Air Resources Board and the Director of Finance shall submit a plan for the expenditure or use of the funds to the chairpersons of the committees in each house of the Legislature that consider appropriations and the Chairperson of the Joint Legislative Budget Committee for approval. This plan, in the judgment of the Board and the Director, shall provide for the expenditure of funds to assist in achieving the goal of reducing greenhouse gas emissions.

(d) The Director of Finance will not allocate funds until he or she has determined that sufficient cash has been deposited into the Greenhouse Gas Reduction Fund.

(e) Any Agency, board or department receiving funds from this item shall be required to demonstrate, through a series of duties, a strong administrative record to justify proposed expenditures.

(f) No funds in this item shall be used for the purposes of the development of a High-Speed Rail System for two years.

3940 State Water Resources Control Board

The State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards (Regional Boards or Water Boards) preserve and enhance the quality of California's water resources and ensure proper allocation and effective use. These objectives are achieved through the Water Quality and Water Rights programs.

Governor's Budget. The Governor's Budget includes \$713 million and 1,502 positions for support of the Board. Decreases in funding are largely due to reductions in bond expenditures.

Items Proposed for Vote-Only

- 1. Re-Appropriation and Sunset Extension: Underground Storage Tank Cleanup Tank Fund, School District Account.** Proposal to extend the sunset date and re-appropriating funds to the Underground Storage Tank Cleanup Fund School District Account. Currently, there is approximately \$11 million remaining in the School District Account. To-date, the State Water Resources Control Board has received approximately 170 eligible claims from school districts for reimbursement from the Account, and the Board continues to receive additional claims from school districts for reimbursement from the Account on an on-going basis.

Staff Comments. Staff concurs with the need for this proposal.

Recommendation: APPROVE Item 1.

Vote:

ITEMS PROPOSED FOR DISCUSSION**Reorganization of the Regional Water Quality Control Boards**

Background. The subcommittee heard this issue on April 25 and held the issue open for further review. The Governor proposes trailer bill language to reorganize the regional water boards to address a number of issues including retaining quality board members on the boards. The proposals include:

- **Consolidate Regional Boards.** The Governor proposes to eliminate the Colorado Regional Water Quality Control Board and to shift its functions to both the Lahontan and San Diego regions.
- **Reduce the Number of Board Members.** The Governor proposes to reduce the number of board members on a given regional board from nine to seven.
- **Eliminate Categorical Board Members Associations.** The proposal removes categorical spots on the regional boards including those for water supply, conservation, production, irrigation agriculture, industrial water, local government, or general members of the public.
- **Regional Water Board Chair Selected by the Governor.** The proposal allows the Governor to appoint the chairperson of the regional boards rather than the board members selecting from amongst themselves.

The reorganization proposal is a product of several years of attempts to reconcile the ability of the state to attract and retain quality board members who have expertise in the field. The review of complex permits and basin plans requires a level of expertise that generally comes from those with a great deal of experience within the water quality field. There are a few issues that were included in the overall general proposal that were not included specifically in the trailer bill language. These include:

- **Conflict of Interest Rules.** Current law prohibits regional board members from acting on proposals that involves the board member or any permittee where the board member has a position of authority or financial interest. The proposal had included language to conform the Water Code to the Political Reform Act as applies to all other state officials.
- **Increased Per Diem for Regional Board Members.** The proposal had included an increase in the per diem compensation from \$100 per day to \$500 per day, and an increase in the annual cap from \$13,500 to \$60,000. This was intended to address, among other issues, the time spent by board members evaluating complex permits during board deliberations, and to attract and retain quality board members.

Staff Comments. Staff have reviewed the proposal and in general concur with the proposals to change the constitution of the regional boards, including those proposals that were not included in the trailer bill language. However, staff have some concerns with the proposed consolidation of the regional boards and the appointment of the chair by the Governor's office rather than the regional boards. It is unclear why the Colorado Regional Board was selected for elimination rather than consolidation of urban Southern California boards (such as Santa Ana and San Diego). Staff recommends reconsideration of the board consolidation proposal to ensure the proposed consolidation achieves the goal of increasing government efficiency and reducing programmatic expenses at the regional board level.

Staff Recommendation:

1. APPROVE Trailer Bill Language (including conflict of interest and per diem elements).
2. DENY regional board consolidation (elimination of the Colorado Regional Board) and appointment of chair by the Governor.

Vote:

San Diego Regional Board Office Location

Budget Proposal. The subcommittee heard this issue on April 25 and held the item open to get a better idea about the costs associated with the office move. The Water Board is requesting additional funding to relocate the San Diego regional office. Originally, the Water Board requested \$2.8 million (various special funds) on a one-time basis for relocation expenses and \$505,000 (various special funds) on an annual basis for the anticipated rent increase.

The May Revision proposal reduces the original request significantly and updated its estimates for future rent costs. The cost of the move and the budget request is \$1.5 million. The existing rent is \$822,000 and the increase in rent is \$408,000 for a total annual rent cost of \$1.2 million. The reason for the rent increase is a move from a light industrial area to an area designated for business use resulting in an increase in cost per square foot. To mitigate these costs, the board is reducing its footprint and total square footage required.

Background. According to the Administration, relocation is necessary because the current location is directly next to an industrial solar panel manufacturer that emits toxins into the air. Regional Board employees have complained and submitted Workers Compensation claims regarding headaches and nausea believed to be related to toxins entering the building. As of this date, all of these claims have been settled without litigation.

Staff Comments. The relocation of the board is expensive and the board should be directed to use all means to reduce costs during the move. That said, it is likely the relocation is necessary and should be funded. Staff concurs with the need for the move and the modified and reduced funding request.

Recommendation: APPROVE as proposed.

Vote:

Lahontan Regional Water Quality Control Board—Tahoe Issues

Background. There is a need to coordinate and integrate the mandates of Tahoe’s recently adopted bi-state Total Maximum Daily Load (TMDL) program with the Tahoe Regional Planning Agency’s (TRPA) environmental threshold standards, and the goals of Tahoe’s Environmental Improvement Program. The California Tahoe Conservancy and other federal, state, and local agencies responsible for implementing these mandates are developing a comprehensive implementation plan for the Tahoe TMDL and related EIP water quality and watershed restoration programs on the California side of the Tahoe basin. The plan includes:

- A description of the roles and responsibilities of all responsible federal, state, and local land management and implementing agencies;
- A description of the key programs and projects necessary to meet the NPDES Permit requirements and associated TMDL load reduction targets for the forest, air and stream bank erosion sources along with EIP watershed and water quality goals;
- A financing strategy describing the levels of federal, state, and local funding expected to be available and necessary to implement the plan;
- A comprehensive monitoring and assessment program which may be developed in conjunction with TRPA or the Tahoe Science Consortium or other public agencies; and
- A schedule to develop the appropriate methods and protocols to establish load reduction measures for floodplain management and other elements of stream restoration projects.

Staff Comments. The Lahontan Regional Water Quality Control Board is the lead agency responsible for establishing and developing near-shore water quality objectives under existing statute. However, when the original environmental reports, including the TMDL, were released it was not clear whether near-shore water quality was addressed sufficiently in the requirements. Rather than focus solely on deep water quality and clarity, the water board is also charged with near-shore water quality, particularly as it impacts human and environmental health. In order to ensure this is addressed, staff recommends the following draft budget bill language:

The Lahontan Water Board shall, within 90 days of receipt of the above-described plan, establish a schedule for the development and adoption of near-shore water quality objectives to improve near-shore water quality conditions along with a comprehensive implementation strategy describing the nature of actions and associated timelines that will be necessary to implement the plan or its component parts.

In addition, given the sensitivity of the state's activities related to Lake Tahoe and the ongoing concerns about interactions with the planning and permitting agencies of both California and Nevada, staff recommends the following Supplemental Reporting Language related to Lake Tahoe:

To prepare for the possible eventuality of Nevada withdrawing from the Tahoe Regional Compact as set forth in Nevada Senate Bill 271 and instead establishing a Nevada Tahoe Regional Planning Agency, the California Research Bureau is directed to report to the Legislature by February 1, 2013 on the advisability and the necessary steps to be taken in case it is necessary for California to consider re-establishing the statutes that created the California Tahoe Regional Planning Agency in order to protect the economic growth and environmental attributes in the region.

Recommendation: APPROVE budget bill language and Supplemental Reporting Language.

Vote:

8660 California Public Utilities Commission

The California Public Utilities Commission (CPUC) is responsible for the regulation of privately owned "public utilities," such as gas, electric, telephone, and railroad corporations, as well as certain video providers and passenger and household goods carriers. The PUC's primary objective is to ensure adequate facilities and services for the public at equitable and reasonable rates. The PUC also promotes energy conservation through its various regulatory decisions. The Governor's Budget proposes \$1.4 billion to support the CPUC in the budget year.

ITEM PROPOSED FOR DISCUSSION

Safety Programs and Proposals (Consumer Safety Division)

Background. The Governor's budget includes four proposals for enhancement of the Consumer Safety Division. This is above and beyond the additional 12 positions and about \$671,000 approved by the Legislature in the 2011 budget process. The subcommittee heard these proposals on April 25 and held open one item, the Global Safety and Enforcement Programs proposal (Global Safety and Enforcement Programs [\$5.9 million, 41 positions]) in order to give staff and the LAO more time to review the workload analysis and need for the positions. Staff had raised concerns about whether or not these positions would produce the necessary cultural change at the CPUC required to more comprehensively enforce safety standards.

Updated LAO Analysis.

LAO Assessment. Our analysis indicates that some of the workload identified in the Governor's proposal is justified. Specifically, some of the additional workload related to gas and rail safety activities was recommended by the National Transportation Safety Board as part of its evaluation the CPUC's safety programs. However, we find that the other workload included as part of the proposal is not justified. For example, the CPUC plans to use some of the requested resources to develop power line standards in order to reduce fire hazards. However, as indicated above, CalFIRE already maintains a power line prevention program. We also note that the CPUC has been unable to explain how it would coordinate with CalFIRE to avoid any duplication of efforts. In addition, the safety inspections that would be conducted by the CPUC may be duplicative of the inspections that are currently conducted by Cal/OSHA. Since most of the proposed activities are possibly outside the jurisdiction of the CPUC, it's not clear whether it would have enforcement authority and thus need additional legal and ALJ positions.

Finally, we note that the CPUC, as a whole, currently has roughly 70 vacant positions. At the time of this analysis, the commission has not provided a plan on how it will address its vacancies. Given the CPUC's current vacancy rate, the requested funding may not be spent as proposed in the budget year.

LAO Recommendation. In view of the above concerns, we recommend that the Legislature reject the Governor's January budget proposal to provide the CPUC with 41 additional positions and a \$5.9 million augmentation to support these positions, as well as the \$1.3 million proposed on a one-time basis for consulting services. In order to address some of the gas and railroad safety activities that are justified on a workload basis, we recommend—given the CPUC's current vacancy rate—that the Legislature direct the administration to redirect existing resources within CPUC to support these activities. Finally, we recommend that the Legislature direct the CPUC to coordinate with CalFIRE and Cal/OSHA to first determine where possible duplication of efforts and inadequacies exist in the area of safety, and provide a report to the Legislature on its findings.

Staff Comments. Staff generally concurs with the LAO analysis of the issues that there is a need for the 19 positions requested for gas and railroad safety activities. These positions are clearly justified on a workload basis. However, staff disagrees that current vacant positions should be used for these purposes. It would be more appropriate for the CPUC to focus on filling necessary vacant positions for the purposes for which the Legislature approved them, than to redirect them to other purposes without ensuring statutory mandates are fulfilled. These positions, along with the three proposals already approved by the subcommittee on April 25, will put the CPUC in a position to improve its public safety program.

Staff Recommendation:

- 1) APPROVE 19 requested positions in the gas and rail safety program.
- 2) DENY remaining 22 positions.
- 3) DENY \$300,000 in one-time consulting service.
- 4) APPROVE access to \$960,000 in federal funds to strengthen safety oversight and enforcement of gas, electric, communications, and rail public utilities.
- 5) APPROVE Supplemental Reporting Language requiring the Commission to submit, by February 1, 2013, a report on milestones achieved with these positions. This should include, but not be limited to: additional miles of gas and rail lines inspected, additional corrective actions directed by the Commission, and generally the actions the Commission has taken using these positions to improve gas, rail and public utility safety in the State.

Vote: