



## Senate Budget and Fiscal Review

# Subcommittee No. 5 2012 Agendas

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*California State Senate*  
SENATE BUDGET & FISCAL REVIEW  
**SUBCOMMITTEE No. 1**

**Agenda**

**March 8, 2004**  
**Upon Adjournment of Session – Room 113**

EDUCATION  
JACK SCOTT, CHAIR  
BOB MARGETT  
JOHN VASCONCELLOS

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# **SUBCOMMITTEE NO. 5**

# **Agenda**

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



**Thursday, March 8, 2011  
10:30 a.m. or upon adjournment of session  
Room 113**

**Consultant: Kris Kuzmich**

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List of Departments and Issues to Be Heard)*

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1900	Public Employees' Retirement System
1920	State Teachers' Retirement System
7100	Employment Development Department
7350	Department of Industrial Relations
8380	Department of Human Resources
8885	Commission on State Mandates – Filipino Employee Surveys
CS 4.21	Health Care Premium Savings

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***Items Proposed for Vote Only – Issue Descriptions*****PUBLIC EMPLOYEES' RETIREMENT SYSTEM (1900)****Issue 1 – Mandated Reports: Expenditures for External Investment Advisors and Board of Administration Budgetary Expenditures**

**Background.** Provisional language in the annual Budget Act requires the California Public Employees' Retirement System (CalPERS) to: (1) annually report on the estimated and final expenditures for external investment advisors and (2) to report on an estimated, quarterly, and final basis the Board of Administration's budgetary expenditures.

With regard to the budgetary expenditures report, CalPERS is requesting to modify the requirement and maintain only the final Expenditure Report. With regard to the external investment advisors report, CalPERS indicates that these reports are duplicative of information that is provided in its Comprehensive Annual Financial Report.

**Staff Comment.** Staff agrees that the Budget Act reporting requirements are either redundant or duplicative of information presented through other formal and annual reporting structures. Deleting these reporting requirements would also be consistent with the Governor's Executive Order B-14-11, which directed all state departments to identify legislatively-mandated reports that may no longer be of significant value to the Legislature, as part of the Administration's overall effort to identify and eliminate administrative inefficiencies and reduce costs.

**Staff Recommendation:** Approve the elimination of the budget provisional language requiring CalPERS to: (1) annually report on the estimated and final expenditures for external investment advisors and (2) to report on an estimated and quarterly basis the Board of Administration's budgetary expenditures.

***Items Proposed for Vote Only – Issue Descriptions*****STATE TEACHERS' RETIREMENT SYSTEM (1920)****Issue 2 – Mandated Report: Expenditures for External Investment Advisors**

**Background.** Provisional language in the annual Budget Act requires the California State Teachers' Retirement System (CalSTRS) to annually report on the estimated and final expenditures for external investment advisors. CalSTRS indicates that this report is duplicative of information that is provided in other investment reports; further, actual expenditures for external managers are included in the Financial Section of the CalSTRS' Comprehensive Annual Financial Report.

**Staff Comment.** Staff agrees that the Budget Act reporting requirement is duplicative of information presented through other formal and annual reporting structures. Deleting this reporting requirement would also be consistent with the Governor's Executive Order B-14-11, which directed all state departments to identify legislatively-mandated reports that may no longer be of significant value to the Legislature, as part of the Administration's overall effort to identify and eliminate administrative inefficiencies and reduce costs.

**Staff Recommendation:** Approve the elimination of the budget provisional language requiring CalSTRS to annually report on estimated and final expenditures for external investment advisors.

***Items Proposed for Vote Only – Issue Descriptions Continued*****EMPLOYMENT DEVELOPMENT DEPARTMENT (7100)****Issue 3 – Expand the Financial Institution Records Match Program to the Employment Development Department**

**Governor’s Budget Request.** The January budget requests to expand the Financial Institution Records Match (FIRM), an enforcement tool used to collect delinquent taxes and non-tax debts of individuals and business entities, to the Employment Development Department, effective January 2013. Under this proposal, EDD would provide reimbursements to the Franchise Tax Board (FTB) of approximately \$296,000 in 2012-13, \$236,000 in 2013-14, and \$150,000 on-going. The costs in the first two years are slightly higher due to one-time costs related to initial set-up, including licenses, hardware, and software, and to implement the FIRM process into the EDD’s Automated Collection Enhancement System (discussed as Proposed Vote Only Issue 3 immediately below). This request includes proposed trailer bill language.

**Prior Budget Action.** Chapter 14, Statutes of 2011 (SB 86), authorized the Franchise Tax Board to operate and administer a FIRM that utilizes automated data exchanges to identify accounts of delinquent tax debtors held at financial institutions doing business in California. The FTB estimated that the use of FIRM would generate \$43 million in additional GF revenues in 2011-12.

**Background.** A FIRM tool requires financial institutions doing business in California to match FTB records information on delinquent tax and non-tax debtors against their customer records on a quarterly basis. In addition to expanding the FIRM to EDD in 2012-13, the Administration also proposes to include the Board of Equalization (this aspect of the proposal will be discussed in Subcommittee No. 4). EDD estimates that 250,000 debtor records would be submitted on a quarterly basis using the FIRM tool; included in this batch of debtor records are other debts and/or penalty assessments referred to the EDD for collection, such as Department of Industrial Relations’ debts. EDD estimates increased revenues of \$6 to \$12 million will be collected annually; roughly \$3.1 to \$6.2 million of this amount is new GF revenues.

**Staff Recommendation:** Approve the request and related trailer bill language.

**Issue 4 – Automated Collection Enhancement System**

**Governor’s Budget Request.** The January budget requests a one-time augmentation of \$8.8 million (various special funds) and 41 positions for year seven of the Automated Collection Enhancement System (ACES) project, an information technology project intended to improve EDD’s ability to track, collect, and audit the payment of employer payroll taxes, including unemployment insurance and personal income taxes. Additionally, beginning in 2013-14 and on-going, \$5.7 million (various special funds) and 22 positions are requested for on-going support of ACES. This request also includes proposed trailer bill language.

**Prior Budget Actions.** The ACES project began with the approval of the 2006 Budget Act. Since that time, the Legislature has annually provided funding for the development and implementation of the ACES project. Most recently, and in the 2011 Budget Act, \$21.9 million (\$19.5 million GF and various special funds) and 49.3 positions were provided to fund year six of the ACES project. The 2011 Budget Act also reduced EDD by 18 baseline positions that supported the Tax Accounting System (TAS) that are longer needed post implementation of ACES.

**Background.** EDD's Tax Branch is a major revenue collection organization for the state, receiving and processing approximately \$50 billion annually from over 1.2 million registered California employers. The ACES project is modeled after the systems currently used by the Franchise Tax Board and Board of Equalization; it will increase the effectiveness of EDD's tax collection operations. ACES will also collect penalties and back-wages that are due to the Department of Industrial Relations (DIR), which were previously collected by the Franchise Tax Board. ACES "went live" and began final implementation on January 18, 2011.

The ACES project is a benefits-based procurement, whereby the additional revenue generated by the project offsets all project costs thereby minimizing risk for the state. The ACES solution is expected to increase GF revenue by \$28.8 million (all funds total of \$105.5 million) in 2012-13 by improving collection capabilities for delinquent accounts. The proposed trailer bill language is clean-up in nature, as it removes from statute the Franchise Tax Board's authority to collect delinquent accounts for the DIR. This statutory authority is no longer needed; as of January 31, 2012, ACES is collecting all delinquent accounts for DIR.

With regard to the on-going resources requested to support ACES, the Administration indicates that continued development, implementation, and support of interfaces will be pursued. These activities have been identified and prioritized by their ability to generate revenue, simplify existing work processes, and create efficiency through automation. In addition, there may be future requests to further expand ACES, such as to initiate electronic filing of liens with the Secretary of State and interagency offsets, such as interfaces between EDD, DIR, and the Board of Equalization.

**Staff Recommendation:** Approve the budget request and related trailer bill language.

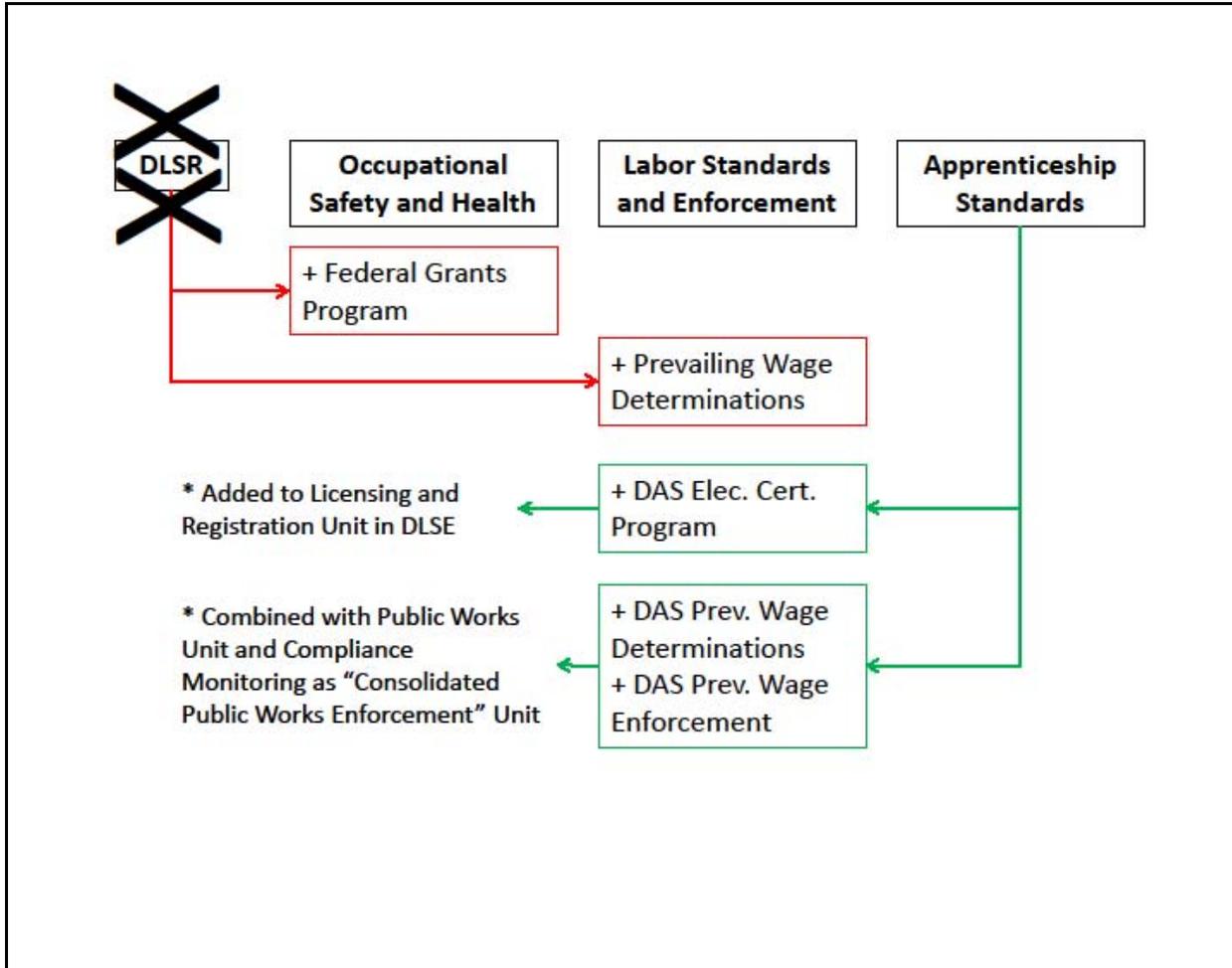
***Items Proposed for Vote Only – Issue Descriptions Continued*****DEPARTMENT OF INDUSTRIAL RELATIONS (7350)****Issue 5 – Consolidated Public Works Enforcement**

**Governor’s Budget Request.** The January budget requests to eliminate the Division of Labor Statistics and Research (DLSR), transferring all responsibilities and workload to the Division of Occupational Health and Safety (DOSH) and the Division of Labor Standards Enforcement (DLSE) and otherwise reorganize the DIR as detailed further below. This consolidation will result in the reduction of one position and on-going savings of \$231,000 GF. This request also includes proposed trailer bill language.

**Background.** The DIR is comprised of five programmatic divisions: (1) Labor Standards Enforcement-DLSE; (2) Occupational Safety and Health-DOSH; (3) Workers’ Compensation Administration-DWCA; (4) Labor Statistics and Research-DLSR; and (5) Division of Apprenticeship Standards-DAS. DIR also has two units, State Mediation and Conciliation and Self Insurance Plans, and an Administration Division.

This request eliminates the DLSR and reassigns its principal responsibilities to the DLSE (determination of prevailing wage rates) and DOSH (job safety records, reports, and statistics). In addition, this proposal also creates an integrated Public Works unit within DLSE and consolidates within that unit: (1) existing public works investigation and enforcement at DLSE; (2) the Compliance Monitoring Unit, pursuant to Chapter 7, Statutes of 2009-10 Second Extraordinary Session, discussed as Proposed Discussion/Vote Issue 1 in the Department of Industrial Relations section of this agenda; (3) public works apprenticeship enforcement responsibilities currently performed by DAS; and (4) prevailing wage rate determinations currently performed by DLSR. Finally, this request transfers the administration and authority of the Electricians Certification Program and Fund from DAS to DLSE. Figure 1 on the next page illustrates this reorganization of DIR.

**Figure 1 – DIR Reorganization to Eliminate the Division of Labor Statistics and Research and Establish Consolidated Public Works Enforcement with the Division of Labor Standards Enforcement**



**Staff Comment.** This request will improve efficiency and effectiveness within DIR while reducing costs by: (1) eliminating DLSR as a separate division with two largely unrelated functions; (2) consolidating all public works enforcement responsibilities in an integrated unit; and (3) shifting the administration of the Electrician Certification Program to the enforcement division of DIR.

**Staff Recommendation:** Approve the request and corresponding trailer bill language to eliminate the Division of Labor Statistics and Research and establish consolidated public works enforcement within the Division of Labor Standards Enforcement.

<b><i>Items Proposed for Vote Only – Issue Descriptions Continued</i></b>
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<b>COMMISSION ON STATE MANDATES (8885)</b>
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**Issue 6 – Filipino Employee Surveys**

**Governor’s Request.** The January budget requests the repeal of 32 of 56 currently suspended mandates that have been suspended for the past two years or more, including the local government mandate related to Filipino Employee Surveys. This request includes proposed trailer bill language.

**Background.** Budget funding for non-education mandate payments to local governments is included in the budget of the Commission on State Mandates (Commission). The Commission is responsible for determining whether a new statute, executive order, or regulation contains a reimbursable state mandate on local governments and determining the appropriate reimbursement to local governments from a mandate claim. The Constitution, as amended by Proposition 1A of 2004, requires that the Legislature either fund or suspend local mandates. In most cases, if the Legislature fails to fund a mandate, or if the Governor vetoes funding, the legal requirements are considered suspended pursuant to the Constitution. Suspending a mandate does not relieve the state of the obligation of reimbursing valid claims from prior-years, but it does allow the state to defer payment. The State owes local governments an estimated \$1.6 billion in non-education mandate payments.

The Filipino Employee Surveys mandate has been suspended since 1990. It requires local agencies to categorize Filipino employees as a separate ethnic calculation in employee ethnicity survey and tabulations. The Administration asserts that this mandate should be repealed because other laws require similar information. Further, in the Administration’s tabulation of the constitutionally-required 2012-13 GF expenditure if the mandates are neither suspended nor repealed, no funding is scheduled for the Filipino Employee Surveys.

**Staff Comment.** The Governor’s mandate proposal is a continuation of the status quo in terms of mandates in effect and mandates not in effect. The substantive difference in this year’s proposal is the Governor’s request to amend statute to repeal 32 of the 56 mandates currently suspended. The difference between suspension and repeal does not affect budget savings because in either case the activity becomes optional for local governments and the state does not have to reimburse costs. The argument for repeal is that if the mandate will continue to be suspended in the foreseeable future, the statutory provisions should reflect that the activity is no longer required. Given that the Filipino Employee Survey mandate has been suspended since 1990, and other laws require similar information, staff recommends this mandate be repealed.

**Staff Recommendation:** Approve the request to repeal the Filipino Employee Survey mandate, including trailer bill language.

<b><i>Vote on Vote-Only Issues 1 - 6:</i></b>
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<b>1900</b>	<b>PUBLIC EMPLOYEES' RETIREMENT SYSTEM</b>
<b>CS 4.21</b>	<b>HEALTH CARE PREMIUM SAVINGS</b>

**Background.** The Legislature determines policies concerning state employee, both active and retired, health benefit programs. Through the Public Employees' Medical and Hospital Care Act (PEMHCA), the Legislature vests responsibility for managing health care programs for state workers, state retirees, and employees or retirees of participating local agencies with the California Public Employees' Retirement System (CalPERS). The state's contribution to employee health care is based on a negotiated percentage of the average cost of four health plans with the most enrolled state employees. Any health premium increases in a calendar year are negotiated by CalPERS with health plan providers; the CalPERS board typically adopts the next year's health premiums in June. The cost of state employer health and dental care benefits for active employees and retirees, and their dependents, is estimated to total \$2.9 billion GF (\$1.4 billion other funds) in 2012-13.

<b><i>Issue Proposed for Discussion / Vote</i></b>
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<b>Issue 1 – Health Care Premium Savings</b>
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**Governor's Budget Request.** Via Budget Control Section 4.21 (CS 4.21), the January budget requires CalPERS to achieve savings of \$45.4 million GF and \$22.5 million other funds in the 2012-13 Health Benefits Program, and an equivalent amount of on-going savings. CalPERS is required to report before October 10, 2012, the savings achieved as well as their source.

**Prior Budget Action.** The 2011 Budget Act established CS 4.21 and required CalPERS to achieve one-time savings of \$80 million GF and \$35.7 million other funds in the 2011-12 Health Benefits Program, and an equivalent amount of on-going savings beginning in 2012-13. The 2011 Budget Act also included trailer bill language requiring CalPERS to negotiate with health plans to offer a core health care plan option to the existing portfolio of health plans and/or implement other measures to achieve the on-going savings. Finally, CalPERS was also required to notify the Joint Legislative Budget Committee and DOF before October 10, 2011, that the savings had been achieved as well as their source.

**Background.** CalPERS reported that it achieved savings of \$46.7 million GF and \$23.2 million other funds. These savings result from a number of one-time and on-going strategies adopted by the CalPERS Board, such as Value Based Purchasing and High Performance Provider Networks, to reduce premium costs.

CalPERS also reported that it achieved additional savings through the adoption of cost avoidance measures not accounted for in the above totals. More specifically, these additional savings totaled \$15.9 million GF and \$4.0 million other funds, and were a result of such activities as Pharmacy Benefit Changes, Integrated Healthcare Model, and Service Area Expansion.

With regard to 2012-13, the estimated funding of \$2.9 billion GF (\$1.4 billion other funds) represents a year-to-year increase of \$246 million GF (\$87 million other funds) over the 2011-12 expenditure level. This reflects an estimated 8.5 percent increase in health

premium rates, which is the Department of Finance's projection based on the retiree health valuation report. Therefore, the savings targets identified in CS 4.21 for 2012-13 are the amount of savings not achieved in 2011-12, adjusted by the expected growth in premium costs.

**Staff Comment.** All parties are concerned about the increases in health care costs, as they present a budgetary challenge not only for the state but also for local governments and private employers. As evidenced by the report CalPERS submitted per the requirements of CS 4.21 in the current fiscal year, CalPERS has made progress not only in 2011-12 but also in prior years in pursuing numerous strategies to achieve savings in the Health Benefits Program. However, even with these extensive efforts, the overall program costs continue to grow, presenting continuing challenges to CalPERS in its administration of PEMHCA health care programs and for the State in managing its overall budget.

From a more basic accounting and operational perspective, the budget structure that has been adopted, i.e., to use a control section mechanism, may not be ideal. The Health Benefits Program operates on a calendar year, with the premium rates adopted each June for the following calendar year, while the State Budget is based on a fiscal year approach. Further, the budgetary accounting does not afford the opportunity to "score" cost avoidance savings, yet these savings are legitimate. It is also worth noting that savings that are one-time in nature, while legitimate and with the potential for the identification of new ones each year, do not reduce baseline expenditure levels or result in on-going savings.

Finally, staff notes that the Administration has indicated that it is continuing to work with CalPERS and expects to submit additional proposals related to the health benefits program as part of the Spring budget process.

**LAO Recommendation.** Any savings resulting from this control section likely would have to be achieved through CalPERS premium negotiations. In April, CalPERS will begin the formal negotiation process for calendar year 2013 premiums. The CalPERS board is expected to approve the premium rates in June 2012. We think it is premature to assume any savings resulting from the 2013 premiums. Therefore, we recommend that the Legislature hold this item open until after the May Revision.

**Subcommittee Questions.** Based on the above comments, the Subcommittee may wish to ask CalPERS the following questions:

1. The report that CalPERS submitted, identifying the source of the 2011-12 savings, listed a number of broad descriptive titles. Please provide more detailed examples of activities within these titles, such as High Performance Provider Networks, which resulted in savings of \$10.6 million, and Value Based Purchasing, which resulted in savings of \$19.2 million.
2. For the cost avoidance savings CalPERS has reported, please provide more specific examples of savings achieved by adopting Pharmacy Benefit Changes, Integrated Healthcare Model, and Service Area Expansion.
3. With regard to one-time versus on-going savings, does CalPERS focus on one more so than the other? Should the primary focus be on on-going savings, as these savings reduce baseline expenditures?
4. As noted above, the 2011 Budget Act included trailer bill language requiring CalPERS to negotiate with health plans to offer a core health care plan option to the existing portfolio of health plans and/or implement other measures to achieve on-going

savings. Is CalPERS negotiating a lower cost health care plan? If not, what other cost savings measures is CalPERS negotiating?

**Staff Recommendation:** Hold open pending receipt of additional proposals as part of the Spring budget process.

**Vote:**

<b>8380</b>	<b>DEPARTMENT OF HUMAN RESOURCES</b>
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**Department and Budget Overview.** Effective July 1, 2012, the Department of Personnel Administration's (DPA) organization code (8380) will be utilized for the new Department of Human Resources (CalHR). As of that date, and consistent with the Governor's Reorganization Plan Number 1 of 2011, DPA and the operational non-constitutional functions of the State Personnel Board (SPB) will be consolidated into the new CalHR.

CalHR will be responsible for managing the State's personnel functions and represents the Governor as the "employer" in all matters concerning state employer-employee relations. CalHR will be responsible for issues related to recruitment, selection, salaries, benefits, position classification, and provides a variety of training and consultation services to state departments and local agencies, including providing legal representation to state agencies for appeals of disciplinary actions and labor relations matters.

	2010-11* (actual)	2011-12* (estimated)	2012-12 (proposed)
Expenditures	\$71,685	\$79,635	\$94,132
General Fund	\$7,398	\$6,410	\$8,177
Personnel Years	206.7	245.0	242.0

\*The years prior to July 1, 2012, represent the former Department of Personnel Administration structure and budgetary resources.

<b><i>Issue Proposed for Discussion / Vote</i></b>
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<b>Issue 1 – Governor's Reorganization Plan Number 1 of 2011</b>
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**Governor's Budget Request.** As a result of the Governor's Reorganization Plan Number 1 of 2011 (GRP 1-2011), the January budget requests transfer of budget authority from the Department of Personnel Administration (DPA) and State Personnel Board (SPB) to the new Department of Human Resources (CalHR), effective July 1, 2012.

**Background.** The GRP 1-2011 consolidated the human resource management functions and authorities previously vested with SPB and DPA, except for the constitutional responsibilities of SPB, into CalHR. The Administration asserts that, by consolidating the day-to-day operations of DPA and SPB into one consolidated agency, the state personnel system would be streamlined into functionally integrated programs that will end disjointed processes which are neither efficient nor cost effective. The GRP 1-2011 was effective on September 9, 2011.

Consistent with the GRP 1-2011, The SPB will continue to act as an independent five-member Board within CalHR, appointed by the Governor and serving ten-year terms, to hear merit appeals and oversight of the merit principle. CalHR will provide administrative and staff support to enable the SBP to accomplish its mission.

Over the next two fiscal years, the Administration reports that CalHR will achieve its targeted budgetary savings, reducing staff levels by 15 percent (a total of 60 positions eliminated) and achieving savings of \$8.6 million (\$3.7 million GF). The savings are a result of the following:

- Elimination of the HR Modernization Project (effective July 1, 2011).
- Elimination of duplicate administrative functions such as budgets, human resources, and facilities operations.
- Elimination, reduction, or reclassification of redundant levels of management and supervisory staff and “flatten” the organization to increase each manager’s level of supervision.
- Elimination or combination of communication, legislation, and clerical support functions.
- Streamlining, re-prioritization, and elimination of redundant processes as a result of the consolidation (for example, consolidation of the Career Executive Assignment review process at one agency and/or automation of processes such as seniority calculations).

At the time the GRP 1-2011 was before the Legislature, the Administration stated that staff reductions were expected to be achieved through attrition over the next few years. In addition, it was expected that efficiencies would be achieved in the line agencies with regard to more effective human resources functions, resulting in additional unquantified savings.

**Staff Comment.** Staff raises no concern with the budget request, as it is consistent with the GRP 1-2011 which was effectively adopted by the Legislature in 2011. Staff notes, however, a concern with a separate budget proposal that impacts the new CalHR. More specifically, as part of a larger government reorganization plan, the Governor is proposing to move CalHR under the new Government Operations Agency. Under the new organizational structure, the Director of CalHR would report to the Agency Secretary who would then report to the Governor. While this structure would not be an issue for many of CalHR’s responsibilities, it could negatively impact labor relations, including collective bargaining; as it stands now, the Director of DPA directly reports to the Governor. Further, the timing of this reorganization plan is unknown, including whether it would be pursued through a formal GRP process or some other venue.

**Subcommittee Questions.** Based on the above comments, the Subcommittee may wish the Administration and CalHR to provide responses to the following questions:

1. What is the timing of the reorganization plan to create a new Government Operations Agency that would include CalHR? Will this plan be pursued as part of a formal GRP or some other process?
2. How would CalHR’s reporting relationship be structured under the new Agency, particularly with regard to labor relations and collective bargaining?

**Staff Recommendation:** Approve the budget request.

**Vote:**

**0559****LABOR AND WORKFORCE DEVELOPMENT AGENCY**

**Department and Budget Overview.** The Labor and Workforce Development Agency (LWDA) brings together the departments, boards, and commissions which train, protect, and provide benefits to employees. The LWDA is primarily responsible for three different types of functions: labor law enforcement, workforce development, and benefit payment and adjudication. The LWDA includes the Department of Industrial Relations (DIR), the Employment Development Department (EDD), the Agricultural Labor Relations Board (heard in Subcommittee No. 2), and the California Workforce Investment Board. The LWDA is funded through reimbursements from those departments. The LWDA provides policy and enforcement coordination of California's labor and employment programs and policy and budget direction for the departments and boards.

	<b>2010-11 (actual)</b>	<b>2011-12 (estimated)</b>	<b>2012-13 (proposed)</b>
Expenditures	\$3,035,000	\$2,297,000	\$2,295,000
General Fund	0	0	0
Personnel Years	13.9	11.4	11.4

***Issue Proposed for Discussion / Vote*****Issue 1 – Economic and Employment Enforcement Coalition**

**Governor's Budget Request.** The January budget removed budget provisional language requiring the LWDA to report on the progress of the Economic and Employment Enforcement Coalition (EEEC), a federal-state multi-agency partnership formed to combat the worst violators of federal and state labor, licensing, and tax laws operating in the underground economy. In addition to LWDA, the other state departments that comprise the EEEC include the DIR, EDD, and the Contractors State License Board (CSLB).

**Prior Budget Actions.** The initial EEEC budget request was approved as three-year limited term in the 2005 Budget Act; the 2008 Budget Act extended the EEEC for two additional years. The 2010 Budget Act permanently established the EEEC, with 66 positions and on-going funding of \$7.208 million (special fund and reimbursements). Those positions were allocated as follows: LWDA – one position; DIR – 29 positions; EDD – 25 positions; and CSLB – 11 positions. The 2011 Budget Act required LWDA to report by January 1, 2012, on the progress of the EEEC and transferred authority for the EEEC from the LWDA to the DIR, as part of a larger reorganization of LWDA.

**Background.** The goal of the EEEC is to target violators who operate in the underground economy and assist legitimate businesses that do comply with California law. Within the underground economy, employers utilize various illegal schemes to conceal their true tax liability, as well as reduce their operating costs associated with insurance, payroll taxes, licenses, employee benefits, safety equipment, and safety conditions.

The LWDA submitted the required January 1, 2012, EEEC progress report on February 28, 2012. The report states that the EEEC focused its efforts on traditionally low-wage industries, including agriculture, car wash, garment manufacturing, janitorial service, horse

racetracks, and restaurants. Further, since its inception in July 2005, EEEEC enforcement activities involved 7,296 business inspections, during which compliance checks identified 49,433 violations of labor, licensing, and tax laws, valued at \$62.8 million in penalty assessments. EEEEC activities also resulted in 3,446 cases being referred to District Attorney's Offices, with 1,696 criminal convictions. These violations represent employers who were using unlawful tactics to achieve an unfair competitive advantage over law abiding employers.

In January 2012, as reported in the *SF Chronicle*, the EEEEC was reconstituted and renamed the Labor Enforcement Taskforce. The Administration did not notify the Legislature or staff of these changes. The Administration indicates that the changes were made in this time of scarce resources so the effort would be directed closely by the two key programs that enforce labor law issues. The Administration reports that all partner agencies of the EEEEC are part of the reconstituted Taskforce, and that the Board of Equalization and Department of Insurance are new secondary partners. The Administration also reports that the Taskforce will be focusing more on labor law violations, specifically in low wage industries, with targeting of employers empirically based. Finally, the Taskforce intends to evaluate the effectiveness of its efforts.

**Staff Comment.** The EEEEC was a budget creation; there is no statutory citation that delineates program priorities or parameters. The Administration asserts that the functions of the reconstituted and renamed Labor Enforcement Taskforce are consistent with the initial 2005-06 budget request that established the EEEEC – the changes were made to more effectively communicate to employers and employee's the program's overall purpose; i.e., the name change is simply semantics. However, the prior name was reflective of the EEEEC's mission to combat the worst operators in the underground economy who violate federal and state laws beyond just labor laws – the mission specifically includes licensing and tax laws. As noted above, the January 2012 progress report was submitted late. This report also speaks to prior activities of the EEEEC; not the reconstituted Labor Enforcement Taskforce. Further, with the deletion of any requirement to report to the Legislature in future years, there is no formal venue to ensure the Taskforce's consistency with the original mission to combat the worst violators of federal and state labor, licensing, and tax laws operating in the underground economy.

Given these issues, the Subcommittee may wish to consider whether trailer bill language is warranted to formalize this effort against the underground economy, as well as reinstating a periodic reporting requirement either through trailer bill language or the budget bill.

**Staff Recommendation:** Hold open.

**Vote:**

<b>7100</b>	<b>EMPLOYMENT DEVELOPMENT DEPARTMENT</b>
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**Department and Budget Overview.** The Employment Development Department (EDD) administers services to employers, employees, and job seekers. The EDD pays benefits to eligible workers who become unemployed or disabled, collects payroll taxes, administers the Paid Family Leave Program, and assists job seekers by providing employment and training programs under the federal Workforce Investment Act of 1998. In addition, the EDD collects and provides comprehensive labor market information concerning California's workforce.

	2010-11 (actual)	2011-12 (estimated)	2011-13 (proposed)
Expenditures	\$26,975,292,000	\$20,437,306,000	\$14,331,715,000
General Fund	\$38,943,000	\$344,379,000	\$438,758,000
Personnel Years	11,237.1	10,097.1	10,073.1

<b><i>Issues Proposed for Discussion / Vote</i></b>
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<b>Issue 1 – Unemployment Insurance Loan Interest Payment</b>
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**Governor's Budget Request.** Similar to the approach taken in the 2011 Budget Act, the January budget requests a loan of \$417 million from the Unemployment Compensation Disability Fund (DI Fund) to the GF to pay the September 2012 interest payment due to the federal government for the quarterly loans the Employment Development Department (EDD) has been obtaining from the federal government since January 2009 to cover the Unemployment Insurance (UI) Fund deficit and make payments to unemployment insurance (UI) claimants without interruption. This portion of the request includes budget bill provisional language.

To fund future interest payments for funds borrowed from the federal government to pay UI benefits, and to repay the funds borrowed from the DI Fund in both 2011 and 2012, the January budget requests to increase, through trailer bill language that requires a 2/3rds vote (effective January 1, 2013), the employer surcharge payable to the Employment Training Fund by a total of \$472.6 million (\$39 per employee). The surcharge would be eliminated once the UI debt to the federal government is fully paid back and there is no longer a need to pay interest payments. Until that point is reached, the Administration indicates that this proposal would increase taxes on nearly every California employer by between \$40 and \$61 per employee per year, fluctuating each year to fully fund the interest costs due to the federal government.

In conjunction with the employer surcharge, and through trailer bill language, the January budget proposes to increase the minimum monetary eligibility to qualify for UI benefits to account for increases in employee wages that have occurred since the requirements were last adjusted in 1992. Under current law, to meet monetary eligibility requirements, a claimant must have earned: (1) at least \$900 in a single quarter and total base period earnings of \$1,125 or (2) at least \$1,300 in any one quarter in the base period. The budget increases the minimum eligibility to: (1) \$1,920 in the highest quarter and total base period earnings of \$2,400 or (2) at least \$3,200 in any one quarter in the base period. With these

changes, approximately 40,000 individuals would no longer be eligible for UI benefits, saving \$30 million per year.

**Background.** The UI program is a federal-state program, authorized in federal law but with broad discretion for states to set benefit and employer contribution levels. The UI program provides weekly payments to eligible workers who lose their jobs through no fault of their own. Benefits range from \$40 to \$450 per week, depending on earnings in a 12-month base period. The program is financed by unemployment tax contributions paid by employers, based on the number of employees, on the first \$7,000 of taxable wages paid to each employee. The contribution schedule is comprised of seven schedules, ranging from AA to F, with a range of 0.1 percent (the lowest rate on Schedule AA) to 6.2 percent (the maximum rate on Schedule F). Current law also includes a provision to add a 15 percent emergency solvency surcharge when the UI fund reserve is low (Schedule F+). California employers have been on this emergency F+ schedule since calendar year 2004.

The UI Trust Fund (UI fund) became insolvent in January 2009 and ended that year with a shortfall of \$6.2 billion. The contributing factors to the insolvency of the UI fund are: (1) significant statutory increases to the UI benefit level that began in 2002 – these legislative changes increased the maximum weekly benefit amount from \$230 per week to \$450 per week; (2) no change in the UI financing structure despite significant increases to UI benefits – for example, the taxable wage ceiling has remained at the federal minimum level of \$7,000 since 1983; (3) the inability of the fund to build a healthy reserve in the last decade – the EDD indicates that the existing UI financing system can be sustained in the long run only if the state unemployment rate averaged around four percent over time; and (4) the current economy which resulted in increased numbers of UI benefit payments and decreased revenues.

With the UI fund insolvent, the state began borrowing funds from the Federal Unemployment Account in order to continue paying UI benefits to qualifying claimants without interruption. The UI fund deficit was \$9.8 billion at the end of 2011 and is expected to increase to \$11.7 billion at the end of 2012. Generally, loans lasting more than one year require interest payments; the federal American Recovery and Reinvestment Act (ARRA) of 2009 provided temporary relief to states from making interest payments on UI loans through December 31, 2010. With the expiration of the ARRA provisions, interest of \$303.5 million was paid in September 2011 and the budget includes an interest payment due in September 2012 totaling \$417 million (estimated). Interest will continue to accrue and be payable annually until the principal on the federal UI loan is repaid. Federal law requires that the interest payment come from state funds.

The September 2011 interest payment of \$303.5 million was made by borrowing funds from the Unemployment Compensation Disability Fund (DI Fund). Under current law, those funds are to be repaid from the GF to the DI Fund by 2016.

Federal law also includes provisions to ensure that a state does not continue to incur loans over an extended period. Specifically, if a state has an outstanding loan balance on January 1 for two consecutive years, the full amount of the loan must be repaid before November of the second year or employers face higher federal UI taxes. Due to California carrying an outstanding loan balance for two consecutive years, the Federal Unemployment Tax (FUTA) credit will decrease from 5.4 percent to 5.1 percent on January 1, 2012. This will result in employers paying an additional \$21 per employee per year; the aggregate increase in employer costs in 2012 is \$300 million (estimated). These additional federal taxes pay down

the principal on the federal loan. The FUTA credits will continue to decrease by 0.3 percent each year until the federal loans are paid in full (and the UI fund is solvent). In 2013, the increased cost is \$50 per employee (estimated); the aggregate increase in employer costs in 2013 is \$606 million (estimated).

The DI program is a component of State Disability Insurance (SDI) and provides benefits to workers who are unable to work due to pregnancy or a non-work related illness or injury. The SDI program taxes covered employees up to a statutory ceiling, which is projected to increase to \$93,316 in 2011. The statutory formula for calculating the SDI contribution rate helps to maintain an adequate DI Fund balance. While contributions account for the majority of total receipts to the DI Fund, interest earnings and other receipts are also included in the DI Fund balance.

The \$417 million loan interest payment figure is an estimate based on two primary factors: (1) the interest rate the federal government charges the state and (2) the amount of federal funds the state has borrowed. The January budget estimated a federal interest rate of 4.09 percent. On February 13, 2012, the federal government released the 2012 interest rate; it was lowered to 2.943 percent, resulting in the estimated September 2012 payment dropping to \$330 million. The Administration indicates that it will provide an updated interest payment calculation during the May Revision.

**Staff Comment.** In developing its proposal, the Administration indicates that it took into consideration the current state of the economy and its recovery, and the potential cost impacts that an overall UI solvency proposal would present to employers (and the economy). By acting now to comprehensively address UI fund insolvency, the Legislature could stop the growth of the UI fund deficit and reduce associated state interest costs. On the other hand, such actions have the disadvantage of increasing employer costs and/or decreasing aid to unemployed workers during a difficult economic time for the state. However, continuing with a large outstanding federal loan will also increase costs to employers through reduced federal tax credits. The January budget does not include a proposal to address the underlying insolvency of the UI fund.

The Administration also points to the fact that there are 28 other states that face a similar situation with their UI Fund, indicative that this is a national issue which may be addressed on the federal level. In its July 2011 report entitled, *Managing California's Insolvency: The Impact of Federal Proposals on Unemployment Insurance*, the LAO noted that three federal proposals had been introduced to address the insolvency issue and determined that all three would improve the solvency of California's UI fund. More recently, as part of his 2013 budget proposal, President Obama proposed to: (1) provide employers in indebted states with tax relief for two years; (2) raise the minimum level of wages subject to unemployment taxes in 2015 to a level slightly less in real terms than it was in 1983 – for California this would increase the current wage base of \$7,000 to approximately \$15,000 – offset by lower tax rates to avoid a Federal tax increase; and (3) a number of other steps to address program integrity, such as preventing improper payments and reducing error rates.

At this juncture, it remains unclear whether any federal reforms will be enacted. This uncertainty complicates the Legislature's decision as to how it should address the insolvency of its UI fund. The LAO recommended that regardless of whether Congress acts to address the UI insolvency problems faced by California and other states, the Legislature should ensure implementation of a long-term solvency plan by 2014. If federal reforms are enacted, it is likely that no additional action by the Legislature will be necessary to ensure long-term

solvency. However, if no federal reforms are enacted, it will be critically important for the Legislature to adopt its own long-term solvency plan.

Similar to language contained in the 2011 Budget Act, this request is accompanied by budget bill provisional language to: (1) authorize the Department of Finance to increase/decrease the actual amount paid/borrowed from the DI fund based on a more precise calculation of the interest due; and (2) specify that the annual contribution rates for the DI fund shall not increase as the result of any loan made to the GF (i.e., in calculating the annual disability insurance tax rate each year, the EDD shall treat outstanding DI loans as available cash in the DI Fund). This latter provision is pivotal to preventing any potential increase in employee-paid DI taxes as a result of the loan from the DI Fund to the GF.

**LAO Recommendation.** Consistent with our previous reports, we continue to recommend that, in the absence of federal UI reforms, the Legislature adopt a comprehensive plan to ensure the long-term solvency of the UI fund. We suggest that such a plan be balanced, including both actions on the revenue side (increased employer taxes) and the cost side (decreased UI benefits). The Governor's proposals fall short of being a comprehensive plan to address the long-term solvency of the UI fund. However, we find that the Governor's proposals merit consideration if included in a comprehensive long-term solvency plan. If a future long-term solvency plan included increased employer taxes, dedicating a portion of these increased revenues to making interest payments on the state's federal loan, in a manner similar to that proposed by the Governor, would avoid significant GF costs in future years. Also, we concur with the Governor's assessment that monetary eligibility thresholds should be updated to reflect changes in wage levels.

We recognize that, in light of uncertainty regarding federal UI reforms and the recovery of California's labor market, the Legislature may wish to take a wait-and-see approach during 2012 and delay enactment of a long-term solvency plan until next year. Enactment of a long-term plan will likely necessitate significant legislative deliberation and compromise among the various stakeholders of the UI system. For this reason, if the Legislature elects to delay addressing UI fund insolvency, we think that it would be premature to enact the Governor's proposed employer surcharge and monetary eligibility changes. Under this scenario, we would recommend that the Legislature postpone considering the Governor's proposals until they can be considered as part of a long-term solvency plan. In the interim, continuing the current-year strategy of borrowing from the DI fund to cover the state's federal interest payment, creating short-term GF savings, is warranted by the state's fiscal condition.

**Staff Recommendation:** Approve the loan of \$417 million from the Unemployment Compensation Disability Fund to the GF to pay the September 2012 unemployment insurance loan interest payment due to the federal government, including the budget provisional language. Reject the other aspects of the request, including proposed trailer bill language, pertaining to (1) the Employment Training Fund surcharge and (2) income eligibility for unemployment insurance benefits.

**Vote:**

## Issue 2 – California Unemployment Insurance Appeals Board: Restructuring Second Level Appeals

**Governor’s Budget Request.** The January budget requests, effective January 1, 2013, the elimination of the California Unemployment Insurance Appeals Board (CUIAB) and proposes a restructured second level appeals process for half-year savings of \$600,000 (\$3,000 GF, \$552,000 federal funds, and \$45,000 other funds) in 2012-13 and full-year savings of \$1.2 million in 2013-14 and on-going. The request also includes proposed trailer bill language.

**Background.** The CUIAB was established in 1943 to provide due process for California claimants and employers who dispute unemployment and disability insurance benefit and payroll tax determinations made by the EDD. The structure at the CUIAB provides due process appeals for claimants, employers, and the EDD, and is presided over by a seven-member board. Five of these members are appointed by the Governor, with Senate confirmation, and the other two members are legislative appointees. Current law requires that two of the seven members be attorneys and that the Governor select the Chair. Current law also requires that each member of the board devote his/her full time to the performance of his/her duties. Members are compensated \$128,109 a year; the Chair is compensated \$132,179 per year.

California is one of 49 states and territories that provide workers and employers with two levels of appeals. The federal government does not require second level appeals; however, the federal government does reimburse states for the costs of second level appeals. The second level appeal process also takes pressure off the superior court system.

The first, or lower appeal, is an appeal to an Administrative Law Judge (ALJ) in CUIAB Field Operations. The second, or higher level, is an appeal of the decision made by the Field Operations ALJ. These appeals are submitted to CUIAB Appellate Operations where they are reviewed by ALJs and decided by Board Members. More specifically, when a claimant, employer, or EDD disagrees with the decision of the first-level ALJ, he or she may appeal to the Board. Each appeal is reviewed by a second level ALJ who then prepares a proposed written decision which is sent to two Board members. The Board members review the case and the second-level ALJ’s decision and decide the appeal case as a panel. If the two Board members cannot agree, then the Board Chair resolves the impasse.

In fiscal year 2011-12, CUIAB’s budget totaled \$102.5 million to administer the appeals program with approximately 92 percent from the federal government, 7.4 percent from state special funds, 0.5 percent from the GF, and 0.2 percent from other funds. The small amount of state GF is used to adjudicate appeals for state-only programs, such as personal income tax liability and collection cases, as federal law prohibits using federal funds for these purposes. Since the recession began in 2007, CUIAB has seen its workload increase to unprecedented levels for both first and second level appeals. The CUIAB remains designated “at risk” for 2012 by the federal Department of Labor (DOL) because the state has not achieved the acceptable level of performance for appeals promptness. In making this designation, DOL acknowledged that CUIAB has made performance improvements. For instance, as of December 2011, the CUIAB backlog of second level appeal cases totaled 3,792, with an average age of 39 days, statistics near the federal DOL standard. However, the CUIAB resolved only 17.2 percent of its cases within 45 days, well off the federal DOL standard of 50 percent of cases.

This request would eliminate the board, add a Bureau Director who would be a Governor's appointee subject to Senate confirmation, and would have four second level ALJ positions, which currently act as board authors, reclassified as "Presiding" ALJS (PAJLs) authorized to independently review and decide cases. To ensure impartiality, quality, and consistency, CUIAB would implement a quality control practice for decisions. The Board's other duties would be assigned to permanent civil service staff. These duties would include: establishing precedent decisions; promulgating regulation; approving the CUIAB budget; and overseeing the administration of the agency. Finally, the Board would be changed to a Bureau; in addition to the new Director, the following positions would be established: Chief of the Field Office; Chief of the Appellate Office; General Counsel over the Legal Office; Special Assistant to the Bureau Director; and Chief of the Project Team and Research Office.

**Staff Comment.** Staff acknowledges the obvious diligence and effort that was undertaken by the Administration in the past year developing this proposal to restructure CUIAB second level appeals; however, many unresolved questions remain. It is not clear how replacing a board where the majority of the members are subject to Senate confirmation, with a Bureau where only the director is subject to Senate confirmation, provides the same level of legislative oversight and checks and balances. This proposal also does nothing to improve the performance of the second level appeals process; rather, it would essentially maintain the status quo as to workflow and timeliness of second level appeals. Additionally, under the current process, all parties, i.e., employers, claimants, and the EDD, benefit from a third party arbitrator. It is not clear that the restructured process would provide the same level of benefit. The restructured Bureau would also not provide 100 percent review of the second level ALJ decisions, which potentially affects the quality and consistency of decisions over time. Under the current structure, 100 percent review is provided. The budgetary savings attached to this proposal are minimal, with insignificant savings to the GF. Further, the restructured Bureau could also increase caseload (and costs and delays) in the civil court system, a system which has seen extensive budget reductions in recent years. Given these and other issues, the Subcommittee may wish to hold this request open to allow further time for consideration and consultation with the policy committee, including the proposed trailer bill language.

**Staff Recommendation:** Hold open.

**Vote:**

**Issue 3 – California Unemployment Insurance Appeals Board Administrative Consolidation**

**Governor’s Budget Request.** The January budget requests an on-going adjustment to reflect cost savings from shifting the administrative functions of the California Unemployment Insurance Appeals Board (CUIAB) to the EDD, thereby reducing staffing by 18 positions and costs by \$2 million (\$9,000 GF and various special funds). This adjustment is separate and apart from Issue 2 above, which would restructure the CUIAB’s second level appeals process.

**Background.** The CUIAB was established in 1943 to provide due process for California claimants and employers who disagreed with benefit and tax determinations made by the EDD. Initially, the EDD provided administrative support to the CUIAB. During the 1990s, the CUIAB established its own administrative support functions, which involved replicating and staffing an administrative support system for facilities, procurement, budget, and personnel. The CUIAB administrative services branch is staffed with 49 positions and is comprised of four divisions: (1) Business Services; (2) Personnel Services; (3) Budget and Workload; and (4) Strategic Planning and Training.

During an economic recession, the demand for unemployment insurance (UI) services grows exponentially, including appeals activities. Based on the workload associated with UI services in the last several years, the federal Department of Labor increased the state’s federal grant funding. In the reverse, as the economy continues to improve, UI workload will decrease as will the federal grant funding. The Administration indicates that this request begins the process to “right-size” the CUIAB and EDD, creating further efficiencies, all of which must occur within the next two fiscal years.

The administrative shifts would occur within the CUIAB Business Services, Human Resources, and Budget and Workload Divisions, to the EDD’s Business Operations, Planning, and Support Division, Fiscal Programs Division, and Human Resources Division. The CUIAB Training Unit will remain with the CUIAB, but within the Field Operations unit.

**Staff Comment.** Current law mandates autonomy and independence for the CUIAB from EDD in establishing its budget and in personnel appointments for CUIAB, to ensure the operational independence of CUIAB and the impartial adjudication of unemployment insurance appeals. This administrative consolidation is consistent with current law, as the CUIAB will retain authority over these issues; EDD will simply handle the ministerial aspects of these functions for the CUIAB. Further, agreements are being completed between CUIAB and EDD to create appropriate levels of support from EDD to ensure that the authority the CUIAB has over budget and personnel is not interfered with.

**Staff Recommendation:** Approve the request.

**Vote:**

<b>7350</b>	<b>DEPARTMENT OF INDUSTRIAL RELATIONS</b>
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**Department and Budget Overview.** The objective of the Department of Industrial Relations (DIR) is to protect the workforce in California; improve working conditions; and advance opportunities for profitable employment. The DIR enforces workers' compensation insurance laws and adjudicates workers' compensation insurance claims; works to prevent industrial injuries and deaths; promulgates and enforces laws relating to wages, hours, and conditions of employment; promotes apprenticeship and other on-the-job training; assists in negotiations with parties in dispute when a work stoppage is threatened; and analyzes and disseminates statistics which measure the condition of labor in the state.

	2010-11 (actual)	2011-12 (estimated)	2012-13 (proposed)
Expenditures	\$359,739,000	\$412,395,000	\$425,114,000
General Fund	\$4,235,000	\$4,556,000	\$4,392,000
Personnel Years	2,449.9	2,701.8	2,717.3

<b><i>Issues Proposed for Discussion / Vote</i></b>
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<b>Issue 1 – Compliance Monitoring Unit Cash Flow</b>
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**Governor's Budget Request.** The January budget requests provisional language in the annual Budget Act to allow the State Public Works Enforcement Fund (SPWEF) to borrow from the Uninsured Employers Benefits Trust Fund (UEBTF), Labor Enforcement and Compliance Fund (LECF), and/or the Construction Industry Enforcement Fund (CIEF), for cash flow purposes.

**Background.** Chapter 7, Statutes of 2009-10 of the Second Extraordinary Session, established a dedicated program (Compliance Monitoring Unit) and funding source within DIR to enforce prevailing wage requirements on specific public works projects as a replacement for enforcement through Labor Compliance Programs. In addition, Chapter 7 established the SPWEF, and authorized the DIR Director to determine and assess a fee in an amount not to exceed one-quarter of one percent of the bond proceeds on bonds issued by the State to fund public works projects.

The nature of bond funding requires that the Compliance Monitoring Unit program expenses may only be charged in arrears, and may not exceed actual expenses incurred. Therefore, a cash flow loan will be needed on an annual on-going basis to allow the program to operate and fulfill its statutory mandate.

Chapter 378, Statutes of 2011, among others, authorized a loan not to exceed \$4.3 million from the UEBTF to the SPWEF to meet the start-up needs of the Compliance Monitoring Unit.

**Staff Comment.** Given that the program can only bill in arrears, and may not exceed actual expenses, if this borrowing structure is not authorized, the Compliance Monitoring Unit will not be able to operate and meet its statutory mandate. Given this, this request is essentially

an annual loan that will be paid back but then re-borrowed again and again. This request authorizes borrowing from three other funds, two of which receive revenue, at least in part, from an employer assessment that is variable. Therefore, there is a concern that permitting this borrowing from the Uninsured Employers Benefits Trust Fund-UEBTF and Labor Enforcement and Compliance Fund-LECF could result in a need to increase employer assessments; i.e., borrowing from the UEBTF or the LECF could reduce the amount available to fund the activities that would otherwise be funded by the fund necessitating an increased assessment. Therefore, the Subcommittee may wish to consider modifying the requested provisional language to specify intent that the annual assessments for the UEBTF and LECF shall not increase as the result of any loan made to the SPWEF.

**Staff Recommendation:** Approve the provisional budget language, as modified, to allow the State Public Works Enforcement Fund to borrow from the Uninsured Employers Benefits Trust Fund, Labor Enforcement and Compliance Fund, and/or the Construction Industry Enforcement Fund for cash flow purposes.

**Vote:**

<b>Issue 2 – Implementation of 2011 Legislation Supported by the Labor Enforcement and Compliance Fund: Prevailing Wage Violations (AB 551) and Willful Misclassification of Independent Contractor (SB 459)</b>
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**Governor’s Budget Requests.** The January budget requests increased expenditure authority from the Labor Enforcement and Compliance Fund (LECF) to comply with two recent statutory changes, as follows:

**1. Prevailing Wage Violations (Chapter 677, Statutes of 2011 – AB 551)**

**Summary.** The January budget requests \$765,000 and four positions in 2012-13, and \$639,000 on-going, to comply with the requirements of Chapter 677, Statutes of 2011 (AB 551), related to prevailing wage violations. Of the requested resources in 2012-13, \$100,000 is for one-time costs to redesign and/or upgrade the existing database system.

**Background.** In its consideration of Chapter 551, the Legislature was presented with the following question: “Should the penalties for failing to pay prevailing wages on public works projects and failing to provide payroll records in a timely manner be increased, as well as create a process for debarment for failing to follow the laws governing public works contracts, to encourage compliance with public works laws and the payment of the prevailing wage?”

In answering that question, Chapter 677 (1) increases the penalty assessed from \$20 to \$80 to contractors and subcontractors with previous violations and from \$30 to \$120 for willful violations; (2) requires the Labor Commissioner to maintain a Web site listing of contractors who are ineligible to bid on or be awarded a public works contract and at least annually notify awarding bodies of the availability of the list of disbarred contractors; and (3) states that the Labor Commissioner notify the contractor or subcontractor that, in addition to any other penalties, the contractor shall be subject to disbarment if certified payroll records are not produced within 30 days

after receipt of written notice. Failure to comply by that deadline would prohibit the contractor from bidding on or be awarded a contract for public work or performing work as a subcontractor on a public works project for three years.

## **2. Willful Misclassification of Independent Contractor (Chapter 706, Statutes of 2011 – SB 459)**

**Summary.** The January budget requests \$1.7 million and 13 positions in 2012-13, and \$1.65 million on-going, to comply with the requirements of Chapter 706, Statutes of 2011 (SB 459), related to willful misclassification of independent contractors.

**Background.** In its consideration of Chapter 706, the Legislature was presented with the following question: “Should California employers and the DIR be required to take specified actions to decrease the incidence of misclassification of workers as independent contractors and should the law governing classification of persons as independent contractors provide civil penalties for willful misclassification of an employee as an independent contractor?”

In answering that question, Chapter 706 prohibits the willful misclassification of an individual as an independent contractor rather than as an employee and provides that persons or employers violating the prohibition are subject to specified civil penalties as assessed by the Labor and Workforce Development Agency or a court.

**Staff Comment.** Staff notes no concern with the programmatic specifics of these requests, as they are consistent with the legislation that was approved by the Legislature last year. With regard to the budget resources, staff notes that the levels of requested resources are beyond that which was estimated last year by the Appropriations Committees in their analyses of the bills. DIR indicated to staff that it regrets the discrepancies between the information initially provided to the Appropriations Committees and the resources contained in these requests. Apparently communication breakdowns internal to DIR caused this to occur. DIR has assured both budget and fiscal staff that such discrepancies will not occur in the future.

In addition, staff notes that the requested resources are permanent, yet the workload estimates are less certain as these are new activities and there are unknowns as to the actual amount of workload that will materialize. Therefore, in considering these requests, the Subcommittee may wish to consider authorizing the resources on a two-year limited-term basis to allow the resource levels to be revisited in two years’ time when actual workload will be known.

Staff notes several concerns about the Labor Enforcement and Compliance Fund (LECF), which is the fund source supporting these requests. As part of the 2009 Budget Act, the GF costs of the Labor Standards Enforcement and the Occupational Safety and Health Programs (\$15.2 million and \$24.8 million, respectively) were shifted to fees – trailer bill language was adopted (Chapter 12, Statutes of 2009-10 Fourth Extraordinary Session) establishing the LECF and an assessment structure based on the size of the employer. The surcharge levied would not exceed \$37,000,000. The statutory authorization for the LECF sunsets on June 30, 2013. At present the Subcommittee does not have a proposal before it to reauthorize the LECF, yet these requests would utilize the LECF on a permanent basis. Further, given the current statutory cap on the overall level of funding in the LECF, it appears

that there are inadequate resources in the LECF to sustain both current activities and the new activities contained in these requests on an on-going basis.

The Administration indicates that it is currently considering a request from DIR to pursue LECF reauthorization. Staff expects receipt of this proposal as part of the spring budget process. Therefore, the Subcommittee may wish to defer action on these requests until such time as the Administration submits a comprehensive proposal to reauthorize the LECF. With that proposal in hand, the Subcommittee would be better positioned to consider these requests to implement legislation from 2011 supported by the LECF.

**LAO Recommendation.** In general, we find that the LECF is an appropriate funding source for implementation of Chapter 677 and Chapter 706, as proposed by the Governor. However, authorization for the LECF is scheduled to expire at the end of 2012-13. Given that there is currently no plan for reauthorization of the LECF, it is premature for the Legislature to consider establishing new permanent positions supported by this fund. Therefore, we recommend the Legislature consider the administration's forthcoming proposal on reauthorization of the LECF prior to considering the Governor's proposal to establish these positions.

We concur with the Administration's finding that implementation of Chapter 677 and Chapter 706 will result in increased workload for DLSE. Little empirical workload data currently exists to inform a precise calculation of this increased workload. Accordingly, the Administration has estimated the increased workload based on limited available data, institutional knowledge, and experience. In light of this, we recommend that should and when the Legislature approves the requested positions to implement Chapters 677 and 706, it approves them as two-year limited term to provide time for collection of better workload data.

**Staff Recommendation:** Hold open and defer action on these requests pending receipt of additional information from the Administration.

**Vote:**

### **Issue 3 – Employee/Employer Education and Outreach**

**Governor's Budget Request.** The January budget requests three-year limited-term increased expenditure authority of \$2.3 million in 2012-13, and \$1.6 million in 2013-14 and 2014-15, from the Labor and Workforce Development Fund (LWDF) and four redirected positions, to increase the overall efficacy of statewide enforcement of labor laws.

**Background.** The mission of the DIR is to protect the California workforce, improve working conditions, and enhance opportunities for profitable employment. These responsibilities are carried out through three major programs: the adjudication of workers' compensation disputes; the prevention of industrial injuries and deaths; and the enforcement of laws relating to wages, hours, and working conditions. With regard to the latter, the Labor Code vests authority with DIR to enforce minimum labor standards to protect employees and to protect employers who comply with the law from those employers who attempt to gain an advantage by failing to comply with minimum labor standards. These activities comprise the day-to-day work of DIR and have also periodically been the focus of targeted campaigns funded in an additive fashion to DIR's budget, such as: (1) the 2009 Budget Act proposal to

provide \$1.5 million to conduct a targeted outreach campaign to reduce the incidence of heat-related illness in the workplace and (2) the 2005 Budget Act proposal to establish the Economic and Employment Enforcement Coalition (EEEC), a partnership of state and federal agencies charged with targeted enforcement against unscrupulous businesses participating in the "underground economy."

This request builds on these efforts on a limited-term basis utilizing funding available and accrued from Chapter 906, Statutes of 2003. Chapter 906 allows employees to sue their employers for civil penalties for employment law violations. Any penalties recovered under this chapter are required to be distributed 75 percent to the Labor and Workforce Development Agency (LWDA) for enforcement of labor laws and education of employers and employees about their rights and responsibilities, and 25 percent to the aggrieved employee. The funds directed to LWDA are deposited in the Labor and Workforce Development Fund. Currently, DIR does not receive an appropriation from this fund. Since its inception, the fund has been underutilized with revenue outpacing annual expenses.

The resources in this request would be split between two divisions at DIR: (1) Division of Labor Standards Enforcement and (2) Division of Occupational Safety and Health, as illustrated in Figure 2 below.

**Figure 2 – Expenditure Plan for Employee/Employer Outreach**

<b>Division of Labor Standards Enforcement (DLSE)</b>			
<b>#</b>	<b>DESCRIPTION</b>	<b>2012-13</b>	<b>2013-2015</b>
1	Translation & duplication of wage claim video and written resources for waiting rooms.	\$432,000	
2	Development of language cards for investigators.	\$3,000	
3	Educational outreach partnerships with industry groups and other public agencies.	\$374,000	\$374,000
4	Educational outreach via ethnic media outlets.	\$135,000	\$100,000
5	Educational outreach via out-of-home (outdoor) advertising.	\$135,000	\$100,000
6	Employer training regarding labor costing and litigation pursuant to LC Section 2810.	\$371,000	\$221,000
<b>DLSE Grand Total</b>		<b>\$1,450,000</b>	<b>\$795,000</b>
<b>Division of Occupational Safety and Health (DOSH)</b>			
<b>#</b>	<b>DESCRIPTION</b>	<b>2012-13</b>	<b>2013-2015</b>
1	Media buys for heat outreach to agricultural workers and employers.	\$200,000	\$200,000
2	Integrated training programs on significant hazards for internal staff, joint external training.	\$450,000	\$450,000
3	Multilingual outreach materials.	\$100,000	\$100,000
4	Training of trainers for worker organizations to better utilize and communicate with DOSH.	\$100,000	\$100,000
<b>DOSH Grand Total</b>		<b>\$850,000</b>	<b>\$850,000</b>
<b>Department of Industrial Relations Grand Total</b>		<b>\$2,300,000</b>	<b>\$1,645,000</b>

**Staff Comment.** The Administration has affirmed that the resources in this request will not overlap or otherwise duplicate the efforts of the EEEEC; for instance, there will be close coordination to ensure strategic coverage across the state and reach the broadest audience. The media components of this new outreach also build on prior lessons learned, primarily from the 2009 Budget Act appropriation pertaining to heat-related illnesses. The lesson learned from that campaign was that billboard and radio ads were the most effective

communication tool; therefore, DIR indicates that this new outreach effort will not utilize television media.

With regard to outcomes, since this is a limited-term outreach effort, the Administration indicates that it will undertake a statistical analysis of the number of: citations issued; self-audits to reimburse employees for minimum wages and overtime; number of complaints alleging labor law violations; violations found during inspections; wages recovered for workers; number of attendees at outreach events and whether compliance increases following such outreach; and, litigation brought to protect workers and hold violators responsible. Given that this outcome analysis is already planned, in considering approval of this request, the Subcommittee may wish to require a written report of the outcomes and achievements of the outreach effort when it concludes in fiscal year 2014-15.

With regard to the proposed fund source, as noted in Issue 2 above pertaining to the implementation of 2011 legislation supported by the Labor Enforcement and Compliance Fund, the Subcommittee may wish to delay action on this request until such time that an on-going fund source has been identified to implement those identified legislative priorities.

**LAO Recommendation.** The Governor's proposed education and outreach activities are consistent with DIR's mission to protect California's workforce, improve working conditions, and enhance opportunities for profitable employment. Additionally, these activities are an appropriate use of LWDF funding. However, uncertainty regarding the availability of future funding from the LECF may necessitating prioritization of limited funding available to DIR, including LWDF funds, to meet its current obligations, which include implementation of recent legislation. Therefore, we recommend the Legislature postpone consideration of the Governor's proposal to fund \$2.3 million in expanded education and outreach activities from the LWDF until it has considered the administration's proposal to reauthorize the LECF.

**Staff Recommendation:** Hold open.

**Vote:**

#### **Issue 4 – Minors' Temporary Entertainment Work Permit Program (AB 1401; 2011)**

**Governor's Budget Request.** The January budget requests increased expenditure authority of \$583,000 (Entertainment Work Permit Fund-EWPF) and four positions in 2012-13, and \$307,000 on-going, to comply with the requirements of Chapter 557, Statutes of 2011 (AB 1401), related to minors' temporary entertainment work permit program. Of the resources requested in 2012-13, \$250,000 is one-time to create an on-line application and payment system.

**Background.** Current law (prior to enactment of Chapter 557) provides that minors aged 15 days to 18 years employed in the entertainment industry, must have written consent from the Labor Commissioner (known as an entertainment work permit) to perform work. These permits are issued for a period not to exceed six months. Eleven DIR staff working in district offices throughout the state issue the entertainment work permits. Permit applications are received over-the-counter and are also accepted via mail at all district offices. The current goal for turnaround on issuance of the permit from receipt is three working days. In 2010,

DIR issued 60,361 entertainment work permits. The total cost of administering the current program is approximately \$767,000 per year, for which DIR receives no specific revenue. The primary funding for existing workload is through the Labor Enforcement and Compliance Fund (LECF).

Effective January 1, 2012, Chapter 557 established an online permit approval process for the issuance of temporary work permits for minors working in the entertainment industry. Chapter 557 created the Entertainment Work Permit Fund into which permit fees received for a temporary entertainment work permit will be deposited and provides that these funds shall pay the costs to administer the temporary work permit program. Chapter 557 also authorized, on a one-time basis, borrowing and repayment of up to \$250,000 from the LECF to the EWPF to pay for startup costs incurred in the creation of the program. The authorized fee level is sufficient to cover program costs up to \$50 per application. The DIR reports that its conservative estimate determined that at least one-third of the 60,631 permits issued would start the process as a temporary permit using the new online application process. The resulting workload related to these 20,210 permits results in the four positions reflected in this request.

**Staff Comment.** Staff notes no concern with the programmatic specifics of this request, as it is consistent with the legislation that was approved by the Legislature last year. With regard to the budgetary resources requested, staff notes that the level of resources requested is beyond that which was estimated last year by the Appropriations Committees in their analysis of the bill. DIR indicated to staff that it regrets the discrepancies between the information initially provided to the Appropriations Committees and the resources contained in this request. Apparently communication breakdowns internal to DIR caused this to occur. DIR has assured both budget and fiscal staff that such discrepancies will not occur in the future.

Further, staff notes that while the implementation of the bill represents increased workload for DIR, it is not yet clear that the DIR estimate will prove correct yet the requested resources are permanent. In considering this request, the Subcommittee may wish to consider authorizing the resources on a two-year limited-term basis to allow the resource level to be revisited in two years' time when actual workload is known.

**Staff Recommendation:** Approve the request on a two-year limited-term basis.

**Vote:**

### Issue 5 – Eliminate the Occupational Safety and Health Standards Board

**Governor's Budget Request.** The January budget requests to eliminate the Occupational Safety and Health Standards Board (OSH Board) and transfer responsibility to the Division of Occupational Safety and Health within the Department of Industrial Relations for half year savings of \$324,000 (other funds) and two positions and on-going savings of \$649,000 (other funds) and four positions beginning in 2013-14. This request includes proposed budget trailer bill language.

**Background.** The OSH Board, a seven-member body appointed by the Governor, is comprised of individuals from the areas of field labor, field management, field occupational

health, field occupational safety, and the general public. The OSH Board is the standards-setting agency within the Cal/OSHA program. The OSH Board's objective is to adopt reasonable and enforceable standards at least as effective as federal standards. The OSH Board also has the responsibility to grant or deny applications for variances from adopted standards and respond to petitions for new or revised standards. The part-time, independent board holds monthly meetings throughout California. The members are not salaried, but receive \$100/day per diem. The OSH Board has 15.9 staff and an operating budget of \$2.4 million (mix of federal and special funds).

The Administration indicates that this proposal is part of its continuing effort to reduce the size of state government and create efficiencies. By eliminating the OSH Board, the Administration intends to model the state's approach to developing occupational safety and health standards after the federal approach for standards development, including stakeholder advisory panels. While the proposal technically eliminates the OSH Board, the proposed trailer bill language retains the Board's function in an Advisory Committee. The Administration asserts that modifying the OSH Board in this manner allows for a more streamlined operation, with reduced staffing levels, and no longer requires payment of stipends to board members, thereby achieving the savings figure identified above.

**Staff Comment.** This proposal is not new. Rather, it was proposed last year as part of a larger May Revision plan to make government more efficient by eliminating various boards and commissions. The final legislative action last year was to reject the elimination of the OSH Board.

Similar to last year, concerns have again been raised about the proposal, including: (1) The OSH Board's balanced representation requires regulations to be reached by consensus, yet the Administration's restructured proposal is silent how this process could be preserved using the proposed "advisory" board structure; and (2) The OSH Board is funded by an employer assessment and federal funds; the employer community has indicated their desire to continue paying for the OSH Board, as the Board's function and consensus process is of significant value. To staff's knowledge, the Administration has not developed a response to these concerns. More critically, staff is also unaware of any publicly presented concerns with the OSH Board's rulemaking process.

**Staff Recommendation:** Reject the elimination of the Occupational Safety and Health Standards Board and related trailer bill language.

**Vote:**

## **SUBCOMMITTEE NO. 5**

## **Agenda**

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



Thursday, March 8, 2011  
10:30 a.m. or upon adjournment of session  
Room 113

Consultant: Kris Kuzmich

### **OUTCOMES**

#### **DEPARTMENTS TO BE HEARD**

*(Please See Detailed Agenda on Page 2 for Specific  
List of Departments and Issues to Be Heard)*

0559	Secretary for Labor and Workforce Development
1900	Public Employees' Retirement System
1920	State Teachers' Retirement System
7100	Employment Development Department
7350	Department of Industrial Relations
8380	Department of Human Resources
8885	Commission on State Mandates – Filipino Employee Surveys
CS 4.21	Health Care Premium Savings

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Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-324-9335. Requests should be made one week in advance whenever possible.

**AGENDA – PROPOSED VOTE ONLY ITEMS**

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	<i>Issue 1 – Mandated Reports: Expenditures for External Investment Advisors and Board of Administration Budgetary Expenditures.....</i>	<b>4</b>
<b>1920</b>	<b>State Teachers’ Retirement System.....</b>	<b>5</b>
	<i>Issue 2 – Mandated Report: Expenditures for External Investment Advisors .....</i>	<b>5</b>
<b>7100</b>	<b>Employment Development Department.....</b>	<b>6</b>
	<i>Issue 3 – Expand the Financial Institution Records Match Program to the Employment Development Department .....</i>	<b>6</b>
	<i>Issue 4 – Automated Collection Enhancement System .....</i>	<b>6</b>
<b>7350</b>	<b>Department of Industrial Relations .....</b>	<b>8</b>
	<i>Issue 5 – Consolidated Public Works Enforcement .....</i>	<b>8</b>
<b>8885</b>	<b>Commission on State Mandates.....</b>	<b>10</b>
	<i>Issue 6 – Filipino Employee Surveys .....</i>	<b>10</b>

**Vote-Only Issues 1 through 6 approved by vote of 2-0, with Senator Wolk absent.**

**AGENDA – DISCUSSION / VOTE ITEMS**

<u>Item</u>	<u>Department</u>	<u>Page</u>
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<b>CS 4.21</b>	<b>Health Care Premium Savings .....</b>	<b>11</b>
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<b>8380</b>	<b>Department of Human Resources .....</b>	<b>14</b>
	Issue 1 – Governor’s Reorganization Plan Number 1 of 2011 .....	14
<b>0559</b>	<b>Labor and Workforce Development Agency .....</b>	<b>16</b>
	Issue 1 – EEEEC Report .....	16
<b>7100</b>	<b>Employment Development Department.....</b>	<b>18</b>
	Issue 1 – Unemployment Insurance Loan Interest Payment.....	18
	Issue 2 – California Unemployment Insurance Appeals Board Restructuring Second Level Appeals .....	22
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	Issue 2 – Implementation of 2011 Legislation Supported by the Labor Enforcement and Compliance Fund: Prevailing Wage Violations (AB 551) and Willful Misclassification of Independent Contractor (SB 459) .....	26
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***Items Proposed for Vote Only – Issue Descriptions*****PUBLIC EMPLOYEES' RETIREMENT SYSTEM (1900)****Issue 1 – Mandated Reports: Expenditures for External Investment Advisors and Board of Administration Budgetary Expenditures**

**Background.** Provisional language in the annual Budget Act requires the California Public Employees' Retirement System (CalPERS) to: (1) annually report on the estimated and final expenditures for external investment advisors and (2) to report on an estimated, quarterly, and final basis the Board of Administration's budgetary expenditures.

With regard to the budgetary expenditures report, CalPERS is requesting to modify the requirement and maintain only the final Expenditure Report. With regard to the external investment advisors report, CalPERS indicates that these reports are duplicative of information that is provided in its Comprehensive Annual Financial Report.

**Staff Comment.** Staff agrees that the Budget Act reporting requirements are either redundant or duplicative of information presented through other formal and annual reporting structures. Deleting these reporting requirements would also be consistent with the Governor's Executive Order B-14-11, which directed all state departments to identify legislatively-mandated reports that may no longer be of significant value to the Legislature, as part of the Administration's overall effort to identify and eliminate administrative inefficiencies and reduce costs.

**Staff Recommendation:** Approve the elimination of the budget provisional language requiring CalPERS to: (1) annually report on the estimated and final expenditures for external investment advisors and (2) to report on an estimated and quarterly basis the Board of Administration's budgetary expenditures.

***Items Proposed for Vote Only – Issue Descriptions*****STATE TEACHERS' RETIREMENT SYSTEM (1920)****Issue 2 – Mandated Report: Expenditures for External Investment Advisors**

**Background.** Provisional language in the annual Budget Act requires the California State Teachers' Retirement System (CalSTRS) to annually report on the estimated and final expenditures for external investment advisors. CalSTRS indicates that this report is duplicative of information that is provided in other investment reports; further, actual expenditures for external managers are included in the Financial Section of the CalSTRS' Comprehensive Annual Financial Report.

**Staff Comment.** Staff agrees that the Budget Act reporting requirement is duplicative of information presented through other formal and annual reporting structures. Deleting this reporting requirement would also be consistent with the Governor's Executive Order B-14-11, which directed all state departments to identify legislatively-mandated reports that may no longer be of significant value to the Legislature, as part of the Administration's overall effort to identify and eliminate administrative inefficiencies and reduce costs.

**Staff Recommendation:** Approve the elimination of the budget provisional language requiring CalSTRS to annually report on estimated and final expenditures for external investment advisors.

***Items Proposed for Vote Only – Issue Descriptions Continued*****EMPLOYMENT DEVELOPMENT DEPARTMENT (7100)****Issue 3 – Expand the Financial Institution Records Match Program to the Employment Development Department**

**Governor’s Budget Request.** The January budget requests to expand the Financial Institution Records Match (FIRM), an enforcement tool used to collect delinquent taxes and non-tax debts of individuals and business entities, to the Employment Development Department, effective January 2013. Under this proposal, EDD would provide reimbursements to the Franchise Tax Board (FTB) of approximately \$296,000 in 2012-13, \$236,000 in 2013-14, and \$150,000 on-going. The costs in the first two years are slightly higher due to one-time costs related to initial set-up, including licenses, hardware, and software, and to implement the FIRM process into the EDD’s Automated Collection Enhancement System (discussed as Proposed Vote Only Issue 3 immediately below). This request includes proposed trailer bill language.

**Prior Budget Action.** Chapter 14, Statutes of 2011 (SB 86), authorized the Franchise Tax Board to operate and administer a FIRM that utilizes automated data exchanges to identify accounts of delinquent tax debtors held at financial institutions doing business in California. The FTB estimated that the use of FIRM would generate \$43 million in additional GF revenues in 2011-12.

**Background.** A FIRM tool requires financial institutions doing business in California to match FTB records information on delinquent tax and non-tax debtors against their customer records on a quarterly basis. In addition to expanding the FIRM to EDD in 2012-13, the Administration also proposes to include the Board of Equalization (this aspect of the proposal will be discussed in Subcommittee No. 4). EDD estimates that 250,000 debtor records would be submitted on a quarterly basis using the FIRM tool; included in this batch of debtor records are other debts and/or penalty assessments referred to the EDD for collection, such as Department of Industrial Relations’ debts. EDD estimates increased revenues of \$6 to \$12 million will be collected annually; roughly \$3.1 to \$6.2 million of this amount is new GF revenues.

**Staff Recommendation:** Approve the request and related trailer bill language.

**Issue 4 – Automated Collection Enhancement System**

**Governor’s Budget Request.** The January budget requests a one-time augmentation of \$8.8 million (various special funds) and 41 positions for year seven of the Automated Collection Enhancement System (ACES) project, an information technology project intended to improve EDD’s ability to track, collect, and audit the payment of employer payroll taxes, including unemployment insurance and personal income taxes. Additionally, beginning in 2013-14 and on-going, \$5.7 million (various special funds) and 22 positions are requested for on-going support of ACES. This request also includes proposed trailer bill language.

**Prior Budget Actions.** The ACES project began with the approval of the 2006 Budget Act. Since that time, the Legislature has annually provided funding for the development and implementation of the ACES project. Most recently, and in the 2011 Budget Act, \$21.9 million (\$19.5 million GF and various special funds) and 49.3 positions were provided to fund year six of the ACES project. The 2011 Budget Act also reduced EDD by 18 baseline positions that supported the Tax Accounting System (TAS) that are longer needed post implementation of ACES.

**Background.** EDD's Tax Branch is a major revenue collection organization for the state, receiving and processing approximately \$50 billion annually from over 1.2 million registered California employers. The ACES project is modeled after the systems currently used by the Franchise Tax Board and Board of Equalization; it will increase the effectiveness of EDD's tax collection operations. ACES will also collect penalties and back-wages that are due to the Department of Industrial Relations (DIR), which were previously collected by the Franchise Tax Board. ACES "went live" and began final implementation on January 18, 2011.

The ACES project is a benefits-based procurement, whereby the additional revenue generated by the project offsets all project costs thereby minimizing risk for the state. The ACES solution is expected to increase GF revenue by \$28.8 million (all funds total of \$105.5 million) in 2012-13 by improving collection capabilities for delinquent accounts. The proposed trailer bill language is clean-up in nature, as it removes from statute the Franchise Tax Board's authority to collect delinquent accounts for the DIR. This statutory authority is no longer needed; as of January 31, 2012, ACES is collecting all delinquent accounts for DIR.

With regard to the on-going resources requested to support ACES, the Administration indicates that continued development, implementation, and support of interfaces will be pursued. These activities have been identified and prioritized by their ability to generate revenue, simplify existing work processes, and create efficiency through automation. In addition, there may be future requests to further expand ACES, such as to initiate electronic filing of liens with the Secretary of State and interagency offsets, such as interfaces between EDD, DIR, and the Board of Equalization.

**Staff Recommendation:** Approve the budget request and related trailer bill language.

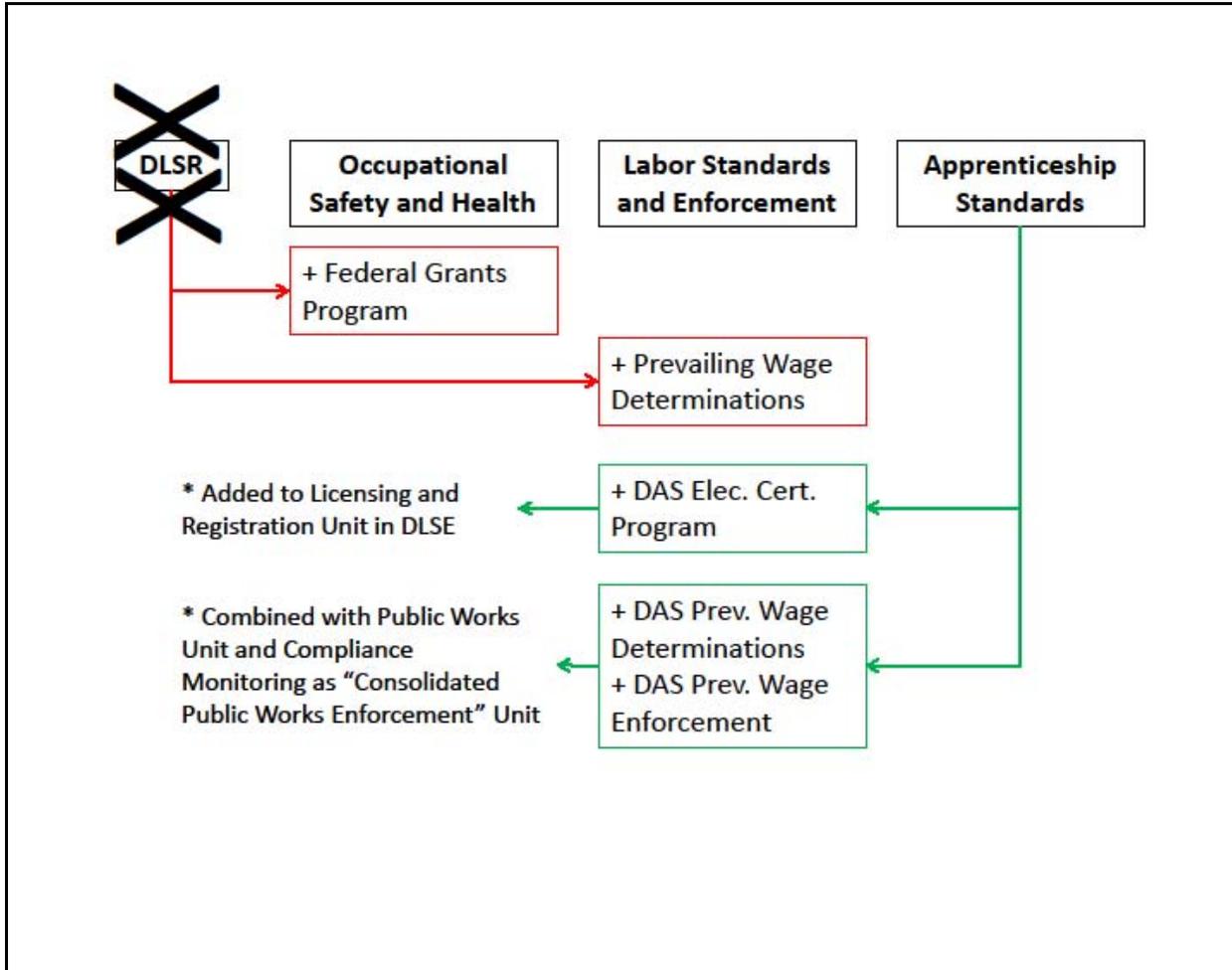
***Items Proposed for Vote Only – Issue Descriptions Continued*****DEPARTMENT OF INDUSTRIAL RELATIONS (7350)****Issue 5 – Consolidated Public Works Enforcement**

**Governor’s Budget Request.** The January budget requests to eliminate the Division of Labor Statistics and Research (DLSR), transferring all responsibilities and workload to the Division of Occupational Health and Safety (DOSH) and the Division of Labor Standards Enforcement (DLSE) and otherwise reorganize the DIR as detailed further below. This consolidation will result in the reduction of one position and on-going savings of \$231,000 GF. This request also includes proposed trailer bill language.

**Background.** The DIR is comprised of five programmatic divisions: (1) Labor Standards Enforcement-DLSE; (2) Occupational Safety and Health-DOSH; (3) Workers’ Compensation Administration-DWCA; (4) Labor Statistics and Research-DLSR; and (5) Division of Apprenticeship Standards-DAS. DIR also has two units, State Mediation and Conciliation and Self Insurance Plans, and an Administration Division.

This request eliminates the DLSR and reassigns its principal responsibilities to the DLSE (determination of prevailing wage rates) and DOSH (job safety records, reports, and statistics). In addition, this proposal also creates an integrated Public Works unit within DLSE and consolidates within that unit: (1) existing public works investigation and enforcement at DLSE; (2) the Compliance Monitoring Unit, pursuant to Chapter 7, Statutes of 2009-10 Second Extraordinary Session, discussed as Proposed Discussion/Vote Issue 1 in the Department of Industrial Relations section of this agenda; (3) public works apprenticeship enforcement responsibilities currently performed by DAS; and (4) prevailing wage rate determinations currently performed by DLSR. Finally, this request transfers the administration and authority of the Electricians Certification Program and Fund from DAS to DLSE. Figure 1 on the next page illustrates this reorganization of DIR.

**Figure 1 – DIR Reorganization to Eliminate the Division of Labor Statistics and Research and Establish Consolidated Public Works Enforcement with the Division of Labor Standards Enforcement**



**Staff Comment.** This request will improve efficiency and effectiveness within DIR while reducing costs by: (1) eliminating DLSR as a separate division with two largely unrelated functions; (2) consolidating all public works enforcement responsibilities in an integrated unit; and (3) shifting the administration of the Electrician Certification Program to the enforcement division of DIR.

**Staff Recommendation:** Approve the request and corresponding trailer bill language to eliminate the Division of Labor Statistics and Research and establish consolidated public works enforcement within the Division of Labor Standards Enforcement.

<b><i>Items Proposed for Vote Only – Issue Descriptions Continued</i></b>
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<b>COMMISSION ON STATE MANDATES (8885)</b>
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**Issue 6 – Filipino Employee Surveys**

**Governor’s Request.** The January budget requests the repeal of 32 of 56 currently suspended mandates that have been suspended for the past two years or more, including the local government mandate related to Filipino Employee Surveys. This request includes proposed trailer bill language.

**Background.** Budget funding for non-education mandate payments to local governments is included in the budget of the Commission on State Mandates (Commission). The Commission is responsible for determining whether a new statute, executive order, or regulation contains a reimbursable state mandate on local governments and determining the appropriate reimbursement to local governments from a mandate claim. The Constitution, as amended by Proposition 1A of 2004, requires that the Legislature either fund or suspend local mandates. In most cases, if the Legislature fails to fund a mandate, or if the Governor vetoes funding, the legal requirements are considered suspended pursuant to the Constitution. Suspending a mandate does not relieve the state of the obligation of reimbursing valid claims from prior-years, but it does allow the state to defer payment. The State owes local governments an estimated \$1.6 billion in non-education mandate payments.

The Filipino Employee Surveys mandate has been suspended since 1990. It requires local agencies to categorize Filipino employees as a separate ethnic calculation in employee ethnicity survey and tabulations. The Administration asserts that this mandate should be repealed because other laws require similar information. Further, in the Administration’s tabulation of the constitutionally-required 2012-13 GF expenditure if the mandates are neither suspended nor repealed, no funding is scheduled for the Filipino Employee Surveys.

**Staff Comment.** The Governor’s mandate proposal is a continuation of the status quo in terms of mandates in effect and mandates not in effect. The substantive difference in this year’s proposal is the Governor’s request to amend statute to repeal 32 of the 56 mandates currently suspended. The difference between suspension and repeal does not affect budget savings because in either case the activity becomes optional for local governments and the state does not have to reimburse costs. The argument for repeal is that if the mandate will continue to be suspended in the foreseeable future, the statutory provisions should reflect that the activity is no longer required. Given that the Filipino Employee Survey mandate has been suspended since 1990, and other laws require similar information, staff recommends this mandate be repealed.

**Staff Recommendation:** Approve the request to repeal the Filipino Employee Survey mandate, including trailer bill language.

<b><i>Vote-Only Issues 1 through 6 approved by vote of 2-0, with Senator Wolk absent.</i></b>
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<b>1900 CS 4.21</b>	<b>PUBLIC EMPLOYEES' RETIREMENT SYSTEM HEALTH CARE PREMIUM SAVINGS</b>
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**Background.** The Legislature determines policies concerning state employee, both active and retired, health benefit programs. Through the Public Employees' Medical and Hospital Care Act (PEMHCA), the Legislature vests responsibility for managing health care programs for state workers, state retirees, and employees or retirees of participating local agencies with the California Public Employees' Retirement System (CalPERS). The state's contribution to employee health care is based on a negotiated percentage of the average cost of four health plans with the most enrolled state employees. Any health premium increases in a calendar year are negotiated by CalPERS with health plan providers; the CalPERS board typically adopts the next year's health premiums in June. The cost of state employer health and dental care benefits for active employees and retirees, and their dependents, is estimated to total \$2.9 billion GF (\$1.4 billion other funds) in 2012-13.

<b><i>Issue Proposed for Discussion / Vote</i></b>
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<b>Issue 1 – Health Care Premium Savings</b>
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**Governor's Budget Request.** Via Budget Control Section 4.21 (CS 4.21), the January budget requires CalPERS to achieve savings of \$45.4 million GF and \$22.5 million other funds in the 2012-13 Health Benefits Program, and an equivalent amount of on-going savings. CalPERS is required to report before October 10, 2012, the savings achieved as well as their source.

**Prior Budget Action.** The 2011 Budget Act established CS 4.21 and required CalPERS to achieve one-time savings of \$80 million GF and \$35.7 million other funds in the 2011-12 Health Benefits Program, and an equivalent amount of on-going savings beginning in 2012-13. The 2011 Budget Act also included trailer bill language requiring CalPERS to negotiate with health plans to offer a core health care plan option to the existing portfolio of health plans and/or implement other measures to achieve the on-going savings. Finally, CalPERS was also required to notify the Joint Legislative Budget Committee and DOF before October 10, 2011, that the savings had been achieved as well as their source.

**Background.** CalPERS reported that it achieved savings of \$46.7 million GF and \$23.2 million other funds. These savings result from a number of one-time and on-going strategies adopted by the CalPERS Board, such as Value Based Purchasing and High Performance Provider Networks, to reduce premium costs.

CalPERS also reported that it achieved additional savings through the adoption of cost avoidance measures not accounted for in the above totals. More specifically, these additional savings totaled \$15.9 million GF and \$4.0 million other funds, and were a result of such activities as Pharmacy Benefit Changes, Integrated Healthcare Model, and Service Area Expansion.

With regard to 2012-13, the estimated funding of \$2.9 billion GF (\$1.4 billion other funds) represents a year-to-year increase of \$246 million GF (\$87 million other funds) over the 2011-12 expenditure level. This reflects an estimated 8.5 percent increase in health

premium rates, which is the Department of Finance's projection based on the retiree health valuation report. Therefore, the savings targets identified in CS 4.21 for 2012-13 are the amount of savings not achieved in 2011-12, adjusted by the expected growth in premium costs.

**Staff Comment.** All parties are concerned about the increases in health care costs, as they present a budgetary challenge not only for the state but also for local governments and private employers. As evidenced by the report CalPERS submitted per the requirements of CS 4.21 in the current fiscal year, CalPERS has made progress not only in 2011-12 but also in prior years in pursuing numerous strategies to achieve savings in the Health Benefits Program. However, even with these extensive efforts, the overall program costs continue to grow, presenting continuing challenges to CalPERS in its administration of PEMHCA health care programs and for the State in managing its overall budget.

From a more basic accounting and operational perspective, the budget structure that has been adopted, i.e., to use a control section mechanism, may not be ideal. The Health Benefits Program operates on a calendar year, with the premium rates adopted each June for the following calendar year, while the State Budget is based on a fiscal year approach. Further, the budgetary accounting does not afford the opportunity to "score" cost avoidance savings, yet these savings are legitimate. It is also worth noting that savings that are one-time in nature, while legitimate and with the potential for the identification of new ones each year, do not reduce baseline expenditure levels or result in on-going savings.

Finally, staff notes that the Administration has indicated that it is continuing to work with CalPERS and expects to submit additional proposals related to the health benefits program as part of the Spring budget process.

**LAO Recommendation.** Any savings resulting from this control section likely would have to be achieved through CalPERS premium negotiations. In April, CalPERS will begin the formal negotiation process for calendar year 2013 premiums. The CalPERS board is expected to approve the premium rates in June 2012. We think it is premature to assume any savings resulting from the 2013 premiums. Therefore, we recommend that the Legislature hold this item open until after the May Revision.

**Subcommittee Questions.** Based on the above comments, the Subcommittee may wish to ask CalPERS the following questions:

1. The report that CalPERS submitted, identifying the source of the 2011-12 savings, listed a number of broad descriptive titles. Please provide more detailed examples of activities within these titles, such as High Performance Provider Networks, which resulted in savings of \$10.6 million, and Value Based Purchasing, which resulted in savings of \$19.2 million.
2. For the cost avoidance savings CalPERS has reported, please provide more specific examples of savings achieved by adopting Pharmacy Benefit Changes, Integrated Healthcare Model, and Service Area Expansion.
3. With regard to one-time versus on-going savings, does CalPERS focus on one more so than the other? Should the primary focus be on on-going savings, as these savings reduce baseline expenditures?
4. As noted above, the 2011 Budget Act included trailer bill language requiring CalPERS to negotiate with health plans to offer a core health care plan option to the existing portfolio of health plans and/or implement other measures to achieve on-going

savings. Is CalPERS negotiating a lower cost health care plan? If not, what other cost savings measures is CalPERS negotiating?

**Staff Recommendation:** Hold open pending receipt of additional proposals as part of the Spring budget process.

***Vote: None; item held open.***

<b>8380</b>	<b>DEPARTMENT OF HUMAN RESOURCES</b>
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**Department and Budget Overview.** Effective July 1, 2012, the Department of Personnel Administration's (DPA) organization code (8380) will be utilized for the new Department of Human Resources (CalHR). As of that date, and consistent with the Governor's Reorganization Plan Number 1 of 2011, DPA and the operational non-constitutional functions of the State Personnel Board (SPB) will be consolidated into the new CalHR.

CalHR will be responsible for managing the State's personnel functions and represents the Governor as the "employer" in all matters concerning state employer-employee relations. CalHR will be responsible for issues related to recruitment, selection, salaries, benefits, position classification, and provides a variety of training and consultation services to state departments and local agencies, including providing legal representation to state agencies for appeals of disciplinary actions and labor relations matters.

	2010-11* (actual)	2011-12* (estimated)	2012-12 (proposed)
Expenditures	\$71,685	\$79,635	\$94,132
General Fund	\$7,398	\$6,410	\$8,177
Personnel Years	206.7	245.0	242.0

\*The years prior to July 1, 2012, represent the former Department of Personnel Administration structure and budgetary resources.

<b><i>Issue Proposed for Discussion / Vote</i></b>
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<b>Issue 1 – Governor's Reorganization Plan Number 1 of 2011</b>
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**Governor's Budget Request.** As a result of the Governor's Reorganization Plan Number 1 of 2011 (GRP 1-2011), the January budget requests transfer of budget authority from the Department of Personnel Administration (DPA) and State Personnel Board (SPB) to the new Department of Human Resources (CalHR), effective July 1, 2012.

**Background.** The GRP 1-2011 consolidated the human resource management functions and authorities previously vested with SPB and DPA, except for the constitutional responsibilities of SPB, into CalHR. The Administration asserts that, by consolidating the day-to-day operations of DPA and SPB into one consolidated agency, the state personnel system would be streamlined into functionally integrated programs that will end disjointed processes which are neither efficient nor cost effective. The GRP 1-2011 was effective on September 9, 2011.

Consistent with the GRP 1-2011, The SPB will continue to act as an independent five-member Board within CalHR, appointed by the Governor and serving ten-year terms, to hear merit appeals and oversight of the merit principle. CalHR will provide administrative and staff support to enable the SBP to accomplish its mission.

Over the next two fiscal years, the Administration reports that CalHR will achieve its targeted budgetary savings, reducing staff levels by 15 percent (a total of 60 positions eliminated) and achieving savings of \$8.6 million (\$3.7 million GF). The savings are a result of the following:

- Elimination of the HR Modernization Project (effective July 1, 2011).
- Elimination of duplicate administrative functions such as budgets, human resources, and facilities operations.
- Elimination, reduction, or reclassification of redundant levels of management and supervisory staff and “flatten” the organization to increase each manager’s level of supervision.
- Elimination or combination of communication, legislation, and clerical support functions.
- Streamlining, re-prioritization, and elimination of redundant processes as a result of the consolidation (for example, consolidation of the Career Executive Assignment review process at one agency and/or automation of processes such as seniority calculations).

At the time the GRP 1-2011 was before the Legislature, the Administration stated that staff reductions were expected to be achieved through attrition over the next few years. In addition, it was expected that efficiencies would be achieved in the line agencies with regard to more effective human resources functions, resulting in additional unquantified savings.

**Staff Comment.** Staff raises no concern with the budget request, as it is consistent with the GRP 1-2011 which was effectively adopted by the Legislature in 2011. Staff notes, however, a concern with a separate budget proposal that impacts the new CalHR. More specifically, as part of a larger government reorganization plan, the Governor is proposing to move CalHR under the new Government Operations Agency. Under the new organizational structure, the Director of CalHR would report to the Agency Secretary who would then report to the Governor. While this structure would not be an issue for many of CalHR’s responsibilities, it could negatively impact labor relations, including collective bargaining; as it stands now, the Director of DPA directly reports to the Governor. Further, the timing of this reorganization plan is unknown, including whether it would be pursued through a formal GRP process or some other venue.

**Subcommittee Questions.** Based on the above comments, the Subcommittee may wish the Administration and CalHR to provide responses to the following questions:

1. What is the timing of the reorganization plan to create a new Government Operations Agency that would include CalHR? Will this plan be pursued as part of a formal GRP or some other process?
2. How would CalHR’s reporting relationship be structured under the new Agency, particularly with regard to labor relations and collective bargaining?

**Staff Recommendation:** Approve the budget request.

**Vote: Item approved by vote of 2-0, with Senator Wolk absent.**

**0559****LABOR AND WORKFORCE DEVELOPMENT AGENCY**

**Department and Budget Overview.** The Labor and Workforce Development Agency (LWDA) brings together the departments, boards, and commissions which train, protect, and provide benefits to employees. The LWDA is primarily responsible for three different types of functions: labor law enforcement, workforce development, and benefit payment and adjudication. The LWDA includes the Department of Industrial Relations (DIR), the Employment Development Department (EDD), the Agricultural Labor Relations Board (heard in Subcommittee No. 2), and the California Workforce Investment Board. The LWDA is funded through reimbursements from those departments. The LWDA provides policy and enforcement coordination of California's labor and employment programs and policy and budget direction for the departments and boards.

	<b>2010-11 (actual)</b>	<b>2011-12 (estimated)</b>	<b>2012-13 (proposed)</b>
Expenditures	\$3,035,000	\$2,297,000	\$2,295,000
General Fund	0	0	0
Personnel Years	13.9	11.4	11.4

***Issue Proposed for Discussion / Vote*****Issue 1 – Economic and Employment Enforcement Coalition**

**Governor's Budget Request.** The January budget removed budget provisional language requiring the LWDA to report on the progress of the Economic and Employment Enforcement Coalition (EEEC), a federal-state multi-agency partnership formed to combat the worst violators of federal and state labor, licensing, and tax laws operating in the underground economy. In addition to LWDA, the other state departments that comprise the EEEC include the DIR, EDD, and the Contractors State License Board (CSLB).

**Prior Budget Actions.** The initial EEEC budget request was approved as three-year limited term in the 2005 Budget Act; the 2008 Budget Act extended the EEEC for two additional years. The 2010 Budget Act permanently established the EEEC, with 66 positions and on-going funding of \$7.208 million (special fund and reimbursements). Those positions were allocated as follows: LWDA – one position; DIR – 29 positions; EDD – 25 positions; and CSLB – 11 positions. The 2011 Budget Act required LWDA to report by January 1, 2012, on the progress of the EEEC and transferred authority for the EEEC from the LWDA to the DIR, as part of a larger reorganization of LWDA.

**Background.** The goal of the EEEC is to target violators who operate in the underground economy and assist legitimate businesses that do comply with California law. Within the underground economy, employers utilize various illegal schemes to conceal their true tax liability, as well as reduce their operating costs associated with insurance, payroll taxes, licenses, employee benefits, safety equipment, and safety conditions.

The LWDA submitted the required January 1, 2012, EEEC progress report on February 28, 2012. The report states that the EEEC focused its efforts on traditionally low-wage industries, including agriculture, car wash, garment manufacturing, janitorial service, horse

racing tracks, and restaurants. Further, since its inception in July 2005, EEEEC enforcement activities involved 7,296 business inspections, during which compliance checks identified 49,433 violations of labor, licensing, and tax laws, valued at \$62.8 million in penalty assessments. EEEEC activities also resulted in 3,446 cases being referred to District Attorney's Offices, with 1,696 criminal convictions. These violations represent employers who were using unlawful tactics to achieve an unfair competitive advantage over law abiding employers.

In January 2012, as reported in the *SF Chronicle*, the EEEEC was reconstituted and renamed the Labor Enforcement Taskforce. The Administration did not notify the Legislature or staff of these changes. The Administration indicates that the changes were made in this time of scarce resources so the effort would be directed closely by the two key programs that enforce labor law issues. The Administration reports that all partner agencies of the EEEEC are part of the reconstituted Taskforce, and that the Board of Equalization and Department of Insurance are new secondary partners. The Administration also reports that the Taskforce will be focusing more on labor law violations, specifically in low wage industries, with targeting of employers empirically based. Finally, the Taskforce intends to evaluate the effectiveness of its efforts.

**Staff Comment.** The EEEEC was a budget creation; there is no statutory citation that delineates program priorities or parameters. The Administration asserts that the functions of the reconstituted and renamed Labor Enforcement Taskforce are consistent with the initial 2005-06 budget request that established the EEEEC – the changes were made to more effectively communicate to employers and employee's the program's overall purpose; i.e., the name change is simply semantics. However, the prior name was reflective of the EEEEC's mission to combat the worst operators in the underground economy who violate federal and state laws beyond just labor laws – the mission specifically includes licensing and tax laws. As noted above, the January 2012 progress report was submitted late. This report also speaks to prior activities of the EEEEC; not the reconstituted Labor Enforcement Taskforce. Further, with the deletion of any requirement to report to the Legislature in future years, there is no formal venue to ensure the Taskforce's consistency with the original mission to combat the worst violators of federal and state labor, licensing, and tax laws operating in the underground economy.

Given these issues, the Subcommittee may wish to consider whether trailer bill language is warranted to formalize this effort against the underground economy, as well as reinstating a periodic reporting requirement either through trailer bill language or the budget bill.

**Staff Recommendation:** Hold open.

**Vote: None; item held open.**

<b>7100</b>	<b>EMPLOYMENT DEVELOPMENT DEPARTMENT</b>
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**Department and Budget Overview.** The Employment Development Department (EDD) administers services to employers, employees, and job seekers. The EDD pays benefits to eligible workers who become unemployed or disabled, collects payroll taxes, administers the Paid Family Leave Program, and assists job seekers by providing employment and training programs under the federal Workforce Investment Act of 1998. In addition, the EDD collects and provides comprehensive labor market information concerning California's workforce.

	2010-11 (actual)	2011-12 (estimated)	2011-13 (proposed)
Expenditures	\$26,975,292,000	\$20,437,306,000	\$14,331,715,000
General Fund	\$38,943,000	\$344,379,000	\$438,758,000
Personnel Years	11,237.1	10,097.1	10,073.1

<b><i>Issues Proposed for Discussion / Vote</i></b>
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<b>Issue 1 – Unemployment Insurance Loan Interest Payment</b>
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**Governor's Budget Request.** Similar to the approach taken in the 2011 Budget Act, the January budget requests a loan of \$417 million from the Unemployment Compensation Disability Fund (DI Fund) to the GF to pay the September 2012 interest payment due to the federal government for the quarterly loans the Employment Development Department (EDD) has been obtaining from the federal government since January 2009 to cover the Unemployment Insurance (UI) Fund deficit and make payments to unemployment insurance (UI) claimants without interruption. This portion of the request includes budget bill provisional language.

To fund future interest payments for funds borrowed from the federal government to pay UI benefits, and to repay the funds borrowed from the DI Fund in both 2011 and 2012, the January budget requests to increase, through trailer bill language that requires a 2/3rds vote (effective January 1, 2013), the employer surcharge payable to the Employment Training Fund by a total of \$472.6 million (\$39 per employee). The surcharge would be eliminated once the UI debt to the federal government is fully paid back and there is no longer a need to pay interest payments. Until that point is reached, the Administration indicates that this proposal would increase taxes on nearly every California employer by between \$40 and \$61 per employee per year, fluctuating each year to fully fund the interest costs due to the federal government.

In conjunction with the employer surcharge, and through trailer bill language, the January budget proposes to increase the minimum monetary eligibility to qualify for UI benefits to account for increases in employee wages that have occurred since the requirements were last adjusted in 1992. Under current law, to meet monetary eligibility requirements, a claimant must have earned: (1) at least \$900 in a single quarter and total base period earnings of \$1,125 or (2) at least \$1,300 in any one quarter in the base period. The budget increases the minimum eligibility to: (1) \$1,920 in the highest quarter and total base period earnings of \$2,400 or (2) at least \$3,200 in any one quarter in the base period. With these

changes, approximately 40,000 individuals would no longer be eligible for UI benefits, saving \$30 million per year.

**Background.** The UI program is a federal-state program, authorized in federal law but with broad discretion for states to set benefit and employer contribution levels. The UI program provides weekly payments to eligible workers who lose their jobs through no fault of their own. Benefits range from \$40 to \$450 per week, depending on earnings in a 12-month base period. The program is financed by unemployment tax contributions paid by employers, based on the number of employees, on the first \$7,000 of taxable wages paid to each employee. The contribution schedule is comprised of seven schedules, ranging from AA to F, with a range of 0.1 percent (the lowest rate on Schedule AA) to 6.2 percent (the maximum rate on Schedule F). Current law also includes a provision to add a 15 percent emergency solvency surcharge when the UI fund reserve is low (Schedule F+). California employers have been on this emergency F+ schedule since calendar year 2004.

The UI Trust Fund (UI fund) became insolvent in January 2009 and ended that year with a shortfall of \$6.2 billion. The contributing factors to the insolvency of the UI fund are: (1) significant statutory increases to the UI benefit level that began in 2002 – these legislative changes increased the maximum weekly benefit amount from \$230 per week to \$450 per week; (2) no change in the UI financing structure despite significant increases to UI benefits – for example, the taxable wage ceiling has remained at the federal minimum level of \$7,000 since 1983; (3) the inability of the fund to build a healthy reserve in the last decade – the EDD indicates that the existing UI financing system can be sustained in the long run only if the state unemployment rate averaged around four percent over time; and (4) the current economy which resulted in increased numbers of UI benefit payments and decreased revenues.

With the UI fund insolvent, the state began borrowing funds from the Federal Unemployment Account in order to continue paying UI benefits to qualifying claimants without interruption. The UI fund deficit was \$9.8 billion at the end of 2011 and is expected to increase to \$11.7 billion at the end of 2012. Generally, loans lasting more than one year require interest payments; the federal American Recovery and Reinvestment Act (ARRA) of 2009 provided temporary relief to states from making interest payments on UI loans through December 31, 2010. With the expiration of the ARRA provisions, interest of \$303.5 million was paid in September 2011 and the budget includes an interest payment due in September 2012 totaling \$417 million (estimated). Interest will continue to accrue and be payable annually until the principal on the federal UI loan is repaid. Federal law requires that the interest payment come from state funds.

The September 2011 interest payment of \$303.5 million was made by borrowing funds from the Unemployment Compensation Disability Fund (DI Fund). Under current law, those funds are to be repaid from the GF to the DI Fund by 2016.

Federal law also includes provisions to ensure that a state does not continue to incur loans over an extended period. Specifically, if a state has an outstanding loan balance on January 1 for two consecutive years, the full amount of the loan must be repaid before November of the second year or employers face higher federal UI taxes. Due to California carrying an outstanding loan balance for two consecutive years, the Federal Unemployment Tax (FUTA) credit will decrease from 5.4 percent to 5.1 percent on January 1, 2012. This will result in employers paying an additional \$21 per employee per year; the aggregate increase in employer costs in 2012 is \$300 million (estimated). These additional federal taxes pay down

the principal on the federal loan. The FUTA credits will continue to decrease by 0.3 percent each year until the federal loans are paid in full (and the UI fund is solvent). In 2013, the increased cost is \$50 per employee (estimated); the aggregate increase in employer costs in 2013 is \$606 million (estimated).

The DI program is a component of State Disability Insurance (SDI) and provides benefits to workers who are unable to work due to pregnancy or a non-work related illness or injury. The SDI program taxes covered employees up to a statutory ceiling, which is projected to increase to \$93,316 in 2011. The statutory formula for calculating the SDI contribution rate helps to maintain an adequate DI Fund balance. While contributions account for the majority of total receipts to the DI Fund, interest earnings and other receipts are also included in the DI Fund balance.

The \$417 million loan interest payment figure is an estimate based on two primary factors: (1) the interest rate the federal government charges the state and (2) the amount of federal funds the state has borrowed. The January budget estimated a federal interest rate of 4.09 percent. On February 13, 2012, the federal government released the 2012 interest rate; it was lowered to 2.943 percent, resulting in the estimated September 2012 payment dropping to \$330 million. The Administration indicates that it will provide an updated interest payment calculation during the May Revision.

**Staff Comment.** In developing its proposal, the Administration indicates that it took into consideration the current state of the economy and its recovery, and the potential cost impacts that an overall UI solvency proposal would present to employers (and the economy). By acting now to comprehensively address UI fund insolvency, the Legislature could stop the growth of the UI fund deficit and reduce associated state interest costs. On the other hand, such actions have the disadvantage of increasing employer costs and/or decreasing aid to unemployed workers during a difficult economic time for the state. However, continuing with a large outstanding federal loan will also increase costs to employers through reduced federal tax credits. The January budget does not include a proposal to address the underlying insolvency of the UI fund.

The Administration also points to the fact that there are 28 other states that face a similar situation with their UI Fund, indicative that this is a national issue which may be addressed on the federal level. In its July 2011 report entitled, *Managing California's Insolvency: The Impact of Federal Proposals on Unemployment Insurance*, the LAO noted that three federal proposals had been introduced to address the insolvency issue and determined that all three would improve the solvency of California's UI fund. More recently, as part of his 2013 budget proposal, President Obama proposed to: (1) provide employers in indebted states with tax relief for two years; (2) raise the minimum level of wages subject to unemployment taxes in 2015 to a level slightly less in real terms than it was in 1983 – for California this would increase the current wage base of \$7,000 to approximately \$15,000 – offset by lower tax rates to avoid a Federal tax increase; and (3) a number of other steps to address program integrity, such as preventing improper payments and reducing error rates.

At this juncture, it remains unclear whether any federal reforms will be enacted. This uncertainty complicates the Legislature's decision as to how it should address the insolvency of its UI fund. The LAO recommended that regardless of whether Congress acts to address the UI insolvency problems faced by California and other states, the Legislature should ensure implementation of a long-term solvency plan by 2014. If federal reforms are enacted, it is likely that no additional action by the Legislature will be necessary to ensure long-term

solvency. However, if no federal reforms are enacted, it will be critically important for the Legislature to adopt its own long-term solvency plan.

Similar to language contained in the 2011 Budget Act, this request is accompanied by budget bill provisional language to: (1) authorize the Department of Finance to increase/decrease the actual amount paid/borrowed from the DI fund based on a more precise calculation of the interest due; and (2) specify that the annual contribution rates for the DI fund shall not increase as the result of any loan made to the GF (i.e., in calculating the annual disability insurance tax rate each year, the EDD shall treat outstanding DI loans as available cash in the DI Fund). This latter provision is pivotal to preventing any potential increase in employee-paid DI taxes as a result of the loan from the DI Fund to the GF.

**LAO Recommendation.** Consistent with our previous reports, we continue to recommend that, in the absence of federal UI reforms, the Legislature adopt a comprehensive plan to ensure the long-term solvency of the UI fund. We suggest that such a plan be balanced, including both actions on the revenue side (increased employer taxes) and the cost side (decreased UI benefits). The Governor's proposals fall short of being a comprehensive plan to address the long-term solvency of the UI fund. However, we find that the Governor's proposals merit consideration if included in a comprehensive long-term solvency plan. If a future long-term solvency plan included increased employer taxes, dedicating a portion of these increased revenues to making interest payments on the state's federal loan, in a manner similar to that proposed by the Governor, would avoid significant GF costs in future years. Also, we concur with the Governor's assessment that monetary eligibility thresholds should be updated to reflect changes in wage levels.

We recognize that, in light of uncertainty regarding federal UI reforms and the recovery of California's labor market, the Legislature may wish to take a wait-and-see approach during 2012 and delay enactment of a long-term solvency plan until next year. Enactment of a long-term plan will likely necessitate significant legislative deliberation and compromise among the various stakeholders of the UI system. For this reason, if the Legislature elects to delay addressing UI fund insolvency, we think that it would be premature to enact the Governor's proposed employer surcharge and monetary eligibility changes. Under this scenario, we would recommend that the Legislature postpone considering the Governor's proposals until they can be considered as part of a long-term solvency plan. In the interim, continuing the current-year strategy of borrowing from the DI fund to cover the state's federal interest payment, creating short-term GF savings, is warranted by the state's fiscal condition.

**Staff Recommendation:** Approve the loan of \$417 million from the Unemployment Compensation Disability Fund to the GF to pay the September 2012 unemployment insurance loan interest payment due to the federal government, including the budget provisional language. Reject the other aspects of the request, including proposed trailer bill language, pertaining to (1) the Employment Training Fund surcharge and (2) income eligibility for unemployment insurance benefits.

**Vote: None; item held open.**

## Issue 2 – California Unemployment Insurance Appeals Board: Restructuring Second Level Appeals

**Governor’s Budget Request.** The January budget requests, effective January 1, 2013, the elimination of the California Unemployment Insurance Appeals Board (CUIAB) and proposes a restructured second level appeals process for half-year savings of \$600,000 (\$3,000 GF, \$552,000 federal funds, and \$45,000 other funds) in 2012-13 and full-year savings of \$1.2 million in 2013-14 and on-going. The request also includes proposed trailer bill language.

**Background.** The CUIAB was established in 1943 to provide due process for California claimants and employers who dispute unemployment and disability insurance benefit and payroll tax determinations made by the EDD. The structure at the CUIAB provides due process appeals for claimants, employers, and the EDD, and is presided over by a seven-member board. Five of these members are appointed by the Governor, with Senate confirmation, and the other two members are legislative appointees. Current law requires that two of the seven members be attorneys and that the Governor select the Chair. Current law also requires that each member of the board devote his/her full time to the performance of his/her duties. Members are compensated \$128,109 a year; the Chair is compensated \$132,179 per year.

California is one of 49 states and territories that provide workers and employers with two levels of appeals. The federal government does not require second level appeals; however, the federal government does reimburse states for the costs of second level appeals. The second level appeal process also takes pressure off the superior court system.

The first, or lower appeal, is an appeal to an Administrative Law Judge (ALJ) in CUIAB Field Operations. The second, or higher level, is an appeal of the decision made by the Field Operations ALJ. These appeals are submitted to CUIAB Appellate Operations where they are reviewed by ALJs and decided by Board Members. More specifically, when a claimant, employer, or EDD disagrees with the decision of the first-level ALJ, he or she may appeal to the Board. Each appeal is reviewed by a second level ALJ who then prepares a proposed written decision which is sent to two Board members. The Board members review the case and the second-level ALJ’s decision and decide the appeal case as a panel. If the two Board members cannot agree, then the Board Chair resolves the impasse.

In fiscal year 2011-12, CUIAB’s budget totaled \$102.5 million to administer the appeals program with approximately 92 percent from the federal government, 7.4 percent from state special funds, 0.5 percent from the GF, and 0.2 percent from other funds. The small amount of state GF is used to adjudicate appeals for state-only programs, such as personal income tax liability and collection cases, as federal law prohibits using federal funds for these purposes. Since the recession began in 2007, CUIAB has seen its workload increase to unprecedented levels for both first and second level appeals. The CUIAB remains designated “at risk” for 2012 by the federal Department of Labor (DOL) because the state has not achieved the acceptable level of performance for appeals promptness. In making this designation, DOL acknowledged that CUIAB has made performance improvements. For instance, as of December 2011, the CUIAB backlog of second level appeal cases totaled 3,792, with an average age of 39 days, statistics near the federal DOL standard. However, the CUIAB resolved only 17.2 percent of its cases within 45 days, well off the federal DOL standard of 50 percent of cases.

This request would eliminate the board, add a Bureau Director who would be a Governor's appointee subject to Senate confirmation, and would have four second level ALJ positions, which currently act as board authors, reclassified as "Presiding" ALJS (PAJLs) authorized to independently review and decide cases. To ensure impartiality, quality, and consistency, CUIAB would implement a quality control practice for decisions. The Board's other duties would be assigned to permanent civil service staff. These duties would include: establishing precedent decisions; promulgating regulation; approving the CUIAB budget; and overseeing the administration of the agency. Finally, the Board would be changed to a Bureau; in addition to the new Director, the following positions would be established: Chief of the Field Office; Chief of the Appellate Office; General Counsel over the Legal Office; Special Assistant to the Bureau Director; and Chief of the Project Team and Research Office.

**Staff Comment.** Staff acknowledges the obvious diligence and effort that was undertaken by the Administration in the past year developing this proposal to restructure CUIAB second level appeals; however, many unresolved questions remain. It is not clear how replacing a board where the majority of the members are subject to Senate confirmation, with a Bureau where only the director is subject to Senate confirmation, provides the same level of legislative oversight and checks and balances. This proposal also does nothing to improve the performance of the second level appeals process; rather, it would essentially maintain the status quo as to workflow and timeliness of second level appeals. Additionally, under the current process, all parties, i.e., employers, claimants, and the EDD, benefit from a third party arbitrator. It is not clear that the restructured process would provide the same level of benefit. The restructured Bureau would also not provide 100 percent review of the second level ALJ decisions, which potentially affects the quality and consistency of decisions over time. Under the current structure, 100 percent review is provided. The budgetary savings attached to this proposal are minimal, with insignificant savings to the GF. Further, the restructured Bureau could also increase caseload (and costs and delays) in the civil court system, a system which has seen extensive budget reductions in recent years. Given these and other issues, the Subcommittee may wish to hold this request open to allow further time for consideration and consultation with the policy committee, including the proposed trailer bill language.

**Staff Recommendation:** Hold open.

***Vote: None; item held open.***

***Chair also requested the EDD provide to the subcommittee: (1) CUIAB statistics in writing that were presented as part of testimony and (2) additional information to back-up witness statement that the budget proposal would not impact the civil court system.***

**Issue 3 – California Unemployment Insurance Appeals Board Administrative Consolidation**

**Governor’s Budget Request.** The January budget requests an on-going adjustment to reflect cost savings from shifting the administrative functions of the California Unemployment Insurance Appeals Board (CUIAB) to the EDD, thereby reducing staffing by 18 positions and costs by \$2 million (\$9,000 GF and various special funds). This adjustment is separate and apart from Issue 2 above, which would restructure the CUIAB’s second level appeals process.

**Background.** The CUIAB was established in 1943 to provide due process for California claimants and employers who disagreed with benefit and tax determinations made by the EDD. Initially, the EDD provided administrative support to the CUIAB. During the 1990s, the CUIAB established its own administrative support functions, which involved replicating and staffing an administrative support system for facilities, procurement, budget, and personnel. The CUIAB administrative services branch is staffed with 49 positions and is comprised of four divisions: (1) Business Services; (2) Personnel Services; (3) Budget and Workload; and (4) Strategic Planning and Training.

During an economic recession, the demand for unemployment insurance (UI) services grows exponentially, including appeals activities. Based on the workload associated with UI services in the last several years, the federal Department of Labor increased the state’s federal grant funding. In the reverse, as the economy continues to improve, UI workload will decrease as will the federal grant funding. The Administration indicates that this request begins the process to “right-size” the CUIAB and EDD, creating further efficiencies, all of which must occur within the next two fiscal years.

The administrative shifts would occur within the CUIAB Business Services, Human Resources, and Budget and Workload Divisions, to the EDD’s Business Operations, Planning, and Support Division, Fiscal Programs Division, and Human Resources Division. The CUIAB Training Unit will remain with the CUIAB, but within the Field Operations unit.

**Staff Comment.** Current law mandates autonomy and independence for the CUIAB from EDD in establishing its budget and in personnel appointments for CUIAB, to ensure the operational independence of CUIAB and the impartial adjudication of unemployment insurance appeals. This administrative consolidation is consistent with current law, as the CUIAB will retain authority over these issues; EDD will simply handle the ministerial aspects of these functions for the CUIAB. Further, agreements are being completed between CUIAB and EDD to create appropriate levels of support from EDD to ensure that the authority the CUIAB has over budget and personnel is not interfered with.

**Staff Recommendation:** Approve the request.

**Vote: Item approved by vote of 2-0, with Senator Wolk absent.**

<b>7350</b>	<b>DEPARTMENT OF INDUSTRIAL RELATIONS</b>
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**Department and Budget Overview.** The objective of the Department of Industrial Relations (DIR) is to protect the workforce in California; improve working conditions; and advance opportunities for profitable employment. The DIR enforces workers' compensation insurance laws and adjudicates workers' compensation insurance claims; works to prevent industrial injuries and deaths; promulgates and enforces laws relating to wages, hours, and conditions of employment; promotes apprenticeship and other on-the-job training; assists in negotiations with parties in dispute when a work stoppage is threatened; and analyzes and disseminates statistics which measure the condition of labor in the state.

	2010-11 (actual)	2011-12 (estimated)	2012-13 (proposed)
Expenditures	\$359,739,000	\$412,395,000	\$425,114,000
General Fund	\$4,235,000	\$4,556,000	\$4,392,000
Personnel Years	2,449.9	2,701.8	2,717.3

<b><i>Issues Proposed for Discussion / Vote</i></b>
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<b>Issue 1 – Compliance Monitoring Unit Cash Flow</b>
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**Governor's Budget Request.** The January budget requests provisional language in the annual Budget Act to allow the State Public Works Enforcement Fund (SPWEF) to borrow from the Uninsured Employers Benefits Trust Fund (UEBTF), Labor Enforcement and Compliance Fund (LECF), and/or the Construction Industry Enforcement Fund (CIEF), for cash flow purposes.

**Background.** Chapter 7, Statutes of 2009-10 of the Second Extraordinary Session, established a dedicated program (Compliance Monitoring Unit) and funding source within DIR to enforce prevailing wage requirements on specific public works projects as a replacement for enforcement through Labor Compliance Programs. In addition, Chapter 7 established the SPWEF, and authorized the DIR Director to determine and assess a fee in an amount not to exceed one-quarter of one percent of the bond proceeds on bonds issued by the State to fund public works projects.

The nature of bond funding requires that the Compliance Monitoring Unit program expenses may only be charged in arrears, and may not exceed actual expenses incurred. Therefore, a cash flow loan will be needed on an annual on-going basis to allow the program to operate and fulfill its statutory mandate.

Chapter 378, Statutes of 2011, among others, authorized a loan not to exceed \$4.3 million from the UEBTF to the SPWEF to meet the start-up needs of the Compliance Monitoring Unit.

**Staff Comment.** Given that the program can only bill in arrears, and may not exceed actual expenses, if this borrowing structure is not authorized, the Compliance Monitoring Unit will not be able to operate and meet its statutory mandate. Given this, this request is essentially

an annual loan that will be paid back but then re-borrowed again and again. This request authorizes borrowing from three other funds, two of which receive revenue, at least in part, from an employer assessment that is variable. Therefore, there is a concern that permitting this borrowing from the Uninsured Employers Benefits Trust Fund-UEBTF and Labor Enforcement and Compliance Fund-LECF could result in a need to increase employer assessments; i.e., borrowing from the UEBTF or the LECF could reduce the amount available to fund the activities that would otherwise be funded by the fund necessitating an increased assessment. Therefore, the Subcommittee may wish to consider modifying the requested provisional language to specify intent that the annual assessments for the UEBTF and LECF shall not increase as the result of any loan made to the SPWEF.

**Staff Recommendation:** Approve the provisional budget language, as modified, to allow the State Public Works Enforcement Fund to borrow from the Uninsured Employers Benefits Trust Fund, Labor Enforcement and Compliance Fund, and/or the Construction Industry Enforcement Fund for cash flow purposes.

**Vote: None; item held open.**

**Issue 2 – Implementation of 2011 Legislation Supported by the Labor Enforcement and Compliance Fund: Prevailing Wage Violations (AB 551) and Willful Misclassification of Independent Contractor (SB 459)**

**Governor’s Budget Requests.** The January budget requests increased expenditure authority from the Labor Enforcement and Compliance Fund (LECF) to comply with two recent statutory changes, as follows:

**1. Prevailing Wage Violations (Chapter 677, Statutes of 2011 – AB 551)**

**Summary.** The January budget requests \$765,000 and four positions in 2012-13, and \$639,000 on-going, to comply with the requirements of Chapter 677, Statutes of 2011 (AB 551), related to prevailing wage violations. Of the requested resources in 2012-13, \$100,000 is for one-time costs to redesign and/or upgrade the existing database system.

**Background.** In its consideration of Chapter 551, the Legislature was presented with the following question: “Should the penalties for failing to pay prevailing wages on public works projects and failing to provide payroll records in a timely manner be increased, as well as create a process for debarment for failing to follow the laws governing public works contracts, to encourage compliance with public works laws and the payment of the prevailing wage?”

In answering that question, Chapter 677 (1) increases the penalty assessed from \$20 to \$80 to contractors and subcontractors with previous violations and from \$30 to \$120 for willful violations; (2) requires the Labor Commissioner to maintain a Web site listing of contractors who are ineligible to bid on or be awarded a public works contract and at least annually notify awarding bodies of the availability of the list of disbarred contractors; and (3) states that the Labor Commissioner notify the contractor or subcontractor that, in addition to any other penalties, the contractor shall be subject to disbarment if certified payroll records are not produced within 30 days

after receipt of written notice. Failure to comply by that deadline would prohibit the contractor from bidding on or be awarded a contract for public work or performing work as a subcontractor on a public works project for three years.

## **2. Willful Misclassification of Independent Contractor (Chapter 706, Statutes of 2011 – SB 459)**

**Summary.** The January budget requests \$1.7 million and 13 positions in 2012-13, and \$1.65 million on-going, to comply with the requirements of Chapter 706, Statutes of 2011 (SB 459), related to willful misclassification of independent contractors.

**Background.** In its consideration of Chapter 706, the Legislature was presented with the following question: “Should California employers and the DIR be required to take specified actions to decrease the incidence of misclassification of workers as independent contractors and should the law governing classification of persons as independent contractors provide civil penalties for willful misclassification of an employee as an independent contractor?”

In answering that question, Chapter 706 prohibits the willful misclassification of an individual as an independent contractor rather than as an employee and provides that persons or employers violating the prohibition are subject to specified civil penalties as assessed by the Labor and Workforce Development Agency or a court.

**Staff Comment.** Staff notes no concern with the programmatic specifics of these requests, as they are consistent with the legislation that was approved by the Legislature last year. With regard to the budget resources, staff notes that the levels of requested resources are beyond that which was estimated last year by the Appropriations Committees in their analyses of the bills. DIR indicated to staff that it regrets the discrepancies between the information initially provided to the Appropriations Committees and the resources contained in these requests. Apparently communication breakdowns internal to DIR caused this to occur. DIR has assured both budget and fiscal staff that such discrepancies will not occur in the future.

In addition, staff notes that the requested resources are permanent, yet the workload estimates are less certain as these are new activities and there are unknowns as to the actual amount of workload that will materialize. Therefore, in considering these requests, the Subcommittee may wish to consider authorizing the resources on a two-year limited-term basis to allow the resource levels to be revisited in two years’ time when actual workload will be known.

Staff notes several concerns about the Labor Enforcement and Compliance Fund (LECF), which is the fund source supporting these requests. As part of the 2009 Budget Act, the GF costs of the Labor Standards Enforcement and the Occupational Safety and Health Programs (\$15.2 million and \$24.8 million, respectively) were shifted to fees – trailer bill language was adopted (Chapter 12, Statutes of 2009-10 Fourth Extraordinary Session) establishing the LECF and an assessment structure based on the size of the employer. The surcharge levied would not exceed \$37,000,000. The statutory authorization for the LECF sunsets on June 30, 2013. At present the Subcommittee does not have a proposal before it to reauthorize the LECF, yet these requests would utilize the LECF on a permanent basis. Further, given the current statutory cap on the overall level of funding in the LECF, it appears

that there are inadequate resources in the LECF to sustain both current activities and the new activities contained in these requests on an on-going basis.

The Administration indicates that it is currently considering a request from DIR to pursue LECF reauthorization. Staff expects receipt of this proposal as part of the spring budget process. Therefore, the Subcommittee may wish to defer action on these requests until such time as the Administration submits a comprehensive proposal to reauthorize the LECF. With that proposal in hand, the Subcommittee would be better positioned to consider these requests to implement legislation from 2011 supported by the LECF.

**LAO Recommendation.** In general, we find that the LECF is an appropriate funding source for implementation of Chapter 677 and Chapter 706, as proposed by the Governor. However, authorization for the LECF is scheduled to expire at the end of 2012-13. Given that there is currently no plan for reauthorization of the LECF, it is premature for the Legislature to consider establishing new permanent positions supported by this fund. Therefore, we recommend the Legislature consider the administration's forthcoming proposal on reauthorization of the LECF prior to considering the Governor's proposal to establish these positions.

We concur with the Administration's finding that implementation of Chapter 677 and Chapter 706 will result in increased workload for DLSE. Little empirical workload data currently exists to inform a precise calculation of this increased workload. Accordingly, the Administration has estimated the increased workload based on limited available data, institutional knowledge, and experience. In light of this, we recommend that should and when the Legislature approves the requested positions to implement Chapters 677 and 706, it approves them as two-year limited term to provide time for collection of better workload data.

**Staff Recommendation:** Hold open and defer action on these requests pending receipt of additional information from the Administration.

**Vote: None; item held open.**

### Issue 3 – Employee/Employer Education and Outreach

**Governor's Budget Request.** The January budget requests three-year limited-term increased expenditure authority of \$2.3 million in 2012-13, and \$1.6 million in 2013-14 and 2014-15, from the Labor and Workforce Development Fund (LWDF) and four redirected positions, to increase the overall efficacy of statewide enforcement of labor laws.

**Background.** The mission of the DIR is to protect the California workforce, improve working conditions, and enhance opportunities for profitable employment. These responsibilities are carried out through three major programs: the adjudication of workers' compensation disputes; the prevention of industrial injuries and deaths; and the enforcement of laws relating to wages, hours, and working conditions. With regard to the latter, the Labor Code vests authority with DIR to enforce minimum labor standards to protect employees and to protect employers who comply with the law from those employers who attempt to gain an advantage by failing to comply with minimum labor standards. These activities comprise the day-to-day work of DIR and have also periodically been the focus of targeted campaigns funded in an additive fashion to DIR's budget, such as: (1) the 2009 Budget Act proposal to

provide \$1.5 million to conduct a targeted outreach campaign to reduce the incidence of heat-related illness in the workplace and (2) the 2005 Budget Act proposal to establish the Economic and Employment Enforcement Coalition (EEEC), a partnership of state and federal agencies charged with targeted enforcement against unscrupulous businesses participating in the "underground economy."

This request builds on these efforts on a limited-term basis utilizing funding available and accrued from Chapter 906, Statutes of 2003. Chapter 906 allows employees to sue their employers for civil penalties for employment law violations. Any penalties recovered under this chapter are required to be distributed 75 percent to the Labor and Workforce Development Agency (LWDA) for enforcement of labor laws and education of employers and employees about their rights and responsibilities, and 25 percent to the aggrieved employee. The funds directed to LWDA are deposited in the Labor and Workforce Development Fund. Currently, DIR does not receive an appropriation from this fund. Since its inception, the fund has been underutilized with revenue outpacing annual expenses.

The resources in this request would be split between two divisions at DIR: (1) Division of Labor Standards Enforcement and (2) Division of Occupational Safety and Health, as illustrated in Figure 2 below.

**Figure 2 – Expenditure Plan for Employee/Employer Outreach**

<b>Division of Labor Standards Enforcement (DLSE)</b>			
<b>#</b>	<b>DESCRIPTION</b>	<b>2012-13</b>	<b>2013-2015</b>
1	Translation & duplication of wage claim video and written resources for waiting rooms.	\$432,000	
2	Development of language cards for investigators.	\$3,000	
3	Educational outreach partnerships with industry groups and other public agencies.	\$374,000	\$374,000
4	Educational outreach via ethnic media outlets.	\$135,000	\$100,000
5	Educational outreach via out-of-home (outdoor) advertising.	\$135,000	\$100,000
6	Employer training regarding labor costing and litigation pursuant to LC Section 2810.	\$371,000	\$221,000
<b>DLSE Grand Total</b>		<b>\$1,450,000</b>	<b>\$795,000</b>
<b>Division of Occupational Safety and Health (DOSH)</b>			
<b>#</b>	<b>DESCRIPTION</b>	<b>2012-13</b>	<b>2013-2015</b>
1	Media buys for heat outreach to agricultural workers and employers.	\$200,000	\$200,000
2	Integrated training programs on significant hazards for internal staff, joint external training.	\$450,000	\$450,000
3	Multilingual outreach materials.	\$100,000	\$100,000
4	Training of trainers for worker organizations to better utilize and communicate with DOSH.	\$100,000	\$100,000
<b>DOSH Grand Total</b>		<b>\$850,000</b>	<b>\$850,000</b>
<b>Department of Industrial Relations Grand Total</b>		<b>\$2,300,000</b>	<b>\$1,645,000</b>

**Staff Comment.** The Administration has affirmed that the resources in this request will not overlap or otherwise duplicate the efforts of the EEEEC; for instance, there will be close coordination to ensure strategic coverage across the state and reach the broadest audience. The media components of this new outreach also build on prior lessons learned, primarily from the 2009 Budget Act appropriation pertaining to heat-related illnesses. The lesson learned from that campaign was that billboard and radio ads were the most effective

communication tool; therefore, DIR indicates that this new outreach effort will not utilize television media.

With regard to outcomes, since this is a limited-term outreach effort, the Administration indicates that it will undertake a statistical analysis of the number of: citations issued; self-audits to reimburse employees for minimum wages and overtime; number of complaints alleging labor law violations; violations found during inspections; wages recovered for workers; number of attendees at outreach events and whether compliance increases following such outreach; and, litigation brought to protect workers and hold violators responsible. Given that this outcome analysis is already planned, in considering approval of this request, the Subcommittee may wish to require a written report of the outcomes and achievements of the outreach effort when it concludes in fiscal year 2014-15.

With regard to the proposed fund source, as noted in Issue 2 above pertaining to the implementation of 2011 legislation supported by the Labor Enforcement and Compliance Fund, the Subcommittee may wish to delay action on this request until such time that an on-going fund source has been identified to implement those identified legislative priorities.

**LAO Recommendation.** The Governor's proposed education and outreach activities are consistent with DIR's mission to protect California's workforce, improve working conditions, and enhance opportunities for profitable employment. Additionally, these activities are an appropriate use of LWDF funding. However, uncertainty regarding the availability of future funding from the LECF may necessitating prioritization of limited funding available to DIR, including LWDF funds, to meet its current obligations, which include implementation of recent legislation. Therefore, we recommend the Legislature postpone consideration of the Governor's proposal to fund \$2.3 million in expanded education and outreach activities from the LWDF until it has considered the administration's proposal to reauthorize the LECF.

**Staff Recommendation:** Hold open.

**Vote: None; item held open.**

#### **Issue 4 – Minors' Temporary Entertainment Work Permit Program (AB 1401; 2011)**

**Governor's Budget Request.** The January budget requests increased expenditure authority of \$583,000 (Entertainment Work Permit Fund-EWPF) and four positions in 2012-13, and \$307,000 on-going, to comply with the requirements of Chapter 557, Statutes of 2011 (AB 1401), related to minors' temporary entertainment work permit program. Of the resources requested in 2012-13, \$250,000 is one-time to create an on-line application and payment system.

**Background.** Current law (prior to enactment of Chapter 557) provides that minors aged 15 days to 18 years employed in the entertainment industry, must have written consent from the Labor Commissioner (known as an entertainment work permit) to perform work. These permits are issued for a period not to exceed six months. Eleven DIR staff working in district offices throughout the state issue the entertainment work permits. Permit applications are received over-the-counter and are also accepted via mail at all district offices. The current goal for turnaround on issuance of the permit from receipt is three working days. In 2010,

DIR issued 60,361 entertainment work permits. The total cost of administering the current program is approximately \$767,000 per year, for which DIR receives no specific revenue. The primary funding for existing workload is through the Labor Enforcement and Compliance Fund (LECF).

Effective January 1, 2012, Chapter 557 established an online permit approval process for the issuance of temporary work permits for minors working in the entertainment industry. Chapter 557 created the Entertainment Work Permit Fund into which permit fees received for a temporary entertainment work permit will be deposited and provides that these funds shall pay the costs to administer the temporary work permit program. Chapter 557 also authorized, on a one-time basis, borrowing and repayment of up to \$250,000 from the LECF to the EWPF to pay for startup costs incurred in the creation of the program. The authorized fee level is sufficient to cover program costs up to \$50 per application. The DIR reports that its conservative estimate determined that at least one-third of the 60,631 permits issued would start the process as a temporary permit using the new online application process. The resulting workload related to these 20,210 permits results in the four positions reflected in this request.

**Staff Comment.** Staff notes no concern with the programmatic specifics of this request, as it is consistent with the legislation that was approved by the Legislature last year. With regard to the budgetary resources requested, staff notes that the level of resources requested is beyond that which was estimated last year by the Appropriations Committees in their analysis of the bill. DIR indicated to staff that it regrets the discrepancies between the information initially provided to the Appropriations Committees and the resources contained in this request. Apparently communication breakdowns internal to DIR caused this to occur. DIR has assured both budget and fiscal staff that such discrepancies will not occur in the future.

Further, staff notes that while the implementation of the bill represents increased workload for DIR, it is not yet clear that the DIR estimate will prove correct yet the requested resources are permanent. In considering this request, the Subcommittee may wish to consider authorizing the resources on a two-year limited-term basis to allow the resource level to be revisited in two years' time when actual workload is known.

**Staff Recommendation:** Approve the request on a two-year limited-term basis.

**Vote: None; item held open.**

### **Issue 5 – Eliminate the Occupational Safety and Health Standards Board**

**Governor's Budget Request.** The January budget requests to eliminate the Occupational Safety and Health Standards Board (OSH Board) and transfer responsibility to the Division of Occupational Safety and Health within the Department of Industrial Relations for half year savings of \$324,000 (other funds) and two positions and on-going savings of \$649,000 (other funds) and four positions beginning in 2013-14. This request includes proposed budget trailer bill language.

**Background.** The OSH Board, a seven-member body appointed by the Governor, is comprised of individuals from the areas of field labor, field management, field occupational

health, field occupational safety, and the general public. The OSH Board is the standards-setting agency within the Cal/OSHA program. The OSH Board's objective is to adopt reasonable and enforceable standards at least as effective as federal standards. The OSH Board also has the responsibility to grant or deny applications for variances from adopted standards and respond to petitions for new or revised standards. The part-time, independent board holds monthly meetings throughout California. The members are not salaried, but receive \$100/day per diem. The OSH Board has 15.9 staff and an operating budget of \$2.4 million (mix of federal and special funds).

The Administration indicates that this proposal is part of its continuing effort to reduce the size of state government and create efficiencies. By eliminating the OSH Board, the Administration intends to model the state's approach to developing occupational safety and health standards after the federal approach for standards development, including stakeholder advisory panels. While the proposal technically eliminates the OSH Board, the proposed trailer bill language retains the Board's function in an Advisory Committee. The Administration asserts that modifying the OSH Board in this manner allows for a more streamlined operation, with reduced staffing levels, and no longer requires payment of stipends to board members, thereby achieving the savings figure identified above.

**Staff Comment.** This proposal is not new. Rather, it was proposed last year as part of a larger May Revision plan to make government more efficient by eliminating various boards and commissions. The final legislative action last year was to reject the elimination of the OSH Board.

Similar to last year, concerns have again been raised about the proposal, including: (1) The OSH Board's balanced representation requires regulations to be reached by consensus, yet the Administration's restructured proposal is silent how this process could be preserved using the proposed "advisory" board structure; and (2) The OSH Board is funded by an employer assessment and federal funds; the employer community has indicated their desire to continue paying for the OSH Board, as the Board's function and consensus process is of significant value. To staff's knowledge, the Administration has not developed a response to these concerns. More critically, staff is also unaware of any publicly presented concerns with the OSH Board's rulemaking process.

**Staff Recommendation:** Reject the elimination of the Occupational Safety and Health Standards Board and related trailer bill language.

***Vote: Item rejected by vote of 2-0, with Senator Wolk absent.***

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



Thursday, March 15, 2012  
9:30 a.m. or Upon Adjournment of Session  
Room 113

Consultant: Joe Stephenshaw

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Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-324-9335. Requests should be made one week in advance whenever possible.

## **Panel for Alternative Custody Expansion/Female Offender Overview Discussion**

### **Panel 1**

**Elizabeth Siggins**, Director of Adult Programs (A)

**Kathleen Allison**, Associate Director, Female Offender Program

**Aaron Edwards**, Legislative Analyst's Office

**Drew Soderborg**, Legislative Analyst's Office

Department of Finance

### **Panel 2**

**Barry Krisberg**, Director of Research and Policy, and Lecturer in Residence Chief  
Justice Earl Warren Institute on Law and Social Policy University of California, Berkeley  
School of Law

**Wendy S. Still**, Chief Adult Probation Officer, Adult Probation Department , City and  
County of San Francisco

### **Panel 3**

**Emily Harris**, Californians United for a Responsible Budget

**Cynthia Chandler**, Executive Director, Justice Now

**Edwina Perez-Santiago**, Re-entry-Reunite Project

## **CA Department of Corrections and Rehabilitation (5225)**

**Departmental Overview.** Effective July 1, 2005, the California Department of Corrections and Rehabilitation (CDCR) was created pursuant to the Governor's Reorganization Plan No. 1 of 2005 and Chapter 10, Statutes of 2005 (SB 737, Romero). All departments that previously reported to the Youth and Adult Correctional Agency (YACA) were consolidated into CDCR and include YACA, the California Department of Corrections, Youth Authority, Board of Corrections (now the Corrections Standards Authority (CSA)), Board of Prison Terms, and the Commission on Correctional Peace Officers' Standards and Training (CPOST). Effective July 1, 2012, Chapter 36, Statutes of 2011(SB 92, Committee on Budget and Fiscal Review) creates the Board of State and Community Corrections ("BSCC"). At that time, the BSCC will supersede the CSA.

According to the department's website, its mission is to "enhance public safety through the safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities."

The CDCR is responsible for the incarceration, training, education, and care of adult felons and non-felon narcotic addicts, as well as juvenile offenders. The CDCR also supervises and treats adult and juvenile parolees (juvenile parole is in the process of being realigned to counties). Until June 30, 2012, the department is responsible for setting minimum standards for the operation of local detention facilities and selection and training of law enforcement personnel, as well as provides local assistance in the form of grants to local governments for crime prevention and reduction programs.

The department operates 33 adult prisons, including 8 reception centers (7 male and 1 female), a central medical facility, a treatment center for narcotic addicts under civil commitment, and a substance abuse facility for incarcerated felons. The CDCR also operates three juvenile correctional facilities. In addition, CDCR operates dozens of adult and juvenile conservation camps, the Richard A. McGee Correctional Training Center, and nearly 200 parole offices, as well as contracts to house inmates in several in-state and out-of-state correctional facilities. However, due to the 2011 Public Safety Realignment, the department is altering its contract bed mix.

**Budget Overview.** The Governor's Budget proposes \$8.9 billion and 58,528.2 positions for the CDCR in 2012-13. The table on the following page shows CDCR's total operational expenditures and positions for 2010-11 through 2012-13.

(dollars in thousands)

<b>Funding</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
General Fund	\$9,481,820	\$8,980,824	\$8,664,771
General Fund, Prop 98	24,510	23,623	21,229
Other Funds	108,767	117,317	71,755
Reimbursements	106,196	130,287	130,077
<b>Total</b>	<b>\$9,721,293</b>	<b>\$9,252,051</b>	<b>\$8,887,832</b>
<b>Positions</b>	<b>57,620.6</b>	<b>61,150.1</b>	<b>58,528.2</b>

**2011 Public Safety Realignment.** Last year, Governor Brown signed AB 109 and AB 117 (known as public safety realignment), historic legislation that will enable California to close the revolving door of low-level inmates cycling in and out of state prisons. It is the cornerstone of California's solution for reducing the number of inmates in the state's 33 prisons to 137.5 percent of design capacity by June 27, 2013, as ordered by a Three-Judge Court and affirmed by the United States Supreme Court. In a May 23, 2011 decision, the United States Supreme Court affirmed the judgment of a three-judge panel convened pursuant to the Prison Litigation Reform Act of 1995 (18 U. S. C. §3626) ordering California to reduce its prison population to no more than 137.5 percent of its design capacity within two years.

**Key Features of Public Safety Realignment**

<b>Felon Incarceration</b>	<b>Post-Release Supervision</b>	<b>Parole and PRCS Revocations</b>
Restructured felon penalty by making specified non-violent, non-serious, non-sex offenses subject to local punishment	Created Post Release Community Supervision (PRCS) for certain offenders to be supervised locally upon release from prison	Parole revocation terms are served locally and, by July 1, 2013, both parole and PRCS revocations will be adjudicated by the courts

Under AB 109 and AB 117, all felons convicted of current or prior serious or violent offenses, sex offenses, and sex offenses against children will go to state prison. Additionally, there are nearly 60 additional crimes that are not defined in the Penal Code as serious or violent offenses but remain offenses that would be served in state prison rather than in local custody.

## **Female Offenders: Expansion of Alternative Custody Program**

**Governor's Proposal.** The Governor's budget proposes trailer bill language that provides for the expansion of the Alternative Custody Program (ACP) for Women to include women who have a prior serious or violent conviction. The goal is to allow CDCR to place these offenders in community-based treatment programs in an effort to achieve successful outcomes and reduce recidivism among this population. Savings resulting from the reduction in the female inmate population will be used to cover the cost of treatment programs in the community. The anticipated population decline in future years is expected to generate long-term savings of \$2.5 million beginning in 2014-15 and \$5 million annually thereafter.

**Background.** Senate Bill 1266 (Liu, 2010) established an ACP within the CDCR under which eligible female inmates, including pregnant inmates or inmates who were the primary caregivers of dependent children, would be allowed to participate in lieu of their confinement in state prison. Under the program, female inmates may be placed in a residential home, a nonprofit residential drug-treatment program, or a transitional-care facility that offers individualized services based on an inmate's needs. The program focuses on reuniting low-level inmates with their families and reintegrating them back into their community.

All inmates continue to serve their sentences under the jurisdiction of the CDCR and may be returned to state prison for any reason. An inmate selected for ACP is under the supervision of a Parole Agent and is required to be electronically monitored at all times.

### **Current eligibility criteria for participation:**

- Female inmate (including pregnant females)
- Inmate who, immediately prior to incarceration, was the primary caregiver of a dependent child
- Must have 24 months or less to serve in state prison
- Must volunteer for the program

### **Current exclusionary criteria:**

- Current or prior serious or violent felony, as defined by the Penal Code
- Current or prior sex-offense conviction or PC 290 registration requirement
- An escape in the last 10 years
- Specific in-prison misconduct or custody levels
- Active restraining order
- Gang membership/affiliation
- Felony, or Immigration and Customs Enforcement hold

### **Additional case-by-case eligibility determination:**

- Current or prior sexual convictions not requiring PC 290 registration
- Current or prior child-abuse arrests or convictions in which the offense was related to abuse or neglect of a child

- Current or prior convictions for stalking

**The principles of ACP's programs and services include:**

- Deliver programs and services that are evidence-based
- Address why the inmate engages in criminal behavior
- Deliver programs at varying levels of intensity
- Use both incentives and sanctions
- Be conducted by adequately-trained staff
- Measure performance and provide feedback

Services for ACP participants can include: education/vocational training, anger management, family- and marital-relationship assistance, substance-abuse counseling and treatment, life-skills training, narcotics/alcoholics anonymous, faith-based and volunteer community service opportunities. However, the CDCR reports that, currently, there are no programs provided for ACP. In addition, housing availability has been an unforeseen obstacle since the implementation of ACP.

According to the CDCR, the current Average Daily Population (ADP) for non-violent, non-serious female offenders that have the potential to meet ACP requirements is 1,023. If non-violent, non-serious female offenders with prior serious and violent crimes are not excluded, the current ADP would be 1,327.

CDCR implemented ACP on September 12, 2011. As of January 17, 2012, CDCR had released 24 female offenders to the ACP.

**Female Offender Programs and Services/Female Offender Master Plan.** In July 2005, the California correctional system reorganized to address directly the rehabilitative and re-entry needs of all inmates and parolees. As part of this reorganization, the CDCR established the Female Offender Programs and Services (FOPS) office, to manage and provide oversight to adult female programs, including prisons, conservation camps, and community programs. FOPS developed a gender-responsive, culturally sensitive approach to program and policy development to improve recidivism outcomes for the adult incarcerated and paroled female offenders under the supervision of the CDCR.

In addition, the CDCR established a Gender-Responsive Strategies Commission (GRSC) to assist in the development of a master plan for female offenders. This advisory commission was comprised of representatives of the various disciplines within CDCR, community partners, nationally recognized experts on female offenders, previously incarcerated individuals, family members of women offenders and other external stakeholders, including labor, the California Commission on the Status of Women, the Little Hoover Commission (LHC) and legislative representatives. Several subcommittees provide input to the CDCR on institutional operational practice and policy, treatment programs, community re-entry, medical and mental health, and parole.

Collaboratively, FOPS and GRSC developed a master plan, a gender-responsive, culturally sensitive approach to program and policy development to improve recidivism outcomes for the adult incarcerated and paroled female offenders under the supervision of the CDCR. The plan provides a blueprint for CDCR to incorporate national standards in operational practice, program development, medical and mental health care, substance abuse treatment, family reunification, and community re-entry.

**Female Offender Population.** On June 30, 2011, CDCR's female population was 9,565. The Governor's Budget projects that CDCR's female population will decline to 6,641 on June 30, 2012, and will decrease further to 5,767 by June 30, 2013.

CDCR currently houses female offenders at three institutions; California Institute for Women in Corona, and Valley State Prison for Women and Central California Women's Facility both in Chowchilla. The Governor's budget anticipates the conversion of Valley State Prison for Women to a male facility by July 2013.

As of the Corrections Standards Authority's County Jail Populations Profile, 3rd Quarter Reporting for 2011 (July - September), there were 8,915 female offenders in county jails, 5,575 of which were non-sentenced.

**Gender Responsive Planning.** Following is background to gender-responsive planning included in a letter to probation officers and Community Corrections Partnership members from Barbara Owen, Professor, Criminology, CSU-Fresno and Barbara Bloom, Professor and Chair, Criminology & Criminal Justice Studies, Sonoma State University:

In 2003, the National Institute of Corrections (NIC) published the report, *Gender-Responsive Strategies: Research, Practice and Guiding Principles for Women Offenders*, authored by Bloom, Owen, and Covington. This report has been incorporated into strategic plans and state and national standards in multiple jurisdictions throughout the country. This approach can be defined as:

*Gender-responsive means creating an environment through site selection, staff selection, program development, content, and material that reflects an understanding of the realities of women's lives and addresses the issues of the participants. Gender-responsive approaches are multidimensional and are based on theoretical perspectives that acknowledge women's pathways into the criminal justice system. These approaches address social (e.g., poverty, race, class and gender inequality) and cultural factors, as well as therapeutic interventions. These interventions address issues such as abuse, violence, family relationships, substance abuse and co-occurring disorders. They provide a strength-based approach to treatment and skill building. The emphasis is on self-efficacy.*

Six guiding principles frame this approach:

Gender:	Acknowledge that gender makes a difference.
Environment:	Create an environment based on safety, respect, and dignity.
Relationships:	Develop policies, practices, and programs that are relational and promote healthy connections to children, family, significant others, and the community.
Services and Supervision:	Address substance abuse, trauma, and mental health issues through comprehensive, integrated, culturally relevant services, and appropriate supervision.
Socioeconomic Status:	Provide women with opportunities to improve their socioeconomic conditions.
Community:	Establish a system of community supervision and re-entry with comprehensive, collaborative services.

The gender-responsive approach is built on empirical research that has found that female offenders' pathways to criminality to be significantly different from those of their male counterparts. In addition, the types of crimes committed by female offenders, their level of violence, their responses to custody and supervision, and their family situations and responsibilities have also been shown to be very different than those of male offenders. Among women, the most common pathways to crime are based on survival (of abuse and poverty) and substance abuse. Research on female offenders has established that women enter the criminal justice system in ways different from those of male offenders. California's female offenders have a specific profile that mirrors national findings. They are less likely than men to have committed violent offenses and more likely to have been convicted of crimes involving property or drugs—posing a lesser risk to the community.

Women in community-based, family-focused settings face fewer obstacles to visitation and maintaining family connections. Community-based settings can emphasize treatment, service provision, and community reentry. Addressing the risk and needs of the female offender requires an appropriate assessment. There are multiple instruments that provide assessments, but counties should consider using gender-responsive risk and needs assessment instruments that incorporate women's pathways and recommend gender-appropriate placements, treatment, and supervision.

As part of community programming, this system of supervision and support in communities should include: housing, education, job training, employment, family counseling, child care and parenting education, drug and alcohol treatment, health and mental health care, peer support, and aftercare. Wraparound services and other integrated approaches can also be very effective because they address multiple needs in a coordinated way and facilitate access to services.

In addition, several research studies have found that gender responsive approaches are more effective in reducing recidivism and improving outcomes for female offenders when implemented according to these principles.

Therefore, to make a significant impact on California's female offenders, we propose that the Public Safety Realignment efforts develop innovative and focused interventions that address these differences and target the specific risks and needs of female offenders.

**Staff Comment.** As an increased number of female offenders are supervised locally due to realignment, the state should explore ways to improve tracking and evaluation of service and programs specific to this population such as including this information when reporting to the new Board of State and Community Corrections. In addition, the CDCR must continue and improve upon efforts to meet the goals of the Female Offender Master Plan in delivering services and programs for female offenders who remain in CDCR institutions.

In relation to the ACP, questions have been raised as to whether certain barriers to qualifying should be removed. In addition, whether administering the program as currently authorized or under expanded authority, the efforts must be made to ensure participants are placed in settings and receive services that are consistent with the program's intent. Specifically, the CDCR should utilize evidenced based programs for women when they are placed in alternative custody, ensure women are able to access health services on ACP, and ensure savings from the ACP actually go to treatment programs in the community.

**Recommendation.** Approve trailer bill language to expand the Alternative Custody Program.

## Office of the Inspector General (0552)

The Office of the Inspector General (OIG) oversees the state's correctional system through contemporaneous monitoring and special reviews of the policies, practices, and procedures of the CDCR. Although the duties required of the OIG's Office are complex, its mission is clear: to protect public safety by safeguarding the integrity of California's correctional system.

The OIG is responsible for contemporaneous oversight of the CDCR's internal affairs investigations and employee disciplinary process, as well as contemporaneous oversight monitoring of all deadly force incidents, certain custodial death incidents, and other significant critical incidents. In addition, the OIG is statutorily responsible for conducting use of force monitoring, policy and performance reviews, the vetting of wardens and superintendents, sexual abuse in detention reviews, retaliation complaint reviews, independent intake (complaint) processing, and medical inspections. As required by statute, the OIG's monitoring and oversight activities are reported publicly several times per year.

The Governor's Budget proposes \$14.6 million General Fund and 86.4 positions. This reflects a decrease of \$2.1 million General Fund and 13.6 positions as compared to the 2011 Budget Act.

### Issue 1 – Reorganization of the Office of the Inspector General

**Governor's Proposal.** Consistent with previous Legislative and Administrative actions, the Governor's budget includes a proposal to restructure and downsize the OIG to meet reductions of \$4.9 million in the current year and \$7.3 million in the budget year. This includes a reduction of positions totaling 39 positions in the current year and 48.5 positions in the budget year.

**Background.** A series of budget actions in 2011 reduced the OIG's operating budget from \$26.1 million in 2010-11 down to \$16.7 million in 2011-12 and \$14.6 million in 2012-13 and ongoing. This is a total reduction of \$11.6 million, or 44 percent. Simultaneously, the Administration and the Legislature revisited the mission of the OIG and deliberated on ways to improve its efficiencies and operations.

The culmination of these efforts resulted in legislation that codified the OIG's medical inspection program; requires the OIG to conduct policy and performance reviews of the CDCR (at the request of the Governor, the Senate Rules Committee, or the Speaker of the Assembly); removed the peace officer status of OIG employees; removed the mandate that the OIG conduct audits and investigations of the CDCR; and removed the requirement that the OIG conduct quadrennial facility operation reviews and one-year warden follow-up audits. Additionally, 2011 Budget Act Control Sections 3.91(a) and 3.91(b) specified that agencies were to meet predetermined budget reduction targets

through reorganizations, consolidations, eliminations, and by improving operational efficiencies.

Subsequent to these actions, the OIG abolished its bureaus and restructured its operations into three regions (northern, central, and southern) to reduce travel and overtime costs and improve efficiencies. This regional approach also allows staff to respond more quickly to issues arising at California's prisons, youth facilities, and parole regions, which are located throughout California from the Oregon border, down to the Mexican border.

Deputy Inspector Generals are being cross trained in the eight primary disciplines that our statutory mandates require: including use of force monitoring, policy and performance reviews, warden and superintendent vetting, retaliation complaint reviews, Sexual Abuse in Detention Elimination Act (SADEA) reviews, independent intake (complaint) processing, medical inspections, and critical incident monitoring. Additionally, the OIG is in the process of consolidating its building leases, has reduced its cell phone and equipment inventory, reduced its vehicle fleet, reduced its temp-help usage, and will be abolishing vacant positions. Even with these mitigating actions, the OIG continues to identify a necessity to lay-off staff.

The remaining eight mandated functions of the IOG are as follows:

1. California Rehabilitation Oversight Board - The OIG supplies the Chair of the Board (Inspector General), the counsel for the Board (Chief Counsel), the Executive Director for the Board (CEA), the Board Secretary (Brown Act adherence), plus other staffing support as needed for publications/meetings.
2. Retaliation complaints - Legislation requires the OIG to review any complaints of whistleblower retaliation within the CDCR that the OIG receives. The OIG's Intake Unit processes all such complaints which are then screened by the Chief Counsel, and those deemed legally sufficient are assigned out to the regional units for action.
3. Intake Unit – The Intake Unit receives and processes hundreds of complaints from multiple sources regarding CDCR activities. The OIG maintains a toll-free public telephone number to allow reporting of administrative wrongdoing, poor management practices, criminal conduct, fraud, and other abuses in CDCR.
4. PREA - Pursuant to statute, the OIG reviews the mishandling of sexual abuse incidents within correctional institutions, maintains the confidentiality of sexual abuse victims, and ensures impartial resolution of inmate and ward sexual abuse complaints through the Sexual Abuse in Detention Elimination Ombudsperson. The CDCR notifies the OIG of all PREA complaints via their AOD process. These are then monitored by the Discipline Monitoring Unit to ensure compliance with PREA policies and any resulting staff allegations are automatically monitored. The Intake Unit also processes complaints regarding the handling of any PREA investigations and these are sent out to the regional DMU units to monitor and follow up.

5. Warden and Superintendent Vetting - The OIG reviews the Governor's candidates for appointment to serve as warden for the state's adult correctional institutions and as superintendents for the state's juvenile facilities. Currently, it is anticipated that CDCR will have a minimum of 12 new wardens, and likely more, in the 2012 calendar year that will require vetting.

6. Authorized Reviews - Under the revised statute, the OIG is mandated to conduct a review of any policy/practice/procedure of the CDCR when requested by either the Governor, the Senate Rules Committee, or the Speaker of the Assembly.

7. Discipline Monitoring Unit (formerly the BIR) - As discussed above, this unit has been re-titled from the "BIR" to the "DMU" within the OIG. Each Region (North, Central and South) has a team of attorneys and DIGs who are assigned to the monitoring of CDCR internal affairs cases. In addition to the monitoring of the CDCR's Central Intake process and actual internal affairs investigations, the SAIGs (Special Assistant Inspector Generals – attorneys) also monitor the discipline process from the time the hiring authority receives the investigative report through the completion of the adverse action process/hearing at the State Personnel Board and the performance of CDCR's EAPT (Employee Advocate Prosecution Team). In addition to the monitoring of internal affairs matters, the DMU monitors CDCR's Use of Force Review process and Critical Incidents.

8. Medical Inspection Unit (MIU) - The OIG is required to conduct an objective, clinically appropriate, and metric-oriented medical inspection program to periodically review delivery of medical care at each state prison. This program has completed its second cycle of inspections at all 33 prisons. In an effort to improve efficiencies, we have regionalized our operations and as a result, our plan for Cycle III of our medical inspection program (commencing in February) will see a more streamlined process and we anticipate that our reports will be issued in less time than they were for Cycles I and II.

**Staff Comment.** The Legislative Analyst's Office has recommended that the OIG's budget be reduced by an additional \$496,000 in 2011-12 and \$665,000 in 2012-13 because the salaries of positions being eliminated were not reduced at mid-step, which is standard practice. Staff finds that such reductions would likely result in the need for the OIG to also reduce additional personnel. Further, the OIG aligned its personnel with budget authority based on the numerous reductions outlined above. Staff finds that the OIG did an appropriate job of restructuring its budget in a manner consistent with previous Legislative actions.

**Recommendation.** Approve as Budgeted.

## **Issue 2 – California Rehabilitation Oversight Board Update**

**California Rehabilitation Oversight Board.** AB 900 (Solario, 2007) established the California Rehabilitation Oversight Board (C-ROB) within the Office of the Inspector General. C-ROB is made up of state and local law enforcement, education, treatment, and rehabilitation professionals who are mandated to examine and report biannually on rehabilitative programming provided by the CDCR. In performing its duties, C-ROB is required by statute to use the work of the Expert Panel on Adult Offender Reentry and Recidivism Reduction Programs.

C-ROB uses the California Logic Model as the framework by which to evaluate CDCR's progress in implementing rehabilitative programming. The California Logic Model is eight evidence-based principles and practices, identified by the expert panel, that show what effective rehabilitation programming could look like as an offender moves through the state's correctional system. The eight areas are: (a) assess high risk; (b) assess need; (c) develop behavior management plan; (d) deliver programs; (e) measure progress; (f) preparation for reentry; (g) reintegrate; and (h) follow-up.

Today (March 15, 2012) C-ROB is releasing the tenth biannual report, which examines the progress the CDCR made in providing and implementing rehabilitative programming between July and December 2011.

**Staff Comment.** This Subcommittee has held two oversight hearings on CDCR rehabilitative programs in the past year. C-ROB's biannual reports have been helpful in providing information regarding the types of programs and program utilization within CDCR. However, given the changes, including realignment, that have impacted the department since C-ROB was established, the subcommittee may wish to assess whether some of C-ROB's statutory requirements should be revisited.

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



Thursday, March 22, 2012  
9:30 a.m. or Upon Adjournment of Session  
Room 113

Consultant: Joe Stephenshaw

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## **Panel for Division of Juvenile Justice**

### **Panel 1**

Amy Jarvis, Department of Finance  
Mike Minor, Chief Deputy Secretary, Division of Juvenile Justice  
Tor Tarantola, Legislative Analyst's Office

### **Panel 2**

Daniel Macallair, MPA, Executive Director, Center on Juvenile and Criminal Justice  
David Steinhart, Director of the Commonweal Juvenile Justice Program  
Linda Penner, Chief Probation Officer, Fresno County

## **Panel for the Board of State and Community Corrections**

### **Panel 1**

Andrea Scharffer, Department of Finance  
Robert Takeshta, Executive Director (A), Corrections Standards Authority  
Tor Tarantola, Legislative Analyst's Office

### **Panel 2**

Sharon Aungst, Director, The Partnership for Community Excellence, California Forward  
Kathy Jett, Consultant, The Partnership for Community Excellence, California Forward  
Elizabeth Howard Espinosa, Legislative Representative, California State Association of Counties  
Karen Pank, Executive Director Chief Probation Officers of California

## **CA Department of Corrections and Rehabilitation (5225)**

**Departmental Overview.** Effective July 1, 2005, the California Department of Corrections and Rehabilitation (CDCR) was created pursuant to the Governor's Reorganization Plan No. 1 of 2005 and Chapter 10, Statutes of 2005 (SB 737, Romero). All departments that previously reported to the Youth and Adult Correctional Agency (YACA) were consolidated into CDCR and include YACA, the California Department of Corrections, Youth Authority, Board of Corrections (now the Corrections Standards Authority (CSA)), Board of Prison Terms, and the Commission on Correctional Peace Officers' Standards and Training (CPOST). Effective July 1, 2012, Chapter 36, Statutes of 2011(SB 92, Committee on Budget and Fiscal Review) creates the Board of State and Community Corrections ("BSCC"). At that time, the BSCC will supersede the CSA.

According to the department's website, its mission is to "enhance public safety through the safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities."

The CDCR is responsible for the incarceration, training, education, and care of adult felons and non-felon narcotic addicts, as well as juvenile offenders. The CDCR also supervises and treats adult and juvenile parolees (juvenile parole is in the process of being realigned to counties). Until June 30, 2012, the department is responsible for setting minimum standards for the operation of local detention facilities and selection and training of law enforcement personnel, as well as provides local assistance in the form of grants to local governments for crime prevention and reduction programs.

The department operates 33 adult prisons, including 8 reception centers (7 male and 1 female), a central medical facility, a treatment center for narcotic addicts under civil commitment, and a substance abuse facility for incarcerated felons. The CDCR also operates three juvenile correctional facilities. In addition, CDCR operates dozens of adult and juvenile conservation camps, the Richard A. McGee Correctional Training Center, and nearly 200 parole offices, as well as contracts to house inmates in several in-state and out-of-state correctional facilities. However, due to the 2011 Public Safety Realignment, the department is altering its contract bed mix.

**Budget Overview.** The Governor's Budget proposes \$8.9 billion and 58,528.2 positions for the CDCR in 2012-13. The table on the following page shows CDCR's total operational expenditures and positions for 2010-11 through 2012-13.

## **Division of Juvenile Justice Realignment**

**Background.** The Division of Juvenile Justice (DJJ), originally known as the California Youth Authority (CYA), was created by statute in 1941 and began operating in 1943, providing training and parole supervision for juvenile and young adult offenders.

In a reorganization of the California corrections agencies in 2005, the CYA became the DJJ within the Department of Corrections and Rehabilitation. Currently, the DJJ receives its youthful offender population from both juvenile and adult court referrals.

The DJJ carries out its responsibilities through three divisions: the Division of Juvenile Facilities, the Division of Juvenile Programs, and the Division of Juvenile Parole Operations. The Juvenile Parole Board, an administrative body separate from DJJ, determines a youth's parole readiness.

Youths committed directly to the DJJ do not receive determinate sentences. A youth's length of stay is determined by the severity of the committing offense and their progress toward parole readiness; however, the DJJ is authorized to house youths until age 21 or 25, depending upon their commitment offense.

The DJJ also provides housing for youths under the age of 18 who have been sentenced to state prison. Youths sentenced to state prison may remain at DJJ until age 18, or if the youth can complete his or her sentence prior to age 21, the DJJ may house him or her until released to parole.

The vast majority of youthful offenders are now directed to county programs, enabling direct access and closer proximity to their homes, families, social programs and services, and other support systems. Those youths directed to the DJJ have been convicted of the most serious and violent crimes and/or are most in need of the specialized treatment services necessary for their success. DJJ youth represent approximately one percent of the 225,000 youth arrests each year.

**Governor's Proposal.** The Governor proposes that DJJ will stop intake of new juvenile offenders effective January 1, 2013, eventually transferring the responsibility for managing all youthful offenders to local jurisdictions. The Governor's proposal includes \$10 million in 2011-12 to support local governments in planning for the realignment of the remaining DJJ population. Absent realignment, DJJ's proposed budget is \$199 million for 2012-13.

The Governor has delayed charging counties \$125,000 per juvenile offenders committed to DJJ, pursuant to the current-year trigger.

**Staff Comment. Previous efforts to realign the state’s juvenile justice responsibilities to local jurisdictions have been successful.** Since reaching a high of 10,122 in 1996, the number of youths committed to the DJJ by juvenile and superior courts has steadily declined. The budget reports that DJJ’s average daily population will be 1,149 in 2012-13. This reduction in population has led to the closing of the majority of DJJ facilities. Today the DJJ operates three facilities (two in Stockton and one in Ventura) and one fire camp.

The drastic decline in population began in the mid to late 1990s and continued through the last decade due to the following factors:

- Counties received increased federal funding to build additional treatment facilities.
- *Chapter 6, Statutes of 1996, (SB 681, Hurtt)*, enacted changes in fees counties paid to house youths in DJJ facilities based upon the classification of a youths commitment offense.
- *Chapter 175, Statutes of 2007, (SB 81, Committee on Budget and Fiscal Review) and Chapter 257, Statutes of 2007, (AB 191, Committee on Budget)*, restricted juvenile court commitments to cases that were violent offenses as specified in Section 707(b) of the Welfare and Institutions Code, or sex offenses as specified in Section 290 of the Penal Code.
- *Chapter 729, Statutes of 2010, (AB 1628, Blumenfield)*, transferred youth parole responsibilities to county probation, eliminating DJJ parole by June 30, 2014.

Along with the increased responsibility, the state has provided locals with resources to house and treat juvenile offenders, including the following sources that are all ongoing, except the local jail construction funds:

(dollars in millions)

Source	Amount
Juvenile Justice Crime Prevention Grants	\$107.1
Juvenile Probation Funding	151.8
Juvenile Camp Funding	29.4
SB 81/AB 191 and AB 1628 Realignment	104.1
Local Jail Construction	\$300

A recent report by the Center on Juvenile and Criminal Justice notes that several counties, such as San Bernardino, Napa, Santa Clara, Alameda, San Francisco and Santa Cruz, have implemented innovative local practices for rehabilitation of serious youth offenders. The report further notes that some of these counties are seeing reductions in recidivism rates. Additionally, according to the California Department of Justice’s most recent report on crime statistics, juvenile arrest rates have decreased from 2005-2010.

**What is an appropriate level of state juvenile justice responsibility.** If the Governor's proposal to realign responsibility for all juvenile offenders in California is adopted, California may be the only state without state sanctions for juvenile offenders. DJJ's current population, although small in numbers, is comprised of our state's highest risk juvenile offender population. Representatives of probation officers have noted that they do not have the capacity to treat many of the youth that are sent to DJJ because of the severity of their treatment need (many have acute mental health or sexual behavioral symptoms) nor do they want to house these youth with the population that is currently kept locally due to management concerns.

On the other hand, some have questioned the state's ability to house and provide adequate services for juvenile offenders. DJJ is currently under a consent decree as a result of the *Farrell v. Cate* lawsuit, which was initiated with a complaint surrounding conditions in the juvenile justice system that was filed in state court in January 2003. Six remedial plans were developed and have guided improvements (a Special Master in the *Farrell* case has filed periodic reports detailing the changes in conditions). However, there is continuing debate as to whether the DJJ can ever reach full *Farrell* compliance.

**Counties are currently implementing changes to absorb the impact of the 2011 public safety realignment.** Per the 2011 Public Safety Realignment, which requires that certain low-level felony offenders serve their time locally and shifts the majority of the state's parole population to local jurisdictions, counties are currently dealing with a significant increase in public safety responsibilities. Probation departments are in the process of creating and implementing new supervision strategies and adjusting workforces accordingly. Given this huge shift in responsibility that local probation departments are currently dealing with, the Legislature must consider impacts that realigning the state's juvenile population at this time may have on the implementation of the 2011 public safety realignment.

**Potential hurdles.** Stakeholders and the Administration have acknowledged issues related to realigning DJJ's population, including statutory issues, that remain unresolved. These include; 1) age of jurisdiction, counties can only retain wards up to the age of 21, while DJJ retains wards to the age of 25, 2) court commitment changes, establishing a process for changes in commitment status, 3) the potential increase in Direct Files of juveniles in adult court, and 4) potential sight and sound barriers required for inmates under the age of 18, if they are housed in adult institutions. Until resolution to many of these issues becomes clearer, it may be premature to provide locals with \$10 million in planning funding, as the budget proposes.

**Recommendation.** No action. The Administration is expected to update the proposal for May Revise.

## **Board of State and Community Corrections (5227)**

### **Issue 1 – Establishment of the Board of State and Community Corrections**

**Background.** Originally, the Board of Corrections (BOC) was established in 1944 as part of the state prison system. Effective July 1, 2005, as part of the corrections agency consolidation, the Corrections Standards Authority (CSA) was created within CDCR by bringing together the BOC and the Correctional Peace Officers Standards and Training (CPOST) commission. The reorganization consolidated the duties and functions of the BOC and CPOST and entrusted the CSA with new responsibilities.

The CSA works in partnership with city and county officials to develop and maintain standards for the construction and operation of local jails and juvenile detention facilities and for the employment and training of local corrections and probation personnel. The CSA also inspects local adult and juvenile detention facilities, administers funding programs for local facility construction, administers grant programs that address crime and delinquency, and conducts special studies relative to the public safety of California's communities.

The CSA currently operates using a four divisional structure:

- **Facilities Standards and Operations Division.** The Facilities Standards and Operations Division works in collaboration with local corrections agencies to maintain and enhance the safety, security, and efficiency of local jails and juvenile detention facilities.
- **Corrections Planning and Programs Division.** The Corrections Planning and Programs Division plans, develops, and administers programs in collaboration with local and State corrections agencies to enhance the effectiveness of correctional systems and improve public safety.
- **Standards and Training for Corrections Division.** The Standards and Training for Corrections Division works in collaboration with State and local corrections and public/private training providers in developing and administering programs designed to ensure the competency of State and local corrections professionals.
- **County Facilities Construction Division.** The County Facilities Construction Division works in collaboration with State and local government agencies in administering funding for county detention facility construction projects, for the purpose of enhancing public safety and conditions of confinement.

Legislation associated with the 2011 Budget Act abolished the CSA and established the new Board of State and Community Corrections (Board) as an independent entity, effective July 1, 2012. The Board will absorb the previous functions of the CSA as well

as other public safety programs previously administered by the California Emergency Management Agency (CalEMA). Specific statutory changes include:

- Abolish the CSA within CDCR and established the Board as an independent entity.
- Transfer the powers and duties of the CSA to the Board.
- Transfer certain powers and duties that currently reside with CalEMA to the Board.
- Eliminate the California Council on Criminal Justice and assigned its powers and duties to the Board.
- Reestablish CPOST within CDCR.

The Board will provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California’s adult and juvenile criminal justice system. Particularly important in the next several years will be coordinating with and assisting local governments as they implement the realignment of many adult offenders to local government jurisdictions that began in 2011. The Board will guide statewide public safety policies and ensure that all available resources are maximized and directed to programs that are proven to reduce crime and recidivism among all offenders.

The new Board will be an entity independent from CDCR. The Board will continue to be chaired by the Secretary of CDCR, and its vice-chair will be a local law enforcement representative. The Board will have 12 members, streamlined from both its immediate predecessor (CSA), with 19 members, and its former predecessor (BOC), which had 15 members. Members will reflect state, local, judicial, and public stakeholders.

**Governor’s Proposal.** The Governor’s Budget proposes \$109.2 million (\$16.9 million General Fund and \$92.2 million other funds) for the state operations and local assistance programs included under the Board. The funding is comprised of resources transferred from the CSA and CalEMA and will allow the Board to operate as an independent entity. Below is a chart summarizes the proposed funding and program structure of the Board, including resources transferred from CDCR and Cal EMA.

The Governor’s Budget also includes trailer bill language to clarify the Board’s authority for administration of certain federal funds.

(dollars in millions)

	<b>Funding</b>	<b>Positions</b>
Program 10 - Board Administration and Program Support	\$1.99	19.0
Program 15 - Corrections Planning and Grant Programs	\$81.26	23.5
Program 20 - Local Facilities Standards and Operations	\$3.81	20.0

Program 25 - Standards and Training for Local Corrections	\$22.19	13.0
<b>Board Total</b>	<b>\$109.16</b>	<b>75.5</b>
<b>From CDCR</b>	- <b>\$63,191</b>	<b>-68.5</b>
<b>From CalEMA</b>	- <b>\$45,970</b>	<b>-8.5</b>
<b>Net Total of the Establishment of the Board</b>	<b>\$0</b>	<b>-1.5</b>

Beside the core CSA functions, outlined above, the proposal includes \$253,000 from CDCR for administrative functions and the transfer of \$8.9 million from CDCR to assist counties with the implementation of the 2011 public safety realignment. The Board is to administer these funds, in consultation with the Department of Finance. Of the \$8.9 million, \$7.9 million is to be distributed to counties for the Community Corrections Partnership to develop realignment implementation plans and the remaining \$1 million is to provide state-wide training to counties.

Programs that will transfer from CalEMA include:

- **Edward Byrne Justice Assistance Grant (JAG) Program** - The U.S. Congress established the JAG program in the 2005 Omnibus Appropriations package. California's JAG program recipients include local criminal justice agencies, which utilize the grant to address apprehension, prosecution, adjudication, detention, and rehabilitation of offenders who violate state and local laws. California's JAG program also funds the California Counter Drug Procurement Program.
- **Residential Substance Abuse Treatment (RSAT) Program** - The RSAT Program is designed to assist state and local government agencies in developing and implementing substance abuse treatment programs in correctional and detention facilities and to provide community-based aftercare services for offenders.
- **California Gang Reduction, Intervention, and Prevention (CalGRIP) Initiative** - The CalGRIP Initiative provides Restitution Fund grants to cities using a local collaborative effort for anti-gang activities.

Lastly, CSA and Cal EMA provided grants directly to local public safety agencies, including: Citizen's Option for Public Safety (COPS); Juvenile Justice Crime Prevention Act Grants; Booking Fees, Small and Rural Sheriffs Grants; Juvenile Probation Funding; California Multi-Jurisdictional Methamphetamine Enforcement Team; California Gang Violence Suppression Program; Multi-Agency Enforcement Consortium; Rural Crime Prevention; Sexual Assault Felony Enforcement; and the High Technology Theft Apprehension and Prosecution Program. Funding for these programs was realigned to locals as part of the 2011 public safety realignment. However, if it is determined that state level administration requirements remain for any of these programs, the Board would fulfill those responsibilities.

**Staff Comment.** The Board will be critical to the implementation and success of the 2011 public safety realignment. One of the key drivers in establishing the Board was the need for a state/local body that could serve as the backbone of California's public safety continuum. To facilitate local success, California needs to strategically coordinate support, foster local leadership, target resources and provide technical assistance. Per statute, the Board will be charged with "providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems. This mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations."

The Board also will have the duty to "collect and maintain available information and data about state and community correctional policies, practices, capacities, and needs, including, but not limited to, prevention, intervention, suppression, supervision, and incapacitation, as they relate to both adult corrections, juvenile justice, and gang problems. The Board shall seek to collect and make publicly available up-to-date data and information reflecting the impact of state and community correctional, juvenile justice, and gang-related policies and practices enacted in the state, as well as information and data concerning promising and evidence-based practices from other jurisdictions."

Within these responsibilities, the Board will play a key role in collecting, maintaining, and reporting data regarding the 2011 public safety realignment. Such data will be critical in understanding how resources should be allocated and how program success is ultimately measured.

It is worth noting that there is significant interest in researching and reporting on aspects of the 2011 public safety realignment from within academic and private foundation communities. One project of note, The Partnership for Community Excellence (The Partnership) established by California Forward, seeks to develop a "hub" to coordinate efforts to assist local governments in implementing public safety realignment. The Partnership notes that the state has not provided any direction or assistance to counties in developing integrated strategies to reduce costs and improve outcomes. This effort highlights the urgency for the Board to assume its responsibilities in ensuring that California has an efficient and effective approach to public safety in a time of such momentous change.

**Recommendation.** Approve the Board of State and Community Corrections proposal and trailer bill language. Adopt budget bill language requiring the Board to report quarterly on progress of the transition, including; workload analysis, backlogs and/or gaps, and staff vacancies.

Senate Budget and Fiscal Review—Mark Leno, Chair

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



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## CALIFORNIA DEPARTMENT OF JUSTICE (0820)

**Departmental Overview.** The constitutional office of the Attorney General, as chief law officer of the state, has the responsibility to see that the laws of California are uniformly and adequately enforced. This responsibility is fulfilled through the diverse programs of the Department of Justice (DOJ).

The DOJ is responsible for providing skillful and efficient legal services on behalf of the people of California. The Attorney General represents the people in all matters before the Appellate and Supreme Courts of California and the United States; serves as legal counsel to state officers, boards, commissioners and departments; represents the people in actions to protect the environment and to enforce consumer, antitrust, and civil laws; and assist district attorneys in the administration of justice. The DOJ also provides oversight, enforcement, education and regulation of California's firearms/dangerous weapons laws; provides evaluation and analysis of physical evidence; regulates legal gambling activities in California; supports the telecommunications and data processing needs of the California criminal justice community; and pursues projects designed to protect the people of California from fraudulent, unfair, and illegal activities.

**Budget Overview.** The Governor's 2012-13 Budget proposes \$723.38 million (\$201.2 million General Fund) and 4,653.3 personnel years.

### Expenditures

Program	2010-11	2012-12	2012-13
Directorate and Administration	\$81.94	\$88.38	\$91.32
Legal Services	\$315.05	\$367.20	\$375.59
Law Enforcement	\$215.36	\$209.45	\$187.75
California Justice Information Services	\$136.12	\$155.14	\$158.03
<b>Totals</b>	<b>\$666.54</b>	<b>\$671.80</b>	<b>\$723.38</b>
<b>Personnel Years</b>	<b>4654.5</b>	<b>4789.2</b>	<b>4653.3</b>

**Issue 1 – Division of Law Enforcement**

**Governor’s Budget Request.** The 2012-13 budget includes a request to re-authorize \$11.8 in funding (\$4.9 million General Fund and \$6.9 million in Legal Services Revolving Fund) to continue public safety programs within the Department of Justice’s Division of Law Enforcement (DLE).

**Background.** The 2011 Budget Act identified the elimination of all General Fund contributions for the DOJ’s Division of Law Enforcement (DLE) as part of the solution for closing the 2011-12 budget gap. This reduction amounted to a \$36.8 million reduction in General Fund contributions in 2011-12 and \$71.5 million in 2012-13. General Fund resources for forensic laboratory program, the Armed Persons Program, and investigation teams to assist the Department’s legal services division remained intact. The Governor’s 2012-13 Budget proposal includes a partial restoration of DLE funding that would be contingent on the passage of a tax proposal via ballot initiative. If the initiative fails to pass it would trigger the collapse of the partial restoration of the Division of Law Enforcement.

When a crime occurs, local law enforcement is able to investigate the immediate circumstances of the crime and make an arrest. However, if the crime is part of an organized criminal enterprise, the local agency may have incapacitated the street level operative, but not the central functions of the larger organization. While some large cities might have the capacity to develop more sophisticated surveillance capabilities, they cannot avoid their own jurisdictional limitations. As a result, by their nature, local law enforcement agencies’ resources and personnel are primarily focused on patrolling the streets of their jurisdictions. The Attorney General’s office is situated to exercise statewide jurisdiction and has established relationships with local and federal authorities that ensure a streamlined enforcement approach.

This budget proposal requests the reauthorization of 51 positions within the Division of Law Enforcement. The \$4.9 million dollars in General Funds would provide the Division of Law Enforcement with 17 positions in the Special Operations Unit and six positions in the Office of the Director. The Special Operations Unit provides statewide enforcement for combating intrastate drug trafficking and violent criminal activity. Personnel within the Special Operations Unit often conduct undercover operations to gather evidence leading to the arrest and prosecution of individuals conducting criminal activity. The additional General Fund contribution would provide three sworn agents and three administrative support staff to be housed within the Office of the Director. The \$6.9 million dollar Legal Services Revolving Fund contribution would provide the Division of Law Enforcement with 22 positions in the Special Investigations Team Program and six positions in the Foreign Prosecution and Law Enforcement Unit. The Special Investigations Team is responsible for conducting complex investigations involving the allegations of civil rights violations, public corruption, underground economy, environmental contamination, federal and state habeas litigation involving capital and non-capital cases, homicides, officer involved shootings, consumer fraud, money laundering, conflict of interest, bribery, tax evasion, race discrimination, death in custody

evaluations, misappropriation of public funds, suspected criminal activity involving public officials and mortgage fraud. The positions within the Office of the Director provide the managerial support for the Division's enforcement and administrative functions.

**LAO Recommendation:** Approve as budgeted. Shift the existing \$2 million General Fund appropriation for the Special Investigations Team to the Legal Services Revolving Fund.

**Staff Recommendation:** Approve LAO's recommendation.

<b>Issue 2 – Armed Prohibited Persons System Workload</b>
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**Governor's Budget Request.** The Governor's 2012-13 Budget requests the authorization of \$1.6 million dollars in Dealers Record of Sale Account spending authority be granted to the Department of Justice's Bureau of Firearms to address enforcement activities associated with the Armed Prohibited Persons System (APPS). The spending authority would begin in 2012-13 and would provide the Department with eight personnel that would serve on a three-year limited term basis.

**Background.** Existing law authorizes the Department of Justice (DOJ) to require a firearms dealer to charge each firearm purchaser a fee, as specified, to fund various specified costs in connection with, among other things, a background check of the purchaser, and to fund the costs associated with the DOJ's firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms.

Chapter 743, Statutes of 2011 (SB 819) authorized the Department of Justice to utilize the Dealers' Record of Sales Account to fund firearms related regulatory and enforcement activities associated with the Armed Persons Prohibited Persons System. The Department of Justice has requested \$1.6 million dollars in 2012-13 in Dealers Record of Sales Account spending authority to support eight additional staff hired on a three year limited term basis.

According to the Department of Justice there are on average, 4,500 newly identified automated Armed Prohibited Persons added to the database on an annual basis. In addition there are approximately 440,000 historical files that need to be manually processed. The Department of Justice currently has the capacity to investigate over 1,700 cases per year leaving a large number of cases backlogged on an annual basis. There are currently seventeen personnel within the Department of Justice assigned to the APPS program that conduct surveillance, seize weapons when necessary, and write reports. The additional limited term positions would be distributed throughout the state and would supplement the current activities of APPS investigators within the Department of Justice.

**Staff Comment:** Fiscal analysis for SB 819 (Leno) authorizing the use of Dealers Record Of Sales Account funds for APPS reflects information from the Department Of Justice indicating a need for 5 special agents for \$945K and a one-time request of \$500K for task forces, resulting in estimated costs of \$1.5M in 2012-13, and \$945K annually thereafter. However this request reflects an increase in both personnel and continued funding.

**Hearing Questions:** The Subcommittee may want to hear from the Department of Justice on the following issues:

1. *Please explain the discrepancy between the original fiscal analysis of SB 819 (Leno) and the request submitted?*

**Staff Recommendation:** Approve as Budgeted.

### Issue 3 – Hawkins Data Center

**Governor’s Budget Request:** The Governor’s 2012-13 Budget requests \$486,000 of one time Dealer Record of Sales (DROS) authority in Fiscal Year 2012-13 and one time authority of \$18,000 in Fiscal Year 2013-14 to support the software development and enhancements required to meet the mandates set forth in Chapter 745, Statutes of 2011 (AB 809).

**Background.** Existing law regulates the transfer of firearms for retaining specified information regarding firearm transfers by the Department of Justice. Existing law establishes different requirements regarding reportable information for handguns and firearms that are not handguns (rifles and shotguns, etc.). Under existing law, the Department of Justice requires firearms dealers to keep a register or record of electronic or telephonic transfers of information pertaining to firearms transactions. Existing law exempts from these requirements certain transactions involving long guns.

Existing law prohibits peace officers, Department of Justice employees, and the Attorney General from retaining or compiling certain information relating to transactions regarding long guns, as specified. Chapter 745, Statutes of 2011 (AB 809) provides that those provisions are repealed on January 1, 2014, and thereafter would require those peace officers to retain and compile information relating to long guns, as specified.

Long gun purchaser information is currently used to build a background check, referred to as the Basic Firearms Eligibility Check. To meet this legislative mandate, the long gun transaction would be expanded to include gun details to build and process the Automated Firearms System (AFS) stolen gun check to ascertain if that long gun is stolen, much like the handgun stolen gun check.

The Department of Justice anticipates that the retention of long gun data will increase volume of retained Dealer Record of Sales transactions by approximately 250,000 transactions per year. In order to meet the additional requirements the Department of Justice utilize external services for software development purposes that would cost \$395,000 dollars and for enhancements to the Department's California Handgun Registration Information System (CHRIS) that would cost approximately \$65,000 dollars. The remaining funds would be utilized for internal consultation and project oversight.

**Staff Comment:** Staff does not have any concerns with this request.

**Staff Recommendation:** Approve as Budgeted.

#### Issue 4 – Legal Services Allocations and Small Client Pot

**Governor's Budget Request.** The Governor's 2012-13 Budget redirects \$1.86 million dollars in General Fund to the small client pot beginning in 2012-13 to address the departments legal service's needs. Additionally, the Governor's 2012-13 Budget includes a request to augment the Department of Justice's budget by \$600,000 dollars by utilizing funds within the Indian Gaming Special Distribution Fund. The \$2.5 million dollar augmentation would be utilized to fund legal services provided for the Governor's office.

**Background.** The 2011 Budget Act reflected the conversion of Department of Justice non-billable clients to billable status. The twelve largest clients (those with over 1,000 hours in 2009-10) with separate General Fund items of appropriation totaling \$50.6 million, and by providing \$1.5 million General Fund in a "small client" pot within the Department of Justice's budget to address the remaining clients. The Department of Justice has proposed several changes to the structure that was originally agreed to in the 2011 Budget Act. The Department of Justice has requested to merge funds into a separate schedule within the main item: separate items of appropriation have been eliminated and the funds merged into each client's main item with a new budget bill program schedule referred to as "Department of Justice Legal Services." Funds are transferred from the state entities budget to the Department of Justice's Legal Services Revolving Fund after the Department of Justice performs legal services for each respective client.

**LAO Recommendation:** Approve the Governor's proposal to augment the Department Of Justices' (DOJ) budget by \$600,000 from the Indian Gaming Special Distribution Fund and delaying by one year the proposed \$1.9 million increase in DOJ's General Fund appropriation for legal services.

**Staff Recommendation:** Approve Governor's proposal to augment DOJ's budget by \$600,000 from the Indian Gaming Special Distribution Fund and delay \$1.9 million dollar General Fund appropriation to Department of Justice for Legal Services.

#### Issue 5 – National Mortgage Settlement Agreement

**Background:** On February 9, 2012 the federal government and 49 states reached a settlement with a number of national banks with respect to certain practices implemented by these banks regarding mortgage servicing and home foreclosures, the agreement was signed off by a federal judge on April 6<sup>th</sup>. The settlement provides for relief for borrowers in the form of modifications, mortgage loan servicing reforms, increased compliance monitoring and enforcement. In joining the national servicing settlement agreement the state was able to reach an agreement that could amount to \$18 billion dollars in support for homeowners in the state. According to the Department of Justice the settlement will be structured as follows:

- \$12 billion will be dedicated to reduce the principal balance on loans by offering either affordable modifications or short sales to approximately 250,000 California homeowners.
- \$430 million payment in penalties, costs, and fees.
- \$849 million to help refinance the loans of approximately 28,000 California homeowners with interest rates above 5.25 percent who are current on their mortgage payments but underwater on their loans.
- \$279 million will be dedicated to provide payments to approximately 140,000 homeowners foreclosed upon during the worst period of servicing misconduct.
- \$1.1 billion will be distributed to California communities to repair blight and devastation left by waves of foreclosures in hard-hit areas.
- \$3.5 billion to forgive unpaid debts to banks for about 32,100 homeowners who have lost their homes to foreclosure.

In addition to the amount agreed to in the settlement there will also be reforms to the mortgage servicing industry:

- Information in foreclosure affidavits must be personally reviewed and based on competent evidence.
- Holders of loans and their legal standing to foreclose must be documented and disclosed to borrowers.
- Borrowers must be sent a pre-foreclosure notice that will include a summary of loss mitigation options offered, an account summary, description of facts

supporting lender's right to foreclose, and a notice that the borrower may request a copy of the loan note and the identity of the investor holding the loan.

- Borrowers must be thoroughly evaluated for all available loss mitigation options before foreclosure referral, and banks must act on loss mitigation applications before referring loans to foreclosure; i.e. "dual tracking" will be restricted.
- Denials of loss mitigation relief must be automatically reviewed, with a right to appeal for borrowers.
  
- Banks must implement procedures to ensure accuracy of accounts and default fees, including regular audits, detailed monthly billing statements and enhanced billing dispute rights for borrowers.
  
- Banks are required to adopt procedures to oversee foreclosure firms, trustees and other agents.
  
- Banks will have specific loss mitigation obligations, including customer outreach and communications, time lines to respond to loss mitigation applications, and e-portals for borrowers to keep informed of loan modification status.
  
- Banks are required to designate an employee as a continuing single point of contact to assist borrowers seeking loss mitigation assistance.
  
- Military personnel who are covered by the SCRA will have enhanced protections.
  
- Banks must maintain adequate trained staff to handle the demand for loss mitigation relief.
  
- Application and qualification information for proprietary loan modifications must be publicly available.

**Staff Comment:** This is an informational item. The Subcommittee may want to hear from the Department of Justice on the following issues:

1. *The settlement included approximately \$410 million dollars in discretionary funds, has the Attorney General's office identified where those funds will be utilized?*
  
2. *Could you please elaborate on the implementation process of the reforms that were agreed to in the settlement agreement?*

## **Issue 1: Judicial Branch – Trial Court Funding (0250)**

**Background.** Chapter 850, Statutes of 1997, enacted the Lockyer-Isenberg Trial Court Funding Act of 1997 to provide a stable and consistent funding source for the trial courts. Beginning in 1997-98, consolidation of the costs of operation of the trial courts was implemented at the state level, with the exception of facility, revenue collection, and local judicial benefit costs. This implementation capped the counties' general purpose revenue contributions to trial court costs at a revised 1994-95 level. The county contributions become part of the Trial Court Trust Fund, which supports all trial court operations. Fine and penalty revenue collected by each county is retained or distributed in accordance with statute.

Chapter 1082, Statutes of 2002, enacted the Trial Court Facilities Act of 2002, which provided a process for the responsibility for court facilities to be transferred from the counties to the state by July 1, 2007. This Chapter also established several new revenue sources, which went into effect on January 1, 2003. These revenues are deposited into the State Court Facilities Construction Fund (SCFCF) for the purpose of funding the construction and maintenance of court facilities throughout the state. As facilities transfer to the state, counties will also contribute revenues for operation and maintenance of court facilities based upon historical expenditures.

In enacting these changes, the Legislature sought to create a trial court system that was more uniform in terms of standards, procedures, and performance. The Legislature also wanted to maintain a more efficient trial court system through the implementation of cost management and control systems.

The Judicial Council is the policymaking body of the California courts, the largest court system in the nation. Under the leadership of the Chief Justice and in accordance with the California Constitution, the council is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice. The Administrative Office of the Courts (AOC) implements the council's policies.

Currently, the state maintains 58 trial court systems, each having jurisdiction over a single county. These courts have trial jurisdiction over all criminal cases (including felonies, misdemeanors, and traffic matters). They also have jurisdiction over all civil cases (including family law, probate, juvenile, and general civil matters). In 2009–10, more than ten million cases were filed in trial courts throughout the state.

**Major Trial Court Realignment Legislation**

Legislation	Description
<b>Lockyer–Isenberg Trial Court Funding Act of 1997.</b> Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle)	Transferred financial responsibility for trial courts (above a fixed county share) from the counties to the state.
<b>Trial Court Employment Protection and Governance Act.</b> Chapter 1010, Statutes of 2000 (SB 2140, Burton)	Classified most individuals working in the trial courts as court employees.
<b>Trial Court Facilities Act of 2002.</b> Chapter 1082, Statutes of 2002 (SB 1732, Escutia)	Initiated the transfer of ownership and responsibility of trial court facilities from the counties to the state.

**Governor’s Proposal.** The Governor budget contains the following proposals relative to trial court funding:

- 1) \$50 million for the Trial Court Trust Fund from civil court fee increases. These funds would be available to offset the ongoing impact of reductions in funding for trial court operations contained in previous budget acts.
- 2) Provisional Language that would grant the Judicial Council the authority to allocate the continuing budget reductions across the branch and to redirect funding from other court fund sources, as the Judicial Council deems appropriate.
- 3) A trigger reduction of \$125 million if the Governor’s tax proposal is not approved in November. While the Branch would determine how to implement this reduction, it is the equivalent of court closures equal to three days per month.

The following shows total trial court funding as proposed in the Governor’s Budget.

(dollars in millions)

2010-11	2011-12	2012-13
\$3,218	\$2,667	\$2,819

**Legislative Analyst’s Office (LAO).** The LAO has determined that recent reliance on one–time solutions to address judicial branch cuts results in \$302 million still requiring ongoing solutions. According to the LAO, implementing ongoing reductions in the budget year, as proposed by the Governor, may be difficult because the branch has fewer one–time options available to help address the reduction, largely because of the significant amount of special fund balances used this year. To the extent that the Legislature approves the continuation of the ongoing reduction, the LAO offers a series of recommendations and options below. Specifically, The LAO recommend the Legislature (1) reject the Governor's proposed budget bill language to authorize the Judicial Council to allocate the reductions, (2) approve the Governor's proposed increase in civil fees, (3) adopt specific actions to achieve ongoing savings in the judicial branch, and (4) require that the judicial branch submit a report on potential operational

efficiencies. Below are actions that the LAO recommends the legislature adopt or consider:

- **Implement Electronic Court Reporting.** Under current law, trial courts use certified shorthand reporters to create and transcribe the official record of many court proceedings. As in previous years, the LAO recommends the Legislature direct the trial courts to phase in electronic court reporting, estimating that the state could save about \$13 million in 2012–13 and in excess of \$100 million on an annual basis upon full implementation.
- **Ensure Courts Charge for Court Reporting Services in Civil Cases.** The parties in a civil case are currently required to pay for reporting services only for proceedings lasting more than an hour. However, information provided by AOC indicates a roughly \$50 million difference between court reporting costs for civil cases and the amount of fee revenue collected to offset these costs. This shortfall likely includes costs related to proceedings of less than one hour, fee waivers courts are authorized to provide to indigent litigants, and some failure to collect these fees in certain courts. The LAO recommends the Legislature amend existing state law to require trial courts to charge court reporting fees to offset costs related to court reporting services, including proceedings lasting less than an hour (though still allowing fee waivers for indigent litigants). The LAO believes this new source of revenue along with more efficient collection of the fee by trial courts would generate ongoing savings of \$23 million in 2012–13.
- **Reduce Trial Court Funding Based on Workload Analysis.** In 2005, AOC and the National Center for State Courts completed an in–depth study on the level of funding a given trial court would need based on a specified workload, as measured by the number of cases filed. This study is commonly referred to as the "resource allocation study." Based on data compiled through 2010–11, 10 of the 58 trial courts in the state received more funding—totaling roughly \$40 million—than predicted by the workload study. Based on these findings, the LAO recommends that the Legislature direct the Judicial Council to more closely align the level of funding for the above courts to their actual workload need. If implemented over a four–year period, the LAO projects this recommendation would achieve General Fund savings of \$25 million in the first year of implementation and \$40 million upon full implementation.
- **Transfer Remaining California Case Management System (CCMS) Funds to Trial Courts.** The judicial branch has worked since 2002 to develop a statewide court case management technology project called CCMS. This system was designed to standardize court filings, increase electronic access to court records, reduce the amount of work associated with paper–driven filings, and allow electronic interaction with criminal justice entities. In March 2012, the Judicial Council voted to terminate the product before deploying it to individual courts. Based on AOC estimated costs, the decision to terminate CCMS will reduce spending on this project by \$46 million in 2012–13. In addition, the Judicial Council will receive a one–time \$16 million cash payment from the CCMS product vendor as compensation for numerous product quality issues which resulted in a ten–month project delay. The LAO recommends that the Legislature

direct AOC to transfer all of these funds (totaling \$62 million in 2012–13) directly to trial court operations to offset the unallocated reduction.

- **Implement a Furlough for Court Employees for One Year.** The Legislature could mandate a statewide furlough for court employees for one year. This would be in addition to the furlough days already implemented in many courts. 47 of the 58 trial courts have implemented furlough days at some point in the last few years, with the number of actual furlough days varying across courts. The LAO projects that a one–day–per–month furlough could generate roughly \$65 million in savings in the budget year.
- **Delay Or Cancel Certain Court Construction Projects.** As discussed previously, two judicial branch special funds—SCFCF and ICNA—receive roughly \$450 million in criminal fine and civil filing fee revenues annually for court facility construction projects. A portion of these funds are also used for maintenance of court facilities. Most ICNA construction projects are currently in either the site acquisition or design phase, whereas most SCFCF projects are already under construction. The LAO proposes that the Legislature could delay all projects not currently under construction (mainly ICNA projects) for one year and transfer a couple hundred million dollars of the \$320 million in annual revenues received by ICNA to offset reductions to the trial courts. Alternatively, the LAO suggests the Legislature could consider canceling certain courthouse construction projects and achieve significant savings on an ongoing basis saving roughly \$100 million annually.
- **Require Individual Courts to Make Additional Reductions.** The LAO proposes that the Legislature could require that the individual trial courts be required to absorb additional reductions. However, they note that actions taken in prior years have frequently resulted in a backlog of cases, delays in processing court paperwork, and longer wait times for those seeking court services. In addition, the LAO notes that many trial courts also drew upon their local reserves to help offset recent budget cuts and avoid taking certain operational actions. At the end of 2010–11, trial courts possessed combined reserves of \$562 million, but only around half was unrestricted and available for use by the trial courts to address their budget reductions. The actual level of reserve balances, particularly unrestricted funds, currently varies across trial courts. Some courts possess enough funds in their reserves to cover a large share of their annual expenditures and would probably be able to draw on these reserves—rather than make additional operational changes—to absorb additional budget reductions. Other courts lack a significant amount of unrestricted funds and might have difficulty absorbing further budgetary reductions.
- **Require Judicial Branch to Submit Report on Potential Operational Efficiencies.** The LAO notes that court operations and procedures are governed by numerous state laws which are usually enacted as formal rules of court established by the Judicial Council. These rules of court are designed to ensure standard practices across all courts. For example, the rules regulate the format of case filings, identify acceptable ways to document court proceedings, and provide guidelines for proceedings for all case types. The Judicial Council, in consultation with trial court administrators and other judicial stakeholders, is best

positioned to evaluate current practices to identify those processes that may be outdated, inefficient, and require statutory change. The courts have expressed that they believe opportunities exist to generate savings through changes in current law, rules of court, and operations. The judicial branch reports having already begun to identify such opportunities. Thus, the LAO recommends that the Legislature require the judicial branch to submit a report on potential operational efficiencies as well as their estimated savings, including those requiring statutory amendments, at budget hearings for legislative consideration and potential action.

**Staff Comments:**

**Recent reductions in trial court funding have been partially offset.** Although trial courts have experienced reductions in General Fund support in the past several years, these reductions have been largely offset by fund shifts and additional revenue from court-related fee increases. As a result, although cumulative reductions currently stand at \$605.8 million, the total level of funding for trial courts has remained relatively flat in recent years. For instance, in 2010-11, trial courts actually received an increase in funding as compared to 2009-10 and the actual funding reduction allocated to trial courts for 2011-12 was \$138.3 million.

Following is a summary of reductions and offsets to trial court funding since 2008-09.

(dollars in millions)

<b>Trial Court Reductions</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>
Unallocated Reduction	\$92.2	\$268.6	\$55	\$320
One-time Reduction		(100)	(30)	
<b>Total</b>	<b>\$92.2</b>	<b>\$268.6</b>	<b>\$55</b>	<b>\$320</b>
<b>Offsets</b>				
<b>Offsets</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>
Use of Local Reserves	\$92.2	\$71	\$25	\$0
Transfer From other Funds		130	130	233.0
Fee Increases		46.7	113.2	107.1
Use of Fund Reserve		3	36	69.4
<b>Total</b>	<b>\$92.2</b>	<b>\$250.7</b>	<b>\$304.2</b>	<b>\$409.5</b>

Although funding reductions have been largely offset in the past, many of the sources used for these offsets have been exhausted. Additionally, although some funding for

employee benefit cost increases has been provided, trial courts have not received an inflation or cost-of-living adjustment since 2008-09 (\$70.1 million Consumer Price Index adjustment), which increases the pressure on trial courts to provide a sustained level of service.

**Previous reductions continue to impact trial court services.** Under Government Code (GC) section 68106, courts must provide written notice to the public and to the Judicial Council at least 60 days before instituting any plan to reduce costs by designating limited services days. The council, in turn, must post all such notices on its internet site within 15 days of receipt. Since GC Section 68106 became operative on October 19, 2010, the Judicial Council has received notices from 25 courts.

In addition to the notices described above, efforts to reduce trial court expenditures have led to staffing reductions, including.

- San Joaquin Superior Court, which recently laid off 42 employees.
- San Francisco Superior Court, which recently laid off 75 employees.
- Los Angeles Superior Court, which previously laid off 329 employees and recently announced 350 additional layoffs.

**Many one-time offsets have been exhausted.** As mentioned previously, reductions in funding for trial courts have largely been offset by fund shifts or transfers, use of local funding reserves, fee increases, and court closures. Other than fee increases, many of these offsets have been one-time in nature and may no longer be feasible options to mitigate the impact of previous reductions in trial court funding.

**Court construction funding has contributed to recent solutions.** The Judicial Branch has two primary court construction funds, the SCFCF, which receives approximately \$130 million from fees and penalty assessments to support trial court construction projects, and the Immediate and Critical Needs Account (ICNA), which receives approximately \$321 million from various civil and criminal fines and fees to support 41 trial court construction projects that were deemed to be immediate and critical by the Judicial Council. In the current year, the following actions were taken related to these two funds:

- Transferred \$310.3 million from the ICNA to the GF.
- Loaned \$350 million from the SCFCF to the GF, to be repaid with interest.
- Loaned \$90 million from the ICNA to the GF, to be repaid with interest.
- Provided authority to the AOC to allow for redirection of \$130 million from the SCFCF and ICNA to offset the reduction to trial court funding.

The AOC submitted a revised court construction funding plan to the Judicial Council this past December that results in minimal project delays and the cancelation of only two, one-courtroom projects (Alpine and Sierra). The Legislature should receive a proposal this spring that reflects an updated funding plan.

Due to delays related to the acquisition of properties, the construction program has been able to proceed with minimal impact to projects. However, in 2012–13 and beyond, the redirections and loans may cause delays to the project schedules

**Judicial Branch proposed solutions for trial court funding.** The AOC has proposed that the following solution be considered as a package of components that can provide ongoing funding stability for trial courts.

- **Establish a New Baseline Budget That Reflects an Appropriate Level of Ongoing Funding Based on Cumulative Reductions.** Trial courts will absorb approximately \$350 million as operationalized reductions while recognizing that courts may be unable to provide full access to justice. This is an attempt to more accurately reflect the budget after the successive years of one-time borrowing solutions.
- **General Fund Restoration.** Part of the ongoing solution would include a restoration of \$150 million. This restoration is proposed to be made over the next three fiscal years: \$100 million in 2012-13, another \$25 million in 2013-14, and a further \$25 million in 2014-15.
- **Additional and/or Increases in Various Civil Fees.** As done in past years, the judicial branch will work with the other branches of government and judicial branch stakeholders, including the State Bar, to develop a range of user-fees. As mentioned above, the proposed budget includes \$50 million in new fee revenue for the trial court trust fund.
- **Transfer and Redirections from other Court Funds.** Part of the solution would include a redirection from other funds, after consultation and negotiation with branch stakeholders. The court's goal is to achieve a consensus on redirections of \$50 million.
- **Improved Efficiencies in Court Operations and Changes in Unnecessary Statutory and Reporting Requirements.** The Judicial Branch would identify areas in which courts can become more efficient without threatening the administration of justice and make changes in those areas.
- **Trial Court Fund Balances.** Part of the solution would include the trial courts using \$100 million of the fund balances in 2012-13, \$75 million in 2013-14, and \$50 million in 2014-15.

**Previous trial court closure.** The 2009–10 budget authorized the Judicial Council to provide that the courts be closed for the transaction of judicial business for one day per month. On July 29, 2009, the Judicial Council designated the third Wednesday of the month from September 2009 through June 2010 as a uniform statewide court closure day. The council directed that on that day, all superior courts, Courts of Appeal, and the Supreme Court would be closed.

The impact of court closures varied considerably from court to court. A few courts reported that there was no discernible impact or only a minimal impact. But most courts reported that there was a noticeable impact on court operations and court users from closure of the courts. Workload did not go away simply because the court was closed

one day a month. Just as on existing court holidays, that workload shifted to other days. The Legislature may consider asking the AOC to provide greater detail on the impacts of the previous one-day closure and expected impacts of closing trial courts for three days per month.

**Recommendation.** Hold open to allow the AOC additional time to develop a trial court funding plan for 2012-13 that provides clarity on offsets to previous reductions.

## **Issue 2: California Court Case Management System – Discussion Item**

**Background.** Following enactment of the Trial Court Funding Act of 1997, the Judicial Council became responsible for allocating funding to support the various case management systems used by the superior courts. Case management systems are the mechanism by which court staff calendar, update, and track all cases.

In 2003 the AOC selected BearingPoint Incorporated (BearingPoint) as the vendor responsible for developing a case management system for criminal and traffic case types, referred to as the criminal system. The criminal system was based on an earlier version that was in use at the Superior Court of Orange County (Orange) and a separate version in use at the Superior Court of Ventura County (Ventura). The vendor began development of the criminal system in 2003. In July 2006 the Superior Court of Fresno County (Fresno) deployed the criminal system. Although the AOC planned to deploy the system to other superior courts, Fresno was the only court to ultimately implement it. BearingPoint supported the system until December 2006, when the AOC transitioned the contract to Deloitte Consulting. In October 2009 the AOC took over support of the criminal system.

In 2003 the AOC contracted with Deloitte for the design of a system for civil, small claims, and probate cases, referred to as the *civil system*, which was completed in November 2005. In July 2007 the mental health case type was added to the civil system. Los Angeles, Orange, Sacramento, San Diego, San Joaquin, and Ventura county superior courts implemented various components of the civil system.

In June 2007 the AOC began overseeing the development of a single, statewide case management system for all case types, referred to as the California Court Case Management System (CCMS). CCMS combines the capabilities already developed in the criminal and civil systems (interim systems) with new functionality for family law and juvenile case types. The civil system was to serve as the architectural base for CCMS.

The goals for CCMS include improving the access, quality, and timeliness of justice; promoting public safety; and enabling court accountability. CCMS is also designed to include statewide reporting, and court interpreter and court reporter scheduling, and interfaces with other justice partner systems. The CCMS application is designed to manage all case types, including civil, small claims, probate, mental health, criminal, traffic, family law, juvenile dependency, and juvenile delinquency cases. The CCMS

design also includes a public Web site that is intended to allow users to search for case information, pay fines and fees, request traffic school enrollment, request a continuance on a traffic case, access court calendars, and view certain case documents.

According to a February 2011 report by the State Auditor, AOC records showed that in 2015-16, the year in which the AOC estimated at the time of the report that CCMS would be deployed statewide, the full cost of the project was likely to reach nearly \$1.9 billion (not including costs that superior courts would incur to implement CCMS). As of February of this year, over \$500 million had been spent on CCMS. In addition to total cost, other concerns highlighted by the audit include: 1) inadequate planning, 2) failure to adequately structure the development vendor's contract, 3) failure to develop accurate cost estimates, and 4) the AOC's need to gain better support from the superior courts for the project.

At a special session on March 27, 2012, the Judicial Council voted to stop deployment of the CCMS as a statewide solution for the case management needs of the trial courts. Instead, the council directed the council's CCMS Internal Committee, in partnership with the trial courts, to develop timelines and recommendations to the Judicial Council to find other ways to use the CCMS technology and the state's investment in the software system, as well as develop new strategies to assist courts with failing case management systems.

The council also directed the CCMS Internal Committee, in partnership with the trial courts, to develop timelines and recommendations to the Judicial Council for providing technology solutions to improve efficiencies in court operations by maximizing the value of document management systems, e-filing capabilities, and e-delivery services for the benefit of litigants, attorneys, justice branch partners, and the public. Further, the committee was also directed to establish a technology governance structure to best serve the implementation of technology solutions, and develop alternatives for the Superior Court of San Luis Obispo and other trial courts that have failing case management systems and critical case management needs.

The AOC had anticipated a budget of approximately \$55 million for V4 activities in 2012-13. Based on the Judicial Council action, the total cost in FY 2012-13 will be \$8.6 million (as outlined below) which will make \$46.4 million available for other judicial branch priorities.

(dollars in millions)

2012-13 Activities	Cost
Terminate V4	\$2.7
Technology Vision and Roadmap	\$.8
Leverage CCMS Technology	\$3.4
Leverage Doc Management/eFile/eAccess	\$.6
Court Technology Governance Structure	\$.2
Alternatives for San Luis Obispo	\$.7
Courts with Critical CMS Needs	\$.2
<b>Total</b>	<b>\$8.6</b>

The CCMS Internal Committee and the AOC also notified the Judicial Council that the cost reimbursement that was negotiated with Deloitte Consulting, the primary vendor used in the development of CCMS, following delays in the project, would be in the form of a \$16 million payment.

**Staff Comment.** As noted above, the AOC plans on exploring options to best leverage the substantial investment in CCMS that has been made to date. In addition, there are significant costs associated with maintenance of V2 (Fresno) and V3 (Los Angeles, Orange, Sacramento, San Diego, San Joaquin, and Ventura). Specifically cost in 2012-13 for the V2 will be \$4.1 million, and costs for the V3 will be \$11.9 million, both from the Trial Court Trust Fund. The Legislature may want to ask the following questions:

- Can the AOC provide further detail on the process and of options they may be considered to utilize the technology investment made to date?
- How will the costs of V2 and V3 maintenance be reduced?

Senate Budget and Fiscal Review—Mark Leno, Chair

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



Thursday, April 19, 2012  
9:30 a.m. or Upon Adjournment of Session  
Room 113

Consultants: Joe Stephenshaw  
Brady Van Engelen

## Hearing Outcomes

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## CALIFORNIA DEPARTMENT OF JUSTICE (0820)

**Departmental Overview.** The constitutional office of the Attorney General, as chief law officer of the state, has the responsibility to see that the laws of California are uniformly and adequately enforced. This responsibility is fulfilled through the diverse programs of the Department of Justice (DOJ).

The DOJ is responsible for providing skillful and efficient legal services on behalf of the people of California. The Attorney General represents the people in all matters before the Appellate and Supreme Courts of California and the United States; serves as legal counsel to state officers, boards, commissioners and departments; represents the people in actions to protect the environment and to enforce consumer, antitrust, and civil laws; and assist district attorneys in the administration of justice. The DOJ also provides oversight, enforcement, education and regulation of California's firearms/dangerous weapons laws; provides evaluation and analysis of physical evidence; regulates legal gambling activities in California; supports the telecommunications and data processing needs of the California criminal justice community; and pursues projects designed to protect the people of California from fraudulent, unfair, and illegal activities.

**Budget Overview.** The Governor's 2012-13 Budget proposes \$723.38 million (\$201.2 million General Fund) and 4,653.3 personnel years.

### Expenditures

Program	2010-11	2012-12	2012-13
Directorate and Administration	\$81.94	\$88.38	\$91.32
Legal Services	\$315.05	\$367.20	\$375.59
Law Enforcement	\$215.36	\$209.45	\$187.75
California Justice Information Services	\$136.12	\$155.14	\$158.03
<b>Totals</b>	<b>\$666.54</b>	<b>\$671.80</b>	<b>\$723.38</b>
<b>Personnel Years</b>	<b>4654.5</b>	<b>4789.2</b>	<b>4653.3</b>

**Issue 1 – Division of Law Enforcement**

**Governor’s Budget Request.** The 2012-13 budget includes a request to re-authorize \$11.8 in funding (\$4.9 million General Fund and \$6.9 million in Legal Services Revolving Fund) to continue public safety programs within the Department of Justice’s Division of Law Enforcement (DLE).

**LAO Recommendation:** Approve as budgeted. Shift the existing \$2 million General Fund appropriation for the Special Investigations Team to the Legal Services Revolving Fund.

**Staff Recommendation:** Approve LAO’s recommendation.

*Item approved 3-0*

**Issue 2 – Armed Prohibited Persons System Workload**

**Governor’s Budget Request.** The Governor’s 2012-13 Budget requests the authorization of \$1.6 million dollars in Dealers Record of Sale Account spending authority be granted to the Department of Justice’s Bureau of Firearms to address enforcement activities associated with the Armed Prohibited Persons System (APPS). The spending authority would begin in 2012-13 and would provide the Department with eight personnel that would serve on a three-year limited term basis.

**Staff Recommendation:** Approve as Budgeted.

*Item approved 2-1*

**Issue 3 – Hawkins Data Center**

**Governor’s Budget Request:** The Governor’s 2012-13 Budget requests \$486,000 of one time Dealer Record of Sales (DROS) authority in Fiscal Year 2012-13 and one time authority of \$18,000 in Fiscal Year 2013-14 to support the software development and enhancements required to meet the mandates set forth in Chapter 745, Statutes of 2011 (AB 809).

**Staff Recommendation:** Approve as Budgeted.

***Item approved 2-1***

**Issue 4 – Legal Services Allocations and Small Client Pot**

**Governor’s Budget Request.** The Governor’s 2012-13 Budget redirects \$1.86 million dollars in General Fund to the small client pot beginning in 2012-13 to address the departments legal service’s needs. Additionally, the Governor’s 2012-13 Budget includes a request to augment the Department of Justice’s budget by \$600,000 dollars by utilizing funds within the Indian Gaming Special Distribution Fund. The \$2.5 million dollar augmentation would be utilized to fund legal services provided for the Governor’s office.

**Staff Recommendation:** Approve Governor’s proposal to augment DOJ’s budget by \$600,000 from the Indian Gaming Special Distribution Fund and delay \$1.9 million dollar General Fund appropriation to Department of Justice for Legal Services.

***Item approved 2-1***

**Issue 5 – National Mortgage Settlement Agreement**

**Issue 1: Judicial Branch – Trial Court Funding (0250)**

- **Require Judicial Branch to Submit Report on Potential Operational Efficiencies.** The LAO notes that court operations and procedures are governed by numerous state laws which are usually enacted as formal rules of court established by the Judicial Council. These rules of court are designed to ensure standard practices across all courts. For example, the rules regulate the format of case filings, identify acceptable ways to document court proceedings, and provide guidelines for proceedings for all case types. The Judicial Council, in consultation with trial court administrators and other judicial stakeholders, is best positioned to evaluate current practices to identify those processes that may be outdated, inefficient, and require statutory change. The courts have expressed that they believe opportunities exist to generate savings through changes in current law, rules of court, and operations. The judicial branch reports having already begun to identify such opportunities. Thus, the LAO recommends that the Legislature require the judicial branch to submit a report on potential operational efficiencies as well as their estimated savings, including those requiring statutory amendments, at budget hearings for legislative consideration and potential action.

**Recommendation.** Hold open to allow the AOC additional time to develop a trial court funding plan for 2012-13 that provides clarity on offsets to previous reductions.

*Item held open. Motion to require the Judicial Branch to submit a report to the subcommittee by May Revise detailing operational efficiencies, including system-wide or court specific, approved 3-0*

**Issue 2: California Court Case Management System – Discussion Item**

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



Thursday, May 10, 2012  
9:30 a.m. or Upon Adjournment of Session  
Room 113  
Part A

Consultant: Joe Stephenshaw

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## Vote Only Items

Item Number	Department	Vote Only Calendar		Amount
		Issue	Action	
1	CDCR	Federated Data Center	Approve as Budgeted	\$0
2	CDCR	Technical Adjustment	Approve as Budgeted	\$0
3	CDCR	Workforce Cap Plan	Approve as Budgeted	\$0
4	CDCR	CIW, Intermediate Care Facility	Reject Proposal	\$1.3 million GF
5	CDCR	Public Safety HR Positions	Reject Proposal	\$1.98 million GF
6	CDCR	Transfer DJJ Parole to Adult Parole	Approve as Requested	\$0
7	CDCR	Tech Adjust – Transfer Program Funding	Approve as Proposed	\$0
8	CDCR	Expenditure Authority for Unpaid Leave Settlement Agreement	Approve as Proposed	\$0
9	CDCR	Estrella Cancellation	Approved as Budgeted	-\$1.9 million GF
10	CDCR	Statewide Budget Packages and Advance Planning	Approve as Proposed	\$750,000 GO Bond
11	CDCR	Tehachapi, SHU, Small Management Yards Cancellation	Approve as Proposed	-\$60,000 GO Bond
12	CDCR	Capital Outlay Reappropriations and Extension	Approve as Proposed	\$61 million GF, \$15.3 million lease revenue bond
1	Mandates	Public Safety Mandates (Page 19)	Suspend	NA

## Issue 1: FEDERATED DATA CENTER SUPPORT

**Governor’s Proposal.** The California Department of Corrections and Rehabilitation (CDCR) and California Correctional Health Care Services (CCHCS - formerly California Prison Health Care Services) request the permanent transfer of ten (10.0) positions (authority only) from CDCR and CCHCS to the California Technology Agency (Technology Agency), Office of Technology Services (OTech). The ten (10.0) positions will be used to support the Federated Data Center (FDC), which is located on OTech’s raised floor. The FDC is a shared data center providing server hosting, network, and

data storage services to CDCR, CCHCS and other State departments. There is no net increase in cost to the State as a result of this proposed change.

**Background.** The FDC was originally proposed by a consortium of several State departments to facilitate and standardize California's Information Technology (IT) Infrastructure consolidation efforts and comply with Assembly Bill 2408. This legislation was enacted in 2010 in concert with Governor's Executive Order (EO) S-03-10 which requires that State departments (1) transition the hosting of all mission critical and public-facing applications to a Tier III data center as designated by the Technology Agency by no later than September 2010, and (2) all new mission critical and public-facing applications and major server refreshes be hosted in a Tier III data center as designated by the Technology Agency.

**Recommendation.** Approve as Budgeted.

## **Issue 2 – Technical Adjustment**

**Governor's Proposal.** The CDCR requests to permanently realign resources for a number of programs and divisions in 2012-13 and ongoing. These realignments result in a net reduction of 2.0 positions (1.8 PYs) and will allow CDCR to properly align its budget authority with its existing expenditures by program.

**Background.** Each year, CDCR's programs and divisions are provided funding allotments that tie to the budget authority in the Budget Act. Due to changes in business practices over the years and/or errors in requesting budget authority by program, CDCR has identified various programs and divisions which require realignment to accurately align their authority with their expenditures.

**Recommendation.** Approve as Budgeted.

## **Issue 3 – Workforce Cap Plan**

**Governor's Proposal.** CDCR requests the elimination of 1,877.6 positions (1,847.2 PYs) in Fiscal Year 2012-13 and ongoing to remove the position authority associated with CDCR's Workforce Cap (WFC) reduction of \$195.2 million. In addition, this proposal schedules CDCR's WFC reduction, which was included in Control Section 3.93 of the 2011 Budget, to the correct programs.

**Background.** The WFC funding was reduced from CDCR's budget through Control Section 3.93 of the 2011-12 Budget Act. CDCR has previously accounted for these positions as salary savings. This request would schedule the position reductions to the correct programs and items.

**Recommendation.** Approve as Budgeted.

## **Issue 4 – CA Institute for Women, Intermediate Care Facility**

**Governor’s Proposal.** The CDCR is requesting \$1.3 million from the General Fund in Fiscal Year 2012-13 and ongoing to establish 12.8 positions to provide the appropriate custodial and perimeter tower staffing required for the California Institution for Women (CIW) 45-bed inpatient facility. These positions are requested to rectify an error made in the 2011-12 pre-activation BCP that incorrectly calculated the amount of coverage that a Licensed Psychiatric Technician (LPT) classification could provide in lieu of a Medical Technical Assistant (MTA).

**Background.** This Budget Change Proposal (BCP) is in response to the Long-Range Mental Health Bed Plan proposal submitted to the Coleman Court regarding the shortage of Acute/Intermediate Care Facility (ICF) mental health inpatient beds which prohibits timely placement of inmate-patients who require this level of care. Currently, the CDCR does not provide this level of care to female inmate-patients in its existing institutions. The Acute/ICF level of care for female inmate-patients is only provided at the Department of Mental Health (DMH), Patton State Hospital (PSH). The April 2006 Statewide Mental Health Bed Plan proposed to change that relationship by having the CDCR provide the Acute/ICF level of care within its institutions. The facility will be accredited by The Joint Commission and licensed as a Correctional Treatment Center (CTC) with a mental health option, which is currently under construction at the CIW.

A BCP was submitted in 2011-2012 to activate the new 45 bed facility. The BCP was approved providing various positions to activate the facility following the DMH model. An error was made in calculations when it came to determining the number of custody positions required by the conversion of MTA still used by the DMH, which left the facility 6.3 positions short of its required security staffing level. Because CDCR no longer utilizes the MTA classification, the positions were converted to LPTs which are able to distribute medication and can provide some safety coverage. Although the position can provide some safety coverage it does not provide the custodial functions of the MTA. Custody functions must be covered by a Correctional Officer. The BCP approved 12.90 Correctional Officer positions as well as 4.80 Correctional Sergeants; in order to properly staff the building, the CDCR is requesting an additional 6.34 officers. Even with the additional staffing there would be no more than five Correctional Officers posted in the building per shift.

**Recommendation.** Reject proposal.

## **Issue 5 – Public Safety Realignment HR Positions**

**Governor’s Proposal.** The CDCR is requesting \$1.98 million General Fund and 20 two-year limited-term positions in 2012-13 and \$1.92 million General Fund in 2013-14

for implementation of the layoff and transfer process pursuant to Assembly Bill (AB) 109.

**Background.** On March 17, 2011, the California legislature passed AB 109. AB 109 diverts many criminal offenders to county, rather than state, law enforcement agencies. AB 109 was designed to address both California's fiscal crisis and was also a response to a court order regarding overcrowding in California correctional institutions. As a consequence of AB 109, CDCR will be laying off or transferring a significant number of employees due to a reduced prison population.

In order to ensure compliance with AB 109, CDCR is requesting the following:  
Office of Labor Relations (OLR) – AB 109 Realignment Impact to Labor Relations  
The workload of OLR is increasing due to the implementation of AB 109, which encompasses the transfers and layoffs that are being deployed to date and will be implemented beyond 2012-13. In order for OLR to provide necessary business functions in support of AB 109, it is imperative the above requests for additional PY authorization and funding are provided. The requested positions are for a 24-month limited term timeframe.

As impacts of AB 109 begin, OLR will be required to negotiate the impact to employees with their authorized Bargaining Unit representatives. If the impact is not correctly implemented and negotiated, CDCR will be at risk for numerous grievances, arbitrations, and Unfair Labor Practice violations. If OLR is not authorized the requested additional PY authority and additional funding, the current staffing levels on OLR will be unable to perform the necessary functions to properly implement the labor related aspects of AB 109.

Approval of the request provides OLR with staff levels commiserate with the needs outlined by each division within CDCR for implementation of AB 109.

**Recommendation.** Reject proposal.

## **Issue 6 – Tech Adjustment – Transfer DJJ Parole to DAPO**

**Governor's Proposal.** A Spring Finance Letter proposes to transfer the Division of Juvenile Justice Parole Operations (DJJO) to the Division of Adult Parole Operations (DAPO). This proposal has a net zero fiscal effect.

**Background.** On October 1, 2011, DJJO and DAPO were consolidated to achieve efficiencies consistent with CDCR's Workforce Cap Reduction Plan. This adjustment will allow CDCR to properly align its budget authority with its existing program structure.

**Recommendation.** Approve as budgeted.

## **Issue 7 – Tech Adjustment – Transfer Funding Between Programs**

**Governor’s Proposal.** A Spring Finance Letter proposes to realign resources for a number of programs and divisions in 2012-13 and ongoing. This proposal has a net zero fiscal effect.

**Background.** These adjustments will allow CDCR to properly align its budget authority with its existing expenditures by program.

**Recommendation.** Approve as budgeted.

## **Issue 8 – Expenditure Authority for Unpaid Leave Settlement Agreement**

**Governor’s Proposal.** A Spring Finance Letter proposes trailer bill language to authorize the expenditure of any funding received from the settlement of the unpaid leave lawsuit.

**Background.** Authorizes the CDCR to credit money recovered from employee leave settlement to year in which the expenditure was drawn and expend the amount recovered in the year received, upon approval of the Department of Finance.

**Recommendation.** Approve as budgeted.

## **Issue 9 – Estrella Cancelation**

**Governor’s Proposal.** The Governor’s Budget proposes a reduction of \$1.9 million General Fund, \$6,000 Inmate Welfare Fund and 16.4 positions (16.4 PYs) in fiscal year 2011-12 and \$44.5 million General Fund, \$120,000 Inmate Welfare Fund , and 405.5 positions (401.4 PYs) in 2012-13 and ongoing to reflect the cancellation of the activation of the Estrella Correctional Facility. Due to the impacts of realignment, there is no longer a need for this project. Additionally, the CDCR requests \$775,000 and 4 positions (3.8 PYs) remain in 2011-12 and ongoing to place the facility in a warm shutdown until a new plan is developed.

**Background.** Originally, the Estrella Correctional Facility project was for the re-purposing of the Division of Juvenile Justice facility previously known as El Paso de Robles Youth Correctional Facility. The project was included in the CDCR long-range plan for medical and mental health beds provided to the *Coleman* Court in November 2009. The facility was intended to house Specialized General Population (SGP) inmate-patients as well as Enhanced Outpatient Program (EOP) Inmate-patients, with a total population of 1,000 inmate-patients. Construction for the facility was to begin in October 2011, and projected to be complete by December 2012. A BCP was submitted

in 2011-2012 to provide resources to activate the renovated facility. The BCP was approved providing various positions to activate the facility along with ongoing Operating Expenses & Equipment.

**Recommendation.** Approve as Budgeted.

### **Issue 10 – Statewide Budget Packages and Advanced Planning**

**Governor’s Proposal.** A Spring Finance Letter proposes \$503,000 from the cash balance of the 1988 Prison Construction Fund for advance planning and preparation of budget packages for capital outlay projects. This request also eliminates \$503,000 in authority from the 1986 Prison Construction Fund that was contained in the Governor’s Budget.

**Background.** The Governor’s Budget included \$750,000 in General Obligation Bond Funds from two sources (the 1986 Prison Construction Fund and the 1988 Prison Construction Fund). Subsequent to the Governor’s Budget, a review of the 1986 Prison Construction Fund identified that the fund did not have the available cash balance. The entire amount is now being requested to be funded from the 1988 Prison Construction Fund.

**Recommendation.** Approve as Proposed.

### **Issue 11 – Tehachapi, Security Housing Unit, Small Management Yards**

**Governor’s Proposal.** A Spring Finance Letter proposes a reduction of \$60,000 to reflect the cancelation of the Tehachapi, Security Housing Unit (SHU), Small Management Yard (SMY) project.

**Background.** The Tehachapi, SHU, SMY project was included in the Governor’s Budget. However, the project is being withdrawn at this time due to recent guideline changes that may impact the number of inmates housed in SHUs and reduce the total number of SMYs needed.

**Recommendation.** Approve as Proposed.

### **Issue 12 – Capital Outlay Reappropriations and Extension**

**Governor’s Proposal.** A Spring Finance Letter proposes the following capital outlay reappropriations and extension:

California Men's Colony, Central Kitchen Replacement (working drawings and construction), \$258,000 General Fund and \$15.3 million lease revenue bond reappropriation. Although a design firm was selected to complete the working drawings activities for this project, working drawings are only 3 percent complete because the project was suspended pending evaluation of future plans for the facility. This reappropriation is necessary to re-commence the project.

Deuel Vocational Institution, Groundwater Treatment and Non-Portable Water Distribution System, \$27.1 million General Fund reappropriation. A component of the reverse osmosis (RO) plant constructed as part of this project failed in April 2010 and has been under repair. Also, leaks in the project's retention pond system have recently been repaired. The RO repairs are being performed as disputed work under the construction contract. The resolution of the contract dispute will not occur during 2011-12. A reappropriation is necessary to ensure construction funding is available to pay any costs associated with settling the contract dispute and potential liquidated damages.

California Men's Colony, Portable Water Distribution System Upgrade, \$33.6 million General Fund. Construction of this project is complete. However, extended environmental monitoring is required per the California Environmental Quality Act and the Department of Fish and Game. Currently, the Department of General Services has an environmental firm under contract to do this work. An extension of the liquidation period is required to maintain payments for the required environmental oversight.

**Recommendation.** Approve as Proposed.

## Items to be Heard

### CA Department of Corrections and Rehabilitation (5225)

**Departmental Overview.** Effective July 1, 2005, the California Department of Corrections and Rehabilitation (CDCR) was created pursuant to the Governor's Reorganization Plan No. 1 of 2005 and Chapter 10, Statutes of 2005 (SB 737, Romero). All departments that previously reported to the Youth and Adult Correctional Agency (YACA) were consolidated into CDCR and include the California Department of Corrections, Youth Authority (now the Division of Juvenile Justice), Board of Corrections (now the Corrections Standards Authority (CSA)), Board of Prison Terms, and the Commission on Correctional Peace Officers' Standards and Training (CPOST). Effective July 1, 2012, Chapter 36, Statutes of 2011 (SB 92, Committee on Budget and Fiscal Review) creates the Board of State and Community Corrections ("BSCC"). At that time, the BSCC will supersede the CSA.

According to the department's website, its mission is to "enhance public safety through the safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities."

The CDCR is responsible for the incarceration, training, education, and care of adult felons and non-felon narcotic addicts, as well as juvenile offenders. The CDCR also supervises and treats adult and juvenile parolees (juvenile parole is in the process of being realigned to counties). Until June 30, 2012, the department is responsible for setting minimum standards for the operation of local detention facilities and selection and training of law enforcement personnel, as well as provides local assistance in the form of grants to local governments for crime prevention and reduction programs.

The department operates 33 adult prisons, including 8 reception centers (7 male and 1 female), a central medical facility, a treatment center for narcotic addicts under civil commitment, and a substance abuse facility for incarcerated felons. The CDCR also operates three juvenile correctional facilities. In addition, CDCR operates dozens of adult and juvenile conservation camps, the Richard A. McGee Correctional Training Center, and nearly 200 parole offices, as well as contracts to house inmates in several in-state and out-of-state correctional facilities. However, due to the 2011 Public Safety Realignment, the department is altering its contract bed mix.

**Budget Overview.** The Governor's Budget proposes \$8.9 billion and 58,528.2 positions for the CDCR in 2012-13. The table on the following page shows CDCR's total operational expenditures and positions for 2010-11 through 2012-13.

(dollars in thousands)

<b>Funding</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
General Fund	\$9,481,820	\$8,980,824	\$8,664,771
General Fund, Prop 98	24,510	23,623	21,229
Other Funds	108,767	117,317	71,755
Reimbursements	106,196	130,287	130,077
<b>Total</b>	<b>\$9,721,293</b>	<b>\$9,252,051</b>	<b>\$8,887,832</b>
<b>Positions</b>	<b>57,620.6</b>	<b>61,150.1</b>	<b>58,528.2</b>

**2011 Public Safety Realignment.** Last year, Governor Brown signed AB 109 and AB 117 (known as public safety realignment), historic legislation that will enable California to close the revolving door of low-level inmates cycling in and out of state prisons. It is the cornerstone of California’s solution for reducing the number of inmates in the state’s 33 prisons to 137.5 percent of design capacity by June 27, 2013, as ordered by a Three-Judge Court and affirmed by the United States Supreme Court. In a May 23, 2011 decision, the United States Supreme Court affirmed the judgment of a three-judge panel convened pursuant to the Prison Litigation Reform Act of 1995 (18 U. S. C. §3626) ordering California to reduce its prison population to no more than 137.5 percent of its design capacity within two years.

**Key Features of Public Safety Realignment**

<b>Felon Incarceration</b>	<b>Post-Release Supervision</b>	<b>Parole and PRCS Revocations</b>
Restructured felon penalty by making specified non-violent, non-serious, non-sex offenses subject to local punishment	Created Post Release Community Supervision (PRCS) for certain offenders to be supervised locally upon release from prison	Parole revocation terms are served locally and, by July 1, 2013, both parole and PRCS revocations will be adjudicated by the courts

Under AB 109 and AB 117, all felons convicted of current or prior serious or violent offenses, sex offenses, and sex offenses against children will go to state prison. Additionally, there are nearly 60 additional crimes that are not defined in the Penal Code as serious or violent offenses but remain offenses that would be served in state prison rather than in local custody.

## Issue 1 – Clark Compliance

**Governor’s Proposal.** The Governor’s Budget proposes \$3 million General Fund and 12 permanent positions. The purpose of the funding request is to comply with a recent federal court order related to the 1996 class-action lawsuit *Clark v. California (Clark)* and to remedy current and ongoing violations of the *Clark* Remedial Plan (CRP). This BCP requests funding and positions to move the CDCR towards successful Clark case termination.

**Background.** In 1996, a class-action lawsuit known as *Clark v. California* was filed in federal court contending that the state violated the Americans with Disabilities Act by discriminating against prison inmates with developmental disabilities and denying them adequate accommodations, protection, and services because of their developmental disabilities. The state agreed in 2001 to take a series of actions to settle the case including complying with a set of revised policies and procedures as set forth in a court-approved remedial plan.

On July 24, 2009, the CDCR filed a motion to terminate the 2001 Clark Settlement Agreement and Order. However, on September 16, 2010, the Honorable Charles R. Breyer, United States District Judge, denied the CDCR’s move to dismiss the 2001 Clark Settlement Agreement and Order. The Court ordered that the entire CRP remain in effect as drafted to ensure that California prisoners with developmental disabilities are protected from serious injury and discrimination based on their disability. In addition, the Court ordered that the CDCR prepare a plan to address deficiencies in staff training, identification and classification of class members (specifically a validation study), and self-monitoring, including specific amendments to the current Remedial Plan that will remedy legal deficiencies.

The Governor’s proposed budget includes \$3 million for compliance monitoring and training activities related to the *Clark* case. According to the department, these resources are needed to ensure that the state is fulfilling the court-approved remedial plan. Of this proposed funding, \$1.8 million would be used to hire 12 additional headquarters staff to conduct reviews of each of the state’s prisons and assess whether inmates with developmental disabilities are being provided appropriate accommodations in accordance with the remedial plan. The remaining \$1.3 million would be used to provide overtime coverage to backfill behind staff who leave their posts in order to provide annual training to other CDCR staff on how to accommodate the needs of developmentally disabled inmates.

**Legislative Analyst’s Office (LAO).** The LAO found that CDCR currently has unutilized headquarters resources and has vacancies in all of the classifications included in the request. For example, the department is requesting three analyst positions despite having 130 vacant analyst positions within headquarters. Overall, as of April 2012, the department had a total of 265 vacancies (26 percent) within the five classifications for which they are requesting additional position authority.

In view of the above, the LAO recommends that the Legislature reduce the Governor's proposed augmentation by \$1.8 million and 12 positions and direct the department to fill existing positions that are currently vacant to conduct the Clark compliance reviews.

**Recommendation.** Approve the LAO's recommendation to reduce the Governor's proposed augmentation by \$1.8 million and twelve positions.

## California Correctional Health Care Services

### Issue 1 – California Health Care Facility

**Governor’s Proposal.** The CDCR and California Correctional Health Care Services (CCHCS) are requesting 75.4 positions and \$10.9 million in 2012-13 to support the pre-activation activities and a total of 1,139.4 positions and \$108.7 million in 2013-14 and ongoing to support the new California Health Care Facility (CHCF) in Stockton. The funding will provide pre-activation and activation resources that will be distributed on a phased schedule beginning in 2012-13 with a completion date of December 31, 2013.

**Background.** Assembly Bill 900 (AB 900), which is also known as the Public Safety and Offender Rehabilitation Services Act of 2007, authorized construction of infill beds, support, and program space at existing prison facilities under the jurisdiction of the CDCR. The CDCR, working collaboratively with the Federal Receiver, filed the CDCR Revised AB 900 Integrated Strategy Plan, commonly referred to as Long Range Plan, to reduce crowding and provide for increased medical and mental health treatment beds. In order to meet the Long Range Plan, the CDCR and the Federal Receiver have set in motion the construction of new beds throughout the state.

The CHCF will be built on the site of the Northern California Youth Correctional Center and will include 1,722 beds of all security levels and provide all necessary support and rehabilitation program spaces. This project is included in the CDCR’s Long Range Plan for medical and mental health beds provided to the Coleman Court in November 2009.

This facility establishes specialized housing with necessary health care treatment for a population of seriously and chronically medically and mentally ill inmates consistent with state and federal requirements, and will permit the replacement of temporary beds currently in use. The facility’s mission is to house patient-inmates of all security levels efficiently, safely, and cost effectively, as well as to provide the necessary medical and mental health treatment while continuing to provide opportunities for rehabilitative programming through participation in vocational and academic programs, substance abuse treatment, and other offender programs.

In 2011/2012, 10.0 positions were approved effective January 1, 2012. The positions consist of the CHCF Leadership Pre-activation Team and will have overall responsibility for the programs designed for the facility.

The CHCF will provide a total of 1,722 long term medical care beds, helping the CDCR and the CCHCS to meet the 2013 projected need of inmates with major medical need. The bed breakdown is as follows:

Program	Number of Beds	Health Care Standard Required
Inmate Work Crew	100	N/A
Low Acuity	673	Licensable
High Acuity	337	Licensed Inpatient
Mental Health Crisis Beds	137	Licensed Inpatient
Intermediate Care Facility	443	Licensed Inpatient, Accreditation
Acute Psychiatric	32	Licensed Inpatient, Accreditation

The CDCR staffing patterns developed for the CHCF are similar to staffing patterns in use at CDCR institutions as well as Department of Mental Health (DMH) facilities with similar medical/mental health missions, but adjusted for mission difference and sized appropriately for the acuity level of the patient-inmates and the size of the patient-inmate housing units. Overall the staffing is lower due to the integrated care model adopted at the CHCF, which includes many shared services. The shared services provided at the CHCF are Personnel, Training, Business Services, Procurement, Information Technology, Janitorial, and Plant Operations. Shared clinical services, which will cover Nursing, Health Records, Diagnostic Imaging, Pharmacy, Dialysis, Procedure Center, Dental Clinic, Patient-inmate Management Unit, and Treatment and Triage Center, will also be provided.

The CHCF will be licensed under the California Code of Regulations, Title 22, Social Security, Division 5, Chapter 12, Article 4. Title 22 licensure must be obtained prior to housing patient-inmates in a licensed bed. Along with Title 22 licensure, the Intermediate Care Facility and Acute level of care provided by DMH is court ordered to have The Joint Commission, Behavioral Health Care Accreditation. Both processes require detailed policy and procedures along with established staffing requirements.

By consolidating higher acuity patients from elsewhere within the correctional system, which includes institutional medical beds and outside hospital beds, there is an anticipated cost offset in the areas of overcrowding and hospital costs reductions. The CDCR calculates an inmate overcrowding rate annually which includes the staffing and operational expenses and equipment costs estimated to operate an overcrowding bed. Building new capacity at the CHCF enables the CDCR to reduce overcrowding beds elsewhere, which results in an offset. The anticipated offset for personnel costs at the CHCF is \$43 million, based on the 2010/11 Fall Population overcrowding rate. It is important to note that the staffing requested for both the pre-activation phase and for activation also support the needs of the DMH. These resources will ensure licensure, accreditation, and all other activities necessary to successfully meet the court mandate of full occupancy by December 31, 2013.

**Recommendation.** Approve as Budgeted.

## Issue 2 – Pharmacy Augmentation

**Governor’s Proposal.** The California Correctional Health Care Services (CCHCS) requests an augmentation of \$59.9 million in fiscal year 2012/13 and \$51.2 million in 2013/14 and ongoing for pharmaceutical funding. This augmentation is necessary to restore and set the baseline for the pharmaceutical budget.

The CCHCS reports that this augmentation will bring pharmaceutical funding in line with actual expenditures and prevent the CCHCS from either realizing a deficiency in its pharmaceutical budget or failing to comply with the Federal Court’s mandates to provide patient-inmates a level of care that does not violate their constitutional rights.

**Background.** The CCHCS Receivership was established as a result of a class action lawsuit (*Plata v. Brown*) brought against the State of California over the quality of medical care in the state’s 33 adult prisons. In its ruling, the Federal Court found that the care was in violation of the Eighth Amendment of the U.S. Constitution which forbids cruel and unusual punishment. The State settled the lawsuit and entered into a stipulated settlement in 2002, agreeing to a range of remedies that would bring prison medical care in line with constitutional standards. The State failed to comply with the stipulated settlement and on February 14, 2006, the Federal Court appointed a Receiver to manage medical care operations in the prison system. The resulting Receivership is unprecedented in size and scope nationwide.

When considering access to quality health care, one must keep in mind that health care environments in correctional settings are very different from those in the community. Patient-inmates tend to engage in riskier behavior and have more health issues than members of the community. The court found that failure to properly treat patient-inmates resulted in one patient-inmate per week dying as a consequence of misdiagnosis, delayed treatment, or no treatment at all. Pharmaceuticals are an important element in providing constitutional levels of health care to patient-inmates. For instance, uncontrolled high blood pressure can lead to stroke, heart attack, and heart or kidney failure. High cholesterol is a major risk factor for coronary disease and stroke. Untreated diabetes could result in swelling, weight gain, dysfunctional thinking, memory loss, and even death. Treating each medical condition with the appropriate medication is an important element in meeting the requirements of the stipulated settlement.

In addressing the issues that necessitated the creation of the Receivership, the Receiver increased health care staffing and improved patient-inmates’ access to medical care. These two actions led to more patient-inmates being seen by more medical professionals, which in turn, contributed to the growth of pharmaceutical expenditures. In addition, two other factors - the increase in the price of pharmaceuticals due to inflation and proprietary pricing, and the development of new treatments, including treatments for diseases like Human Immunodeficiency Virus (HIV) that become resistant to older protocols – continue to drive pharmaceutical pricing upward. To counter these influences, the Receiver is implementing a variety of cost-containment efforts.

Recognizing the dynamics involved in the continuously rising cost of pharmaceuticals, in 2007/08, the Legislature approved a Finance Letter which provided a temporary \$45.8 million augmentation to the base funding for pharmaceuticals. This augmentation continued for three consecutive fiscal years: 2007, 2008, and 2009. For 2010/11, a BCP was approved to continue the \$45.8 million augmentation for one more year, after which a new assessment would be conducted to determine the permanent funding amount necessary to cover the expenditures. The funds requested in this proposal are a result of that assessment.

The table below provides a 10-year history of pharmaceutical base funding, augmentations and adjustments.

#### BASE FUNDING CALCULATIONS

FY	Base Funding*	FL Augmentation	Price Adjustment	Budget Reductions	Adjusted Base Funding
2002/03	\$123,793,003	\$0		\$0	\$123,793,003
2003/04	\$116,573,052	\$0		\$0	\$116,573,052
2004/05	\$127,733,555	\$0		\$0	\$127,733,555
2005/06	\$156,714,272	\$0		\$0	\$156,714,272
2006/07	\$156,714,272	\$0		\$0	\$156,714,272
2007/08	\$161,120,000	\$45,838,000	(\$1,809,000)	\$0	\$205,149,000
2008/09	\$159,311,000	\$45,838,000	\$2,069,000	\$0	\$207,218,000
2009/10	\$161,380,232	\$45,838,000	-	(\$21,746,000)*	\$185,472,232
2010/11	\$141,199,232	\$45,800,000	-	(\$9,600,000)***	\$177,399,232
2011/12	\$141,199,232	\$0		(\$14,000,000)*	\$127,199,000

**Legislative Analysts Office (LAO).** The LAO recommends that the Legislature reduce the proposed augmentation by \$20 million to \$39.9 million in 2012-13 and \$31.2 million in 2013-14. This reduction accounts for additional efficiencies the LAO believes could be achieved from better inventory management and reduced use of non-formulary drugs. The LAO further recommends that the Legislature approve this augmentation for two years only, so that it can reevaluate the need for ongoing funding in future years. The LAO notes that even with the reduction to the proposed augmentation, the inmate pharmaceutical budget would be over \$1,300 per inmate in 2012-13, or about 60 percent higher than the average of the other states they surveyed.

**Recommendation.** Hold open.

### **Issue 3 – Medical Parole and Medi-Cal Reimbursements**

**Governor’s Proposal.** A Spring Finance Letter proposes trailer bill language to codify the existing Medi-Cal reimbursement process related to the medical parole program.

**Background.** SB 1399 (Leno) provided that, as specified, any prisoner who the head physician for the institution where the prisoner is located determines, as provided, is permanently medically incapacitated with a medical condition that renders the prisoner permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care, and that incapacitation did not exist at the time of sentencing, shall be granted medical parole, if the Board of Parole Hearings determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety. Those provisions do not apply to any prisoner sentenced to death or life in prison without possibility of parole or to any inmate who is serving a sentence for which parole pursuant to this bill is prohibited by any initiative statute. The bill provided that the Board of Parole Hearings or the Division of Adult Parole Operations shall have the authority to impose any reasonable conditions on prisoners subject to parole pursuant to this bill, including, but not limited to, the requirement that parolees submit to electronic monitoring.

**Recommendation.** Approve as Budgeted.

Title of Mandate	Description	Recommendation	Year First Suspend ed (Approx)
Adult Felony Restitution	The mandate requires local probation officers to include a determination as to probation fines and restitution to the victim in a report to the court. This mandate will be repealed because the inclusion of this data to the courts has been in place for many years and is likely now a best practice. Additionally, what is provided to the courts in probation reports regarding restitution should be a local decision rather than a statutory requirement.	Repeal	1990
AIDS/Search Warrant	The mandate requires crime victims be notified of various rights associated with requesting, preparation of, and service of a search warrant for HIV testing of the victim and the assailant, as well as the administration of the test, confidentiality of test results, and receipt of professional counseling. This mandate will be repealed because the activities should now be standard operating procedures for District Attorneys and local health officers. Additionally, other statutes require similar information.	Repeal	2009
Crime Victims' Domestic Violence Incident Reports II	The mandate requires local law enforcement agencies to take a weapon discovered at a domestic violence scene. This mandate will be made permissive because this should be standard operating procedure for local law enforcement.	Permissive	2010
Domestic Violence Information	The mandate requires local law enforcement agencies to develop and implement written policies, standards, and incident report forms for officers' response to domestic violence calls as well as maintaining records of all protection orders associated with those incidents. This mandate will be repealed because the activities should now be standard operating procedure for local law enforcement.	Repeal	1990
Elder Abuse, Law Enforcement Training	The mandate requires local law enforcement officers to complete training on elder and dependent adult abuse that is certified by the Commission on Peace Officers Standards and Training (POST). This mandate will be repealed because this should now be best practices for local law enforcement.	Repeal	2003
Extended Commitment, Youth Authority	The mandate requires prosecuting attorneys to extend the commitment of specified youths. This mandate will be repealed because sentencing laws already allow flexibility for district attorneys to seek varying durations of commitment, on a case-by-case basis, and this should be a local decision.	Repeal	2003
Firearm Hearings for Discharged Inpatients	The mandate requires the district attorney to represent the people of the state of California in civil proceedings. This mandate will be repealed because the Department of Justice should be able to represent the people in these infrequent circumstances.	Repeal	2009
Grand Jury Proceedings	The mandate requires local agencies to perform certain activities for grand jury proceedings such as developing a training program for grand jurors, and providing meeting rooms and reports. This mandate will be repealed. Guidelines and best practices could be provided to assist in the operation of grand jury proceedings as opposed to mandating specific methods.	Repeal	2005
Law Enforcement Sexual Harassment Training	The mandate requires local law enforcement agencies to follow sexual harassment complaint guidelines developed by the Commission on Peace Officer Standards and Training (POST) and for peace officers to receive sexual harassment training. This mandate will be repealed because it should be local law enforcement discretion to avail itself of the POST-certified course.	Repeal	2003
Missing Persons Report	The mandate requires local law enforcement agencies to take a report of a missing person, and, depending upon certain criteria, to submit the report to the Department of Justice. This mandate will be repealed because this should be standard operating procedure by local law enforcement. Guidelines could be provided.	Repeal	2005
Photographic Record of Evidence	The mandate requires local agencies to provide exhibits, such as photographs, in criminal trials in lieu of actual items that are of a toxic nature and pose a health hazard to humans. This mandate will be repealed as this should be standard operating procedure for local agencies for health and safety reasons. In addition, there should be cost savings as a result of keeping a copy of evidence as opposed to paying for storage.	Repeal	2009
Pocket Masks	The mandate requires every law enforcement agency employing peace officers to provide them with a portable manual mask and airway assembly designed to prevent the spread of communicable diseases when applying CPR. This mandate will be repealed as this should now be standard operating procedure.	Repeal	1990
Prisoner Parental Rights	The mandate requires local governments to transport prisoners to and from the court and house them as necessary, so they can attend proceedings to terminate their parental rights or establish legal guardianship over their children. Locals are responsible for ensuring prisoner access to court proceedings affecting their parental rights. Most of these offenders now serve their sentences locally, making the cost of transportation and housing minimal.	Repeal	2005
Stolen Vehicle Notification	The mandate requires local law enforcement agencies that recover stolen vehicles to notify the individual who reported the vehicle stolen within 48 hours. This mandate will be repealed as this is a responsibility of local law enforcement and timing should be locally-determined.	Repeal	2009
Victims' Statements-Minors	The mandate requires a probation officer to obtain a statement from a victim of a crime committed by a minor, that would be a felony if committed by an adult, and to include that statement in the social study submitted to the court. This mandate will be repealed because this is a basic responsibility of law enforcement.	Repeal	1990
Crime Statistics Reports for the Department of Justice Amended	The mandate requires local law enforcement agencies to report specified demographic data on victims and suspects of specified crimes to the Department of Justice. This mandate will be made permissive. This information is used in part for the receipt and provision of federal funds to local entities.	Permissive	2012
False Reports of Police Misconduct	The mandate requires law enforcement agencies that receive an allegation of misconduct against a peace officer to have the complainant read and sign an advisory. This mandate will be repealed because this should be standard operating procedure.	Repeal	2009
Deaf Teletype Equipment	The mandate requires counties to provide 911 deaf teletype equipment at central locations throughout the state. This mandate will be repealed because this should be standard operating procedure.	Repeal	1990
Inmate AIDS Testing	The mandate requires local agencies to test specified inmates and report the incidents where the individuals came into contact with the Human Immunodeficiency Virus (HIV). This mandate will be made permissive and provided at local discretion.	Permissive	2003
Judiciary Proceedings	The mandate requires the county to investigate, prepare for, and conduct a proceeding for commitment, placement, or release of a mentally retarded person who is a danger to himself or others and resides in a state hospital's treatment program. This mandate will be repealed because the courts have the authority to commit mentally retarded individuals that are a danger to themselves or others to a state developmental center.	Repeal	2009

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



Thursday, May 10, 2012  
9:30 a.m. or Upon Adjournment of Session  
Room 113  
Part A

Consultant: Joe Stephenshaw  
**OUTCOMES**

**Item Number and Title**

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**Vote Only**

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	(5) Public Safety Realignment, HR Positions .....	5
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	(8) Expenditure Authority for Unpaid Leave Settlement .....	7
	(9) Estrella Cancellation .....	7
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## Vote Only Items

Vote Only Calendar				
Department	Issue	Staff Reco	Amount	Action
CDCR	Federated Data Center	Approve as Budgeted	\$0	<b>Staff Reco Approved 3-0</b>
CDCR	Technical Adjustment	Approve as Budgeted	\$0	<b>Staff Reco Approved 3-0</b>
CDCR	Workforce Cap Plan	Approve as Budgeted	\$0	<b>Staff Reco Approved 3-0</b>
CDCR	CIW, Intermediate Care Facility	Reject Proposal	\$1.3 million GF	<b>Staff Reco Approved 3-0</b>
CDCR	Public Safety HR Positions	Reject Proposal	\$1.98 million GF	<b>Staff Reco Approved 3-0</b>
CDCR	Transfer DJJ Parole to Adult Parole	Approve as Requested	\$0	<b>Staff Reco Approved 3-0</b>
CDCR	Tech Adjust – Transfer Program Funding	Approve as Proposed	\$0	<b>Staff Reco Approved 3-0</b>
CDCR	Expenditure Authority for Unpaid Leave Settlement Agreement	Approve as Proposed	\$0	<b>Staff Reco Approved 3-0</b>
CDCR	Estrella Cancellation	Approved as Budgeted	-\$1.9 million GF	<b>Staff Reco Approved 2-1 (Anderson No)</b>
CDCR	Statewide Budget Packages and Advance Planning	Approve as Proposed	\$750,000 GO Bond	<b>Staff Reco Approved 2-1 (Anderson No)</b>
CDCR	Tehachapi, SHU, Small Management Yards Cancellation	Approve as Proposed	-\$60,000 GO Bond	<b>Staff Reco Approved 3-0</b>
CDCR	Capital Outlay Reappropriations and Extension	Approve as Proposed	\$61 million GF, \$15.3 million lease revenue bond	<b>Staff Reco Approved 3-0</b>
Mandates	Public Safety Mandates (Page 19)	Suspend	NA	<b>Removed the DOJ crime statistics reporting mandate from the list and suspended the rest of the mandates listed on page 19. 3-0</b>

## Items to be Heard

### Issue 1 – *Clark* Compliance

**Governor’s Proposal.** The Governor’s Budget proposes \$3 million General Fund and 12 permanent positions. The purpose of the funding request is to comply with a recent federal court order related to the 1996 class-action lawsuit *Clark v. California* (*Clark*) and to remedy current and ongoing violations of the *Clark* Remedial Plan (CRP). This BCP requests funding and positions to move the CDCR towards successful *Clark* case termination.

**Recommendation.** Approve the LAO's recommendation to reduce the Governor’s proposed augmentation by \$1.8 million and twelve positions. **Staff Reco Approved 3-0**

## California Correctional Health Care Services

### Issue 1 – California Health Care Facility

**Governor’s Proposal.** The CDCR and California Correctional Health Care Services (CCHCS) are requesting 75.4 positions and \$10.9 million in 2012-13 to support the pre-activation activities and a total of 1,139.4 positions and \$108.7 million in 2013-14 and ongoing to support the new California Health Care Facility (CHCF) in Stockton. The funding will provide pre-activation and activation resources that will be distributed on a phased schedule beginning in 2012-13 with a completion date of December 31, 2013.

**Recommendation.** Approve as Budgeted. **Staff Reco Approved 3-0**

### Issue 2 – Pharmacy Augmentation

**Governor’s Proposal.** The California Correctional Health Care Services (CCHCS) requests an augmentation of \$59.9 million in fiscal year 2012/13 and \$51.2 million in 2013/14 and ongoing for pharmaceutical funding. This augmentation is necessary to restore and set the baseline for the pharmaceutical budget.

**Recommendation.** Hold open. **Held Open**

### Issue 3 – Medical Parole and Medi-Cal Reimbursements

**Governor's Proposal.** A Spring Finance Letter proposes trailer bill language to codify the existing Medi-Cal reimbursement process related to the medical parole program.

**Recommendation.** Approve as Budgeted. **Staff Reco Approved 2-1 (Anderson No)**

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# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



Thursday, May 10, 2012  
9:30 a.m. or upon adjournment of session  
Room 113

Consultant: Kris Kuzmich

## PART B

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**Vote Only Items (Items Originally Heard on March 8, 2012)****EMPLOYMENT DEVELOPMENT DEPARTMENT (7100)****Issue 1 – Unemployment Insurance Loan Interest Payment**

**Governor’s Budget Request.** Similar to the approach taken in the 2011 Budget Act, the January budget requests a loan of \$417 million from the Unemployment Compensation Disability (DI) Fund to the GF to pay the September 2012 interest payment due to the federal government for the quarterly loans the Employment Development Department (EDD) has been obtaining from the federal government since January 2009 to cover the Unemployment Insurance (UI) Fund deficit and make payments to unemployment insurance (UI) claimants without interruption. This portion of the request includes budget bill provisional language.

To fund future interest payments for funds borrowed from the federal government to pay UI benefits, and to repay the funds borrowed from the DI Fund in both 2011 and 2012, the January budget requests to increase, through trailer bill language that requires a two-thirds vote (effective January 1, 2013), the employer surcharge payable to the Employment Training Fund by a total of \$472.6 million (\$39 per employee). The surcharge would be eliminated once the UI debt to the federal government is fully repaid and there is no longer a need to pay interest payments. Until that point is reached, the Administration indicates that this proposal would increase taxes on nearly every California employer by between \$40 and \$61 per employee per year, fluctuating each year to fully fund the interest costs due to the federal government.

In conjunction with the employer surcharge, and through trailer bill language, the January budget proposes to increase the minimum monetary eligibility to qualify for UI benefits to account for increases in employee wages that have occurred since the requirements were last adjusted in 1992. Under current law, to meet monetary eligibility requirements, a claimant must have earned: (1) at least \$900 in a single quarter and total base period earnings of \$1,125 or (2) at least \$1,300 in any one quarter in the base period. The budget increases the minimum eligibility to: (1) \$1,920 in the highest quarter and total base period earnings of \$2,400 or (2) at least \$3,200 in any one quarter in the base period. With these changes, approximately 40,000 individuals would no longer be eligible for UI benefits, saving \$30 million per year.

**Staff Comment.** This item was heard before this Subcommittee on March 8. Testimony was taken, but the item was held over for a vote due to a lack of quorum. Please see the March 8 agenda for detailed background information and LAO comments regarding this budget request.

**Staff Recommendation:** Approve the loan of \$417 million from the Unemployment Compensation Disability Fund to the GF to pay the September 2012 unemployment insurance loan interest payment due to the federal government, including the budget provisional language. Reject the other aspects of the request, including proposed trailer bill language, pertaining to: (1) the Employment Training Fund surcharge and (2) income eligibility for UI benefits.

<b>DEPARTMENT OF INDUSTRIAL RELATIONS (7350)</b>
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**Issue 2 – Compliance Monitoring Unit Cash Flow**

**Governor’s Budget Request.** The January budget requests budget bill provisional language to allow the State Public Works Enforcement Fund (SPWEF) to borrow from the Uninsured Employers Benefits Trust Fund, Labor Enforcement and Compliance Fund, and/or the Construction Industry Enforcement Fund, for cash flow purposes.

**Staff Comment.** This item was heard before this Subcommittee on March 8. Testimony was taken, but the item was held over for a vote due to a lack of quorum. Please see the March 8 agenda for detailed background information and comments regarding this budget request.

**Staff Recommendation:** Approve the budget bill provisional language to allow the State Public Works Enforcement Fund (SPWEF) to borrow from the three specified funds for cash flow purposes, as modified, to specify legislative intent that the annual assessments for the Uninsured Employers Benefits Trust Fund and Labor Enforcement and Compliance Fund shall not increase as the result of any loan made to the SPWEF.

**Issue 3 – Minors’ Temporary Entertainment Work Permit Program (AB 1401; 2011)**

**Governor’s Budget Request.** The January budget requests increased expenditure authority of \$583,000 (Entertainment Work Permit Fund-EWPF) and four positions in 2012-13, and \$307,000 on-going, to comply with the requirements of Chapter 557, Statutes of 2011 (AB 1401), related to the minors’ temporary entertainment work permit program. Of the resources requested in 2012-13, \$250,000 is one-time to create an on-line application and payment system.

**Staff Comment.** This item was heard before this Subcommittee on March 8. Testimony was taken, but the item was held over for a vote due to a lack of quorum. Please see the March 8 agenda for detailed background information and comments regarding this budget request.

**Staff Recommendation:** Approve the request on a two-year limited-term basis.

<b>VOTE:</b>
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<b>0559</b>	<b>LABOR AND WORKFORCE DEVELOPMENT AGENCY (LWDA)</b>
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<b><i>Issue Proposed for Discussion / Vote</i></b>
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<b>Issue 4 – Labor Enforcement Task Force Reporting Language</b>
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**Governor’s Budget Request.** The January budget removed budget bill provisional language requiring the LWDA to report on the progress of the Economic and Employment Enforcement Coalition (EEEC), a federal-state multi-agency partnership formed to combat the worst violators of federal and state labor, licensing, and tax laws operating in the underground economy.

**Prior Budget Actions.** The initial EEEC budget request was approved as three-year limited term in the 2005 Budget Act; the 2008 Budget Act extended the EEEC for two additional years. The 2010 Budget Act permanently established the EEEC, with 66 positions and on-going funding of \$7.208 million (special fund and reimbursements). Those positions were allocated as follows: LWDA – one position; Department of Industrial Relations (DIR) – 29 positions; EDD – 25 positions; and Contractors State License Board (CSLB) – 11 positions. The 2011 Budget Act required LWDA to report by January 1, 2012, on the progress of the EEEC and transferred authority and one position for the EEEC from the LWDA to the DIR, as part of a larger reorganization of LWDA.

**Background.** The goal of the EEEC is to target violators who operate in the underground economy and assist legitimate businesses that do comply with California law. Within the underground economy, employers utilize various illegal schemes to conceal their true tax liability, as well as reduce their operating costs associated with insurance, payroll taxes, licenses, employee benefits, safety equipment, and safety conditions.

In January 2012, as reported in the *SF Chronicle*, the EEEC was reconstituted and renamed the Labor Enforcement Taskforce (LETF). The Administration indicates that the changes were made in this time of scarce resources so the effort would be directed closely by the two key programs that enforce labor law issues. The Administration reports that all partner agencies of the EEEC are part of the reconstituted LETF, and that the Board of Equalization and Department of Insurance are new secondary partners. The Administration also reports that the LETF will be focusing more on labor law violations, specifically in low wage industries, with targeting of employers empirically based. The Taskforce also intends to evaluate the effectiveness of its efforts.

The LWDA submitted the required January 1, 2012, EEEC progress report on February 28, 2012. An additional LETF interim report was submitted on April 28, 2012, containing updated information from January 1, 2012. The interim report also provided detail on the value added of each entity’s participation in the LETF (versus the entity’s baseline accomplishments).

**Staff Comment.** When this issue was heard before this Subcommittee on March 8, it was noted that because the EEEC was a budget creation there is no statutory citation that delineates program priorities or parameters. Therefore, by eliminating the budget reporting requirement, venues to ensure legislative oversight were effectively limited. Since that

hearing, the Administration has provided a LETF interim report, detailing work since January 1, 2012. To ensure continued oversight of the LETF, and consistency with the original mission to combat the worst violators of federal and state labor, licensing, and tax laws operating in the underground economy, the Subcommittee may wish to consider reinstating a periodic reporting requirement through the annual budget act.

**Staff Recommendation:** Adopt the budget provisional language, instituting a biennial reporting requirement for the Labor Enforcement Task Force beginning on March 1, 2013, by adding the following provision to Item 7350-001-0001:

*The Department shall report to the Director of Finance and the Joint Legislative Budget Committee by March 1, 2013, and biennially thereafter, on the accomplishments of the Labor Enforcement Task Force and its enforcement activities regarding labor, tax, and licensing law violators operating in the underground economy. The Task Force is funded at \$7.2 million and 66 positions (30 positions within the Department, 25 positions within the Employment Development Department, and 11 positions within the Contractors' State Licensing Board). Secondary partners of the Task Force include the Bureau of Automotive Repair, the Department of Alcoholic Beverage Control, and the State Board of Equalization. The report shall include, but is not limited to, the following information:*

- a) The "value added" by the Task Force; i.e., distinct reporting of the baseline accomplishment(s) of each participating entity versus the additional accomplishment(s) achieved by virtue of its participation in the Task Force, and efforts to increase collaboration and coordination of the inter-agency enforcement efforts of the Task Force.*
- b) Efforts by the Task Force to develop targeting and statistical reporting methods that facilitate empirical identification of non-compliant employers.*
- c) Any recommended statutory changes to improve the operation of the Task Force, including data sharing across participating agencies.*
- d) Detailed objectives of the Task Force for the next reporting period and a description of how it intends to achieve those objectives.*

**VOTE:**

**7100****EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)*****Issues Proposed for Discussion / Vote*****Issue 5 – California Unemployment Insurance Appeals Board: Restructuring Second Level Appeals**

**Governor’s Budget Request.** The January budget requests, effective January 1, 2013, the elimination of the California Unemployment Insurance Appeals Board (Board) and proposes a restructured second level appeals process for half-year savings of \$600,000 (\$3,000 GF, \$552,000 federal funds, and \$45,000 other funds) in 2012-13 and full-year savings of \$1.2 million in 2013-14 and on-going. The restructuring results in a net reduction of two positions (one position in 2012-13).

The request also includes the elimination of four vacant administrative law judge positions (two positions in 2012-13) due to declining workload. Finally, the request includes proposed budget trailer bill language.

*This request was initially heard on March 8, 2012. Please see that agenda for additional background information.*

**Background.** The Board was established in 1943 to provide due process for California claimants and employers who dispute unemployment and disability insurance benefit and payroll tax determinations made by the EDD. The Board consists of a seven-member board; five of these members are appointed by the Governor, with Senate confirmation, and the other two members are legislative appointees. Current law requires that two of the seven members be attorneys and that the Governor select the Chair. Current law also requires that each member of the board devote his/her full time to the performance of his/her duties. Members are compensated \$128,109 a year; the Chair is compensated \$132,179 per year.

The first, or lower appeal, is an appeal to an Administrative Law Judge (ALJ) in California Unemployment Insurance Appeals Board (CUIAB) Field Operations. The second, or higher level, is an appeal of the decision made by the Field Operations ALJ. These appeals are submitted to CUIAB Appellate Operations where each appeal is reviewed by a second level ALJ who then prepares a proposed written decision which is sent to two Board members. The Board members review the case and the second-level ALJ’s decision and decide the appeal case as a panel. If the two Board members cannot agree, then the Board Chair resolves the impasse. The Board additionally has the responsibility of designating decisions as precedent decisions, establishing regulations governing the CUIAB operations, and approving CUIAB’s operating budget.

The restructuring proposal in this request would eliminate the Board, add a Bureau Director who would be a Governor’s appointee subject to Senate confirmation, and would have four second level ALJ positions, which currently act as board authors, reclassified as “Presiding” ALJS (PAJLS) authorized to independently review and decide cases. To ensure impartiality, quality, and consistency, CUIAB would implement a quality control practice for decisions. The Board’s other duties would be assigned to permanent civil service staff. Finally, the

Board would be changed to a Bureau; in addition to the new Director, five additional upper-level management positions would be established.

**Staff Comment.** The Administration provided follow-up information in response to various questions and concerns that were raised at the March 8, 2012, hearing. Nonetheless, outstanding concerns remain. Under the current process, all parties, i.e., employers, claimants, and the EDD, benefit from a third party arbitrator. It is not clear that the restructured process would provide the same level of benefit. It is also not clear how replacing a Board where the majority of the members are subject to Senate confirmation, with a Bureau where only the director is subject to Senate confirmation, provides the same level of legislative oversight and checks and balances. This is crucial for several reasons, including that the Board is responsible for designating decisions as precedent decisions. The proposal does very little to improve the performance of the second level appeals process; it reduces the processing time of claims not randomly selected for quality control review by one to two days. However, in return for that decrease of one to two days, the restructured Bureau would not provide 100 percent review of the second level ALJ decisions (under the current structure, 100 percent review is provided). This potentially affects the quality and consistency of decisions over time and could also increase caseload (and costs and delays) in the civil court system, a system which has seen extensive budget reductions in recent years.

The LAO noted many of these same concerns with the Administration's proposal, and provided an alternative set of actions for the Subcommittee to consider. Staff concurs with the majority of the LAO's alternative, except for the components that would: (1) transfer the responsibility for issuing decisions on second-level appeals to ALJs and (2) reduce the compensation of Board members to align with the compensation of ALJs. With regard to the former, and similar to the Governor's January proposal, this approach would include random quality control reviews, which would result in less than 100 percent review. With regard to the latter, the point of the LAO alternative was to align Board compensation with that provided to ALJs. However, upon further review, staff finds that the current compensation of the Board is on par with ALJs, due to the fact that ALJs receive, in addition to their base salary, a pay differential for completing Judicial College. Further, senior level ALJs also receive an annual recruitment and retention bonus.

**Staff Recommendation:** Adopt a refined LAO alternative that retains the Board level review of the appeals caseload, including placeholder budget trailer bill language, as follows:

1. Eliminate two vacant ALJ positions in the budget year and four vacant ALJ positions in 2013-14, for savings of \$354,000 in the budget year and \$710,000 in the out years.
2. Maintain the Board but reduce its size and modify Board member qualifications, resulting in annual savings of \$360,000, as follows:
  - a) Reduce the size of the Board from seven to five members, with the Legislature retaining its authority to appoint two members and the Governor having authority to appoint the remaining three members, subject to legislative confirmation.
  - b) Align the required qualifications of the Board members with those of ALJs to, at a minimum, require Board members to be an attorney and have one year of experience in conducting judicial hearings or five years of experience in the practice of law.

**VOTE:**

**Issue 6 – Single Client Database Data Center Costs**

**Governor’s Budget Request.** An April 1 Finance Letter requests the addition of budget bill provisional language to authorize DOF to increase the appropriations in the Unemployment Administration Fund (UI Admin Fund) and the Unemployment Compensation Disability Insurance Fund (DI Fund), up to a cumulative total of \$2 million, should the efforts to reduce anticipated costs associated with the DB2 environment within the Single Client Database (SCDB) prove not to be entirely successful.

**Background.** Both the Unemployment Insurance (UI) and Disability Insurance (DI) programs are supported by a centralized database. EDD first automated this centralized database in the 1980s utilizing an Integrated Data Management System (IDMS) platform. Since that time, the database grew to be one of the largest of its kind in the world, managing 1.2 billion records for 17 million clients. However, in the three decades since adoption of the IDMS platform, other technologies were developed offering better support for critical UI and DI business functions, data, and transaction volumes. In 2009, EDD began plans for the SCDB Modernization project, and with support provided in subsequent Budget Acts, moved from the IDMS platform to a DB2 relational database management system platform which went live on November 28, 2011.

Since November 28, 2011, EDD has been involved in post-conversion activities, resulting in a better understanding of the DB2 platform technical environment and operations. Initially, the central processing unit (CPU) processing time in the DB2 environment was more lengthy than originally estimated. This caused increased costs for EDD. EDD has been working with Office of Technology Services (OTech) and the California Technology Agency to make the DB2 environment more efficient, including the collection and in-depth analysis of online job performance measurements, including evening batch workload. The Administration also reports that OTech will be releasing a new rate structure in the near future that may lower ongoing data center costs. However, if neither of these efforts results in the necessary savings, the UI and DI programs could be negatively impacted by the higher CPU costs.

Since its submittal of the April 1 Finance Letter, the Administration has modified the proposed budget bill provisional language. The Administration indicates that there is \$3.3 million that EDD will be able to absorb/redirect from OTech savings in 2012-13. The provisional language is intended to provide the ability to augment if actual costs realized are beyond the \$3.3 million. The revised language includes a cap of \$660,000 DI fund and \$1.32 million UI Admin Fund. This split is reflective of the historical funding for this project, whereby two-thirds was funded by the UI Admin Fund and the remaining one-third was funded by the DI fund.

**Staff Comment.** Staff agrees with the need for this provisional language to ensure EDD’s costs in the DB2 environment are covered. The proposed language includes notification to the Joint Legislative Budget Committee and a cap on the appropriation authority; these aspects of the request ensure appropriate legislative oversight. The Subcommittee may also wish to consider asking the Administration to informally provide periodic updates to the JLBC as to the status of the ongoing effort to manage costs within the DB2 environment.

**Staff Recommendation:** Approve the April 1 Finance Letter, including the Administration-modified budget bill provisional language.

**VOTE:**

**Issue 7 – Disability Insurance Automation Project**

**Governor’s Budget Request.** An April 1 Finance Letter requests a one-time augmentation of \$33.787 million (Disability Insurance Fund-DI Fund) to fund a net of 68 positions to support the fourth year of development, testing, and implementation of the Disability Insurance Automation (DIA) project.

**Background.** The DIA project was initially funded in the 2006 Budget Act. The DIA project will provide greater access to services for claimants, medical providers, and employers by allowing these individuals to use the Internet to submit claims data using a direct electronic interface or through web-based intelligent forms. This will simplify and automate the numerous manual work processes involved when a Disability Insurance claim is filed with EDD. Further, scanning/optical character recognition will be implemented to convert remaining paper claims to electronic format. Automated business logic will allow “in pattern” claims to be paid automatically, further increasing service delivery. The DIA project is scheduled for “Go Live” in summer 2012.

Of the positions contained in this request, 27 are new positions, 70 are existing positions, and 29 positions were eliminated due to a reduction in Key Data Operators, for a net of 68 positions. The reduction in Key Data Operators is a result of the DIA project providing Web-based intelligent forms, which removes key data entry tasks from Disability Insurance branch employees, thus saving on the amount of staff required to administer the program.

**Staff Comment.** The resources in this request are consistent with Special Project Report (SPR) 3, which was approved by the Technology Agency in November 2011. SPR 3 reflects a number of changes relative to SPR 2, including the project end date being extended from August 2012 to June 2013, scope changes to provide for an interface with the Single Client Database (SCDB) DB2 system. These changes are necessary, particularly with regard to the interface with the SCDB. As discussed in the prior agenda item, as of November 2011 EDD is operating in a DB2 environment, so it was necessary to revise the DIA project to ensure compatibility.

SPR 3 also reflects a total cost of increase of \$38.6 million (DI Fund) over SPR 2. While this is an accurate figure, it is potentially misleading given the extension of the project completion date. In addition, SPR 3 includes *possible* additional vendor support. The more meaningful figure is that one-time costs increased by \$6.1 million and annual support costs increased by \$2 million once the project is fully implemented. Additionally, should EDD become vendor independent sooner than expected, the additional resources may not be required.

On the point of vendor independence, staff notes that EDD is in a difficult position. As the Subcommittee is aware, EDD has simultaneously pursued a number of large information technology projects. Through various budget acts, the Legislature supported these myriad efforts to modernize EDD’s operations. As the projects, including DIA, collectively reach completion EDD faces a challenge to acquire, train, and deploy sufficient state resources to transition to support of the projects and terminate its need for vendor support. In this vein, the Technology Agency has required EDD to provide an enterprise wide resource plan by January 31, 2013, outlining how EDD will provide sufficient state resources to these projects.

**Staff Recommendation:** Approve the April 1 Finance Letter.

**VOTE:**

**7350 DEPARTMENT OF INDUSTRIAL RELATIONS**  
**8320 PUBLIC EMPLOYMENT RELATIONS BOARD**

**Department of Industrial Relations Overview.** The objective of the Department of Industrial Relations (DIR) is to protect the workforce in California; improve working conditions; and advance opportunities for profitable employment. The DIR enforces workers' compensation insurance laws and adjudicates workers' compensation insurance claims; works to prevent industrial injuries and deaths; promulgates and enforces laws relating to wages, hours, and conditions of employment; promotes apprenticeship and other on-the-job training; assists in negotiations with parties in dispute when a work stoppage is threatened; and analyzes and disseminates statistics which measure the condition of labor in the state.

	<b>2010-11 (actual)</b>	<b>2011-12 (estimated)</b>	<b>2012-13 (proposed)</b>
Expenditures	\$359,739,000	\$412,395,000	\$425,114,000
General Fund	\$4,235,000	\$4,556,000	\$4,392,000
Personnel Years	2,449.9	2,701.8	2,717.3

**Public Employment Relations Board Overview.** The mission of the Public Employment Relations Board (PERB) is to administer and enforce California public sector collective bargaining laws in an expert, fair, and consistent manner; to promote improved public sector employer-employee relations; and to provide a timely and cost effective method through which employers, employee organizations, and employees can resolve their labor relations disputes.

	<b>2010-11 (actual)</b>	<b>2011-12 (estimated)</b>	<b>2012-13 (proposed)</b>
Expenditures	\$5,775,000	\$6,233,000	\$6,310,000
General Fund	\$5,763,000	\$6,221,000	\$6,298,000
Personnel Years	35.6	40.0	40.0

***Issue Proposed for Discussion / Vote***

**Issue 8 – Transfer of State Mediation and Conciliation Service to the Public Employment Relations Board**

**Governor's Budget Request.** An April 1 Finance Letter requests to transfer the State Mediation and Conciliation Service (SMCS) program, currently housed within the Department of Industrial Relations (DIR), to the Public Employment Relations Board (PERB). This request has a net-zero budget impact between the two budget items and a reduction of one limited-term position. This request includes proposed budget trailer bill language.

**Background.** The SMCS was established in 1947, beginning as a service to help employers and unions in the private sector avoid strikes and other disruptions to commerce through the use of neutral mediators. In the 1970s, the law was changed to have SMCS take on the responsibility of mediating labor disputes in the schools, community colleges, public higher education, local government, state government, transit, and (in recent years) the trial courts.

The Federal Mediation and Conciliation Service took over most of the private sector mediation work.

While the core of SMCS' public interest mission, to provide dispute resolution mediation services to labor and management parties, remains free to the parties, in 2009 statute was changed to authorize SMCS to charge fees for certain services. The 2009 Budget Act authorized two limited-term positions for two years based on the inauguration of SMCS' reimbursed services program. The 2011 Budget Act extended one of these positions through June 30, 2013. This request eliminates that position effective June 30, 2012. The Administration reports that reimbursement revenue is estimated at \$140,000 per year and there is no current data indicating that the amount of reimbursements can be increased above this level.

The Labor and Workforce Development Agency initiated this request, indicating that SMCS is a better organizational fit under PERB. Further, the Administration indicates that the proposal is consistent with other efforts to streamline state government through consolidations and operational efficiencies.

**Staff Comment.** Unlike the other consolidations and operational efficiency proposals that have been submitted to this Subcommittee by the Administration, this proposal does not include any projected savings. The Administration indicates that there are programmatic efficiencies that can be gained, as well as improved outcomes, by merging the SMCS into PERB. For instance, by having these entities work more closely together, the Administration indicates that improved communication could streamline the process for handling disputes and result in increased usage of alternative dispute resolution forums as opposed to more costly and time-consuming adjudicatory processes. If this proves correct, PERB could improve its caseload turn-around time, resulting in potential future budget savings. Further, it is worth noting that transition costs of roughly \$100,000 are being absorbed. Finally, because this is a transfer of budget authority and positions, without substantive policy changes (the proposed trailer bill consists of conforming, technical changes to the SMCS statutes), it is appropriate to pursue these changes through the budget process.

**Staff Recommendation:** Approve the April 1 Finance letter, including the proposed budget trailer bill language.

**VOTE:**

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
 Senator Joel Anderson  
 Senator Lois Wolk



Thursday, May 10, 2012  
 9:30 a.m. or upon adjournment of session  
 Room 113

Consultant: Kris Kuzmich

## PART B

### OUTCOMES

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<b><i>Vote Only Items (Items Originally Heard on March 8, 2012)</i></b>
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<b>EMPLOYMENT DEVELOPMENT DEPARTMENT (7100)</b>
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**Issue 1 – Unemployment Insurance Loan Interest Payment**

**Governor’s Budget Request.** Similar to the approach taken in the 2011 Budget Act, the January budget requests a loan of \$417 million from the Unemployment Compensation Disability (DI) Fund to the GF to pay the September 2012 interest payment due to the federal government for the quarterly loans the Employment Development Department (EDD) has been obtaining from the federal government since January 2009 to cover the Unemployment Insurance (UI) Fund deficit and make payments to unemployment insurance (UI) claimants without interruption. This portion of the request includes budget bill provisional language.

To fund future interest payments for funds borrowed from the federal government to pay UI benefits, and to repay the funds borrowed from the DI Fund in both 2011 and 2012, the January budget requests to increase, through trailer bill language that requires a two-thirds vote (effective January 1, 2013), the employer surcharge payable to the Employment Training Fund by a total of \$472.6 million (\$39 per employee). The surcharge would be eliminated once the UI debt to the federal government is fully repaid and there is no longer a need to pay interest payments. Until that point is reached, the Administration indicates that this proposal would increase taxes on nearly every California employer by between \$40 and \$61 per employee per year, fluctuating each year to fully fund the interest costs due to the federal government.

In conjunction with the employer surcharge, and through trailer bill language, the January budget proposes to increase the minimum monetary eligibility to qualify for UI benefits to account for increases in employee wages that have occurred since the requirements were last adjusted in 1992. Under current law, to meet monetary eligibility requirements, a claimant must have earned: (1) at least \$900 in a single quarter and total base period earnings of \$1,125 or (2) at least \$1,300 in any one quarter in the base period. The budget increases the minimum eligibility to: (1) \$1,920 in the highest quarter and total base period earnings of \$2,400 or (2) at least \$3,200 in any one quarter in the base period. With these changes, approximately 40,000 individuals would no longer be eligible for UI benefits, saving \$30 million per year.

**Staff Comment.** This item was heard before this Subcommittee on March 8. Testimony was taken, but the item was held over for a vote due to a lack of quorum. Please see the March 8 agenda for detailed background information and LAO comments regarding this budget request.

**Staff Recommendation:** Approve the loan of \$417 million from the Unemployment Compensation Disability Fund to the GF to pay the September 2012 unemployment insurance loan interest payment due to the federal government, including the budget provisional language. Reject the other aspects of the request, including proposed trailer bill language, pertaining to: (1) the Employment Training Fund surcharge and (2) income eligibility for UI benefits.

<b>VOTE: Loan approved by a vote of 2-1, with Senator Anderson voting no. The other aspects of the request rejected by a vote of 3-0.</b>
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**DEPARTMENT OF INDUSTRIAL RELATIONS (7350)****Issue 2 – Compliance Monitoring Unit Cash Flow**

**Governor’s Budget Request.** The January budget requests budget bill provisional language to allow the State Public Works Enforcement Fund (SPWEF) to borrow from the Uninsured Employers Benefits Trust Fund, Labor Enforcement and Compliance Fund, and/or the Construction Industry Enforcement Fund, for cash flow purposes.

**Staff Comment.** This item was heard before this Subcommittee on March 8. Testimony was taken, but the item was held over for a vote due to a lack of quorum. Please see the March 8 agenda for detailed background information and comments regarding this budget request.

**Staff Recommendation:** Approve the budget bill provisional language to allow the State Public Works Enforcement Fund (SPWEF) to borrow from the three specified funds for cash flow purposes, as modified, to specify legislative intent that the annual assessments for the Uninsured Employers Benefits Trust Fund and Labor Enforcement and Compliance Fund shall not increase as the result of any loan made to the SPWEF.

**VOTE: Modified BBL approved by a vote of 3-0.**

**Issue 3 – Minors’ Temporary Entertainment Work Permit Program (AB 1401; 2011)**

**Governor’s Budget Request.** The January budget requests increased expenditure authority of \$583,000 (Entertainment Work Permit Fund-EWPF) and four positions in 2012-13, and \$307,000 on-going, to comply with the requirements of Chapter 557, Statutes of 2011 (AB 1401), related to the minors’ temporary entertainment work permit program. Of the resources requested in 2012-13, \$250,000 is one-time to create an on-line application and payment system.

**Staff Comment.** This item was heard before this Subcommittee on March 8. Testimony was taken, but the item was held over for a vote due to a lack of quorum. Please see the March 8 agenda for detailed background information and comments regarding this budget request.

**Staff Recommendation:** Approve the request on a two-year limited-term basis.

**VOTE: Request approved on a two-year limited-term basis by a vote of 2-1, with Senator Anderson voting no.**

<b>0559</b>	<b>LABOR AND WORKFORCE DEVELOPMENT AGENCY (LWDA)</b>
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<b><i>Issue Proposed for Discussion / Vote</i></b>
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<b>Issue 4 – Labor Enforcement Task Force Reporting Language</b>
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**Governor’s Budget Request.** The January budget removed budget bill provisional language requiring the LWDA to report on the progress of the Economic and Employment Enforcement Coalition (EEEC), a federal-state multi-agency partnership formed to combat the worst violators of federal and state labor, licensing, and tax laws operating in the underground economy.

**Prior Budget Actions.** The initial EEEC budget request was approved as three-year limited term in the 2005 Budget Act; the 2008 Budget Act extended the EEEC for two additional years. The 2010 Budget Act permanently established the EEEC, with 66 positions and on-going funding of \$7.208 million (special fund and reimbursements). Those positions were allocated as follows: LWDA – one position; Department of Industrial Relations (DIR) – 29 positions; EDD – 25 positions; and Contractors State License Board (CSLB) – 11 positions. The 2011 Budget Act required LWDA to report by January 1, 2012, on the progress of the EEEC and transferred authority and one position for the EEEC from the LWDA to the DIR, as part of a larger reorganization of LWDA.

**Background.** The goal of the EEEC is to target violators who operate in the underground economy and assist legitimate businesses that do comply with California law. Within the underground economy, employers utilize various illegal schemes to conceal their true tax liability, as well as reduce their operating costs associated with insurance, payroll taxes, licenses, employee benefits, safety equipment, and safety conditions.

In January 2012, as reported in the *SF Chronicle*, the EEEC was reconstituted and renamed the Labor Enforcement Taskforce (LETF). The Administration indicates that the changes were made in this time of scarce resources so the effort would be directed closely by the two key programs that enforce labor law issues. The Administration reports that all partner agencies of the EEEC are part of the reconstituted LETF, and that the Board of Equalization and Department of Insurance are new secondary partners. The Administration also reports that the LETF will be focusing more on labor law violations, specifically in low wage industries, with targeting of employers empirically based. The Taskforce also intends to evaluate the effectiveness of its efforts.

The LWDA submitted the required January 1, 2012, EEEC progress report on February 28, 2012. An additional LETF interim report was submitted on April 28, 2012, containing updated information from January 1, 2012. The interim report also provided detail on the value added of each entity’s participation in the LETF (versus the entity’s baseline accomplishments).

**Staff Comment.** When this issue was heard before this Subcommittee on March 8, it was noted that because the EEEC was a budget creation there is no statutory citation that delineates program priorities or parameters. Therefore, by eliminating the budget reporting requirement, venues to ensure legislative oversight were effectively limited. Since that

hearing, the Administration has provided a LETF interim report, detailing work since January 1, 2012. To ensure continued oversight of the LETF, and consistency with the original mission to combat the worst violators of federal and state labor, licensing, and tax laws operating in the underground economy, the Subcommittee may wish to consider reinstating a periodic reporting requirement through the annual budget act.

**Staff Recommendation:** Adopt the budget provisional language, instituting a biennial reporting requirement for the Labor Enforcement Task Force beginning on March 1, 2013, by adding the following provision to Item 7350-001-0001:

*The Department shall report to the Director of Finance and the Joint Legislative Budget Committee by March 1, 2013, and biennially thereafter, on the accomplishments of the Labor Enforcement Task Force and its enforcement activities regarding labor, tax, and licensing law violators operating in the underground economy. The Task Force is funded at \$7.2 million and 66 positions (30 positions within the Department, 25 positions within the Employment Development Department, and 11 positions within the Contractors' State Licensing Board). Secondary partners of the Task Force include the Bureau of Automotive Repair, the Department of Alcoholic Beverage Control, and the State Board of Equalization. The report shall include, but is not limited to, the following information:*

- a) The "value added" by the Task Force; i.e., distinct reporting of the baseline accomplishment(s) of each participating entity versus the additional accomplishment(s) achieved by virtue of its participation in the Task Force, and efforts to increase collaboration and coordination of the inter-agency enforcement efforts of the Task Force.*
- b) Efforts by the Task Force to develop targeting and statistical reporting methods that facilitate empirical identification of non-compliant employers.*
- c) Any recommended statutory changes to improve the operation of the Task Force, including data sharing across participating agencies.*
- d) Detailed objectives of the Task Force for the next reporting period and a description of how it intends to achieve those objectives.*

**VOTE: BBL approved by a vote of 3-0.**

**7100****EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)*****Issues Proposed for Discussion / Vote*****Issue 5 – California Unemployment Insurance Appeals Board: Restructuring Second Level Appeals**

**Governor’s Budget Request.** The January budget requests, effective January 1, 2013, the elimination of the California Unemployment Insurance Appeals Board (Board) and proposes a restructured second level appeals process for half-year savings of \$600,000 (\$3,000 GF, \$552,000 federal funds, and \$45,000 other funds) in 2012-13 and full-year savings of \$1.2 million in 2013-14 and on-going. The restructuring results in a net reduction of two positions (one position in 2012-13).

The request also includes the elimination of four vacant administrative law judge positions (two positions in 2012-13) due to declining workload. Finally, the request includes proposed budget trailer bill language.

*This request was initially heard on March 8, 2012. Please see that agenda for additional background information.*

**Background.** The Board was established in 1943 to provide due process for California claimants and employers who dispute unemployment and disability insurance benefit and payroll tax determinations made by the EDD. The Board consists of a seven-member board; five of these members are appointed by the Governor, with Senate confirmation, and the other two members are legislative appointees. Current law requires that two of the seven members be attorneys and that the Governor select the Chair. Current law also requires that each member of the board devote his/her full time to the performance of his/her duties. Members are compensated \$128,109 a year; the Chair is compensated \$132,179 per year.

The first, or lower appeal, is an appeal to an Administrative Law Judge (ALJ) in California Unemployment Insurance Appeals Board (CUIAB) Field Operations. The second, or higher level, is an appeal of the decision made by the Field Operations ALJ. These appeals are submitted to CUIAB Appellate Operations where each appeal is reviewed by a second level ALJ who then prepares a proposed written decision which is sent to two Board members. The Board members review the case and the second-level ALJ’s decision and decide the appeal case as a panel. If the two Board members cannot agree, then the Board Chair resolves the impasse. The Board additionally has the responsibility of designating decisions as precedent decisions, establishing regulations governing the CUIAB operations, and approving CUIAB’s operating budget.

The restructuring proposal in this request would eliminate the Board, add a Bureau Director who would be a Governor’s appointee subject to Senate confirmation, and would have four second level ALJ positions, which currently act as board authors, reclassified as “Presiding” ALJS (PAJLS) authorized to independently review and decide cases. To ensure impartiality, quality, and consistency, CUIAB would implement a quality control practice for decisions. The Board’s other duties would be assigned to permanent civil service staff. Finally, the

Board would be changed to a Bureau; in addition to the new Director, five additional upper-level management positions would be established.

**Staff Comment.** The Administration provided follow-up information in response to various questions and concerns that were raised at the March 8, 2012, hearing. Nonetheless, outstanding concerns remain. Under the current process, all parties, i.e., employers, claimants, and the EDD, benefit from a third party arbitrator. It is not clear that the restructured process would provide the same level of benefit. It is also not clear how replacing a Board where the majority of the members are subject to Senate confirmation, with a Bureau where only the director is subject to Senate confirmation, provides the same level of legislative oversight and checks and balances. This is crucial for several reasons, including that the Board is responsible for designating decisions as precedent decisions. The proposal does very little to improve the performance of the second level appeals process; it reduces the processing time of claims not randomly selected for quality control review by one to two days. However, in return for that decrease of one to two days, the restructured Bureau would not provide 100 percent review of the second level ALJ decisions (under the current structure, 100 percent review is provided). This potentially affects the quality and consistency of decisions over time and could also increase caseload (and costs and delays) in the civil court system, a system which has seen extensive budget reductions in recent years.

The LAO noted many of these same concerns with the Administration's proposal, and provided an alternative set of actions for the Subcommittee to consider. Staff concurs with the majority of the LAO's alternative, except for the components that would: (1) transfer the responsibility for issuing decisions on second-level appeals to ALJs and (2) reduce the compensation of Board members to align with the compensation of ALJs. With regard to the former, and similar to the Governor's January proposal, this approach would include random quality control reviews, which would result in less than 100 percent review. With regard to the latter, the point of the LAO alternative was to align Board compensation with that provided to ALJs. However, upon further review, staff finds that the current compensation of the Board is on par with ALJs, due to the fact that ALJs receive, in addition to their base salary, a pay differential for completing Judicial College. Further, senior level ALJs also receive an annual recruitment and retention bonus.

**Staff Recommendation:** Adopt a refined LAO alternative that retains the Board level review of the appeals caseload, including placeholder budget trailer bill language, as follows:

1. Eliminate two vacant ALJ positions in the budget year and four vacant ALJ positions in 2013-14, for savings of \$354,000 in the budget year and \$710,000 in the out years.
2. Maintain the Board but reduce its size and modify Board member qualifications, resulting in annual savings of \$360,000, as follows:
  - a) Reduce the size of the Board from seven to five members, with the Legislature retaining its authority to appoint two members and the Governor having authority to appoint the remaining three members, subject to legislative confirmation.
  - b) Align the required qualifications of the Board members with those of ALJs to, at a minimum, require Board members to be an attorney and have one year of experience in conducting judicial hearings or five years of experience in the practice of law.

**VOTE: Staff recommendation approved by a vote of 3-0.**

**Issue 6 – Single Client Database Data Center Costs**

**Governor’s Budget Request.** An April 1 Finance Letter requests the addition of budget bill provisional language to authorize DOF to increase the appropriations in the Unemployment Administration Fund (UI Admin Fund) and the Unemployment Compensation Disability Insurance Fund (DI Fund), up to a cumulative total of \$2 million, should the efforts to reduce anticipated costs associated with the DB2 environment within the Single Client Database (SCDB) prove not to be entirely successful.

**Background.** Both the Unemployment Insurance (UI) and Disability Insurance (DI) programs are supported by a centralized database. EDD first automated this centralized database in the 1980s utilizing an Integrated Data Management System (IDMS) platform. Since that time, the database grew to be one of the largest of its kind in the world, managing 1.2 billion records for 17 million clients. However, in the three decades since adoption of the IDMS platform, other technologies were developed offering better support for critical UI and DI business functions, data, and transaction volumes. In 2009, EDD began plans for the SCDB Modernization project, and with support provided in subsequent Budget Acts, moved from the IDMS platform to a DB2 relational database management system platform which went live on November 28, 2011.

Since November 28, 2011, EDD has been involved in post-conversion activities, resulting in a better understanding of the DB2 platform technical environment and operations. Initially, the central processing unit (CPU) processing time in the DB2 environment was more lengthy than originally estimated. This caused increased costs for EDD. EDD has been working with Office of Technology Services (OTech) and the California Technology Agency to make the DB2 environment more efficient, including the collection and in-depth analysis of online job performance measurements, including evening batch workload. The Administration also reports that OTech will be releasing a new rate structure in the near future that may lower ongoing data center costs. However, if neither of these efforts results in the necessary savings, the UI and DI programs could be negatively impacted by the higher CPU costs.

Since its submittal of the April 1 Finance Letter, the Administration has modified the proposed budget bill provisional language. The Administration indicates that there is \$3.3 million that EDD will be able to absorb/redirect from OTech savings in 2012-13. The provisional language is intended to provide the ability to augment if actual costs realized are beyond the \$3.3 million. The revised language includes a cap of \$660,000 DI fund and \$1.32 million UI Admin Fund. This split is reflective of the historical funding for this project, whereby two-thirds was funded by the UI Admin Fund and the remaining one-third was funded by the DI fund.

**Staff Comment.** Staff agrees with the need for this provisional language to ensure EDD’s costs in the DB2 environment are covered. The proposed language includes notification to the Joint Legislative Budget Committee and a cap on the appropriation authority; these aspects of the request ensure appropriate legislative oversight. The Subcommittee may also wish to consider asking the Administration to informally provide periodic updates to the JLBC as to the status of the ongoing effort to manage costs within the DB2 environment.

**Staff Recommendation:** Approve the April 1 Finance Letter, including the Administration-modified budget bill provisional language.

**VOTE: Request approved by a vote of 3-0.**

**Issue 7 – Disability Insurance Automation Project**

**Governor’s Budget Request.** An April 1 Finance Letter requests a one-time augmentation of \$33.787 million (Disability Insurance Fund-DI Fund) to fund a net of 68 positions to support the fourth year of development, testing, and implementation of the Disability Insurance Automation (DIA) project.

**Background.** The DIA project was initially funded in the 2006 Budget Act. The DIA project will provide greater access to services for claimants, medical providers, and employers by allowing these individuals to use the Internet to submit claims data using a direct electronic interface or through web-based intelligent forms. This will simplify and automate the numerous manual work processes involved when a Disability Insurance claim is filed with EDD. Further, scanning/optical character recognition will be implemented to convert remaining paper claims to electronic format. Automated business logic will allow “in pattern” claims to be paid automatically, further increasing service delivery. The DIA project is scheduled for “Go Live” in summer 2012.

Of the positions contained in this request, 27 are new positions, 70 are existing positions, and 29 positions were eliminated due to a reduction in Key Data Operators, for a net of 68 positions. The reduction in Key Data Operators is a result of the DIA project providing Web-based intelligent forms, which removes key data entry tasks from Disability Insurance branch employees, thus saving on the amount of staff required to administer the program.

**Staff Comment.** The resources in this request are consistent with Special Project Report (SPR) 3, which was approved by the Technology Agency in November 2011. SPR 3 reflects a number of changes relative to SPR 2, including the project end date being extended from August 2012 to June 2013, scope changes to provide for an interface with the Single Client Database (SCDB) DB2 system. These changes are necessary, particularly with regard to the interface with the SCDB. As discussed in the prior agenda item, as of November 2011 EDD is operating in a DB2 environment, so it was necessary to revise the DIA project to ensure compatibility.

SPR 3 also reflects a total cost of increase of \$38.6 million (DI Fund) over SPR 2. While this is an accurate figure, it is potentially misleading given the extension of the project completion date. In addition, SPR 3 includes *possible* additional vendor support. The more meaningful figure is that one-time costs increased by \$6.1 million and annual support costs increased by \$2 million once the project is fully implemented. Additionally, should EDD become vendor independent sooner than expected, the additional resources may not be required.

On the point of vendor independence, staff notes that EDD is in a difficult position. As the Subcommittee is aware, EDD has simultaneously pursued a number of large information technology projects. Through various budget acts, the Legislature supported these myriad efforts to modernize EDD’s operations. As the projects, including DIA, collectively reach completion EDD faces a challenge to acquire, train, and deploy sufficient state resources to transition to support of the projects and terminate its need for vendor support. In this vein, the Technology Agency has required EDD to provide an enterprise wide resource plan by January 31, 2013, outlining how EDD will provide sufficient state resources to these projects.

**Staff Recommendation:** Approve the April 1 Finance Letter.

**VOTE: None. Item held over pending receipt of additional information.**

**7350 DEPARTMENT OF INDUSTRIAL RELATIONS**  
**8320 PUBLIC EMPLOYMENT RELATIONS BOARD**

**Department of Industrial Relations Overview.** The objective of the Department of Industrial Relations (DIR) is to protect the workforce in California; improve working conditions; and advance opportunities for profitable employment. The DIR enforces workers' compensation insurance laws and adjudicates workers' compensation insurance claims; works to prevent industrial injuries and deaths; promulgates and enforces laws relating to wages, hours, and conditions of employment; promotes apprenticeship and other on-the-job training; assists in negotiations with parties in dispute when a work stoppage is threatened; and analyzes and disseminates statistics which measure the condition of labor in the state.

	<b>2010-11 (actual)</b>	<b>2011-12 (estimated)</b>	<b>2012-13 (proposed)</b>
Expenditures	\$359,739,000	\$412,395,000	\$425,114,000
General Fund	\$4,235,000	\$4,556,000	\$4,392,000
Personnel Years	2,449.9	2,701.8	2,717.3

**Public Employment Relations Board Overview.** The mission of the Public Employment Relations Board (PERB) is to administer and enforce California public sector collective bargaining laws in an expert, fair, and consistent manner; to promote improved public sector employer-employee relations; and to provide a timely and cost effective method through which employers, employee organizations, and employees can resolve their labor relations disputes.

	<b>2010-11 (actual)</b>	<b>2011-12 (estimated)</b>	<b>2012-13 (proposed)</b>
Expenditures	\$5,775,000	\$6,233,000	\$6,310,000
General Fund	\$5,763,000	\$6,221,000	\$6,298,000
Personnel Years	35.6	40.0	40.0

***Issue Proposed for Discussion / Vote***

**Issue 8 – Transfer of State Mediation and Conciliation Service to the Public Employment Relations Board**

**Governor's Budget Request.** An April 1 Finance Letter requests to transfer the State Mediation and Conciliation Service (SMCS) program, currently housed within the Department of Industrial Relations (DIR), to the Public Employment Relations Board (PERB). This request has a net-zero budget impact between the two budget items and a reduction of one limited-term position. This request includes proposed budget trailer bill language.

**Background.** The SMCS was established in 1947, beginning as a service to help employers and unions in the private sector avoid strikes and other disruptions to commerce through the use of neutral mediators. In the 1970s, the law was changed to have SMCS take on the responsibility of mediating labor disputes in the schools, community colleges, public higher education, local government, state government, transit, and (in recent years) the trial courts.

The Federal Mediation and Conciliation Service took over most of the private sector mediation work.

While the core of SMCS' public interest mission, to provide dispute resolution mediation services to labor and management parties, remains free to the parties, in 2009 statute was changed to authorize SMCS to charge fees for certain services. The 2009 Budget Act authorized two limited-term positions for two years based on the inauguration of SMCS' reimbursed services program. The 2011 Budget Act extended one of these positions through June 30, 2013. This request eliminates that position effective June 30, 2012. The Administration reports that reimbursement revenue is estimated at \$140,000 per year and there is no current data indicating that the amount of reimbursements can be increased above this level.

The Labor and Workforce Development Agency initiated this request, indicating that SMCS is a better organizational fit under PERB. Further, the Administration indicates that the proposal is consistent with other efforts to streamline state government through consolidations and operational efficiencies.

**Staff Comment.** Unlike the other consolidations and operational efficiency proposals that have been submitted to this Subcommittee by the Administration, this proposal does not include any projected savings. The Administration indicates that there are programmatic efficiencies that can be gained, as well as improved outcomes, by merging the SMCS into PERB. For instance, by having these entities work more closely together, the Administration indicates that improved communication could streamline the process for handling disputes and result in increased usage of alternative dispute resolution forums as opposed to more costly and time-consuming adjudicatory processes. If this proves correct, PERB could improve its caseload turn-around time, resulting in potential future budget savings. Further, it is worth noting that transition costs of roughly \$100,000 are being absorbed. Finally, because this is a transfer of budget authority and positions, without substantive policy changes (the proposed trailer bill consists of conforming, technical changes to the SMCS statutes), it is appropriate to pursue these changes through the budget process.

**Staff Recommendation:** Approve the April 1 Finance letter, including the proposed budget trailer bill language.

**VOTE: Request approved by a vote of 2-1 with Senator Anderson voting no.**

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



Thursday, May 17, 2012  
9:30 a.m. or Upon Adjournment of Session  
Room 113

Consultant: Joe Stephenshaw

**Item Number and Title**

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**Vote Only**

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**To be Heard**

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## **Vote Only Items**

### **Issue 1 – Pharmacy Augmentation**

**Governor’s Proposal.** The California Correctional Health Care Services (CCHCS) requests an augmentation of \$59.9 million in fiscal year 2012/13 and \$51.2 million in 2013/14 and ongoing for pharmaceutical funding. This augmentation is necessary to restore and set the baseline for the pharmaceutical budget.

The CCHCS reports that this augmentation will bring pharmaceutical funding in line with actual expenditures and prevent the CCHCS from either realizing a deficiency in its pharmaceutical budget or failing to comply with the Federal Court’s mandates to provide patient-inmates a level of care that does not violate their constitutional rights.

**Recommendation.** Approve on a two-year limited-term basis.

## Items to be Heard

### CA Department of Corrections and Rehabilitation (5225)

**Departmental Overview.** Effective July 1, 2005, the California Department of Corrections and Rehabilitation (CDCR) was created pursuant to the Governor's Reorganization Plan No. 1 of 2005 and Chapter 10, Statutes of 2005 (SB 737, Romero). All departments that previously reported to the Youth and Adult Correctional Agency (YACA) were consolidated into CDCR and include the California Department of Corrections, Youth Authority (now the Division of Juvenile Justice), Board of Corrections (now the Corrections Standards Authority (CSA)), Board of Prison Terms, and the Commission on Correctional Peace Officers' Standards and Training (CPOST). Effective July 1, 2012, Chapter 36, Statutes of 2011 (SB 92, Committee on Budget and Fiscal Review) creates the Board of State and Community Corrections ("BSCC"). At that time, the BSCC will supersede the CSA.

According to the department's website, its mission is to "enhance public safety through the safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities."

The CDCR is responsible for the incarceration, training, education, and care of adult felons and non-felon narcotic addicts, as well as juvenile offenders. The CDCR also supervises and treats adult and juvenile parolees (juvenile parole is in the process of being realigned to counties). Until June 30, 2012, the department is responsible for setting minimum standards for the operation of local detention facilities and selection and training of law enforcement personnel, as well as provides local assistance in the form of grants to local governments for crime prevention and reduction programs.

The department operates 33 adult prisons, including 8 reception centers (7 male and 1 female), a central medical facility, a treatment center for narcotic addicts under civil commitment, and a substance abuse facility for incarcerated felons. The CDCR also operates three juvenile correctional facilities. In addition, CDCR operates dozens of adult and juvenile conservation camps, the Richard A. McGee Correctional Training Center, and nearly 200 parole offices, as well as contracts to house inmates in several in-state and out-of-state correctional facilities. However, due to the 2011 Public Safety Realignment, the department is altering its contract bed mix.

**Budget Overview.** The Governor's Budget proposed \$8.9 billion and 58,528.2 positions for the CDCR in 2012-13. The table on the following page shows CDCR's total operational expenditures and positions for 2010-11 through 2012-13.

(dollars in thousands)

<b>Funding</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
General Fund	\$9,481,820	\$8,980,824	\$8,664,771
General Fund, Prop 98	24,510	23,623	21,229
Other Funds	108,767	117,317	71,755
Reimbursements	106,196	130,287	130,077
<b>Total</b>	<b>\$9,721,293</b>	<b>\$9,252,051</b>	<b>\$8,887,832</b>
<b>Positions</b>	<b>57,620.6</b>	<b>61,150.1</b>	<b>58,528.2</b>

**2011 Public Safety Realignment.** Last year, Governor Brown signed AB 109 and AB 117 (known as public safety realignment), historic legislation that will enable California to close the revolving door of low-level inmates cycling in and out of state prisons. It is the cornerstone of California’s solution for reducing the number of inmates in the state’s 33 prisons to 137.5 percent of design capacity by June 27, 2013, as ordered by a Three-Judge Court and affirmed by the United States Supreme Court. In a May 23, 2011 decision, the United States Supreme Court affirmed the judgment of a three-judge panel convened pursuant to the Prison Litigation Reform Act of 1995 (18 U. S. C. §3626) ordering California to reduce its prison population to no more than 137.5 percent of its design capacity within two years.

**Key Features of Public Safety Realignment**

<b>Felon Incarceration</b>	<b>Post-Release Supervision</b>	<b>Parole and PRCS Revocations</b>
Restructured felon penalty by making specified non-violent, non-serious, non-sex offenses subject to local punishment	Created Post Release Community Supervision (PRCS) for certain offenders to be supervised locally upon release from prison	Parole revocation terms are served locally and, by July 1, 2013, both parole and PRCS revocations will be adjudicated by the courts

Under AB 109 and AB 117, all felons convicted of current or prior serious or violent offenses, sex offenses, and sex offenses against children will go to state prison. Additionally, there are nearly 60 additional crimes that are not defined in the Penal Code as serious or violent offenses but remain offenses that would be served in state prison rather than in local custody.

## Issue 1 – CDCR’s Blueprint

**Governor’s Proposal.** In order to achieve \$1 billion in savings in 2012-13 (growing to \$1.5 billion by 2015-16) related to the reduction in CDCR’s population driven by realignment, advance efforts to end various class-action lawsuits, and maintain an effective prison system, the May Revision includes a comprehensive plan for CDCR, *The Future of California Corrections (Blueprint)*, which includes the following:

1. A net reduction of \$1.9 million.
2. The addition of a budget item (5225-007-0001) in the amount of \$13.8 million to reflect continuation of the Community Correctional Program.
3. \$810 million in lease revenue bond authority to construct three level II dorm facilities.
4. Includes \$700 million in AB 900 (Solorio 2007) lease revenue authority for court-ordered medical upgrades.
5. Includes \$167 million in AB 900 lease revenue authority for the conversion of the Dewitt juvenile facility (1,133 beds, including 953 health care beds).
6. Reappropriates funding necessary to ensure completion of health care projects required to comply with court orders as well as maintain the safe and efficient operation of existing prison facilities.
7. Adds provisional language specifying \$2.8 million is available for expenditure on capital improvement projects at the Folsom Transitional Treatment Facility.
8. Eliminates duplicative provisional reporting language that will now be provided for in statute.
9. Amends provisional language to adjust contract dollars and average daily population figures for out-of-state facilities.
10. Adds the following TBL:
  - a. **Civil Addicts Program Sunset Date** – Ceases commitments of civil addicts to CDCR beginning January 1, 2013.
  - b. **Accountability Language** – Requires CDCR to establish appropriate oversight, evaluation, and accountability measures as part of the Blueprint.
  - c. **Reporting Language** – Requires CDCR to submit estimated expenditures, as specified, to the Department of Finance for inclusion in the annual Governor’s Budget and May Revision.
  - d. **AB 900** – Amends various code sections related to AB 900 as follows:
    - i. Eliminate approximately \$4.1 billion in lease revenue bond authority that is no longer needed for implementation of CDCR’s facilities plan.
    - ii. Delete various sections of the Penal Code related to construction of reentry facilities and the benchmarks associated with phase two of infill, reentry, and health care facilities.
    - iii. Allow for use of specific AB 900 funds for medication distribution facilities improvement projects.

- iv. Revise reporting requirements so that the remaining projects are subject to an approval process that is the same as other state capital outlay projects.
- v. Various clean-up amendments consistent with the changes outlined above.

**Background.** As noted in the Blueprint, for years, California's prison system has faced costly and seemingly endless challenges. Decades-old class-action lawsuits challenge the adequacy of critical parts of its operations, including its health care system, its parole-revocation process, and its ability to accommodate inmates with disabilities. In one case, a federal court seized control over the prison medical care system and appointed a Receiver to manage its operations. The Receiver remains in place today. The state's difficulty in addressing the prison system's multiple challenges was exacerbated by an inmate population that—until recently—had been growing at an unsustainable pace. Overcrowded prison conditions culminated in a ruling last year by the United States Supreme Court ordering the CDCR to reduce its prison population by tens of thousands of inmates by June 2013. At the same time that prison problems were growing, California's budget was becoming increasingly imbalanced. By 2011, California faced a \$26.6 billion General Fund budget deficit, in part because the department's budget had grown from \$5 billion to over \$9 billion in a decade.

To achieve budgetary savings and comply with federal court requirements, the Governor proposed, and the Legislature passed, landmark prison realignment legislation to ease prison crowding and reduce the department's budget by 18 percent. Realignment created and funded a community-based correctional program where lower-level offenders remain under the jurisdiction of county governments. In the six months that realignment has been in effect, the state prison population has dropped considerably—by approximately 22,000 inmates. This reduction in population is laying the groundwork for sustainable solutions. But realignment alone cannot fully satisfy the Supreme Court's order or meet the department's other multi-faceted challenges.

This Blueprint builds upon the changes brought by realignment, and delineates a comprehensive plan for the CDCR to save billions of dollars by achieving its targeted budget reductions, satisfying the Supreme Court's ruling, and getting the department out from under the burden of expensive federal court oversight.

In summary the Blueprint contains the following components:

**Improve the Inmate Classification System.** As a result of research produced by a panel of correctional experts and input from seasoned professionals, the department is modifying its classification system. The modified system will enable the department to safely shift about 17,000 inmates to less costly housing where they can benefit from more access to rehabilitative programs. These modifications will begin to be implemented within six months, and they will eliminate the need to build expensive, high-security prisons.

Return Out-of-State Inmates. The department began sending inmates out-of-state when overcrowding was at its worst in 2007. Currently, there are more than 9,500 inmates outside of California. The department will be able to bring these inmates back as the prison population continues to drop, classification changes are made, and additional housing units are constructed at existing facilities. Returning these inmates to California will stop the flow of taxpayer dollars to other states, and is expected to save the state \$318 million annually.

**Improve Access to Rehabilitation.** This plan enables the department to improve access to rehabilitative programs and place at least 70 percent of the department's target population in programs consistent with their academic and rehabilitative needs. Increasing access to rehabilitative programs will reduce recidivism by better preparing inmates to be productive members of society. In doing so, it will help lower the long-term prison population and save the state money.

The department will establish reentry hubs at certain prisons to concentrate program resources and better prepare inmates as they get closer to being released. It will also designate enhanced programming yards, which will incentivize positive behavior. For parolees, the department will build a continuum of community-based programs to serve, within their first year of release, approximately 70 percent of parolees who need substance-abuse treatment, employment services, or education.

**Standardize Staffing Levels.** Realignment's downsizing has left the department with uneven, ratio-driven staffing levels throughout the system. Continued use of these increasingly outdated staffing ratios as the inmate population declines would be costly and prevent efficient operations. This plan establishes new and uniform staffing standards for each institution that will enable the department to operate more efficiently and safely.

Comply with Court Imposed Health Care Requirements. In recent years, numerous measures have been implemented that have significantly improved the quality of the department's health care system. The Inspector General regularly reviews and scores the department's medical care system, and these scores have been steadily rising. In addition, the capacity of the health care system will soon increase. Slated for completion during the summer of 2013, the California Health Care Facility in Stockton is designed to house inmates requiring long-term medical care and intensive mental health treatment. Its annex, the DeWitt Nelson Youth Correctional Facility, will open in the summer of 2014 to create a unified Stockton complex, allowing both facilities to efficiently transition inmate-patients between the two, while avoiding transportation and security costs as well as the need for expensive services in community hospitals and clinics. These projects, in addition to ongoing mental health and dental projects and new plans to increase medical clinical capacity at existing prisons, will satisfy court imposed requirements.

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**Satisfy the Supreme Court's Order to Reduce Prison Crowding.** As previously mentioned, the department's newly released spring population projections suggest that the department may fall a few percentage points short of meeting the final court-ordered crowding-reduction benchmark even with realignment. In June 2013, the department's prison population is projected to be at 141 percent of design capacity rather than the 137.5 percent goal identified by the Supreme Court. The additional measures proposed in this plan will allow the state to seek and obtain from the court a modification to raise the final benchmark to 145 percent of design capacity. Otherwise, alternatives such as continuing to house inmates out-of-state will have to be considered.

In its order, the Supreme Court contemplated that appropriate modifications to its order may be warranted. The Court explained that as the state implements the order, "time and experience" may reveal effective ways of ensuring adequate health care—other than through population reductions. The state "will be free to move" the Court for modification of the order on that basis, and "these motions would be entitled to serious consideration." This plan sets forth necessary reforms to satisfy this order as well as other court imposed requirements related to the provision of health care services.

The reduced prison population has already substantially aided the department's ability to provide the level of care required by the courts. As the population further declines, the department's ability to provide the required level of prison health care will continue to improve. New health care facilities and enhanced treatment and office space at existing prisons will enable the department to maintain a health care system capable of providing this level of care for a higher density prison population than the Court originally contemplated. This plan will provide critical support for the state's ability to satisfy the Supreme Court's order without having to maintain expensive out-of-state prison beds or release inmates early.

Realignment has provided California an historic opportunity to create not just a less-crowded prison system, but one that is safer, less expensive, and better equipped to rehabilitate inmates before they are released. This plan seizes on that opportunity. Each of the following sections describes key aspects of a prison system that combines the inmate reductions achieved in realignment with a facility-improvement plan that will

enable a more efficient inmate health care delivery system. This is the prison system that best serves California.

Following are Highlights of the Blueprint:

### **Reduce CDCR's Budget**

- CDCR accounted for just three percent of General Fund spending 30 years ago, and increased to 11 percent in FY 2008-09. This plan will lower it to 7.5 percent in FY 2015-16. When realignment is fully implemented CDCR expenditures will drop by 18 percent overall.
- Without realignment, California would have had to build up to nine new prisons or release tens of thousands of inmates to comply with the Supreme Court's order.
- Thanks to realignment, California will spend much less on prisons. The annual prison budget will be reduced by \$1.5 billion upon full implementation.
- Annual savings of \$160 million will come from the closure of an old, costly prison (California Rehabilitation Center). California will also avoid some \$6 billion in construction and related costs for projects no longer needed.

### **Achieve Constitutional Level of Health Care to End Costly Lawsuits, Court Oversight**

- Medical, mental health and dental care in California prisons is under federal court supervision, notably medical care run by a Receiver with full spending authority.
- A key goal of CDCR's comprehensive plan is to end this expensive federal court oversight and to finally resolve health-related class-action lawsuits that date back years and decades.
- Prison health care is now at or close to constitutional levels. The federal judge who appointed the Receiver now says it's time to prepare for the return of health care to California control.
- Slated for completion summer 2013, the California Health Care Facility in Stockton will provide 1,722 beds for inmates requiring long-term in-patient medical care and intensive in-patient mental health care.
- CDCR is also improving medical and dental clinical capacity throughout the prison system to ensure continued constitutional levels of health care.

### **Expand Rehabilitation to Help Reduce Recidivism, Save Long-Term Costs**

- CDCR's rehabilitation programs are currently below where they need to be to help reduce recidivism. For example, CDCR currently has only 1,528 substance-abuse treatment slots.
- The Blueprint sets a goal that rehabilitation programs will be available to at least 70% of the target inmate population, consistent with their academic and rehabilitative needs.
- Continuity of care for parolees also improves the likelihood of successful reintegration; community-based programs will serve 70% of parolees who need substance-abuse treatment, employment services, or education.

### **Improve Prison Operations**

- **New Staffing Standards:** The downsizing caused by realignment has left CDCR with uneven staffing levels driven by now-outdated ratios. A new staffing formula will better manage staffing levels and cost.

- **Improve Inmate Classification:** Thanks to expert outside research, CDCR will safely shift more than 17,000 inmates to less expensive housing (by eliminating the need for high-security prison construction). The inmates will have greater access to rehabilitative programming while easing crowding in all security levels.
- **End of non-traditional beds:** Thanks to the smaller prison population, CDCR now no longer uses gyms and common rooms as temporary dormitories. The elimination of non-traditional beds makes California prisons safer
- **Gang management:** CDCR proposes to improve the way it manages prison gangs with a Step-Down program; giving offenders the chance to show they can refrain from criminal gang behavior and prepares them for less-restrictive housing.

**Note on Prison Population/Benchmark**

- CDCR met the first Three-Judge Court benchmark in December 2011 (167% of design capacity), will exceed the second benchmark in June 2012 (155% of design capacity), and expects to meet the third benchmark in December 2012 (147% of design capacity). The fourth and final benchmark (137.5% of design capacity) looks uncertain according to CDCR's latest population projections. CDCR's current estimates indicate that by June 2013, the prison population will be at 141% of design capacity.
- CDCR indicates that this plan puts the state in a strong position to request that the design capacity cap be raised.
- New health care facilities and enhanced treatment and office space at existing prisons will enable CDCR to maintain a quality healthcare system for a higher density prison population than originally contemplated by the court.

**Legislative Analyst's Office (LAO).** The LAO finds that while the administration's blueprint merits careful consideration by the Legislature, there are alternative packages that are available. Each alternative, including the CDCR blueprint, comes with significant trade-offs to consider. However, the LAO finds that the state could meet specified population cap targets at much lower ongoing General Fund costs in the future than proposed by the administration, potentially saving the state over a billion dollars over the next seven years.

If the federal court does not approve the increase in the population cap, the LAO would recommend that the state adopt a package that (1) closes CRC, (2) rejects the proposed DeWitt and three infill projects, and (3) modestly reduces the state's reliance on out-of-state contract beds. This would save the state an additional \$159 million annually relative to the modified administration plan. These savings are primarily derived from the elimination of the additional debt-service payments and operations costs associated with the construction proposed in the administration's plans. The LAO believes that this recommended approach would result in the greatest cost savings of the alternatives they identify and permit the closure of CRC while avoiding construction and still reducing the number of out-of-state contracts.

**LAO Alternative 1.** Instead, the state could (1) close CRC, (2) approve the DeWitt project, (3) reject the three infill projects, and (4) make a modest reduction in the use of out-of-state contracts. This would save the state an additional \$138 million annually relative to the administration's modified plan. These savings result primarily from the

elimination of the debt service and operating costs associated with the three proposed infill projects. While this approach would result in the closure of CRC and less reliance on contract beds, it would include construction that, in the LAO's view, the administration has not fully justified.

**LAO Alternative 2.** Under this approach, the state would (1) keep CRC in operation, (2) reject the DeWitt and three infill projects, and (3) make a fairly significant reduction in the use of out-of-state contracts. This would save the state an additional \$58 million annually relative to the modified administration plan. These savings are derived from the elimination of the additional debt-service payments associated with the DeWitt and infill projects. While this approach avoids costly construction, it results in an increase in operational costs relative to the administration's modified plan because of the continued operation of CRC.

**Recommendation.** Hold Open.

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



Tuesday, May 22, 2012  
1:30 p.m.  
Room 113

Consultant: Joe Stephenshaw

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## Vote Only Items

### Judicial Branch (0250)

#### Issue 1 – Allocation of the \$350 million Reduction

**Governor’s Proposal.** The May Revise proposes to schedule the \$350 million unallocated reduction contained in the Judicial Branch’s budget.

**Background.** The 2011 Budget Act included an ongoing \$350 million unallocated reduction to the Judicial Branch. The 2012-13 Governor’s Budget only scheduled the reduction for 2011-12, as approved by the Judicial Council. This adjustment schedules the unallocated reduction in 2012-13, consistent with 2011-12.

**Recommendation.** Approve as proposed.

### CA Department of Corrections and Rehabilitation (5225)

#### Issue 1: Juvenile Population Adjustment

**Governor’s Proposal.** The May Revise proposes a net decrease of \$9.1 million General Fund to reflect revised Division of Juvenile Justice (DJJ) population projections.

**Background.** This change is comprised of a decrease of \$7.2 million General Fund, \$1.6 million General Fund Proposition 98, and \$229,000 in reimbursement authority. Adjusted for recent juvenile population trends, the May Revise reflects an estimated average daily population of 992 wards in 2012-13, which is 156 less than projected in the Governor’s Budget.

**Recommendation.** Approve as Budgeted.

#### Issue 2 – Pharmacy Augmentation

**Governor’s Proposal.** The California Correctional Health Care Services (CCHCS) requests an augmentation of \$59.9 million in fiscal year 2012-13 and \$51.2 million in 2013-14 and ongoing for pharmaceutical funding. This augmentation is necessary to restore and set the baseline for the pharmaceutical budget.

The CCHCS reports that this augmentation will bring pharmaceutical funding in line with actual expenditures and prevent the CCHCS from either realizing a deficiency in its pharmaceutical budget or failing to comply with the Federal Court's mandates to provide patient-inmates a level of care that does not violate their constitutional rights.

**Recommendation.** 1) Approve on a two-year limited-term basis, 2) adopt trailer bill language that mandates the use of generics, and 3) adopt budget bill language that requires the Receiver's office to report on feasibility of implementing inmate co-payments.

### **Issue 3 - Female Offenders: Expansion of Alternative Custody Program**

**Governor's Proposal.** The Governor's budget proposes trailer bill language that provides for the expansion of the Alternative Custody Program (ACP) for Women to include women who have a prior serious or violent conviction. The goal is to allow CDCR to place these offenders in community-based treatment programs in an effort to achieve successful outcomes and reduce recidivism among this population. Savings resulting from the reduction in the female inmate population will be used to cover the cost of treatment programs in the community. The anticipated population decline in future years is expected to generate long-term savings of \$2.5 million beginning in 2014-15 and \$5 million annually thereafter.

**Background.** Senate Bill 1266 (Liu, 2010) established an ACP within the CDCR under which eligible female inmates, including pregnant inmates or inmates who were the primary caregivers of dependent children, would be allowed to participate in lieu of their confinement in state prison. Under the program, female inmates may be placed in a residential home, a nonprofit residential drug-treatment program, or a transitional-care facility that offers individualized services based on an inmate's needs. The program focuses on reuniting low-level inmates with their families and reintegrating them back into their community.

All inmates continue to serve their sentences under the jurisdiction of the CDCR and may be returned to state prison for any reason. An inmate selected for ACP is under the supervision of a Parole Agent and is required to be electronically monitored at all times.

In addition to ACP, the CDCR also administers the Community Prisoner and Mother Program, which is a community treatment program that allows eligible women sentenced to state prison and who have one or more children under the age of six to participate together in a community based facility.

**Recommendation.** Approve trailer bill language to expand the Alternative Custody Program and the Community Prisoner and Mother Program.

## Items to be Heard

### Judicial Branch (0250)

Article VI of the Constitution creates the Supreme Court of California and the Courts of Appeal to exercise the judicial power of the state at the appellate level. Article VI also creates the Judicial Council of California to administer the state's judicial system. Chapter 869, Statutes of 1997, created the California Habeas Corpus Resource Center to represent any person financially unable to employ appellate counsel in capital cases.

Chapter 850, Statutes of 1997, enacted the Lockyer-Isenberg Trial Court Funding Act of 1997 to provide a stable and consistent funding source for the trial courts. Beginning in 1997-98, consolidation of the costs of operation of the trial courts was implemented at the state level, with the exception of facility, revenue collection, and local judicial benefit costs. This implementation capped the counties' general-purpose revenue contributions to trial court costs at a revised 1994-95 level. The county contributions become part of the Trial Court Trust Fund, which supports all trial court operations. Fine and penalty revenue collected by each county is retained or distributed in accordance with statute.

Chapter 1082, Statutes of 2002, enacted the Trial Court Facilities Act of 2002, which provided a process for the responsibility for court facilities to be transferred from the counties to the state by July 1, 2007. This Chapter also established several new revenue sources, which went into effect on January 1, 2003. These revenues are deposited into the State Court Facilities Construction Fund (SCFCF) for the purpose of funding the construction and maintenance of court facilities throughout the state. As facilities transferred to the state, counties also contributed revenues for operation and maintenance of court facilities based upon historical expenditures.

In enacting these changes, the Legislature sought to create a trial court system that was more uniform in terms of standards, procedures, and performance. The Legislature also wanted to maintain a more efficient trial court system through the implementation of cost management and control systems.

The Judicial Council is the policymaking body of the California courts, the largest court system in the nation. Under the leadership of the Chief Justice and in accordance with the California Constitution, the council is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice. The Administrative Office of the Courts (AOC) implements the council's policies.

Currently, the state maintains 58 trial court systems, each having jurisdiction over a single county. These courts have trial jurisdiction over all criminal cases (including felonies, misdemeanors, and traffic matters). They also have jurisdiction over all civil cases (including family law, probate, juvenile, and general civil matters). In 2009–10, more than ten million cases were filed in trial courts throughout the state.

The mission of the Judicial Branch is to resolve disputes arising under the law and to interpret and apply the law consistently, impartially, and independently to protect the rights and liberties guaranteed by the Constitutions of California and the United States, in a fair, accessible, effective, and efficient manner.

The May Revision includes total funding of \$3.6 billion (\$730 million General Fund) for the Judiciary.

### Major Trial Court Realignment Legislation

Legislation	Description
<b><i>Lockyer–Isenberg Trial Court Funding Act of 1997.</i></b> Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle)	Transferred financial responsibility for trial courts (above a fixed county share) from the counties to the state.
<b><i>Trial Court Employment Protection and Governance Act.</i></b> Chapter 1010, Statutes of 2000 (SB 2140, Burton)	Classified most individuals working in the trial courts as court employees.
<b><i>Trial Court Facilities Act of 2002.</i></b> Chapter 1082, Statutes of 2002 (SB 1732, Escutia)	Initiated the transfer of ownership and responsibility of trial court facilities from the counties to the state.

**Governor’s Budget Proposals.** The Governor’s budget contains the following proposals relative to trial court funding (note: because of the May Revise proposals, the Branch is no longer included in the trigger reduction described below):

- 1) \$50 million for the Trial Court Trust Fund from civil court fee increases. These funds would be available to offset the ongoing impact of reductions in funding for trial court operations contained in previous budget acts.
- 2) Provisional Language that would grant the Judicial Council the authority to allocate the continuing budget reductions across the branch and to redirect funding from other court fund sources, as the Judicial Council deems appropriate.
- 3) A trigger reduction of \$125 million if the Governor’s tax proposal is not approved in November. While the Branch would determine how to implement this reduction, it is the equivalent of court closures equal to three days per month.

<b>Issue 1 – Employee Retirement Contribution</b>
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**Governor’s Proposal.** The May Revise proposes a reduction of \$4 million General Fund to reflect a shift in employee retirement contributions for employees of the Judicial Council, Courts of Appeal, Habeas Corpus Resource Center, and Supreme Court. Trailer bill language is proposed to reflect this change.

**Background.** The majority of state employees currently pay eight percent of their retirement contribution. Judicial Branch employees of the Judicial Council, Courts of

Appeal, Habeas Corpus Resource Center and Supreme Court typically contribute five percent, with the entire contribution being covered for a small group of employees. Increasing the contribution for state court employees from five percent to eight percent makes their contribution consistent with other state employees.

Staff notes that because Judicial Branch employees are included in a larger group of state miscellaneous employees, the savings to the Branch from this proposal may be well under \$4 million. In addition, there are other benefits that are inconsistent between the Judicial Branch and other state employees. For instance, most Executive Branch employees are afforded annual Merit Salary Adjustments, while Judicial Branch Employees are not.

**Recommendation.** Approve the \$4 million in savings from the Judicial Branch. However, 1) reject the trailer bill language specifying the employee retirement contribution level and, instead, 2) adopt budget bill language that requires the Judicial Council to report to the Legislature, by September 30, 2012, on how these savings will be achieved on an ongoing basis.

## **Issue 2 – Restructure Trial Court Funding**

**Governor’s Proposal.** The May Revise proposes a one-time decrease of \$300 million General Fund to reflect the use of local trial court reserves to support trial court operations and trailer bill language to eliminate trial court reserves at the local level and authorize the Judicial Council to retain three percent of total estimated trial court expenditures for emergencies. Ongoing General Fund support for trial courts will be reduced by \$71 million.

The Administration also proposes to establish a working group to conduct an evaluation of the state’s progress in achieving the goals outlined in the reform legislation, including the ability of trial courts to provide equal access to justice, is appropriate. The working group will conduct a statewide analysis of workload metrics, staffing standards, and other relevant data necessary to support a more uniform and efficient administrative system for the judiciary.

**Background.** During the mid-1990s there were significant reforms in the Judicial Branch—court unification and the state assumption of funding responsibility for trial courts. Prior to state funding, many small courts were in financial crisis and needed emergency state funding to keep their doors open. One of the goals of state funding was to promote equal access to justice so that a citizen’s access to court services was not dependent on the financial health of an individual county. Trial courts have benefitted financially, as the state has been able to stabilize and increase funding.

Since 2007-08, state General Fund support for the Judicial Branch has been reduced by \$653 million ongoing. However, the Administration, the Legislature and the Judicial Council have mitigated these reductions through a mix of permanent and one-time

offsets, including transfers from special funds, fee increases, and use of trial court reserves. Overall expenditures for the trial courts have remained relatively flat as illustrated below. Beginning in 2013-14, because of reliance on one-time reductions and the loss of reserves and fund balances, trial courts will need to achieve reductions through operational changes and efficiencies.

(dollars in millions)

<b>Trial Court Reductions</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>
Unallocated Reduction	\$92.2	\$268.6	\$55	\$320
One-time Reduction		(100)	(30)	
<b>Total</b>	<b>\$92.2</b>	<b>\$268.6</b>	<b>\$55</b>	<b>\$320</b>
<b>Offsets</b>				
<b>Offsets</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>
Use of Local Reserves	\$92.2	\$71	\$25	\$0
Transfer From other Funds		130	130	233.0
Fee Increases		46.7	113.2	107.1
Use of Fund Reserve		3	36	69.4
<b>Total</b>	<b>\$92.2</b>	<b>\$250.7</b>	<b>\$304.2</b>	<b>\$409.5</b>

(dollars in millions)

<b>Trial Court Expenditures</b>				
<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12 (Est.)</b>
\$3,316	\$3,321	\$3,362	\$3,559	\$3,552

At the end of 2010–11, trial courts possessed combined reserves of \$562 million, but only around half was unrestricted and available for use by the trial courts to address their budget reductions. The Legislative Analyst’s Office has previously pointed out that the actual level of reserve balances, particularly unrestricted funds, currently varies across trial courts. Some courts possess enough funds in their reserves to cover a large share of their annual expenditures and would probably be able to draw on these reserves—rather than make additional operational changes—to absorb additional budget reductions. Other courts lack a significant amount of unrestricted funds and might have difficulty absorbing further budgetary reductions.

Even with the current level of trial court reserves and the relatively flat annual expenditures by trial courts, funding issues have driven significant impacts on trial court services. Under Government Code Section 68106, courts must provide written notice to the public and to the Judicial Council at least 60 days before instituting any plan to

reduce costs by designating limited services days. The Judicial Council, in turn, must post all such notices on its Web site within 15 days of receipt. Since Section 68106 became operative on October 19, 2010, and as of last month, the Judicial Council has received notices from 25 counties, which detail the reductions in court staffing and services implemented by these counties.

For example, some counties have had to close courtrooms including:

- San Diego Superior Court, which has reduced the number of assigned judges regularly used by the court and reduced four full-time trial courtrooms.
- San Joaquin Superior Court, which closed courtrooms at the Lodi and Tracy branches and reassigned to other court branches the civil limited, traffic, small claims, domestic violence, civil harassment, and juvenile traffic cases.
- Ventura Superior Court, which closed two civil courtrooms at the East County branch and relocated two civil judges to Ventura.

Other courts have closed entire court branches, including Butte, San Joaquin, and San Luis Obispo Counties, which have closed one court branch each, and San Diego, Sonoma and Stanislaus Counties, which have both closed two court branches.

Budget cuts have also impacted the availability of civil case self-help and family law assistance services, including:

- Alameda Superior Court, which has eliminated self-help services at two court locations and reduced hours in providing services at another court.
- Riverside Superior Court, which decreased family law facilitator assistance in order to provide more civil self-help services. Additionally, one of the court's justice partners reduced by half family law assistance at two court locations and eliminated self-help assistance at another location.
- Sacramento Superior Court, which reduced domestic violence workshops from five to three days per week; eliminated trial setting and notice of motion workshops; closed the computer room where litigants prepared child and spousal support calculations, prepared legal forms, and obtained family law and probate information; and reduced the number of litigants served annually from 40,500 to 33,900 due to reduced staff resources.

Efforts to reduce trial court expenditures have led to staffing reductions, including:

- San Joaquin Superior Court, which recently laid off 42 employees.
- San Francisco Superior Court, which recently laid off 75 employees.
- Los Angeles Superior Court, which previously laid off 329 employees.

**Legislative Analyst's Office (LAO).** The LAO has found that given the state's fiscal situation, the Governor's proposal to utilize \$300 million of local trial court reserves to offset additional General Fund reductions to the trial courts merits approval. However, they note that the proposal will likely result in most, if not all, trial court reserves being

depleted. The depletion of reserves could have differing impacts on individual courts depending on the level of reserves they had maintained, the degree to which they relied on their reserves to implement multi-year budget reductions, and what changes they choose to implement if they had planned to utilize their reserves in the budget year. These changes could include, for example, court closures, staff reductions, and reduced clerk hours.

The LAO recommends rejection of the administration's proposal to eliminate the authority of local courts to retain reserves and to instead establish a statewide reserve. While this proposal could potentially further the goals of statewide trial court realignment, it is a significant policy change that raises numerous questions related to the respective role of the local court and the Judicial Council in setting fiscal and program priorities. Instead, the LAO recommends that the evaluation of whether courts should maintain local reserves be part of the working group proposed by the Governor to evaluate the state's progress in achieving the goals of state trial court realignment. This evaluation could help the Legislature determine what policy changes, such as the Governor's proposed elimination of local reserves, could improve the overall efficiency and effectiveness of the judicial branch.

**Recommendation.** Hold Open.

### **Issue 3 – Use of Trial Court Construction Funds**

**Governor's Proposal.** The May Revise proposes a decrease of \$240 million General Fund to reflect the one-time (\$50 million ongoing) redirection of court construction funds for trial court operations. Trailer bill language is proposed to allow for this redirection.

**Background.** The Judicial Branch has two primary court construction funds, the State Court Facilities Construction Fund (SCFCF), which receives approximately \$130 million from fees and penalty assessments to support trial court construction projects, and the Immediate and Critical Needs Account (ICNA), which receives approximately \$321 million from various civil and criminal fines and fees to support 41 trial court construction projects that were deemed to be immediate and critical by the Judicial Council (the AOC submitted a revised court construction funding plan to the Judicial Council in December that resulted in the cancelation of two, one-courtroom projects (Alpine and Sierra)). In the current year, the following actions were taken related to these two funds:

- Transferred \$310.3 million from the ICNA to the GF.
- Loaned \$350 million from the SCFCF to the GF, to be repaid with interest.
- Loaned \$90 million from the ICNA to the GF, to be repaid with interest.
- Provided authority to the AOC to allow for redirection of \$130 million from the SCFCF and ICNA to offset the reduction to trial court funding.

In response to fiscal constraints, at its December 2011 meeting, the Judicial Council also directed the Office of Court Construction and Management to reduce costs on all proposed court projects by four percent. At its April 2012 meeting, the Judicial Council

subsequently approved a more comprehensive plan to reevaluate the court facilities program to achieve additional cost savings. This reevaluation will include consideration of options such as reducing square footage, undertaking renovations instead of new construction, evaluating lease options, and using lower-cost construction methods, where practical.

The Governor’s May Revise proposal would redirect \$240 million, in 2012-13, from the ICNA. To achieve this, design activities will be delayed for up to 38 court construction projects while the Judicial Council reviews local trial court operations, court construction standards, and the pace of future court construction to ensure operational efficiencies can be reflected in the design of new trial courts. The following table outlines the potential impact of this proposal:

<b>All Active Court Projects</b>	<b>Current Phase</b>	<b>Status in 2012-13</b>
1. El Dorado County: New Placerville Courthouse	Acquisition	Will not proceed to Preliminary Plans
2. Fresno County: Renovate Fresno County Courthouse	Preliminary Plans	Will not proceed to Working Drawings
3. Glenn County: Renovation and Addition to the Willows Courthouse	Preliminary Plans	Will not proceed to Working Drawings
4. Imperial County, New El Centro Family Courthouse	Preliminary Plans	Will not proceed to Working Drawings
5. Inyo County: New Independence Courthouse	Acquisition	Will not proceed to Preliminary Plans
6. Kern County: New Delano Courthouse	Acquisition	Will not proceed to Preliminary Plans
7. Kern County: New Mojave Courthouse	Acquisition	Will not proceed to Preliminary Plans
8. Lake County, New Lakeport Courthouse	Preliminary Plans	Will not proceed to Working Drawings
9. Los Angeles County, New Southeast LA Courthouse	Acquisition	Will not proceed to Preliminary Plans
10. Los Angeles County: New Eastlake Courthouse	Acquisition	Will not proceed to Preliminary Plans
11. Los Angeles County: New Glendale Courthouse	Acquisition	Will not proceed to Preliminary Plans
12. Los Angeles County: New Mental Health Courthouse	Acquisition	Will not proceed to Preliminary Plans
13. Los Angeles County: New Santa Clarita Courthouse	Acquisition	No Change
14. Mendocino County: New Ukiah Courthouse	Acquisition	Will not proceed to Preliminary Plans
15. Merced County: New Los Banos Courthouse	Preliminary Plans	Will not proceed to Working Drawings

16. Nevada County: New Nevada City Courthouse	Acquisition	No Change
17. Placer County: New Tahoe Area Courthouse	Acquisition	Will not proceed to Preliminary Plans
18. Plumas County: New Quincy Courthouse	Acquisition	Will not proceed to Preliminary Plans
19. Riverside County, New Indio Family/Juvenile	Preliminary Plans	Will not proceed to Working Drawings
20. Riverside County: New Hemet Courthouse	Acquisition	Will not proceed to Preliminary Plans
21. Sacramento County: New Sacramento Criminal Courthouse	Acquisition	Will not proceed to Preliminary Plans
22. San Joaquin County: New Stockton Courthouse	Preliminary Plans	Will not proceed to Working Drawings
23. Santa Barbara County: New Santa Barbara Criminal Courthouse	Acquisition	Will not proceed to Preliminary Plans
24. Santa Clara County: New Family Justice Center	Preliminary Plans	Will not proceed to Working Drawings
25. Shasta County, New Redding Courthouse	Acquisition	Will not proceed to Preliminary Plans
26. Siskiyou County: New Yreka Courthouse	Acquisition	Will not proceed to Preliminary Plans
27. Sonoma County, New Santa Rosa Criminal Courthouse	Acquisition	Will not proceed to Preliminary Plans
28. Stanislaus County: New Modesto Courthouse	Acquisition	Will not proceed to Preliminary Plans
29. Tehama County, New Red Bluff Courthouse	Preliminary Plans	Will not proceed to Working Drawings
30. Tuolumne County: New Sonora Courthouse	Acquisition	Will not proceed to Preliminary Plans
31. San Diego Courthouse: New San Diego Courthouse	Preliminary Plans	Will proceed to Working Drawings
32. Butte County, New North County Courthouse	Working Drawings	Will proceed to Construction with PL
33. Kings County: New Hanford Courthouse	Working Drawings	Will proceed to Construction with PL
34. Sutter County, New Yuba City Courthouse	Working Drawings	Will proceed to Construction with PL
35. Yolo County, New Woodland Courthouse	Working Drawings	Will proceed to Construction with PL
36. Solano County, Renovation to Fairfield Courthouse	Working Drawings	Will proceed to Construction with PL

37. San Joaquin County: Renovation and Addition to the Juvenile Justice Center	Working Drawings	Will proceed to Construction with PL
38. Monterey County, New South Monterey County Courthouse	Preliminary Plans	Will not finish Preliminary Plans and will not proceed to Working Drawings - Project is being reassessed by JC

**Recommendation.** Hold Open.

#### **Issue 4 – Courthouse Projects: Reappropriations**

**Governor’s Proposal.** The May Revise proposes to reappropriate \$144.4 million, previously authorized in 2009, from the Immediate and Critical Needs Account (ICNA) for the acquisition phase of 19 courthouse projects.

**Background.** Chapter 10, Statutes of 2009, authorized funding for 19 courthouse projects (listed in the table below), that expires on June 30, 2012. Funding for subsequent design phases will be requested, as appropriate, should the evaluation review (outlined in Issue 4 – *Use of Trial Court Construction Funds*) support the need to continue.

(dollars in millions)

<b>Project</b>	<b>Amount</b>
1. El dorado County: New Placerville Courthouse	\$1.1
2. Inyo County: New Inyo Courthouse	\$.7
3. Kern County: New Delano Courthouse	\$.7
4. Kern County: New Mojave Courthouse	\$.1
5. Los Angeles County: New Southeast Courthouse	\$21.1
6. Los Angeles County: New Santa Clarita Courthouse	\$1.2
7. Los Angeles County: New Glendale Courthouse	\$14.3
8. Los Angeles County: New Mental Health Courthouse	\$33.5

9. Los Angeles County: New Eastlake Juvenile Courthouse	\$13.8
10. Mendocino County: New Ukiah Courthouse	\$3.5
11. Nevada County: New Nevada City Courthouse	\$12.7
12. Placer County: New Tahoe Area Courthouse	\$2.8
13. Plumas County: New Quincy Courthouse	\$.7
14. Riverside County: New Hemet Courthouse	\$.4
15. Sacramento County: New Sacramento Courthouse	\$15.0
16. Santa Barbara County: New Santa Barbara Criminal Courthouse	\$8.6
17. Shasta County: New Redding Courthouse	\$7.0
18. Siskiyou County: New Yreka Courthouse	\$.4
19. Stanislaus County: New Modesto Courthouse	\$6.9

**Recommendation.** Approve as proposed.

<b>Issue 5 – Courthouse Projects: Construction</b>
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**Governor’s Proposal.** The May Revise proposes 1) \$364.8 million in lease-revenue bond authority for the construction phase of four courthouse projects, and 2) budget bill language specifying that funds shall not be expended until the Judicial Council has reconfirmed both the detail cost and scope of the projects, as approved by the Department of Finance.

**Background.** While the court facility reevaluation efforts may result in cost and scope changes, the Administration recognized that some projects, specifically those that are in advanced stages of design, will likely not benefit from a major design reevaluation, as the cost of doing so may outweigh any potential cost savings. Therefore, the May Revise proposes funding and provisional language for the following projects that are in working drawings:

(dollars in millions)

Project	Amount
1. Butte County: New North County Courthouse	\$54.0
2. Kings County: New Hanford Courthouse	\$109.1
3. Sutter County: New Yuba City Courthouse	\$62.7
4. Yolo County: New Woodland Courthouse	\$139.0

**Recommendation.** Approve as proposed.

## **Issue 6 – Court Appointed Counsel Program**

**Governor’s Proposal.** The May Revision proposes \$4.7 million General Fund for the Court Appointed Counsel Program within the Court of Appeals. In addition, the following budget bill language is proposed to revert any unspent funding to the General Fund:

*Of the funds appropriated in Schedule (2), \$63,557,000 is available for the Court Appointed Counsel Program and shall be used solely for this purpose. Any funds for the Court Appointed Counsel Program not expended by June 30, 2013, shall revert to the General Fund.*

**Background.** California has a constitutional mandate to provide adequate legal services to indigents in criminal and juvenile matters before the Courts of Appeal. Private attorneys are appointed by the Courts of Appeal to provide representation to these appellants. Statewide, the attorneys are selected, trained, and mentored by five non-profit appellate projects that contract with the Courts of Appeal to oversee the attorneys’ work on each individual case and ensure competency, efficiency, and cost-effectiveness. The appellate projects also recommend payment for each case based on the complexity of the case, the experience of the attorney, and the guidelines developed by the Judicial Council’s Appellate Indigent Defense Oversight Advisory Committee.

The United States Constitution guarantees effective assistance of counsel for indigent parties in criminal proceedings. At the appellate level, the courts are required to provide indigent appellants with representation by counsel for all appeals from original convictions in criminal cases, juvenile dependency, and delinquent cases. Anyone unable to afford counsel has a right to have this counsel paid for by the state. The work of the appellate projects guides the process that accomplishes this goal.

The cost of the Courts of Appeals, Court Appointed Counsel Program has exceeded its authority in funding each of the past five fiscal years, with shortfalls ranging from \$2.1

million to \$7.5 million (as outlined in the table below). In each of these years the Legislature has approved deficiency funding to support this shortfall (2011-12 has been submitted for approval).

(dollars in millions)

Program Budget	2007-08	2008-09	2009-10	2010-11	2011-12
Authorized Expenditures	\$58.8	\$58.8	\$58.8	\$58.8	\$58.8
Actual Expenditures	\$60.9	\$66.3	\$63.9	\$64.0	\$63.5
<b>Shortfall</b>	<b>\$2.1</b>	<b>\$7.5</b>	<b>\$5.1</b>	<b>\$5.2</b>	<b>\$4.7</b>

**Recommendation.** Approve as proposed.

## **CA Department of Corrections and Rehabilitation (5225)**

**Departmental Overview.** Effective July 1, 2005, the California Department of Corrections and Rehabilitation (CDCR) was created pursuant to the Governor's Reorganization Plan No. 1 of 2005 and Chapter 10, Statutes of 2005 (SB 737, Romero). All departments that previously reported to the Youth and Adult Correctional Agency (YACA) were consolidated into CDCR and include the California Department of Corrections, Youth Authority (now the Division of Juvenile Justice), Board of Corrections (now the Corrections Standards Authority (CSA)), Board of Prison Terms, and the Commission on Correctional Peace Officers' Standards and Training (CPOST). Effective July 1, 2012, Chapter 36, Statutes of 2011 (SB 92, Committee on Budget and Fiscal Review) creates the Board of State and Community Corrections ("BSCC"). At that time, the BSCC will supersede the CSA.

According to the department's website, its mission is to "enhance public safety through the safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities."

The CDCR is responsible for the incarceration, training, education, and care of adult felons and non-felon narcotic addicts, as well as juvenile offenders. The CDCR also supervises and treats adult and juvenile parolees (juvenile parole is in the process of being realigned to counties). Until June 30, 2012, the department is responsible for setting minimum standards for the operation of local detention facilities and selection and training of law enforcement personnel, as well as provides local assistance in the form of grants to local governments for crime prevention and reduction programs.

The department operates 33 adult prisons, including 8 reception centers (7 male and 1 female), a central medical facility, a treatment center for narcotic addicts under civil commitment, and a substance abuse facility for incarcerated felons. The CDCR also operates three juvenile correctional facilities. In addition, CDCR operates dozens of adult and juvenile conservation camps, the Richard A. McGee Correctional Training Center, and nearly 200 parole offices, as well as contracts to house inmates in several in-state and out-of-state correctional facilities. However, due to the 2011 Public Safety Realignment, the department is altering its contract bed mix.

**Budget Overview.** The Governor's Budget proposes \$8.9 billion and 58,528.2 positions for the CDCR in 2012-13. The table on the following page shows CDCR's total operational expenditures and positions for 2010-11 through 2012-13.

(dollars in thousands)

<b>Funding</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
General Fund	\$9,481,820	\$8,980,824	\$8,664,771
General Fund, Prop 98	24,510	23,623	21,229
Other Funds	108,767	117,317	71,755
Reimbursements	106,196	130,287	130,077
<b>Total</b>	<b>\$9,721,293</b>	<b>\$9,252,051</b>	<b>\$8,887,832</b>
<b>Positions</b>	<b>57,620.6</b>	<b>61,150.1</b>	<b>58,528.2</b>

**2011 Public Safety Realignment.** Last year, Governor Brown signed AB 109 and AB 117 (known as public safety realignment), historic legislation that will enable California to close the revolving door of low-level inmates cycling in and out of state prisons. It is the cornerstone of California's solution for reducing the number of inmates in the state's 33 prisons to 137.5 percent of design capacity by June 27, 2013, as ordered by a Three-Judge Court and affirmed by the United States Supreme Court. In a May 23, 2011 decision, the United States Supreme Court affirmed the judgment of a three-judge panel convened pursuant to the Prison Litigation Reform Act of 1995 (18 U. S. C. §3626) ordering California to reduce its prison population to no more than 137.5 percent of its design capacity within two years.

**Key Features of Public Safety Realignment**

<b>Felon Incarceration</b>	<b>Post-Release Supervision</b>	<b>Parole and PRCS Revocations</b>
Restructured felon penalty by making specified non-violent, non-serious, non-sex offenses subject to local punishment	Created Post Release Community Supervision (PRCS) for certain offenders to be supervised locally upon release from prison	Parole revocation terms are served locally and, by July 1, 2013, both parole and PRCS revocations will be adjudicated by the courts

Under AB 109 and AB 117, all felons convicted of current or prior serious or violent offenses, sex offenses, and sex offenses against children will go to state prison. Additionally, there are nearly 60 additional crimes that are not defined in the Penal Code as serious or violent offenses but remain offenses that would be served in state prison rather than in local custody.

## **Issue 1 – DJJ Savings and Realignment Reversal**

**Governor’s Proposal.** The May Revise requests a reduction of \$4.8 million General Fund and 45.7 positions in 2012-13, increasing to \$6.1 million and 61.2 positions by 2014-15 as a result of 1) reducing Division of Juvenile Justice (DJJ) administrative staff, 2) ending juvenile parole on January 1, 2013 instead of July 1, 2014 as required by Chapter 729, Statutes of 2010 (AB 1628), and 3) reducing DJJ’s age of jurisdiction from 25 to 23 for all wards committed to DJJ on or after July 1, 2012. Lastly, this request would increase General Fund revenues by \$19.9 million per year beginning in 2012-13 by establishing a fee of \$24,000 for each offender committed by a juvenile court to DJJ.

Trailer bill language is required to implement each piece of this proposal, with the exception of reducing the number of DJJ administrative staff.

The May Revise also includes an increase of \$11.2 million General Fund to reflect the removal of the Juvenile Justice Realignment proposal included in the Governor’s Budget.

### **Background.**

#### **DJJ Administrative Position Reductions**

The May Revise proposes that by reducing additional field and headquarters administrative positions, DJJ would achieve savings of \$2.7 million and 25.3 positions in 2012-13 and \$3.1 million and 30.0 positions by 2014-15. CDCR’s Workforce Cap Reduction Plan, as proposed in the 2012-13 Governor’ Budget, reduced DJJ’s headquarters budget by \$4.1 million and 5.0 positions in 2011-12 and \$5.0 million and 13.6 positions in 2012-13 and ongoing (excluding DJJ paroles).

#### **Discharge Remaining Juvenile Parolees on January 1, 2013**

By discharging the remaining juvenile parolees on January 1, 2013 instead of July 1, 2014, DJJ would achieve savings of \$2.1 million and 20.4 positions in 2012-13 decreasing to \$1.5 million and 16.1 positions by 2014-15. AB 1628, transitioned all offenders released from DJJ after November 1, 2010 to local probation. DJJ continues to supervise offenders that were released prior to November 1, 2010. AB 1628 specified that all remaining juvenile parolees would be discharged on June 30, 2014. This proposal would instead discharge all remaining juvenile parolees on January 1, 2013. DJJ currently estimates that there will be 450 juvenile parolees in 2012-13 and 285 in 2013-14. However, parolees would have served a minimum of 26 months on parole if discharged on January 1, 2013.

In addition, DJJ projects that 74 parolees in 2012-13 and 31 in 2013-14 will violate their conditions of parole and be returned to a DJJ facility. By eliminating juvenile parole 18 months earlier, those violations will not occur.

Lastly, by eliminating juvenile parole 18 months earlier, DJJ would be able to eliminate 1.0 position from the Board of Parole Hearings (BPH). In total, with the reduction of this position and other reductions taken as part of the Governor's Budget and May Revision, DJJ would maintain 5.0 BPH staff for juvenile facility releases.

### **Age of Jurisdiction**

By reducing DJJ's age of jurisdiction from 25 to 23, DJJ would be able to achieve an estimated savings of \$1.5 million and 15.1 positions in 2014-15. There would be no savings associated with this change until 2014-15 because the population would be reduced through attrition and the average length of stay is three years.

Currently, California is one of only four states that retain jurisdiction up to the age of 25 (Oregon, Montana and Wisconsin are the other three states). The vast majority of states (33 in total) retain jurisdiction up to the age of 23, Kansas retains jurisdiction up to age 21, and other states retain jurisdiction up to the ages of 18, 19, or 20. County jurisdiction in California ends at age 21. With the passage of Chapter 175, Statutes of 2007 (SB 81), the most serious and violent juvenile offenders are sentenced to DJJ rather than local facilities. Therefore, the majority of youth in DJJ are under jurisdiction until the age of 25.

### **Establish a Base Fee of \$24,000 Per Year**

By establishing a fee of \$24,000 per year for each offender committed by a juvenile court to DJJ, state revenue would be increased by \$19.9 million in 2012-13 and ongoing. Prior to January 1, 2012, counties paid an annual base fee of \$215 per month for the most serious offenders and a sliding scale fee that ranged from \$22,000 to \$44,000 annually for lower level offenders. After the passage of SB 81 and the associated population reductions of lower-level offenders, the fees paid by counties diminished. If the sliding scale fees that were in effect prior to January 1, 2012 were applied to the existing population, they would result in revenues of approximately \$3.5 million in 2012-13.

The Budget Act of 2011 included a revenue trigger that required counties to pay the state \$125,000 for each offender committed to DJJ. The trigger went into effect on January 1, 2012. There was strong opposition to the trigger from the local level on the basis that it compromised counties' ability to implement public safety realignment. In response to those concerns, as well as the high cost of housing offenders in DJJ, the Governor's Budget proposed the elimination of DJJ, which also raised strong opposition due to public safety concerns.

**Legislative Analyst's Office (LAO).** In February, the LAO recommended approving the Governor's January proposal to close DJJ and require counties to manage all juvenile offenders. While they still believe that proposal would promote efficiency and accountability in juvenile justice, the LAO finds that the alternative savings measures included in the Governor's May Revision also warrant consideration. However, they do note that the Governor's proposal to lower the DJJ age jurisdiction carries the risk that more juvenile cases would be filed in adult court rather than juvenile court. Because

there is no upper limit on the adult court's age jurisdiction, prosecutors may opt to pursue more eligible juvenile cases in adult court as a way to secure longer sentences. To the extent this occurs, there could be some additional state prison costs in the future.

**Recommendation.** Approve as budgeted.

## California Correctional Health Care Services

### Issue 1 – Baseline Adjustment

**Governor’s Proposal.** The May Revise proposes an increase of \$128.4 million General Fund and 273.6 positions in 2012-13. This funding is to 1) restore \$124.5 million in previous unallocated budget reductions, 2) provide \$1.6 million for the California Health Care Facility, and 3) provide \$2.3 million for the activation of the Folsom Women’s Facility.

#### **Background.**

#### **Baseline Budget Reductions**

From 2009-12 through 2011-12, California Correctional Health Care Services (CCHCS) received three unallocated reductions totaling \$409 million. In addition to these reductions, CCHCS has a savings target for realignment of \$99.7 million in 2012-13. These reductions total \$508.7 million, of which, CCHCS projects to be able to achieve \$384.2 million. As such, CCHCS is requesting \$124.5 million and 243 positions in 2012-13.

(dollars in millions)

<b>Restoration of Reductions</b>	
2009-10 Unallocated	\$151.8
2010-11 Unallocated	\$94.0
2011-12 Unallocated	\$163.2
2012-13 Realignment Savings	\$99.7
<b>Total</b>	<b>\$508.7</b>
CCHCS Projected Savings	\$384.2
<b>Budget Restoration</b>	<b>\$124.5</b>

#### **California Health Care Facility (CHCF)**

The May Revise proposes \$1.6 million General Fund and 11.7 positions for the CHCF in 2012-13. The Governor’s Budget CHCF proposal, which was previously approved by the Subcommittee, did not include resources associated with the renovation of the Dewitt Correctional Facility (Dewitt). However, the CDCR’s Blueprint now includes the renovation of Dewitt to provide a continuum of care between CHCF and Dewitt. As

such, this proposal includes resources for positions that were excluded from the Governor's Budget proposal.

**Folsom Women's Facility**

The May Revise proposes \$2.3 million and 18.9 positions in 2012-13, growing to \$3.5 million and 30.2 positions in 2013-14 for the activation of the Folsom Women's Facility. This facility is also included in CDCR's Blueprint and will provide supplemental female housing for the remaining two female facilities.

**Legislative Analyst's Office (LAO).** The LAO notes that the Receiver's office does not have a specific plan for how it will achieve the level of year-over-year reductions outlined in this proposal. Therefore, it is unclear whether actions they have recommended in recent years—such as increased use of telemedicine and centralized utilization management—could reduce inmate health care expenditures even further. The Receiver's office has indicated that it is currently in the process of revising its methodology for allocating medical staff among the state's prisons. The revised staffing plan, which is due to be completed in the fall of 2012, will allocate staff among prisons based on inmate medical acuity such that prisons with higher proportions of medically ill inmates will be allocated relatively more medical staff. The new methodology is expected to significantly reduce the overall number of prison medical staff and should allow the Receiver to achieve a significant share of the budgeted reductions.

The LAO recommends that the Legislature adopt budget bill language that requires the Receiver to provide a report to the Legislature on the revised staffing plan upon its completion. At a minimum, the report should include (1) data on the overall number of staff currently and proposed to be allocated to each of the state's prisons, by classification, (2) the number of eliminated positions, by classification, (3) a detailed description of the methodology used to develop the revised staffing packages, and (4) the estimated savings achieved in the budget year and ongoing. Such a report would help the Legislature to evaluate the degree to which the proposed staffing changes will result in the savings that the Receiver has committed to achieving.

**Recommendation.** Approve the request with the addition of budget bill language requiring the Receiver's office to report to the Legislature on the revised staffing plan upon its completion.

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



Tuesday, May 22, 2012

1:30 p.m.

Room 113

**OUTCOMES**

Consultant: Joe Stephenshaw

**Item Number and Title**

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**Vote Only**

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5225	California Department of Corrections and Rehabilitation	
	(1) Juvenile Population Adjustment.....	2
	(2) Pharmacy Augmentation.....	2
	(3) Female Offender: Expansion of Alternative Custody Program.....	3

**To be Heard**

0250	Judicial Branch	
	(1) Employee Retirement Contribution .....	5
	(2) Restructure Trial Court Funding.....	6
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5225	California Department of Corrections and Rehabilitation	
	(1) DJJ Savings and Realignment Reversal.....	18
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	(1) Baseline Adjustment .....	21

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## Vote Only Items

### Judicial Branch (0250)

#### Issue 1 – Allocation of the \$350 million Reduction

**Governor’s Proposal.** The May Revise proposes to schedule the \$350 million unallocated reduction contained in the Judicial Branch’s budget.

**Recommendation.** Approve as proposed. **Approved 2-0 (Anderson not voting)**

### CA Department of Corrections and Rehabilitation (5225)

#### Issue 1: Juvenile Population Adjustment

**Governor’s Proposal.** The May Revise proposes a net decrease of \$9.1 million General Fund to reflect revised Division of Juvenile Justice (DJJ) population projections.

**Recommendation.** Approve as Budgeted. **Approved 2-0 (Anderson not voting)**

#### Issue 2 – Pharmacy Augmentation

**Recommendation.** 1) Approve on a two-year limited-term basis, 2) adopt trailer bill language that mandates the use of generics, and 3) adopt budget bill language that requires the Receiver’s office to report on feasibility of implementing inmate co-payments. **Approved 2-0 (Anderson not voting)**

#### Issue 3 - Female Offenders: Expansion of Alternative Custody Program

**Governor’s Proposal.** The Governor’s budget proposes trailer bill language that provides for the expansion of the Alternative Custody Program (ACP) for Women to include women who have a prior serious or violent conviction. The goal is to allow

CDCR to place these offenders in community-based treatment programs in an effort to achieve successful outcomes and reduce recidivism among this population. Savings resulting from the reduction in the female inmate population will be used to cover the cost of treatment programs in the community. The anticipated population decline in future years is expected to generate long-term savings of \$2.5 million beginning in 2014-15 and \$5 million annually thereafter.

**Recommendation.** Approve trailer bill language to expand the Alternative Custody Program and the Community Prisoner and Mother Program. **Approved 2-0 (Anderson not voting)**

## Items to be Heard

### Judicial Branch (0250)

#### Issue 1 – Employee Retirement Contribution

**Governor’s Proposal.** The May Revise proposes a reduction of \$4 million General Fund to reflect a shift in employee retirement contributions for employees of the Judicial Council, Courts of Appeal, Habeas Corpus Resource Center and Supreme Court. Trailer bill language is proposed to reflect this change.

**Recommendation.** Approve the \$4 million in savings from the Judicial Branch. However, 1) reject the trailer bill language specifying the employee retirement contribution level and, instead, 2) adopt budget bill language that requires the Judicial Council to report to the Legislature, by September 30, 2012, on how these savings will be achieved on an ongoing basis. **Approved 2-0 (Anderson not voting)**

#### Issue 2 – Restructure Trial Court Funding

**Governor’s Proposal.** The May Revise proposes a one-time decrease of \$300 million General Fund to reflect the use of local trial court reserves to support trial court operations and trailer bill language to eliminate trial court reserves at the local level and authorize the Judicial Council to retain three percent of total estimated trial court expenditures for emergencies. Ongoing General Fund support for trial courts will be reduced by \$71 million.

The Administration also proposes to establish a working group to conduct an evaluation of the state's progress in achieving the goals outlined in the reform legislation, including the ability of trial courts to provide equal access to justice, is appropriate. The working group will conduct a statewide analysis of workload metrics, staffing standards, and other relevant data necessary to support a more uniform and efficient administrative system for the judiciary.

**Recommendation.** Hold Open. **Held Open**

### **Issue 3 – Use of Trial Court Construction Funds**

**Governor's Proposal.** The May Revise proposes a decrease of \$240 million General Fund to reflect the one-time (\$50 million ongoing) redirection of court construction funds for trial court operations. Trailer bill language is proposed to allow for this redirection.

**Recommendation.** Hold Open. **Held Open**

### **Issue 4 – Courthouse Projects: Reappropriations**

**Governor's Proposal.** The May Revise proposes to reappropriate \$144.4 million, previously authorized in 2009, from the Immediate and Critical Needs Account (ICNA) for the acquisition phase of 19 courthouse projects.

**Recommendation.** Approve as proposed. **Approved 2-0 (Anderson not voting)**

### **Issue 5 – Courthouse Projects: Construction**

**Governor's Proposal.** The May Revise proposes 1) \$364.8 million in lease revenue bond authority for the construction phase of four courthouse projects, and 2) budget bill language specifying that funds shall not be expended until the Judicial Council has reconfirmed both the detail cost and scope of the projects, as approved by the Department of Finance.

**Recommendation.** Approve as proposed. **Approved 2-0 (Anderson not voting)**

## Issue 6 – Court Appointed Counsel Program

**Governor’s Proposal.** The May Revise proposes \$4.7 million General Fund for the Court Appointed Counsel Program within the Court of Appeals. In addition, the following budget bill language is proposed to revert any unspent funding to the General Fund:

*Of the funds appropriated in Schedule (2), \$63,557,000 is available for the Court Appointed Counsel Program and shall be used solely for this purpose. Any funds for the Court Appointed Counsel Program not expended by June 30, 2013, shall revert to the General Fund.*

**Recommendation.** Approve as proposed. **Approved 2-0 (Anderson not voting)**

## CA Department of Corrections and Rehabilitation (5225)

### Issue 1 – DJJ Savings and Realignment Reversal

**Governor’s Proposal.** The May Revise requests a reduction of \$4.8 million General Fund and 45.7 positions in 2012-13, increasing to \$6.1 million and 61.2 positions by 2014-15 as a result of 1) reducing Division of Juvenile Justice (DJJ) administrative staff, 2) ending juvenile parole on January 1, 2013 instead of July 1, 2014 as required by Chapter 729, Statutes of 2010 (AB 1628), and 3) reducing DJJ’s age of jurisdiction from 25 to 23 for all wards committed to DJJ on or after July 1, 2012. Lastly, this request would increase General Fund revenues by \$19.9 million per year beginning in 2012-13 by establishing a fee of \$24,000 for each offender committed by a juvenile court to DJJ.

Trailer bill language is required to implement each piece of this proposal, with the exception of reducing the number of DJJ administrative staff.

The May Revise also includes an increase of \$11.2 million General Fund to reflect the removal of the Juvenile Justice Realignment proposal included in the Governor’s Budget.

**Recommendation.** Approve as budgeted. **Help Open the \$24,000 commitment fee, Approved the remainder of the proposal. 2-0 (Anderson not voting)**

## California Correctional Health Care Services

### Issue 1 – Baseline Adjustment

**Governor’s Proposal.** The May Revise proposes an increase of \$128.4 million General Fund and 273.6 positions in 2012-13. This funding is to 1) restore \$124.5 million in previous unallocated budget reductions, 2) provide \$1.6 million for the California Health Care Facility, and 3) provide \$2.3 million for the activation of the Folsom Women’s Facility.

**Recommendation.** Approve the request with the addition of budget bill language requiring the Receiver’s office to report to the Legislature on the revised staffing plan upon its completion. **Approved 2-0 (Anderson not voting)**

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



May 23, 2012, at 1:30 p.m.  
State Capitol, Room 3191

Consultants: Kris Kuzmich & Brady Van Engelen

## MAY REVISE AND OPEN ISSUES

### AGENDA PART A

*(Please See Detailed Agenda on Pages 2 and 3 for Specific  
List of Issues to Be Heard)*

#### *Departments*

0390	Contribution to the Judges' Retirement Fund
0820	Department of Justice
1900	Public Employees' Retirement System
1920	State Teachers' Retirement System
7100	Employment Development Department
7350	Department of Industrial Relations
8380	Department of Human Resources
8885	Commission on State Mandates
9650	Health and Dental Benefits for Annuitants
9800	Augmentation for Employee Compensation

#### *Control Sections*

3.60/3.61	Contribution to Public Employees' Retirement Benefits
3.90	Reduction for Employee Compensation
4.21	Health Care Premium Savings
31.10	Salary Savings

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**AGENDA – PROPOSED “VOTE ONLY” ITEMS**

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**VARIOUS PUBLIC EMPLOYMENT AND RETIREMENT BUDGET ITEMS:  
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**Summary Chart of Issues Proposed for Vote Only:**

	<b>Issue</b>	<b>Amount</b>	<b>Fund Source</b>	<b>Staff Recommendation</b>
<b>Public Employees' Retirement Fund (1900)</b>				
1	Incorporate CalPERS Board Approved Budget into the Budget Act	Various increases and decreases	Public Employees Retirement Fund	Approve
<b>State Teachers' Retirement System (1920)</b>				
2	Revised 2010-11 Creditable Compensation	\$1.377 million	GF	Approve
<b>Health and Dental Benefits for Retired Annuitants (9650)</b>				
3	Premium Increase for Retiree Health Care	\$13.125 million	GF	Approve
<b>Augmentation for Employee Compensation (9800)</b>				
4	Revised Cost Estimate for Allocation for Employee Compensation	\$10.949 million \$6.078 million	GF Other Funds	Approve
<b>Employment Development Department (7100)</b>				
5	Unemployment Insurance Loan Interest Payment Amount Update	Decrease the loan to the GF by \$104.4 million	Disability Insurance Fund	Approve
6	May Revision Updates, Unemployment Insurance, Disability Insurance, and School Employees Fund Adjustments	Various increases and decreases	Other Funds	Approve
7	Workforce Investment Act Adjustments	Various increases and decreases	Federal Funds	Approve w/modified BBL
<b>California Department of Human Resources (8380)</b>				
8	Tribal Labor Panel	\$100,000	Indian Gaming Special Distribution Fund	Approve

**Items Proposed for Vote Only – Issue Descriptions*****Issue 1 – Public Employees’ Retirement System (1900): Incorporate CalPERS Board Approved Budget into the Budget Act***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests various adjustments (both increases and decreases) to the CalPERS Board of Administration Budget to reflect the request by the CalPERS Board to incorporate its approved budget into the 2012-13 Budget Act.

**Background.** The annual budget act displays, for informational purposes only, the CalPERS’ Board of Administration budget, as CalPERS’ has continuous appropriation authority. The Governor’s January budget includes the estimated CalPERS’ Board of Administration budget for the upcoming fiscal year. On April 18, 2012, the CalPERS Board adopted a final budget. Adoption of this request will ensure that the final 2012-13 Budget Act will accurately reflect the CalPERS Board approved budget.

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

***Issue 2 – California State Teachers’ Retirement System (1920): Revised 2010-11 Creditable Compensation***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests an increase of \$1.377 million GF, over the Governor’s January budget level, due to an increase in the creditable compensation reported by the California State Teachers’ Retirement System (CalSTRS) for fiscal year 2010-11, which increases the GF retirement contribution for fiscal year 2012-13.

**Background.** This May Revision proposal constitutes a technical correction regarding the amount of GF contribution to CalSTRS based on a revision of creditable compensation as reported for 2010-11. The true-up is a percentage-driven calculation and is the result of a lag in reporting of actual compensation. The January budget estimated 2012-13 contributions of \$1.35 billion, based on an October 2011 report of prior-year teacher payroll by CalSTRS. The actual amount is based on the April 2012 submission by CalSTRS, which updated the prior-year teacher payroll.

This request represents a necessary technical adjustment to the GF CalSTRS payment for 2012-13. The budgeted payment amount consists of four separate components as dictated by state law. The revision in the creditable compensation results in a total increase in funding of \$1.377 million. This increase consists of \$545,000 in the Defined Benefit payment, \$157,000 in the Pre-1990 Defined Benefit Level payment, and \$675,000 for Supplemental Benefit Maintenance Account contribution.

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

***Issue 3 – Health and Dental Benefits for Annuitants (9650): Premium Increase for Retiree Health Care***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests to increase by \$13.125 million GF the statewide budget item for the costs of health and dental benefits for retirees to adjust for expected increases in health premium costs over the estimate contained in the Governor’s January budget.

**Background.** The Governor’s January budget included \$1.7 billion (\$1.662 billion GF) for the costs associated with providing health and dental benefits for retirees. The January budget projected an increase of 8.5 percent over the 2012 health premium rates, which translated to a \$177.4 million (\$172.8 million GF) year-over-year increase. The CalPERS’ Board has not yet adopted the final rates, but the Administration indicates that the expected increase will actually be ten percent over the 2012 rates. This necessitates an adjustment to the January budget level to increase it by \$13.125 million. If the final rate increase is ten percent, it would represent a total year-over-year increase of \$190.5 million (\$185.9 million GF). Final rates are not expected to be established until June 13, 2012.

**Staff Comment.** This is a necessary technical adjustment to the January budget level which underestimated the expected increase in health premium costs by 1.5 percent. Please see Issue 1 on Page 10 of this agenda for a proposed “discussion-vote” item related to health care premium costs.

***Issue 4 – Augmentation for Employee Compensation (9800): Revised Estimate for Allocation for Employee Compensation***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests an increase of \$10.949 million GF (\$6.078 million other funds) over the Governor’s January budget level to reflect revised estimates as a result of: (1) updated health care enrollment figures; (2) projected health care premium increases; (3) and updated salary surveys affecting the California Association of Highway Patrolmen (Bargaining Unit 5) and Judges.

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

With regard to health care, this request includes an adjustment for updated health care enrollment figures (over what was included in the January budget). Further, it includes an adjustment for projected health care premium increases. As noted in the immediate prior agenda item, health care premium rates are projected to increase by ten percent; the January budget was based on an 8.5 percent premium increase. Final rates are not expected to be established until June 13, 2012.

This request includes budget bill provisional language to ratify the addenda to extend the contract with Bargaining Units (BUs) 12 (International Union of Operating Engineers), 16 (Union of American Physicians and Dentists), 18 (California Association of Psychiatric Technicians), and 19 (American Federation of State, County and Municipal Employees) through July 1, 2013. This includes, for BUs 12 and 18, an adjustment to the 2012 health care premium rates on July 1, 2012, and the 2013 rates effective December 1, 2012.

Finally, and per current law, this request includes an adjustment for the updated salary surveys affecting BU 5 (California Association of Highway Patrolmen) and Judges.

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

### ***Issue 5 – Employment Development Department (7100): Unemployment Insurance Loan Interest Payment Amount Update***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests a decrease of \$104.4 million in the amount of the interest payment due to the federal government for borrowing that has occurred to provide unemployment insurance (UI) benefits. This request effectively reduces the amount of funds to be borrowed from the Unemployment Compensation Disability Fund (DI).

**Background.** The January budget proposed an increase of \$417 million GF to make the second interest payment due to the federal government for the quarterly loans that the EDD has been obtaining from the federal government since January 2009 to cover the UI Fund deficit (estimated at \$9.8 billion at the end of 2011). To offset this GF expenditure, the January budget included a transfer from the DI Fund to the GF, resulting in no net GF cost in 2012-13. The federal government has since lowered the interest rate on funds borrowed, resulting in a decrease of \$104.4 million. Therefore, as part of the May Revision, the Governor proposes to reduce the loan from the DI fund to the GF to \$312.6 million.

**Staff Comment.** Staff has no concerns with this request as it represents a necessary technical adjustment to the January Budget. The Subcommittee approved the loan from the DI Fund to the GF Fund for the interest payment due to the federal government at its May 10, 2012, hearing.

### ***Issue 6 – Employment Development Department (7100): May Revision Updates, Unemployment Insurance, Disability Insurance, and School Employees Fund Adjustments***

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

- UI Program and Benefit Adjustments. An increase of \$4.3 billion for UI benefits, due to the continuation of the federal benefits extension program. In addition, to accommodate increased benefit payments in the current year resulting from the federal extension, this request includes an increase of \$895.7 million for UI benefits in 2011-12.
- DI Program. A reduction of \$64.4 million to reflect a decrease in DI payments. Additionally, this request decreases DI benefit authority by \$10.8 million in 2011-12.

- School Employees Fund (SEF). An increase of \$19 million for benefit payments for the SEF, a joint, pooled risk fund administered by the EDD, which collects contributions based upon a percentage of total wages paid by public school and community college districts. Additionally, this request includes a decrease in benefit authority of \$13.2 million in 2011-12.

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

### ***Issue 7 – Employment Development Department (7100): Workforce Investment Act Adjustments***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests a decrease of \$55.3 million in federal Workforce Investment Act (WIA) discretionary funding. The decrease reflects changes in federal funding that have reduced state-level discretionary WIA funds from 15 percent of total statewide WIA funding to 5 percent. To reflect an increase in the level of local assistance funds available to states from 85 percent to 95 percent, the Governor requests an increase in WIA local assistance funding of \$5 million in 2012-13 and \$5.3 million in the 2011-12.

**Background.** Changes in federal law have dramatically reduced the amount of discretionary WIA funding available to the state for state-level discretionary programs and grants. Previously, local workforce investment areas received 85 percent of WIA funding, while the state received 15 percent. This amounted to \$69.1 million in 2011-12. Under the new provisions, states only receive five percent of funds, which is estimated to be \$20.5 million in 2012-13 for California. This reduced level of funding is only enough to cover state administrative costs and required federal auditing and oversight activities. This change at the federal level significantly limits the state’s ability to fund statewide workforce development programs with these WIA funds.

**Staff Comment.** It is expected that there will again be a small amount of prior year savings available for reallocation in 2012-13. Therefore, the Subcommittee may wish to modify existing budget bill provisional language to incorporate any prior year savings into the October Revise, which is an annual update to the WIA program that is submitted to the Joint Legislative Budget Committee. This will ensure legislative consultation before these discretionary dollars are allocated for expenditure.

### ***Issue 8 – California Department of Human Resources (8380): Tribal Labor Panel***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests an increase of \$100,000 (Indian Gaming Special Distribution Fund-IGSDF) to provide funding for disbursement to the Tribal Labor Panel to support arbitration duties and other responsibilities pursuant to Government Code Section 12012.85(e).

**Background.** Under current law, the California Department of Human Resources (CalHR) is responsible to provide necessary funding for disbursement to the Tribal Labor Panel. The fund source is the IGSDF, which is money received by the state from Indian tribes as specified by the terms of the tribal-state compacts.

CalHR (formerly Department of Personnel Administration) first received \$400,000 in funding from the IGSDF in the 2000 Budget Act. Since that time, and through 2010-11, these funds were used to contract with an outside entity to provide arbitration services per current law. Not all of the funds were used each year, leading to some funds disencumbering and reverting to the state. Additionally, these funds were reappropriated several times; the last reappropriation was in 2010-11. With this request, the Administration proposes to start fresh in 2012-13 and provide \$100,000 from the IGSDF to CalHR for the Tribal Labor Panel. CalHR requires the appropriation so it can secure the contract; under the standard terms of the Budget Act, CalHR will have one year to encumber and two years to spend the funds.

**Staff Comment.** Staff has no issues with this request. Staff notes, however, that the Indian Gaming Special Distribution Fund could face solvency issues in 2013-14 which may limit any further appropriations for these purposes.

<b>VARIOUS PUBLIC EMPLOYMENT AND RETIREMENT BUDGET ITEMS</b>
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<i>Issues Proposed for Discussion / Vote</i>
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<b>Issue 1 – California Public Employees’ Retirement System (1900) and Health Care Premium Savings (CS 4.21): Elimination of Control Section 4.21</b>
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**General Background.** The Legislature determines policies concerning state employee, both active and retired, health benefit programs. Through the Public Employees’ Medical and Hospital Care Act (PEMHCA), the Legislature vests responsibility for managing health care programs for state workers, state retirees, and employees or retirees of participating local agencies with CalPERS. The state’s contribution to employee health care is based on a negotiated percentage of the average cost of four health plans with the most enrolled state employees. Any health premium increases in a calendar year are negotiated by CalPERS with health plan providers; the CalPERS board typically adopts the next year’s health premiums in June. The cost of state employer health and dental care benefits for active employees and retirees, and their dependents, is estimated to total \$2.9 billion GF (\$1.4 billion other funds) in 2012-13.

**Prior Budget Action.** The 2011 Budget Act established CS 4.21 and required CalPERS to achieve one-time savings of \$80 million GF and \$35.7 million other funds in the 2011-12 Health Benefits Program, and an equivalent amount of on-going savings beginning in 2012-13. The 2011 Budget Act also included trailer bill language requiring CalPERS to negotiate with health plans to offer a core health care plan option to the existing portfolio of health plans and/or implement other measures to achieve the on-going savings. Finally, CalPERS was also required to notify the Joint Legislative Budget Committee and DOF before October 10, 2011, that the savings had been achieved as well as their source.

CalPERS reported that it achieved savings in 2011-12 of \$46.7 million GF and \$23.2 million other funds. These savings resulted from a number of one-time and on-going strategies adopted by the CalPERS Board, such as Value Based Purchasing and High Performance Provider Networks, to reduce premium costs. CalPERS also reported that it achieved additional savings through the adoption of cost avoidance measures not accounted for in the above totals, totaling \$15.9 million GF and \$4.0 million other funds. These cost avoidance savings were a result of such activities as Pharmacy Benefit Changes, Integrated Healthcare Model, and Service Area Expansion.

**Governor’s Budget Request.** Via Budget Control Section 4.21 (CS 4.21), the Governor’s January budget requires CalPERS to achieve savings of \$45.4 million GF and \$22.5 million other funds in the 2012-13 Health Benefits Program, and an equivalent amount of on-going savings. CalPERS is required to report before October 10, 2012, the savings achieved as well as their source. This request was held open at the Subcommittee’s March 8, 2012, hearing as the Administration indicated that it was working with CalPERS and expected to submit additional proposals related to the health benefits program as part of the spring budget process.

**May Revision Request.** In a May Revision Finance letter, the Governor requests an increase of \$45.4 million GF and \$22.5 million other funds to reflect the elimination of Control

Section 4.21. The Administration indicates that CalPERS does not appear to have achieved the expected level of health care savings identified in CS 4.21 due to the significant year-over-year increase in anticipated health premium rates for 2013.

**Staff Comment.** All parties are concerned about the increases in health care costs, as they present a budgetary challenge not only for the state but also for local governments and private employers. As evidenced by the report CalPERS submitted per the requirements of CS 4.21 in 2011-12, CalPERS worked to pursue numerous strategies to achieve savings in the Health Benefits Program. However, even with these efforts, the overall program costs continue to grow, presenting continuing challenges to CalPERS in its administration of PEMHCA health care programs and for the State in managing its overall budget. The Administration now estimates that the 2013 health premium costs will grow year-over-year by ten percent.

Given this dynamic, it is understandable why the Administration requests the elimination of CS 4.21 as part of the May Revision. As the LAO has previously noted, any savings resulting from CS 4.21 likely would have to be achieved through CalPERS premium negotiations and that process is resulting in a ten percent increase in these costs. However, in considering this request, the Subcommittee may wish to query CalPERS about its efforts to reduce health premium costs. The 2011 Budget Act included statutory changes requiring CalPERS to negotiate with health plans to offer a core health care plan option to the existing portfolio of health plans and/or implement other measures to achieve the on-going savings. At its March 13, 2012, meeting, the CalPERS Board considered a staff proposal to seek statutory changes to grant the Board the authority to: (1) adjust premiums as part of programs for health promotion and disease management; and (2) implement risk adjustment across plans to encourage health plan competition based on efficiency and quality rather than on population risk selection.

**Staff Recommendation:** Approve the May Revision request to eliminate CS 4.21.

**VOTE:**

<p><b>Issue 2 – Contribution to Employees’ Retirement Benefits (CS 3.60 and 3.61): Various Technical Rate Adjustments</b></p>
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**General Background.** These control sections provide the mechanism for increases and decreases regarding the state’s employer contribution to public employee retirement accounts, based on the determination of required funding levels. The control sections hold departments’ budgets harmless in the event of increases in employer CalPERS contribution rates and achieve budgetary benefit for the state when CalPERS contribution rates decline.

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests an increase of \$202.063 million GF (\$152.661 million other funds) for retirement rate adjustments. This includes increasing the California State University (CSU) base budget by \$52.486 million GF to adjust it to the 2012-13 employer contribution rates.

**Background.** The Governor's January budget made assumptions regarding investment rates of return as well as retirement rates that have since been revisited and revised. The May Revision provides necessary adjustments to these January estimates. The

Administration indicates that the estimated increase in retirement costs are due to the following:

1. On March 14, 2012, the CalPERS Board voted to adopt a decrease in the assumed investment rate of return to 7.50 percent from 7.75 percent. This action resulted in higher estimated retirement costs in 2012-13 than were assumed in the January budget; of the total increases indicated above, this adjustment accounts for \$304.161 million (\$172.962 million GF) in additional costs.
2. In addition, due to factors beyond the assumed investment rate of return, the retirement rates are estimated to be higher than originally projected in the January budget; of the total increases indicated above, this adjustment accounts for \$50.563 million (\$29.101 million GF) additional costs.

However, the May Revision request notes that the retirement costs are not final and could change pending the adoption of the final 2012-13 retirement rates by the CalPERS Board of Administration on May 16, 2012. As a result of the \$202.063 million GF adjustment, the fourth quarter payment to CalPERS (which was deferred to 2013-14) will increase by \$50.516 million. The \$202.063 million adjustment less the \$50.516 million deferral results in a total net increase of \$151.547 to the GF in 2012-13.

This request also includes amendments to CS 3.61 (which was proposed in the Governor's January budget) to allow for: (1) an incremental adjustment to CSU's base budget in 2012-13 for the change between 2011-12 and 2012-13 rates and (2) adjustments for the unfunded liability costs in 2013-14 and beyond. This part of this request will be considered by Subcommittee No. 1 on Friday, May 25, 2012. This Subcommittee will conform to the Subcommittee No. 1 action.

**Staff Comment.** The CalPERS Board voted on May 16, 2012, to set the state's required 2012-13 employer contribution at a level over the January budget that necessitates an increase of \$124.23 million GF (\$93.622 million other funds). This level reflects the CalPERS Board action to phase-in the impact of the change in discount rate on the employer contribution rate by amortizing over a 20-year period the increase in the actuarial liabilities resulting from the change in assumptions. Under the phase-in, the payment in year one on the portion due to the change in the discount rate is equal to roughly 55 percent of the payment that would have been required without the phase-in and the unpaid balance amortized over the remaining 19 years at 7.5 percent interest. This will result in increased costs of \$145.9 million GF (\$110.7 million other funds) over the next 20 years. The CalPERS Board indicates the phase-in was adopted to provide employers with more time to adjust to the higher contribution rates.

Per the CalPERS Board action on May 16, 2012, the fourth quarter payment to CalPERS (which was deferred to 2013-14) will increase by \$31.058 million. The \$124.23 million adjustment less the \$31.058 million deferral results in a total net increase of \$93.2 million to the GF in 2012-13.

**Staff Recommendation:** Approve an increase of \$124.23 million GF (\$93.622 million other funds) over the January budget level in order to fund the state's required employer contribution to CalPERS in 2012-13.

**VOTE:**

**Issue 3 – Reduction for Employee Compensation (CS 3.90): Employee Compensation Reductions**

**General Background.** This control section allows for adjustments in department budgets to account for changes in employee compensation, including salaries and health and retirement benefits, based on the determination of required funding levels.

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests to add CS 3.90 to the 2012-13 budget to authorize employee compensation-related reductions equivalent to a roughly five percent reduction in pay translating to savings of \$401.7 million GF (\$839.1 million all funds). This request includes both budget bill provisional language and budget trailer bill language.

**Background.** The total number of state employees is 341,783 resulting in a salary cost of \$24.8 billion (all funds). This total includes employment in the Executive Branch, Judicial Branch, University of California, California State University, Hastings College of the Law, and Legislature. Roughly two-thirds of total state employment (214,254 employees) is in the Executive Branch. Of this total Executive Branch employment, about one-third is in the California Department of Corrections and Rehabilitation (CDCR). Compensation for salaries and benefits accounts for approximately 11 percent of GF costs, and includes \$7.2 billion in salary expense and \$3.3 billion in benefit costs. Employees of CDCR account for approximately two-thirds (64 percent) of GF salary costs.

The May Revision proposal is intended to achieve total savings equivalent to a roughly 4.62% percent reduction in pay (total of eight hours per work month). The proposed control section states that the savings will be achieved through: (1) the collective bargaining process, and/or (2) legislative reductions in the state workweek and changes in work schedules, and/or (3) furloughs, and/or (4) other reductions for represented and non-represented employees achieved through existing administration authorities. The Administration indicates its intent is to avoid a furlough program and to mitigate layoffs. To this end, the Administration states it will pursue the implementation of a four-day, 38-hour work week for the majority of state employees to achieve the necessary savings. The Administration suggests that this new workweek would allow the state to: (1) offer better services to the public by being open longer than the traditional 8-hour workday and (2) reduce energy usage in state-owned and leased buildings (any savings achieved from reduced energy usage is not included in the savings total).

The Administration states it will also pursue commensurate reductions in work hours and pay for employees of entities that operate 24 hours per day, seven days a week, when implementation of the four-day workweek is not feasible. These will be “variations” to the four-day 38-hour work week, as the Administration indicates that there will be no exceptions to the salary savings proposal.

Separately, the Administration indicates that it will continue to pursue changes to health coverage for active employees and retirees, to reduce costs for both employees and the state in the coming year. Any potential savings from these changes to health coverage remain unspecified and are not included in the above estimate; i.e., the \$839.1 million is from salary savings only.

**LAO Comment.** Employee compensation, including salaries and benefits, will cost the state's GF \$10.5 billion in 2012-13. Given the severity of the state's budget shortfall, the Legislature will need to consider reductions in these costs; however, there are no ideal ways to achieve such reductions. In addition to the issues related to a four-day workweek, including that it could increase leave balances and hinder services in many cases and may not reduce energy costs or be convenient for many, the Legislature should take into account the following issues when considering other alternatives to reductions in employee compensation costs: (1) bargaining typically necessitates concessions; (2) layoffs take months to achieve and can affect some services; (3) furlough and leave programs have future costs; and (4) non-negotiated state actions raise concerns.

**Staff Comment.** The Administration has indicated that its goal is to have a plan in place to achieve the savings by July 1, 2012, and is actively meeting with departments and labor officials to reach those agreements. At the time this agenda was written, the Administration had not yet transmitted the proposed budget trailer bill language associated with this request.

The five percent reduction could have an impact on revenue-generating activities of the Board of Equalization and the Franchise Tax Board. It would be important to structure any policy such that there would be flexibility to minimize or avoid revenue losses. The tax agencies are currently analyzing the proposal in light of this issue.

The Subcommittee may wish to consider holding this item open to allow time for more detailed information to be presented.

**Staff Recommendation:** Hold open.

<b>Issue 4 – Salary Savings (CS 31.10): Salary Savings and Addition of Budget Bill Control Section 31.10</b>
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**Governor's Budget Request.** In a May Revision Finance letter, the Governor requests various modifications to adjust budget displays to reflect actual expenditures and eliminate the salary savings budget line item per Budget Letter 12-03. A department-by-department review of historic vacancies identified a total of 11,709 positions that will be permanently eliminated. This cost-neutral adjustment will accurately reflect department staffing levels and actual spending on personal services and operational expenses.

This request also includes: (1) a new budget bill control section to grant the Director of Finance authority to adjust positions if it is determined that subsequent adjustments to a department's position elimination total are necessary and (2) conforming changes to an existing budget bill control section CS 29.00, Personnel-Year Estimates of Governor's Budget, May Revision, and Final Change Book.

**Background.** All state departments have some vacant positions due to normal personnel turnover and hiring delays. In past decades, a typical state vacancy rate was about five percent; i.e., about five percent of authorized positions were vacant. According to the State Controller's Office, the current average vacancy rate is now about 15 percent and has hovered around that level for a number of years. Figure 1 on the next page displays that some departments have much higher vacancy rates. The Legislature authorizes positions so

that departments may increase staffing levels to accomplish a specified activity. A high vacancy rate could mean that a department is not able to accomplish all intended activities or that the department has found ways to accomplish the activities without filling some positions (for example, by instead using overtime or contract personnel).

**Figure 1: Vacancy Rates across Largest Departments**

Department	Established Positions	Vacancy Rate (%)
Corrections	60,950	18.6
Transportation	20,989	6.6
Mental Health	11,429	13.1
Highway Patrol	11,254	7.8
Employment Development	10,099	18.9
Motor Vehicles	8,392	6.1
Developmental Services	5,957	15.7
Franchise Tax Board	5,394	11.6
Justice	4,936	21.8
CalFire	4,773	15.6
Board of Equalization	4,666	11.3
Social Services	4,494	21.0
Public Health	3,742	21.0
Health Services	3,331	18.4
Water Resources	3,112	7.8

Source: State Controller's Data

When a position is vacant or filled by an employee at a pay level lower than the department's budget assumes, the department captures "salary savings." Since the early 1940s, the state budget has assumed that most departments have "normal salary savings," historically assuming vacancies equal to about five percent of authorized personnel, and reduces departments' personnel budgets accordingly. (In other words, departments are not appropriated any funds for *normal* salary savings.) "Excess salary savings," or savings from vacant positions in excess of normal salary savings, typically can be used for personnel or operations expenditures but are displayed in a department's personnel budget.

Over the past decade or so, a number of decisions made by both the Administration and Legislature have contributed to high vacancy rates. The policies described below have created incentives for departments to generate excess salary savings by deliberately holding positions vacant.

- *Unallocated Cuts.* The Legislature has approved many unallocated cuts, especially to GF departments. When implementing unallocated cuts, the Administration chooses how to achieve the reduction. It is common for departments to hold positions vacant to absorb unallocated cuts. As a result, departments largely funded by the GF have noticeably higher vacancy rates than special fund departments.
- *Leave Cash Outs.* The number of state retirements has increased as employees of the baby boom generation reach retirement age. Upon retirement, the state must compensate (or cash out) an employee for certain unused leave days. Generally,

departments do not receive supplemental appropriations to cover these costs. Some departments cannot absorb these costs without holding positions vacant.

- *Overtime Costs.* Some departments, especially those with 24-hour institutions, consistently incur high overtime costs. Like leave cash outs, departments sometimes do not receive supplemental appropriations for these costs. Departments with high overtime costs often have high vacancy rates to generate excess salary savings.

This request adjusts budget displays to more accurately reflect where costs are truly being incurred. For this reason, this request does not result in a change to appropriation authority. A statewide summary details the following as a result of this proposal: (1) decrease of 11,709.2 Authorized Positions and \$1.1 billion in regular Salaries; (2) increase of 669.4 Temporary Help Positions and \$137.2 million in Temporary Help funding; (3) increase of \$62.6 million in Overtime funding; (4) increase of \$6.0 million in Staff Benefits; (5) decrease of \$55.0 million in Operating Expenses and Equipment; and (6) increase of \$909.9 million to reflect the elimination of Salary Savings. These statewide totals reveal that money is generally moving from Operating Equipment & Expenses (OE&E) to personnel services. The Administration has provided two examples as explanation for this dynamic: (1) departments have been using OE&E money to fund authorized positions that were not funded and/or (2) departments have been keeping positions vacant (above the budgeted salary savings rate) to fund higher-paid positions, benefits, overtime, temporary help, or OE&E.

**LAO Recommendation.** The Administration should more fully develop its proposal and, if resubmitted later, it should be fully vetted by the Legislature over at least several months in some future year. While the proposal seemingly would have no effect on the number of people currently employed by the state or the amount of money spent by departments, it could result in staffing levels far different from the priorities of the Legislature. The proposal apparently would contribute nothing to balancing the 2012–13 budget. Therefore, the LAO recommends that the Legislature reject the Governor's proposal now and suggest that the Administration may choose to submit detailed proposals in the future justifying why vacant positions should be eliminated and how this new position budgeting process would work in future years. Legislative review of such a proposal would require extensive time of legislators and staff.

**Staff Comment.** This request is intended to eliminate budgeted salary savings and allocate that amount to accurately reflect how state operations funds are being expended. It will eliminate a large number of vacant authorized positions, which were unfunded positions as a result of normal salary savings. It will also ensure the budget no longer reflects salary savings, but rather department budgets for personnel and operations will be closer to reflecting actual costs in those areas. Finally, it holds departments harmless, as the total amount budgeted to a given department is not affected by this proposal. This request will make the budget more transparent, particularly to the public.

**Staff Recommendation:** Approve the May Revision request, including conforming changes to CS 29.00.

**VOTE:**

**Issue 5 – Addition of New Budget Bill Control Section: Government Code Section 19826 Salary Adjustments**

**Background.** In 2006, the supervisory division of the California Association of Professional Scientists (CAPS) requested a quasi-legislative hearing alleging the Department of Personnel Administration (DPA, now California Department of Human Resources) was violating Government Code Section 19826 because fourteen supervisory scientist classifications were performing similar work as certain engineering supervisors and should be paid similar salaries. DPA held a quasi-legislative hearing and, on April 28, 2008, DPA issued a decision recommending salary increases for the fourteen supervisory scientist classifications. DPA has been restricted from implementing the necessary salary increases because there were no existing appropriations to fund the increases. Government Code Section 19826 only permits DPA to adjust salaries where there is an existing appropriation to fund the increase.

Since that time, CAPS initiated litigation, *CAPS v. DPA, et al*, against DOF and DPA to mandate payment of the salary increases. The trial court found DPA has an obligation to present the salary information to DOF for inclusion into the Governor's proposed budget and that DOF is obligated to present the information to the Legislature.

In May 2011, the Court of Appeal held that DOF does not have "a ministerial duty to seek an appropriation to fund salary adjustments approved by DPA." Instead, Section 19826, the court said, "imposes duties only on DPA", by (1) requiring "DPA to adjust salaries based on the principle that like salaries be paid for like work" and (2) prohibiting "DPA from adjusting salaries to the extent funds for new salaries have not been appropriated." The Court also held that "any additional appropriations" to fund such adjustments "are within the discretion of the Legislature and the Governor as they craft a budget." "They can choose," the court said, "to reject proposed salary adjustments despite Section 19826." In addition, the court said DOF needed "to submit to the committees in the Assembly and Senate which consider appropriations and to the Joint Legislative Budget Committee 'copies of budget materials submitted to it' by state agencies for Finance's approval."

The fourteen classifications impacted by the DPA decision are spread among 19 different state departments, primarily in the resources area, including the Departments of Fish and Game, Water Resources, Toxic Substances Control, Parks and Recreation, and the Water Resources Control Board. In total, the salary adjustments comprise \$10.2 million, of which \$1.6 million is GF.

**Staff Comment.** In examining this "like pay-like work" salary adjustment, several factors warrant the Subcommittee's consideration. CAPS pursued the current statutory process which resulted in a favorable decision yet has not resulted in the salary adjustments being made. While it could be argued that result points to a need to change statute, the dynamic remains that under the State Constitution the Legislature has the sole authority to appropriate funds. This salary adjustment has never been included in a Governor's January proposed budget. If it were to be included, it would be the Legislature's choice to adopt or reject any proposed salary adjustments despite Section 19826. In the same vein, the Legislature can choose to add the salary adjustment as it considers the Governor's proposed budget. Another potential concern is that adopting this salary adjustment for these supervisory positions could open the door to additional requests from other supervisory

classifications for quasi-legislative hearings before DPA. Adoption could also increase wage pressure to increase salaries for rank and file CAPS members. However, and per current law, those salary increases would be subject to collective bargaining. In the end, and after having been presented with the salary adjustment information, it is a choice of the Legislature whether to provide the appropriation necessary to implement salary increases under Section 19826.

**Staff Recommendation:** Approve a new budget bill control section to appropriate the funds necessary to adjust salaries for the fourteen supervisory scientist classifications per Government Code Section 19826.

**VOTE:**

**CALIFORNIA DEPARTMENT OF JUSTICE (0820)**

**Departmental Overview.** The constitutional office of the Attorney General, as chief law officer of the state, has the responsibility to see that the laws of California are uniformly and adequately enforced. This responsibility is fulfilled through the diverse programs of the Department of Justice (DOJ).

The DOJ is responsible for providing skillful and efficient legal services on behalf of the people of California. The Attorney General represents the people in all matters before the Appellate and Supreme Courts of California and the United States; serves as legal counsel to state officers, boards, commissioners and departments; represents the people in actions to protect the environment and to enforce consumer, antitrust, and civil laws; and assist district attorneys in the administration of justice. The DOJ also provides oversight, enforcement, education, and regulation of California's firearms/dangerous weapons laws; provides evaluation and analysis of physical evidence; regulates legal gambling activities in California; supports the telecommunications and data processing needs of the California criminal justice community; and pursues projects designed to protect the people of California from fraudulent, unfair, and illegal activities.

**Issues Proposed for Discussion / Vote****Issue 6 – Crime Statistics Reports**

**Governor's Budget Request.** The Governor's 2012-13 budget includes a request via trailer bill language to suspend and repeal the requirements in this mandate program that remain in statute.

**Background.** Currently, the state must reimburse local governments for costs associated with fulfilling reporting requirements. Specifically, some, or all of, the cost of reporting hate crimes, homicides, and domestic violence by local agencies are reimbursable. A reporting requirement to the DOJ regarding certain demographic information about persons charged with specified firearms offenses has been repealed. Furthermore, all of the above mandates minus the firearms report, which was repealed in 2005, are currently in suspense.

According to the State Controller's Office (SCO), the requirement to produce domestic violence incident reports represents the vast majority of the total cost of the combined mandate. Based on SCO's claims data, it is estimated that about \$144 million of the \$146 million accrued cost through 2010-11 is associated with domestic violence incident report requirements, as is about \$17.2 million of the \$17.4 million annual in ongoing costs.

**LAO Recommendation.** The LAO has recommended that the Legislature make several changes to the Governor's proposal related to this mandate. They have recommended that the Legislature maintain the two requirements related to the reporting of hate crime and homicide statistics. Because some federal funds that come to the state—including grants made directly to local entities—may be jeopardized if some local agencies do not report these statistics, and given that they represent a relatively modest state cost, it is their belief that it is in the best fiscal interest of the state to maintain these requirements. They have noted that the Legislature could make optional, rather than delete, the requirement that local

law enforcement agencies produce domestic violence incident reports, thereby eliminating this state-reimbursable mandate.

Additionally, the LAO has suggested not deleting other sections of the domestic violence reporting statutes that would be deleted under the Governor's proposal. Rather, maintaining the requirement that DOJ report domestic violence statistics (which is not a state-reimbursable mandate), and making optional the provisions related to collection and reporting of domestic violence-related information.

Specifically, the LAO has recommended:

- Modifying the Governor's proposed trailer bill language to: (1) leave intact the hate crime and homicide reporting requirements, (2) make optional the requirements related to producing a written incident report for each domestic violence-related call for assistance, (3) make optional the requirements that local law enforcement record certain information related to these calls and report domestic violence statistics to DOJ, (4) leave intact the requirement that DOJ report domestic violence statistics, and (5) direct the Commission on State Mandates to modify its parameters and guidelines for this mandate program to allow local governments to submit future claims only for the hate crime and homicide reporting requirements that would not be eliminated under our proposal.
- Modifying budget bill language to (1) suspend just the portion of this mandate specifically related to the domestic violence incident reports and (2) augment Item 8885-295-0001 by \$1.8 million to pay the costs accrued through 2010-11 associated with the hate crime and homicide reporting requirements that would not be repealed under this proposal.

**Staff Comment.** There have been a number of stakeholders in the state that have identified the reports as a valuable source of information in identifying crime trends in the state. Furthermore, as noted by the LAO, these federal funds could be subject to the reporting of the information specified in this request.

**Staff Recommendation.** Adopt the LAO recommendation.

**VOTE:**

### **Issue 7 – Abbott Laboratories Settlement**

**Governor's Budget Request.** The Governor's May Revise includes a request to transfer \$7.7 million dollars from the False Claims Act fund to the GF.

**Background.** The DOJ, along with the federal government and the Department of Health Care Services, negotiated a settlement with Abbott Laboratories that will provide up to \$7.7 million for deposit into the False Claims Act Fund. It is expected, that, in total, the state will receive approximately \$30.7 million in the settlement. A portion will benefit the GF through Medi-Cal, and the remainder will be deposited into the False Claims Act Fund, which will also benefit the GF.

The consumer protection settlement provides the state with the funds. In the complaint, it was noted that Abbott Laboratories had engaged in unfair and deceptive practices when it marketed one of its products, Depakote, for off-label uses. The drug Depakote is approved for treatment of seizure disorders, mania associated with bipolar disorder and prophylaxis of migraines, but the attorneys general alleged Abbott Laboratories marketed the drug for treating unapproved uses, including schizophrenia, agitated dementia, and autism.

**Staff Recommendation:** Approve May Revise request.

**VOTE:**

### Issue 8 – DNA Identification Fund

**Governor’s Budget Request.** The Governor’s May Revise includes a request that item via trailer bill language that Government Code section 76104.7 be amended in order to add \$1 to the DNA penalty assessment. Additionally the May Revise has requested that Item 0820-011-0001 be eliminated.

**Background.** On November 2, 2004 California voters overwhelmingly passed Proposition 69, the DNA Fingerprint, Unsolved Crime and Innocence Protection Act. Under this initiative any person convicted of a felony offense, plead to a misdemeanor sex offense, and/or was arrested for violent felony or sex crimes is now eligible for inclusion in the Forensic DNA Identification Database. Originally, under Proposition 69, an additional penalty of \$1 is levied for each \$10 fraction thereof, upon every fine, penalty, or forfeiture collected by the courts for criminal offenses. Additional adjustments have been made to Government Code Section 76104.7 levying \$3 for every ten dollars, or part of ten dollars. The May Revise requests that the three dollar amount be struck from Government Code Section 76104.7 and that four dollars be inserted in its place, essentially adding one dollar to the current penalty assessment.

Also included in this request was the call to remove Item 0820-011-0001. This specific item authorized the Controller, upon order of the Director of Finance to transfer funds to the DNA Identification Fund. By increasing the amount levied against individuals specified above the need for a transfer from the General Fund to this account will not be necessary.

**Staff Comment:** Staff has no issues with this request.

**Staff Recommendation:** Approve May Revise Request.

**VOTE:**

### Issue 9 – National Mortgage Settlement Agreement

**Background:** On April 19<sup>th</sup> the Senate Budget and Fiscal Review Subcommittee No. 5 heard the National Mortgage Settlement agreement as a discussion item as no details on the discretionary funds associated with the settlement were available. Subsequently, the Administration has submitted a May Revise that would specify where some of the \$410 million in the discretionary award will be allotted. As noted in the April 19<sup>th</sup> Senate Budget

and Fiscal Review Subcommittee No. 5 hearing agenda, amounts awarded to consumers, local agencies, and the state are identified below:

- \$12 billion will be dedicated to reduce the principal balance on loans by offering either affordable modifications or short sales to approximately 250,000 California homeowners.
- \$430 million payment in penalties, costs, and fees.
- \$849 million to help refinance the loans of approximately 28,000 California homeowners with interest rates above 5.25 percent who are current on their mortgage payments but underwater on their loans.
- \$279 million will be dedicated to provide payments to approximately 140,000 homeowners foreclosed upon during the worst period of servicing misconduct.
- \$1.1 billion will be distributed to California communities to repair blight and devastation left by waves of foreclosures in hard-hit areas.
- \$3.5 billion to forgive unpaid debts to banks for about 32,100 homeowners who have lost their homes to foreclosure.

The Governor's May Revise via trailer bill language identifies where a portion of the \$410.6 million in discretionary funds will be spent in 2012-13. According to the proposed trailer bill language, for 2011-12 and 2012-13, \$94.2 million of the settlement will be utilized to offset GF contributions that support public protection, consumer fraud enforcement and litigation, and housing related programs. Specifically, the funds will be utilized for the following programs in 2012-13:

- \$41.1 million paid as a civil penalty into the Unfair Competition Law Fund to offset the costs of the various Department of Justice Programs.
- \$44.9 million to support the Department of Justice's Public Rights and Law Enforcement programs relating to public protection and consumer fraud enforcement and litigation.
- \$8.2 million for the Department of Fair Employment and Housing. This will offset a portion of the General Fund contribution made to the Department; the contribution from this settlement reflects the housing related portion of the Department's workload.
- \$198 million will be set aside to offset GF costs for housing bond debt service for those programs funded with Proposition 46 and Proposition 1C housing bonds that assist homeowners.

The remaining funds (\$118.4 million) will be set aside for use in the 2013-14 budget for similar purposes.

**Staff Recommendation.** Leave this item open.

**VARIOUS LABOR BUDGET ITEMS*****Issues Proposed for Discussion / Vote*****Issue 10 – Employment Development Department (7100): Disability Insurance Automation Project**

**Governor’s Budget Request.** An April 1 Finance Letter requests a one-time augmentation of \$33.787 million (Disability Insurance Fund-DI Fund) to fund a net of 68 positions to support the fourth year of development, testing, and implementation of the Disability Insurance Automation (DIA) project.

This request was first heard by the Subcommittee on May 10, 2012. It was held open pending receipt of Administration responses to questions raised at the hearing.

**Background.** The DIA project was initially funded in the 2006 Budget Act. The DIA project will provide greater access to services for claimants, medical providers, and employers by allowing these individuals to use the Internet to submit claims data using a direct electronic interface or through web-based intelligent forms. This will simplify and automate the numerous manual work processes involved when a Disability Insurance (DI) claim is filed with EDD. Further, scanning/optical character recognition will be implemented to convert remaining paper claims to electronic format. Automated business logic will allow “in pattern” claims to be paid automatically, further increasing service delivery. The DIA project is scheduled to “Go Live” in summer 2013.

Of the positions contained in this request, 27 are new positions, 70 are existing positions, and 29 positions were eliminated due to a reduction in Key Data Operators, for a net of 68 positions. The reduction in Key Data Operators is a result of the DIA project providing Web-based intelligent forms, which removes key data entry tasks from DI branch employees, thus saving on the amount of staff required to administer the program.

**Staff Comment.** The resources in this request are consistent with Special Project Report (SPR) 3, which was approved by the Technology Agency in November 2011. SPR 3 reflects a number of changes relative to SPR 2, including the project end date being extended from August 2012 to June 2013 and scope changes to provide for an interface with the Single Client Database (SCDB) DB2 system. These changes are necessary, particularly with regard to the interface with the SCDB. As of November 2011, EDD is operating in a DB2 database platform environment, so it is necessary to revise the DIA project to ensure compatibility between the DI system and the main EDD database.

SPR 3 also reflects a variance of \$38.6 million (DI Fund) over SPR 2. While this is an accurate figure, it is potentially misleading given the extension of the project completion date. In addition, SPR 3 includes two years of *possible* additional vendor support. The more meaningful figure is that one-time costs increased by \$6.1 million and annual support costs increased by \$2 million once the project is fully implemented. Additionally, should EDD become vendor independent sooner than expected, the additional resources may not be required.

On the point of vendor independence, staff notes that EDD is in a difficult position. As the Subcommittee is aware, EDD has simultaneously pursued a number of large information technology projects. Through various budget actions, the Legislature supported these myriad efforts to modernize EDD's operations. As the projects, including DIA, collectively reach completion, EDD faces a challenge to acquire, train, and deploy sufficient state staff resources to transition to support of the projects and terminate its need for vendor support. In this vein, the Technology Agency has required EDD to provide an enterprise wide resource plan by January 31, 2013, outlining how EDD will provide sufficient state resources to these projects.

**Staff Recommendation:** Approve the April 1 Finance Letter.

**VOTE:**

<b>Issue 11 – Employment Development Department (7100): Unemployment Insurance Modernization (UIMOD) Continued Claims Redesign Project</b>
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**Governor's Budget Request.** In a May Revision Finance letter, the Governor requests a one-time budget augmentation of \$16.9 million (including \$11.6 million EDD Contingent Fund and \$5.3 million Unemployment Fund) and a redirection of \$6.3 million Unemployment Administration Fund (UI Admin Fund) for the UIMOD Continued Claims Redesign (CCR) Project. The requested increase will fund 47 existing positions, hardware purchases, project management and other consultant costs, Independent Verification and Validation services, Independent Project Office Coordinator services, and an increase to the prime vendor services contract.

**Background.** First authorized in the 2003 Budget Act, the Call Center Network Platform and Application Upgrade (CCNPAU) and CCR subprojects are intended to modernize unemployment insurance (UI) services. In May 2006, the EDD submitted a Special Project Report (SPR) that proposed to merge the two subprojects due to multiple interdependencies. This necessitated refining the scope, schedule, and costs of the combined projects.

The CCNPAU subproject built a single network infrastructure for EDD's 15 call centers to interact with an intelligent call routing system, thereby reducing call blockage and improving access to services at EDD's call centers, to meet federal Department of Labor performance guidelines. This project increased the number of available agents by 1,000 and provided the infrastructure necessary to route calls to specialized agents. The CCNPAU project was completed in May 2011.

The CCR subproject will develop an interactive Internet Web site and telephone application that allows customers to file UI claims and recertify on a bi-weekly basis on the Web or by phone. Customers will be able to confirm certification, reopen claims, submit address changes, and receive communications via this application. This solution reduces the amount of workload that must be processed. SPR 4 for the CCR project was approved by the Technology Agency on April 18, 2012. The CCR project is scheduled for "go live" implementation in August 2013.

**Staff Comment.** SPR 4 reflects a variance of \$30 million over the prior SPR. Of these costs, \$11 million is attributable to the CCNPAU project. While this project was completed in May 2011, funds were spent to incorporate an identity management solution and additional

call center agent seats and equipment due to unprecedented workload increases. The remaining \$19 million is attributable to the CCR project. As with the DIA project, two additional years of *possible* additional vendor support are included, resulting in \$10 million for extending current contracts, equipment, data center services, hardware, software, and state staff. Should EDD become vendor independent sooner than expected, the additional resources may not be required. The remaining \$9 million is due to the need to update this project to provide for an interface with the Single Client Database DB2 system. Again similar to the DIA project, these changes are necessary. As of November 2011, EDD is operating in a DB2 database platform environment, so it is necessary to revise the CCR project to ensure compatibility with the main EDD database.

Staff also notes that the funds included in this request, which are completely necessary to cover the costs for the final year of work to complete this project, do involve trade-offs. This request includes both EDD Contingent Fund and redirected UI Admin Fund dollars. The Contingent Fund is GF-fund fungible. The use of the Contingent Fund in this manner is self-evident; these funds would otherwise be available for GF purposes. The UI Admin Fund are federal dollars provided to the state in support of the costs to administer the UI program. The redirection of \$6.3 million from the UI Admin Fund for the CCR project will result in approximately 284,000 fewer calls that will be answered on an annual basis, 88,000 claims filed by phone, the Internet, and paper or fax would be processed untimely, and 100,000 eligibility determinations appointments would be scheduled untimely on an annual basis. While these trade-offs are not desirable, they are necessary as it is not an option to abandon the CCR project which is in its final 12 months. The CCR project will also result in more services becoming available to the public as “self-service” without any staff interventions. This will generate more efficiencies allowing staff to be redirected to serve customers who are not computer or on-line users. The CCR project will also assist EDD in its ongoing challenges with inadequate federal UI Admin funds (California receives \$98 million, or 22 percent less, than needed to fully fund the actual costs to administer the UI program).

On the point of vendor independence, and as with the DIA project, staff notes that EDD is in a difficult position. As the Subcommittee is aware, EDD has simultaneously pursued a number of large information technology projects. Through various budget actions, the Legislature supported these myriad efforts to modernize EDD’s operations. As the projects collectively reach completion, EDD faces a challenge to acquire, train, and deploy sufficient state staff resources to transition to support of the projects and terminate its need for vendor support. In this vein, the Technology Agency has required EDD to provide an enterprise wide resource plan by January 31, 2013, outlining how EDD will provide sufficient state resources to these projects.

**Staff Recommendation:** Approve the May Revision request. Note, this request includes a conforming action to approve a May Revision request in Budget Item 0530, Office of System Integration (OSI), Health and Human Services Agency, to reduce OSI spending authority in both 2011-12, 2012-13, and 2013-14 to align the authority with the remaining project costs identified in SPR 4 for the CCR project.

**VOTE:**

<b>Issue 12 – Department of Industrial Relations (7350): Implementation of 2011 Legislation, Prevailing Wage Violations (AB 551) and Willful Misclassification of Independent Contractor (SB 459)</b>
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**Governor’s Budget Requests.** The January budget requests increased expenditure authority from the Labor Enforcement and Compliance Fund (LECF) to comply with two recent statutory changes, as follows:

**1. Prevailing Wage Violations (Chapter 677, Statutes of 2011 – AB 551)**

**Summary.** The January budget requests \$765,000 and four positions in 2012-13, and \$639,000 on-going, to comply with the requirements of Chapter 677, Statutes of 2011 (AB 551), related to prevailing wage violations. Of the requested resources in 2012-13, \$100,000 is for one-time costs to redesign and/or upgrade the existing database system.

**Background.** In its consideration of Chapter 551, the Legislature was presented with the following question: “Should the penalties for failing to pay prevailing wages on public works projects and failing to provide payroll records in a timely manner be increased, as well as create a process for debarment for failing to follow the laws governing public works contracts, to encourage compliance with public works laws and the payment of the prevailing wage?”

In answering that question, Chapter 677 (1) increases the penalty assessed from \$20 to \$80 to contractors and subcontractors with previous violations and from \$30 to \$120 for willful violations; (2) requires the Labor Commissioner to maintain a Web site listing of contractors who are ineligible to bid on or be awarded a public works contract and at least annually notify awarding bodies of the availability of the list of disbarred contractors; and (3) states that the Labor Commissioner notify the contractor or subcontractor that, in addition to any other penalties, the contractor shall be subject to disbarment if certified payroll records are not produced within 30 days after receipt of written notice. Failure to comply by that deadline would prohibit the contractor from bidding on or be awarded a contract for public work or performing work as a subcontractor on a public works project for three years.

**2. Willful Misclassification of Independent Contractor (Chapter 706, Statutes of 2011 – SB 459)**

**Summary.** The January budget requests \$1.7 million and 13 positions in 2012-13, and \$1.65 million on-going, to comply with the requirements of Chapter 706, Statutes of 2011 (SB 459), related to willful misclassification of independent contractors.

**Background.** In its consideration of Chapter 706, the Legislature was presented with the following question: “Should California employers and the DIR be required to take specified actions to decrease the incidence of misclassification of workers as independent contractors and should the law governing classification of persons as independent contractors provide civil penalties for willful misclassification of an employee as an independent contractor?”

In answering that question, Chapter 706 prohibits the willful misclassification of an individual as an independent contractor rather than as an employee and provides that persons or employers violating the prohibition are subject to specified civil penalties as assessed by the Labor and Workforce Development Agency or a court.

**May Revision Request.** In a May Revision Finance letter, the Governor requests to instead implement these statutory changes with fund support from the Labor and Workforce Development Fund.

The Labor and Workforce Development Fund (LWDF) was expected to have a fund balance of \$8.7 million in 2012-13; these requests would use a total of \$2.5 million from that fund. The LWDF is established in Labor Code Section 2699 and is a repository for funds awarded through civil actions by employees against employers. The fund is intended to be used by the Labor and Workforce Development Agency to enforce labor laws and educate employees and employers about labor laws.

**Staff Comment.** The May Revision proposal to support these workload requests from the LWDF responds to concerns raised by the Subcommittee when the requests were initially heard on March 8, 2012. The concerns centered on the fact that the Labor Enforcement Compliance Fund is only authorized until June 30, 2013; therefore, it would be difficult for the Subcommittee to fund a permanent workload request on a fund source with a quickly impending sunset. With the May Revision change, staff notes no concern with the requests. The fund source question has been satisfactorily resolved. The programmatic specifics of these requests are consistent with the legislation that was approved by the Legislature last year and staff concurs with the Administration's finding that implementation of Chapters 677 and 706 will result in increased workload for the Department of Industrial Relations.

**Staff Recommendation:** Approve the budget requests, as modified by the May Revision, to utilize the Labor and Workforce Development Fund as the fund source to support implementation of the requests.

**VOTE:**

<p><b>Issue 13 – Department of Industrial Relations (7350): Employee/Employer Education and Outreach</b></p>
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**Governor's Budget Request.** The January budget requests three-year limited-term increased expenditure authority of \$2.3 million in 2012-13, and \$1.6 million in 2013-14 and 2014-15, from the Labor and Workforce Development Fund (LWDF) and four redirected positions, to increase the overall efficacy of statewide enforcement of labor laws.

This request was initially heard on March 8, 2012. It was held open due to uncertainty regarding the availability of future funding from the Labor Enforcement Compliance Fund (LECF), which may necessitate prioritization of limited funding available to DIR, including LWDF funds, to meet its current obligations, including implementation of recent legislation.

**Background.** The mission of the DIR is to protect the California workforce, improve working conditions, and enhance opportunities for profitable employment. These responsibilities are carried out through three major programs: the adjudication of workers' compensation

disputes; the prevention of industrial injuries and deaths; and the enforcement of laws relating to wages, hours, and working conditions. This request utilizes funding available and accrued from Chapter 906, Statutes of 2003. Chapter 906 allows employees to sue their employers for civil penalties for employment law violations. Any penalties recovered under this chapter are required to be distributed 75 percent to the Labor and Workforce Development Agency (LWDA) for enforcement of labor laws and education of employers and employees about their rights and responsibilities, and 25 percent to the aggrieved employee. The funds directed to LWDA are deposited in the LWDF. Currently, DIR does not receive an appropriation from this fund. Since its inception, the fund has been underutilized with revenue outpacing annual expenses.

**Staff Comment.** The Administration has affirmed that the resources in this request will not overlap or otherwise duplicate prior efforts. It will also build on lessons learned from prior outreach campaigns, such as that billboard and radio ads are the most effective communication tool. DIR indicates that this new outreach effort will not utilize television media.

With regard to outcomes, since this is a limited-term outreach effort, the Administration indicates that it will undertake a statistical analysis of the number of: citations issued; self-audits to reimburse employees for minimum wages and overtime; number of complaints alleging labor law violations; violations found during inspections; wages recovered for workers; number of attendees at outreach events and whether compliance increases following such outreach; and, litigation brought to protect workers and hold violators responsible. Given that this data will be collected, the Subcommittee may consider adding a report by March 10, 2013, requiring DIR to provide an update about the status of the implementation of this effort to increase the overall efficacy of statewide enforcement of labor laws.

**LAO Recommendation.** The Governor's proposed education and outreach activities are consistent with DIR's mission to protect California's workforce, improve working conditions, and enhance opportunities for profitable employment. Additionally, these activities are an appropriate use of LWDF funding.

**Staff Recommendation:** Approve the request with supplemental report language requiring the DIR to report to the Legislature by March 10, 2013, as to the status of the implementation of this effort to increase the overall efficacy of statewide enforcement of labor laws.

**VOTE:**

## SUBCOMMITTEE NO. 5

## Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



May 23, 2012, at 1:30 p.m.  
State Capitol, Room 3191

Consultants: Kris Kuzmich & Brady Van Engelen

### MAY REVISE AND OPEN ISSUES

### AGENDA PART A

### OUTCOMES

*(Please See Detailed Agenda on Pages 2 and 3 for Specific  
List of Issues to Be Heard)*

#### *Departments*

0390 Contribution to the Judges' Retirement Fund  
0820 Department of Justice  
1900 Public Employees' Retirement System  
1920 State Teachers' Retirement System  
7100 Employment Development Department  
7350 Department of Industrial Relations  
8380 Department of Human Resources  
8885 Commission on State Mandates  
9650 Health and Dental Benefits for Annuitants  
9800 Augmentation for Employee Compensation

#### *Control Sections*

3.60/3.61 Contribution to Public Employees' Retirement Benefits  
3.90 Reduction for Employee Compensation  
4.21 Health Care Premium Savings  
31.10 Salary Savings

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**AGENDA – PROPOSED “VOTE ONLY” ITEMS**

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**VARIOUS PUBLIC EMPLOYMENT AND RETIREMENT BUDGET ITEMS:  
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**Summary Chart of Issues Proposed for Vote Only:**

	<b>Issue</b>	<b>Amount</b>	<b>Fund Source</b>	<b>Staff Recommendation</b>
<b>Public Employees' Retirement Fund (1900)</b>				
1	Incorporate CalPERS Board Approved Budget into the Budget Act	Various increases and decreases	Public Employees Retirement Fund	Approve
<b>State Teachers' Retirement System (1920)</b>				
2	Revised 2010-11 Creditable Compensation	\$1.377 million	GF	Approve
<b>Health and Dental Benefits for Retired Annuitants (9650)</b>				
3	Premium Increase for Retiree Health Care	\$13.125 million	GF	Approve
<b>Augmentation for Employee Compensation (9800)</b>				
4	Revised Cost Estimate for Allocation for Employee Compensation	\$10.949 million \$6.078 million	GF Other Funds	Approve
<b>Employment Development Department (7100)</b>				
5	Unemployment Insurance Loan Interest Payment Amount Update	Decrease the loan to the GF by \$104.4 million	Disability Insurance Fund	Approve
6	May Revision Updates, Unemployment Insurance, Disability Insurance, and School Employees Fund Adjustments	Various increases and decreases	Other Funds	Approve
7	Workforce Investment Act Adjustments	Various increases and decreases	Federal Funds	Approve w/modified BBL
<b>California Department of Human Resources (8380)</b>				
8	Tribal Labor Panel	\$100,000	Indian Gaming Special Distribution Fund	Approve

**Staff Recommendation on vote-only items 1 through 8 approved by a vote of 2-0, with Senator Anderson absent.**

**Items Proposed for Vote Only – Issue Descriptions*****Issue 1 – Public Employees’ Retirement System (1900): Incorporate CalPERS Board Approved Budget into the Budget Act***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests various adjustments (both increases and decreases) to the CalPERS Board of Administration Budget to reflect the request by the CalPERS Board to incorporate its approved budget into the 2012-13 Budget Act.

**Background.** The annual budget act displays, for informational purposes only, the CalPERS’ Board of Administration budget, as CalPERS’ has continuous appropriation authority. The Governor’s January budget includes the estimated CalPERS’ Board of Administration budget for the upcoming fiscal year. On April 18, 2012, the CalPERS Board adopted a final budget. Adoption of this request will ensure that the final 2012-13 Budget Act will accurately reflect the CalPERS Board approved budget.

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

***Issue 2 – California State Teachers’ Retirement System (1920): Revised 2010-11 Creditable Compensation***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests an increase of \$1.377 million GF, over the Governor’s January budget level, due to an increase in the creditable compensation reported by the California State Teachers’ Retirement System (CalSTRS) for fiscal year 2010-11, which increases the GF retirement contribution for fiscal year 2012-13.

**Background.** This May Revision proposal constitutes a technical correction regarding the amount of GF contribution to CalSTRS based on a revision of creditable compensation as reported for 2010-11. The true-up is a percentage-driven calculation and is the result of a lag in reporting of actual compensation. The January budget estimated 2012-13 contributions of \$1.35 billion, based on an October 2011 report of prior-year teacher payroll by CalSTRS. The actual amount is based on the April 2012 submission by CalSTRS, which updated the prior-year teacher payroll.

This request represents a necessary technical adjustment to the GF CalSTRS payment for 2012-13. The budgeted payment amount consists of four separate components as dictated by state law. The revision in the creditable compensation results in a total increase in funding of \$1.377 million. This increase consists of \$545,000 in the Defined Benefit payment, \$157,000 in the Pre-1990 Defined Benefit Level payment, and \$675,000 for Supplemental Benefit Maintenance Account contribution.

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

***Issue 3 – Health and Dental Benefits for Annuitants (9650): Premium Increase for Retiree Health Care***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests to increase by \$13.125 million GF the statewide budget item for the costs of health and dental benefits for retirees to adjust for expected increases in health premium costs over the estimate contained in the Governor’s January budget.

**Background.** The Governor’s January budget included \$1.7 billion (\$1.662 billion GF) for the costs associated with providing health and dental benefits for retirees. The January budget projected an increase of 8.5 percent over the 2012 health premium rates, which translated to a \$177.4 million (\$172.8 million GF) year-over-year increase. The CalPERS’ Board has not yet adopted the final rates, but the Administration indicates that the expected increase will actually be ten percent over the 2012 rates. This necessitates an adjustment to the January budget level to increase it by \$13.125 million. If the final rate increase is ten percent, it would represent a total year-over-year increase of \$190.5 million (\$185.9 million GF). Final rates are not expected to be established until June 13, 2012.

**Staff Comment.** This is a necessary technical adjustment to the January budget level which underestimated the expected increase in health premium costs by 1.5 percent. Please see Issue 1 on Page 10 of this agenda for a proposed “discussion-vote” item related to health care premium costs.

***Issue 4 – Augmentation for Employee Compensation (9800): Revised Estimate for Allocation for Employee Compensation***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests an increase of \$10.949 million GF (\$6.078 million other funds) over the Governor’s January budget level to reflect revised estimates as a result of: (1) updated health care enrollment figures; (2) projected health care premium increases; (3) and updated salary surveys affecting the California Association of Highway Patrolmen (Bargaining Unit 5) and Judges.

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

With regard to health care, this request includes an adjustment for updated health care enrollment figures (over what was included in the January budget). Further, it includes an adjustment for projected health care premium increases. As noted in the immediate prior agenda item, health care premium rates are projected to increase by ten percent; the January budget was based on an 8.5 percent premium increase. Final rates are not expected to be established until June 13, 2012.

This request includes budget bill provisional language to ratify the addenda to extend the contract with Bargaining Units (BUs) 12 (International Union of Operating Engineers), 16 (Union of American Physicians and Dentists), 18 (California Association of Psychiatric Technicians), and 19 (American Federation of State, County and Municipal Employees) through July 1, 2013. This includes, for BUs 12 and 18, an adjustment to the 2012 health care premium rates on July 1, 2012, and the 2013 rates effective December 1, 2012.

Finally, and per current law, this request includes an adjustment for the updated salary surveys affecting BU 5 (California Association of Highway Patrolmen) and Judges.

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

### ***Issue 5 – Employment Development Department (7100): Unemployment Insurance Loan Interest Payment Amount Update***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests a decrease of \$104.4 million in the amount of the interest payment due to the federal government for borrowing that has occurred to provide unemployment insurance (UI) benefits. This request effectively reduces the amount of funds to be borrowed from the Unemployment Compensation Disability Fund (DI).

**Background.** The January budget proposed an increase of \$417 million GF to make the second interest payment due to the federal government for the quarterly loans that the EDD has been obtaining from the federal government since January 2009 to cover the UI Fund deficit (estimated at \$9.8 billion at the end of 2011). To offset this GF expenditure, the January budget included a transfer from the DI Fund to the GF, resulting in no net GF cost in 2012-13. The federal government has since lowered the interest rate on funds borrowed, resulting in a decrease of \$104.4 million. Therefore, as part of the May Revision, the Governor proposes to reduce the loan from the DI fund to the GF to \$312.6 million.

**Staff Comment.** Staff has no concerns with this request as it represents a necessary technical adjustment to the January Budget. The Subcommittee approved the loan from the DI Fund to the GF Fund for the interest payment due to the federal government at its May 10, 2012, hearing.

### ***Issue 6 – Employment Development Department (7100): May Revision Updates, Unemployment Insurance, Disability Insurance, and School Employees Fund Adjustments***

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

- **UI Program and Benefit Adjustments.** An increase of \$4.3 billion for UI benefits, due to the continuation of the federal benefits extension program. In addition, to accommodate increased benefit payments in the current year resulting from the federal extension, this request includes an increase of \$895.7 million for UI benefits in 2011-12.
- **DI Program.** A reduction of \$64.4 million to reflect a decrease in DI payments. Additionally, this request decreases DI benefit authority by \$10.8 million in 2011-12.

- **School Employees Fund (SEF).** An increase of \$19 million for benefit payments for the SEF, a joint, pooled risk fund administered by the EDD, which collects contributions based upon a percentage of total wages paid by public school and community college districts. Additionally, this request includes a decrease in benefit authority of \$13.2 million in 2011-12.

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

### ***Issue 7 – Employment Development Department (7100): Workforce Investment Act Adjustments***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests a decrease of \$55.3 million in federal Workforce Investment Act (WIA) discretionary funding. The decrease reflects changes in federal funding that have reduced state-level discretionary WIA funds from 15 percent of total statewide WIA funding to 5 percent. To reflect an increase in the level of local assistance funds available to states from 85 percent to 95 percent, the Governor requests an increase in WIA local assistance funding of \$5 million in 2012-13 and \$5.3 million in the 2011-12.

**Background.** Changes in federal law have dramatically reduced the amount of discretionary WIA funding available to the state for state-level discretionary programs and grants. Previously, local workforce investment areas received 85 percent of WIA funding, while the state received 15 percent. This amounted to \$69.1 million in 2011-12. Under the new provisions, states only receive five percent of funds, which is estimated to be \$20.5 million in 2012-13 for California. This reduced level of funding is only enough to cover state administrative costs and required federal auditing and oversight activities. This change at the federal level significantly limits the state’s ability to fund statewide workforce development programs with these WIA funds.

**Staff Comment.** It is expected that there will again be a small amount of prior year savings available for reallocation in 2012-13. Therefore, the Subcommittee may wish to modify existing budget bill provisional language to incorporate any prior year savings into the October Revise, which is an annual update to the WIA program that is submitted to the Joint Legislative Budget Committee. This will ensure legislative consultation before these discretionary dollars are allocated for expenditure.

### ***Issue 8 – California Department of Human Resources (8380): Tribal Labor Panel***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests an increase of \$100,000 (Indian Gaming Special Distribution Fund-IGSDF) to provide funding for disbursement to the Tribal Labor Panel to support arbitration duties and other responsibilities pursuant to Government Code Section 12012.85(e).

**Background.** Under current law, the California Department of Human Resources (CalHR) is responsible to provide necessary funding for disbursement to the Tribal Labor Panel. The fund source is the IGSDF, which is money received by the state from Indian tribes as specified by the terms of the tribal-state compacts.

CalHR (formerly Department of Personnel Administration) first received \$400,000 in funding from the IGSDF in the 2000 Budget Act. Since that time, and through 2010-11, these funds were used to contract with an outside entity to provide arbitration services per current law. Not all of the funds were used each year, leading to some funds disencumbering and reverting to the state. Additionally, these funds were reappropriated several times; the last reappropriation was in 2010-11. With this request, the Administration proposes to start fresh in 2012-13 and provide \$100,000 from the IGSDF to CalHR for the Tribal Labor Panel. CalHR requires the appropriation so it can secure the contract; under the standard terms of the Budget Act, CalHR will have one year to encumber and two years to spend the funds.

**Staff Comment.** Staff has no issues with this request. Staff notes, however, that the Indian Gaming Special Distribution Fund could face solvency issues in 2013-14 which may limit any further appropriations for these purposes.

**VARIOUS PUBLIC EMPLOYMENT AND RETIREMENT BUDGET ITEMS*****Issues Proposed for Discussion / Vote*****Issue 1 – California Public Employees’ Retirement System (1900) and Health Care Premium Savings (CS 4.21): Elimination of Control Section 4.21**

**General Background.** The Legislature determines policies concerning state employee, both active and retired, health benefit programs. Through the Public Employees’ Medical and Hospital Care Act (PEMHCA), the Legislature vests responsibility for managing health care programs for state workers, state retirees, and employees or retirees of participating local agencies with CalPERS. The state’s contribution to employee health care is based on a negotiated percentage of the average cost of four health plans with the most enrolled state employees. Any health premium increases in a calendar year are negotiated by CalPERS with health plan providers; the CalPERS board typically adopts the next year’s health premiums in June. The cost of state employer health and dental care benefits for active employees and retirees, and their dependents, is estimated to total \$2.9 billion GF (\$1.4 billion other funds) in 2012-13.

**Prior Budget Action.** The 2011 Budget Act established CS 4.21 and required CalPERS to achieve one-time savings of \$80 million GF and \$35.7 million other funds in the 2011-12 Health Benefits Program, and an equivalent amount of on-going savings beginning in 2012-13. The 2011 Budget Act also included trailer bill language requiring CalPERS to negotiate with health plans to offer a core health care plan option to the existing portfolio of health plans and/or implement other measures to achieve the on-going savings. Finally, CalPERS was also required to notify the Joint Legislative Budget Committee and DOF before October 10, 2011, that the savings had been achieved as well as their source.

CalPERS reported that it achieved savings in 2011-12 of \$46.7 million GF and \$23.2 million other funds. These savings resulted from a number of one-time and on-going strategies adopted by the CalPERS Board, such as Value Based Purchasing and High Performance Provider Networks, to reduce premium costs. CalPERS also reported that it achieved additional savings through the adoption of cost avoidance measures not accounted for in the above totals, totaling \$15.9 million GF and \$4.0 million other funds. These cost avoidance savings were a result of such activities as Pharmacy Benefit Changes, Integrated Healthcare Model, and Service Area Expansion.

**Governor’s Budget Request.** Via Budget Control Section 4.21 (CS 4.21), the Governor’s January budget requires CalPERS to achieve savings of \$45.4 million GF and \$22.5 million other funds in the 2012-13 Health Benefits Program, and an equivalent amount of on-going savings. CalPERS is required to report before October 10, 2012, the savings achieved as well as their source. This request was held open at the Subcommittee’s March 8, 2012, hearing as the Administration indicated that it was working with CalPERS and expected to submit additional proposals related to the health benefits program as part of the spring budget process.

**May Revision Request.** In a May Revision Finance letter, the Governor requests an increase of \$45.4 million GF and \$22.5 million other funds to reflect the elimination of Control

Section 4.21. The Administration indicates that CalPERS does not appear to have achieved the expected level of health care savings identified in CS 4.21 due to the significant year-over-year increase in anticipated health premium rates for 2013.

**Staff Comment.** All parties are concerned about the increases in health care costs, as they present a budgetary challenge not only for the state but also for local governments and private employers. As evidenced by the report CalPERS submitted per the requirements of CS 4.21 in 2011-12, CalPERS worked to pursue numerous strategies to achieve savings in the Health Benefits Program. However, even with these efforts, the overall program costs continue to grow, presenting continuing challenges to CalPERS in its administration of PEMHCA health care programs and for the State in managing its overall budget. The Administration now estimates that the 2013 health premium costs will grow year-over-year by ten percent.

Given this dynamic, it is understandable why the Administration requests the elimination of CS 4.21 as part of the May Revision. As the LAO has previously noted, any savings resulting from CS 4.21 likely would have to be achieved through CalPERS premium negotiations and that process is resulting in a ten percent increase in these costs. However, in considering this request, the Subcommittee may wish to query CalPERS about its efforts to reduce health premium costs. The 2011 Budget Act included statutory changes requiring CalPERS to negotiate with health plans to offer a core health care plan option to the existing portfolio of health plans and/or implement other measures to achieve the on-going savings. At its March 13, 2012, meeting, the CalPERS Board considered a staff proposal to seek statutory changes to grant the Board the authority to: (1) adjust premiums as part of programs for health promotion and disease management; and (2) implement risk adjustment across plans to encourage health plan competition based on efficiency and quality rather than on population risk selection.

**Staff Recommendation:** Approve the May Revision request to eliminate CS 4.21.

**VOTE: Staff Recommendation approved by a vote of 2-0, with Senator Anderson absent.**

## **Issue 2 – Contribution to Employees’ Retirement Benefits (CS 3.60 and 3.61): Various Technical Rate Adjustments**

**General Background.** These control sections provide the mechanism for increases and decreases regarding the state’s employer contribution to public employee retirement accounts, based on the determination of required funding levels. The control sections hold departments’ budgets harmless in the event of increases in employer CalPERS contribution rates and achieve budgetary benefit for the state when CalPERS contribution rates decline.

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests an increase of \$202.063 million GF (\$152.661 million other funds) for retirement rate adjustments. This includes increasing the California State University (CSU) base budget by \$52.486 million GF to adjust it to the 2012-13 employer contribution rates.

**Background.** The Governor's January budget made assumptions regarding investment rates of return as well as retirement rates that have since been revisited and revised. The

May Revision provides necessary adjustments to these January estimates. The Administration indicates that the estimated increase in retirement costs are due to the following:

1. On March 14, 2012, the CalPERS Board voted to adopt a decrease in the assumed investment rate of return to 7.50 percent from 7.75 percent. This action resulted in higher estimated retirement costs in 2012-13 than were assumed in the January budget; of the total increases indicated above, this adjustment accounts for \$304.161 million (\$172.962 million GF) in additional costs.
2. In addition, due to factors beyond the assumed investment rate of return, the retirement rates are estimated to be higher than originally projected in the January budget; of the total increases indicated above, this adjustment accounts for \$50.563 million (\$29.101 million GF) additional costs.

However, the May Revision request notes that the retirement costs are not final and could change pending the adoption of the final 2012-13 retirement rates by the CalPERS Board of Administration on May 16, 2012. As a result of the \$202.063 million GF adjustment, the fourth quarter payment to CalPERS (which was deferred to 2013-14) will increase by \$50.516 million. The \$202.063 million adjustment less the \$50.516 million deferral results in a total net increase of \$151.547 to the GF in 2012-13.

This request also includes amendments to CS 3.61 (which was proposed in the Governor's January budget) to allow for: (1) an incremental adjustment to CSU's base budget in 2012-13 for the change between 2011-12 and 2012-13 rates and (2) adjustments for the unfunded liability costs in 2013-14 and beyond. This part of this request will be considered by Subcommittee No. 1 on Friday, May 25, 2012. This Subcommittee will conform to the Subcommittee No. 1 action.

**Staff Comment.** The CalPERS Board voted on May 16, 2012, to set the state's required 2012-13 employer contribution at a level over the January budget that necessitates an increase of \$124.23 GF (\$93.622 million other funds). This level reflects the CalPERS Board action to phase-in the impact of the change in discount rate on the employer contribution rate by amortizing over a 20-year period the increase in the actuarial liabilities resulting from the change in assumptions. Under the phase-in, the payment in year one on the portion due to the change in the discount rate is equal to roughly 55 percent of the payment that would have been required without the phase-in and the unpaid balance amortized over the remaining 19 years at 7.5 percent interest. This will result in increased costs of \$145.9 million GF (\$110.7 million other funds) over the next 20 years. The CalPERS Board indicates the phase-in was adopted to provide employers with more time to adjust to the higher contribution rates.

Per the CalPERS Board action on May 16, 2012, the fourth quarter payment to CalPERS (which was deferred to 2013-14) will increase by \$31.058 million. The \$124.23 million adjustment less the \$31.058 million deferral results in a total net increase of \$93.2 million to the GF in 2012-13.

**Staff Recommendation:** Approve an increase of \$124.23 million GF (\$93.622 million other funds) over the January budget level in order to fund the state's required employer contribution to CalPERS in 2012-13.

**VOTE: Staff Recommendation approved by a vote of 2-0, with Senator Anderson absent.**

**Issue 3 – Reduction for Employee Compensation (CS 3.90): Employee Compensation Reductions**

**General Background.** This control section allows for adjustments in department budgets to account for changes in employee compensation, including salaries and health and retirement benefits, based on the determination of required funding levels.

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests to add CS 3.90 to the 2012-13 budget to authorize employee compensation-related reductions equivalent to a roughly five percent reduction in pay translating to savings of \$401.7 million GF (\$839.1 million all funds). This request includes both budget bill provisional language and budget trailer bill language.

**Background.** The total number of state employees is 341,783 resulting in a salary cost of \$24.8 billion (all funds). This total includes employment in the Executive Branch, Judicial Branch, University of California, California State University, Hastings College of the Law, and Legislature. Roughly two-thirds of total state employment (214,254 employees) is in the Executive Branch. Of this total Executive Branch employment, about one-third is in the California Department of Corrections and Rehabilitation (CDCR). Compensation for salaries and benefits accounts for approximately 11 percent of GF costs, and includes \$7.2 billion in salary expense and \$3.3 billion in benefit costs. Employees of CDCR account for approximately two-thirds (64 percent) of GF salary costs.

The May Revision proposal is intended to achieve total savings equivalent to a roughly 4.62% percent reduction in pay (total of eight hours per work month). The proposed control section states that the savings will be achieved through: (1) the collective bargaining process, and/or (2) legislative reductions in the state workweek and changes in work schedules, and/or (3) furloughs, and/or (4) other reductions for represented and non-represented employees achieved through existing administration authorities. The Administration indicates its intent is to avoid a furlough program and to mitigate layoffs. To this end, the Administration states it will pursue the implementation of a four-day, 38-hour work week for the majority of state employees to achieve the necessary savings. The Administration suggests that this new workweek would allow the state to: (1) offer better services to the public by being open longer than the traditional 8-hour workday and (2) reduce energy usage in state-owned and leased buildings (any savings achieved from reduced energy usage is not included in the savings total).

The Administration states it will also pursue commensurate reductions in work hours and pay for employees of entities that operate 24 hours per day, seven days a week, when implementation of the four-day workweek is not feasible. These will be “variations” to the four-day 38-hour work week, as the Administration indicates that there will be no exceptions to the salary savings proposal.

Separately, the Administration indicates that it will continue to pursue changes to health coverage for active employees and retirees, to reduce costs for both employees and the state in the coming year. Any potential savings from these changes to health coverage remain unspecified and are not included in the above estimate; i.e., the \$839.1 million is from salary savings only.

**LAO Comment.** Employee compensation, including salaries and benefits, will cost the state's GF \$10.5 billion in 2012-13. Given the severity of the state's budget shortfall, the Legislature will need to consider reductions in these costs; however, there are no ideal ways to achieve such reductions. In addition to the issues related to a four-day workweek, including that it could increase leave balances and hinder services in many cases and may not reduce energy costs or be convenient for many, the Legislature should take into account the following issues when considering other alternatives to reductions in employee compensation costs: (1) bargaining typically necessitates concessions; (2) layoffs take months to achieve and can affect some services; (3) furlough and leave programs have future costs; and (4) non-negotiated state actions raise concerns.

**Staff Comment.** The Administration has indicated that its goal is to have a plan in place to achieve the savings by July 1, 2012, and is actively meeting with departments and labor officials to reach those agreements. At the time this agenda was written, the Administration had not yet transmitted the proposed budget trailer bill language associated with this request.

The five percent reduction could have an impact on revenue-generating activities of the Board of Equalization and the Franchise Tax Board. It would be important to structure any policy such that there would be flexibility to minimize or avoid revenue losses. The tax agencies are currently analyzing the proposal in light of this issue.

The Subcommittee may wish to consider holding this item open to allow time for more detailed information to be presented.

**Staff Recommendation:** Hold open.

#### Item Held Open.

#### Issue 4 – Salary Savings (CS 31.10): Salary Savings and Addition of Budget Bill Control Section 31.10

**Governor's Budget Request.** In a May Revision Finance letter, the Governor requests various modifications to adjust budget displays to reflect actual expenditures and eliminate the salary savings budget line item per Budget Letter 12-03. A department-by-department review of historic vacancies identified a total of 11,709 positions that will be permanently eliminated. This cost-neutral adjustment will accurately reflect department staffing levels and actual spending on personal services and operational expenses.

This request also includes: (1) a new budget bill control section to grant the Director of Finance authority to adjust positions if it is determined that subsequent adjustments to a department's position elimination total are necessary and (2) conforming changes to an existing budget bill control section CS 29.00, Personnel-Year Estimates of Governor's Budget, May Revision, and Final Change Book.

**Background.** All state departments have some vacant positions due to normal personnel turnover and hiring delays. In past decades, a typical state vacancy rate was about five percent; i.e., about five percent of authorized positions were vacant. According to the State Controller's Office, the current average vacancy rate is now about 15 percent and has hovered around that level for a number of years. Figure 1 on the next page displays that some departments have much higher vacancy rates. The Legislature authorizes positions so

that departments may increase staffing levels to accomplish a specified activity. A high vacancy rate could mean that a department is not able to accomplish all intended activities or that the department has found ways to accomplish the activities without filling some positions (for example, by instead using overtime or contract personnel).

**Figure 1: Vacancy Rates across Largest Departments**

Department	Established Positions	Vacancy Rate (%)
Corrections	60,950	18.6
Transportation	20,989	6.6
Mental Health	11,429	13.1
Highway Patrol	11,254	7.8
Employment Development	10,099	18.9
Motor Vehicles	8,392	6.1
Developmental Services	5,957	15.7
Franchise Tax Board	5,394	11.6
Justice	4,936	21.8
CalFire	4,773	15.6
Board of Equalization	4,666	11.3
Social Services	4,494	21.0
Public Health	3,742	21.0
Health Services	3,331	18.4
Water Resources	3,112	7.8

Source: State Controller's Data

When a position is vacant or filled by an employee at a pay level lower than the department's budget assumes, the department captures "salary savings." Since the early 1940s, the state budget has assumed that most departments have "normal salary savings," historically assuming vacancies equal to about five percent of authorized personnel, and reduces departments' personnel budgets accordingly. (In other words, departments are not appropriated any funds for *normal* salary savings.) "Excess salary savings," or savings from vacant positions in excess of normal salary savings, typically can be used for personnel or operations expenditures but are displayed in a department's personnel budget.

Over the past decade or so, a number of decisions made by both the Administration and Legislature have contributed to high vacancy rates. The policies described below have created incentives for departments to generate excess salary savings by deliberately holding positions vacant.

- *Unallocated Cuts.* The Legislature has approved many unallocated cuts, especially to GF departments. When implementing unallocated cuts, the Administration chooses how to achieve the reduction. It is common for departments to hold positions vacant to absorb unallocated cuts. As a result, departments largely funded by the GF have noticeably higher vacancy rates than special fund departments.
- *Leave Cash Outs.* The number of state retirements has increased as employees of the baby boom generation reach retirement age. Upon retirement, the state must compensate (or cash out) an employee for certain unused leave days. Generally,

departments do not receive supplemental appropriations to cover these costs. Some departments cannot absorb these costs without holding positions vacant.

- *Overtime Costs.* Some departments, especially those with 24-hour institutions, consistently incur high overtime costs. Like leave cash outs, departments sometimes do not receive supplemental appropriations for these costs. Departments with high overtime costs often have high vacancy rates to generate excess salary savings.

This request adjusts budget displays to more accurately reflect where costs are truly being incurred. For this reason, this request does not result in a change to appropriation authority. A statewide summary details the following as a result of this proposal: (1) decrease of 11,709.2 Authorized Positions and \$1.1 billion in regular Salaries; (2) increase of 669.4 Temporary Help Positions and \$137.2 million in Temporary Help funding; (3) increase of \$62.6 million in Overtime funding; (4) increase of \$6.0 million in Staff Benefits; (5) decrease of \$55.0 million in Operating Expenses and Equipment; and (6) increase of \$909.9 million to reflect the elimination of Salary Savings. These statewide totals reveal that money is generally moving from Operating Equipment & Expenses (OE&E) to personnel services. The Administration has provided two examples as explanation for this dynamic: (1) departments have been using OE&E money to fund authorized positions that were not funded and/or (2) departments have been keeping positions vacant (above the budgeted salary savings rate) to fund higher-paid positions, benefits, overtime, temporary help, or OE&E.

**LAO Recommendation.** The Administration should more fully develop its proposal and, if resubmitted later, it should be fully vetted by the Legislature over at least several months in some future year. While the proposal seemingly would have no effect on the number of people currently employed by the state or the amount of money spent by departments, it could result in staffing levels far different from the priorities of the Legislature. The proposal apparently would contribute nothing to balancing the 2012–13 budget. Therefore, the LAO recommends that the Legislature reject the Governor's proposal now and suggest that the Administration may choose to submit detailed proposals in the future justifying why vacant positions should be eliminated and how this new position budgeting process would work in future years. Legislative review of such a proposal would require extensive time of legislators and staff.

**Staff Comment.** This request is intended to eliminate budgeted salary savings and allocate that amount to accurately reflect how state operations funds are being expended. It will eliminate a large number of vacant authorized positions, which were unfunded positions as a result of normal salary savings. It will also ensure the budget no longer reflects salary savings, but rather department budgets for personnel and operations will be closer to reflecting actual costs in those areas. Finally, it holds departments harmless, as the total amount budgeted to a given department is not affected by this proposal. This request will make the budget more transparent, particularly to the public.

**Staff Recommendation:** Approve the May Revision request, including conforming changes to CS 29.00.

**VOTE: Staff Recommendation approved by a vote of 2-0, with Senator Anderson absent.**

**Issue 5 – Addition of New Budget Bill Control Section: Government Code Section 19826 Salary Adjustments**

**Background.** In 2006, the supervisory division of the California Association of Professional Scientists (CAPS) requested a quasi-legislative hearing alleging the Department of Personnel Administration (DPA, now California Department of Human Resources) was violating Government Code Section 19826 because fourteen supervisory scientist classifications were performing similar work as certain engineering supervisors and should be paid similar salaries. DPA held a quasi-legislative hearing and, on April 28, 2008, DPA issued a decision recommending salary increases for the fourteen supervisory scientist classifications. DPA has been restricted from implementing the necessary salary increases because there were no existing appropriations to fund the increases. Government Code Section 19826 only permits DPA to adjust salaries where there is an existing appropriation to fund the increase.

Since that time, CAPS initiated litigation, *CAPS v. DPA, et al*, against DOF and DPA to mandate payment of the salary increases. The trial court found DPA has an obligation to present the salary information to DOF for inclusion into the Governor's proposed budget and that DOF is obligated to present the information to the Legislature.

In May 2011, the Court of Appeal held that DOF does not have "a ministerial duty to seek an appropriation to fund salary adjustments approved by DPA." Instead, Section 19826, the court said, "imposes duties only on DPA", by (1) requiring "DPA to adjust salaries based on the principle that like salaries be paid for like work" and (2) prohibiting "DPA from adjusting salaries to the extent funds for new salaries have not been appropriated." The Court also held that "any additional appropriations" to fund such adjustments "are within the discretion of the Legislature and the Governor as they craft a budget." "They can choose," the court said, "to reject proposed salary adjustments despite Section 19826." In addition, the court said DOF needed "to submit to the committees in the Assembly and Senate which consider appropriations and to the Joint Legislative Budget Committee 'copies of budget materials submitted to it' by state agencies for Finance's approval."

The fourteen classifications impacted by the DPA decision are spread among 19 different state departments, primarily in the resources area, including the Departments of Fish and Game, Water Resources, Toxic Substances Control, Parks and Recreation, and the Water Resources Control Board. In total, the salary adjustments comprise \$10.2 million, of which \$1.6 million is GF.

**Staff Comment.** In examining this "like pay-like work" salary adjustment, several factors warrant the Subcommittee's consideration. CAPS pursued the current statutory process which resulted in a favorable decision yet has not resulted in the salary adjustments being made. While it could be argued that result points to a need to change statute, the dynamic remains that under the State Constitution the Legislature has the sole authority to appropriate funds. This salary adjustment has never been included in a Governor's January proposed budget. If it were to be included, it would be the Legislature's choice to adopt or reject any proposed salary adjustments despite Section 19826. In the same vein, the Legislature can choose to add the salary adjustment as it considers the Governor's proposed budget. Another potential concern is that adopting this salary adjustment for these supervisory positions could open the door to additional requests from other supervisory

classifications for quasi-legislative hearings before DPA. Adoption could also increase wage pressure to increase salaries for rank and file CAPS members. However, and per current law, those salary increases would be subject to collective bargaining. In the end, and after having been presented with the salary adjustment information, it is a choice of the Legislature whether to provide the appropriation necessary to implement salary increases under Section 19826.

**Staff Recommendation:** Approve a new budget bill control section to appropriate the funds necessary to adjust salaries for the fourteen supervisory scientist classifications per Government Code Section 19826.

**VOTE: Revised Staff Recommendation to add the funds to Item 9800 with provisional language to clarify the purpose of the funds approved by a vote of 2-0, with Senator Anderson absent.**

## CALIFORNIA DEPARTMENT OF JUSTICE (0820)

**Departmental Overview.** The constitutional office of the Attorney General, as chief law officer of the state, has the responsibility to see that the laws of California are uniformly and adequately enforced. This responsibility is fulfilled through the diverse programs of the Department of Justice (DOJ).

The DOJ is responsible for providing skillful and efficient legal services on behalf of the people of California. The Attorney General represents the people in all matters before the Appellate and Supreme Courts of California and the United States; serves as legal counsel to state officers, boards, commissioners and departments; represents the people in actions to protect the environment and to enforce consumer, antitrust, and civil laws; and assist district attorneys in the administration of justice. The DOJ also provides oversight, enforcement, education, and regulation of California's firearms/dangerous weapons laws; provides evaluation and analysis of physical evidence; regulates legal gambling activities in California; supports the telecommunications and data processing needs of the California criminal justice community; and pursues projects designed to protect the people of California from fraudulent, unfair, and illegal activities.

### *Issues Proposed for Discussion / Vote*

#### **Issue 6 – Crime Statistics Reports**

**Governor's Budget Request.** The Governor's 2012-13 budget includes a request via trailer bill language to suspend and repeal the requirements in this mandate program that remain in statute.

**Background.** Currently, the state must reimburse local governments for costs associated with fulfilling reporting requirements. Specifically, some, or all of, the cost of reporting hate crimes, homicides, and domestic violence by local agencies are reimbursable. A reporting requirement to the DOJ regarding certain demographic information about persons charged with specified firearms offenses has been repealed. Furthermore, all of the above mandates minus the firearms report, which was repealed in 2005, are currently in suspense.

According to the State Controller's Office (SCO), the requirement to produce domestic violence incident reports represents the vast majority of the total cost of the combined mandate. Based on SCO's claims data, it is estimated that about \$144 million of the \$146 million accrued cost through 2010-11 is associated with domestic violence incident report requirements, as is about \$17.2 million of the \$17.4 million annual in ongoing costs.

**LAO Recommendation.** The LAO has recommended that the Legislature make several changes to the Governor's proposal related to this mandate. They have recommended that the Legislature maintain the two requirements related to the reporting of hate crime and homicide statistics. Because some federal funds that come to the state—including grants made directly to local entities—may be jeopardized if some local agencies do not report these statistics, and given that they represent a relatively modest state cost, it is their belief that it is in the best fiscal interest of the state to maintain these requirements. They have noted that the Legislature could make optional, rather than delete, the requirement that local

law enforcement agencies produce domestic violence incident reports, thereby eliminating this state-reimbursable mandate.

Additionally, the LAO has suggested not deleting other sections of the domestic violence reporting statutes that would be deleted under the Governor's proposal. Rather, maintaining the requirement that DOJ report domestic violence statistics (which is not a state-reimbursable mandate), and making optional the provisions related to collection and reporting of domestic violence-related information.

Specifically, the LAO has recommended:

- Modifying the Governor's proposed trailer bill language to: (1) leave intact the hate crime and homicide reporting requirements, (2) make optional the requirements related to producing a written incident report for each domestic violence-related call for assistance, (3) make optional the requirements that local law enforcement record certain information related to these calls and report domestic violence statistics to DOJ, (4) leave intact the requirement that DOJ report domestic violence statistics, and (5) direct the Commission on State Mandates to modify its parameters and guidelines for this mandate program to allow local governments to submit future claims only for the hate crime and homicide reporting requirements that would not be eliminated under our proposal.
- Modifying budget bill language to (1) suspend just the portion of this mandate specifically related to the domestic violence incident reports and (2) augment Item 8885-295-0001 by \$1.8 million to pay the costs accrued through 2010-11 associated with the hate crime and homicide reporting requirements that would not be repealed under this proposal.

**Staff Comment.** There have been a number of stakeholders in the state that have identified the reports as a valuable source of information in identifying crime trends in the state. Furthermore, as noted by the LAO, these federal funds could be subject to the reporting of the information specified in this request.

**Staff Recommendation.** Adopt the LAO recommendation.

**VOTE: Staff Recommendation approved by a vote of 2-0, with Senator Anderson absent.**

### Issue 7 – Abbott Laboratories Settlement

**Governor's Budget Request.** The Governor's May Revise includes a request to transfer \$7.7 million dollars from the False Claims Act fund to the GF.

**Background.** The DOJ, along with the federal government and the Department of Health Care Services, negotiated a settlement with Abbott Laboratories that will provide up to \$7.7 million for deposit into the False Claims Act Fund. It is expected, that, in total, the state will receive approximately \$30.7 million in the settlement. A portion will benefit the GF through Medi-Cal, and the remainder will be deposited into the False Claims Act Fund, which will also benefit the GF.

The consumer protection settlement provides the state with the funds. In the complaint, it was noted that Abbott Laboratories had engaged in unfair and deceptive practices when it marketed one of its products, Depakote, for off-label uses. The drug Depakote is approved for treatment of seizure disorders, mania associated with bipolar disorder and prophylaxis of migraines, but the attorneys general alleged Abbott Laboratories marketed the drug for treating unapproved uses, including schizophrenia, agitated dementia, and autism.

**Staff Recommendation:** Approve May Revise request.

**VOTE: Staff Recommendation approved by a vote of 2-0, with Senator Anderson absent.**

### Issue 8 – DNA Identification Fund

**Governor's Budget Request.** The Governor's May Revise includes a request that item via trailer bill language that Government Code section 76104.7 be amended in order to add \$1 to the DNA penalty assessment. Additionally the May Revise has requested that Item 0820-011-0001 be eliminated.

**Background.** On November 2, 2004 California voters overwhelmingly passed Proposition 69, the DNA Fingerprint, Unsolved Crime and Innocence Protection Act. Under this initiative any person convicted of a felony offense, plead to a misdemeanor sex offense, and/or was arrested for violent felony or sex crimes is now eligible for inclusion in the Forensic DNA Identification Database. Originally, under Proposition 69, an additional penalty of \$1 is levied for each \$10 fraction thereof, upon every fine, penalty, or forfeiture collected by the courts for criminal offenses. Additional adjustments have been made to Government Code Section 76104.7 levying \$3 for every ten dollars, or part of ten dollars. The May Revise requests that the three dollar amount be struck from Government Code Section 76104.7 and that four dollars be inserted in its place, essentially adding one dollar to the current penalty assessment.

Also included in this request was the call to remove Item 0820-011-0001. This specific item authorized the Controller, upon order of the Director of Finance to transfer funds to the DNA Identification Fund. By increasing the amount levied against individuals specified above the need for a transfer from the General Fund to this account will not be necessary.

**Staff Comment:** Staff has no issues with this request.

**Staff Recommendation:** Approve May Revise Request.

**VOTE: Staff Recommendation approved by a vote of 2-0, with Senator Anderson absent.**

### Issue 9 – National Mortgage Settlement Agreement

**Background:** On April 19<sup>th</sup> the Senate Budget and Fiscal Review Subcommittee No. 5 heard the National Mortgage Settlement agreement as a discussion item as no details on the

discretionary funds associated with the settlement were available. Subsequently, the Administration has submitted a May Revise that would specify where some of the \$410 million in the discretionary award will be allotted. As noted in the April 19<sup>th</sup> Senate Budget and Fiscal Review Subcommittee No. 5 hearing agenda, amounts awarded to consumers, local agencies, and the state are identified below:

- \$12 billion will be dedicated to reduce the principal balance on loans by offering either affordable modifications or short sales to approximately 250,000 California homeowners.
- \$430 million payment in penalties, costs, and fees.
- \$849 million to help refinance the loans of approximately 28,000 California homeowners with interest rates above 5.25 percent who are current on their mortgage payments but underwater on their loans.
- \$279 million will be dedicated to provide payments to approximately 140,000 homeowners foreclosed upon during the worst period of servicing misconduct.
- \$1.1 billion will be distributed to California communities to repair blight and devastation left by waves of foreclosures in hard-hit areas.
- \$3.5 billion to forgive unpaid debts to banks for about 32,100 homeowners who have lost their homes to foreclosure.

The Governor's May Revise via trailer bill language identifies where a portion of the \$410.6 million in discretionary funds will be spent in 2012-13. According to the proposed trailer bill language, for 2011-12 and 2012-13, \$94.2 million of the settlement will be utilized to offset GF contributions that support public protection, consumer fraud enforcement and litigation, and housing related programs. Specifically, the funds will be utilized for the following programs in 2012-13:

- \$41.1 million paid as a civil penalty into the Unfair Competition Law Fund to offset the costs of the various Department of Justice Programs.
- \$44.9 million to support the Department of Justice's Public Rights and Law Enforcement programs relating to public protection and consumer fraud enforcement and litigation.
- \$8.2 million for the Department of Fair Employment and Housing. This will offset a portion of the General Fund contribution made to the Department; the contribution from this settlement reflects the housing related portion of the Department's workload.
- \$198 million will be set aside to offset GF costs for housing bond debt service for those programs funded with Proposition 46 and Proposition 1C housing bonds that assist homeowners.

The remaining funds (\$118.4 million) will be set aside for use in the 2013-14 budget for similar purposes.

**Staff Recommendation.** Leave this item open.

**Item Held Open.**

**VARIOUS LABOR BUDGET ITEMS*****Issues Proposed for Discussion / Vote*****Issue 10 – Employment Development Department (7100): Disability Insurance Automation Project**

**Governor’s Budget Request.** An April 1 Finance Letter requests a one-time augmentation of \$33.787 million (Disability Insurance Fund-DI Fund) to fund a net of 68 positions to support the fourth year of development, testing, and implementation of the Disability Insurance Automation (DIA) project.

This request was first heard by the Subcommittee on May 10, 2012. It was held open pending receipt of Administration responses to questions raised at the hearing.

**Background.** The DIA project was initially funded in the 2006 Budget Act. The DIA project will provide greater access to services for claimants, medical providers, and employers by allowing these individuals to use the Internet to submit claims data using a direct electronic interface or through web-based intelligent forms. This will simplify and automate the numerous manual work processes involved when a Disability Insurance (DI) claim is filed with EDD. Further, scanning/optical character recognition will be implemented to convert remaining paper claims to electronic format. Automated business logic will allow “in pattern” claims to be paid automatically, further increasing service delivery. The DIA project is scheduled to “Go Live” in summer 2013.

Of the positions contained in this request, 27 are new positions, 70 are existing positions, and 29 positions were eliminated due to a reduction in Key Data Operators, for a net of 68 positions. The reduction in Key Data Operators is a result of the DIA project providing Web-based intelligent forms, which removes key data entry tasks from DI branch employees, thus saving on the amount of staff required to administer the program.

**Staff Comment.** The resources in this request are consistent with Special Project Report (SPR) 3, which was approved by the Technology Agency in November 2011. SPR 3 reflects a number of changes relative to SPR 2, including the project end date being extended from August 2012 to June 2013 and scope changes to provide for an interface with the Single Client Database (SCDB) DB2 system. These changes are necessary, particularly with regard to the interface with the SCDB. As of November 2011, EDD is operating in a DB2 database platform environment, so it is necessary to revise the DIA project to ensure compatibility between the DI system and the main EDD database.

SPR 3 also reflects a variance of \$38.6 million (DI Fund) over SPR 2. While this is an accurate figure, it is potentially misleading given the extension of the project completion date. In addition, SPR 3 includes two years of *possible* additional vendor support. The more meaningful figure is that one-time costs increased by \$6.1 million and annual support costs increased by \$2 million once the project is fully implemented. Additionally, should EDD become vendor independent sooner than expected, the additional resources may not be required.

On the point of vendor independence, staff notes that EDD is in a difficult position. As the Subcommittee is aware, EDD has simultaneously pursued a number of large information technology projects. Through various budget actions, the Legislature supported these myriad efforts to modernize EDD's operations. As the projects, including DIA, collectively reach completion, EDD faces a challenge to acquire, train, and deploy sufficient state staff resources to transition to support of the projects and terminate its need for vendor support. In this vein, the Technology Agency has required EDD to provide an enterprise wide resource plan by January 31, 2013, outlining how EDD will provide sufficient state resources to these projects.

**Staff Recommendation:** Approve the April 1 Finance Letter.

**VOTE:** Staff Recommendation approved by vote of 2-0, with Senator Anderson absent. EDD shall provide to the Subcommittee a one page summary of the expected benefits of this information technology project.

**Issue 11 – Employment Development Department (7100): Unemployment Insurance Modernization (UIMOD) Continued Claims Redesign Project**

**Governor's Budget Request.** In a May Revision Finance letter, the Governor requests a one-time budget augmentation of \$16.9 million (including \$11.6 million EDD Contingent Fund and \$5.3 million Unemployment Fund) and a redirection of \$6.3 million Unemployment Administration Fund (UI Admin Fund) for the UIMOD Continued Claims Redesign (CCR) Project. The requested increase will fund 47 existing positions, hardware purchases, project management and other consultant costs, Independent Verification and Validation services, Independent Project Office Coordinator services, and an increase to the prime vendor services contract.

**Background.** First authorized in the 2003 Budget Act, the Call Center Network Platform and Application Upgrade (CCNPAU) and CCR subprojects are intended to modernize unemployment insurance (UI) services. In May 2006, the EDD submitted a Special Project Report (SPR) that proposed to merge the two subprojects due to multiple interdependencies. This necessitated refining the scope, schedule, and costs of the combined projects.

The CCNPAU subproject built a single network infrastructure for EDD's 15 call centers to interact with an intelligent call routing system, thereby reducing call blockage and improving access to services at EDD's call centers, to meet federal Department of Labor performance guidelines. This project increased the number of available agents by 1,000 and provided the infrastructure necessary to route calls to specialized agents. The CCNPAU project was completed in May 2011.

The CCR subproject will develop an interactive Internet Web site and telephone application that allows customers to file UI claims and recertify on a bi-weekly basis on the Web or by phone. Customers will be able to confirm certification, reopen claims, submit address changes, and receive communications via this application. This solution reduces the amount of workload that must be processed. SPR 4 for the CCR project was approved by the Technology Agency on April 18, 2012. The CCR project is scheduled for "go live" implementation in August 2013.

**Staff Comment.** SPR 4 reflects a variance of \$30 million over the prior SPR. Of these costs, \$11 million is attributable to the CCNPAU project. While this project was completed in May 2011, funds were spent to incorporate an identity management solution and additional call center agent seats and equipment due to unprecedented workload increases. The remaining \$19 million is attributable to the CCR project. As with the DIA project, two additional years of *possible* additional vendor support are included, resulting in \$10 million for extending current contracts, equipment, data center services, hardware, software, and state staff. Should EDD become vendor independent sooner than expected, the additional resources may not be required. The remaining \$9 million is due to the need to update this project to provide for an interface with the Single Client Database DB2 system. Again similar to the DIA project, these changes are necessary. As of November 2011, EDD is operating in a DB2 database platform environment, so it is necessary to revise the CCR project to ensure compatibility with the main EDD database.

Staff also notes that the funds included in this request, which are completely necessary to cover the costs for the final year of work to complete this project, do involve trade-offs. This request includes both EDD Contingent Fund and redirected UI Admin Fund dollars. The Contingent Fund is GF-fund fungible. The use of the Contingent Fund in this manner is self-evident; these funds would otherwise be available for GF purposes. The UI Admin Fund are federal dollars provided to the state in support of the costs to administer the UI program. The redirection of \$6.3 million from the UI Admin Fund for the CCR project will result in approximately 284,000 fewer calls that will be answered on an annual basis, 88,000 claims filed by phone, the Internet, and paper or fax would be processed untimely, and 100,000 eligibility determinations appointments would be scheduled untimely on an annual basis. While these trade-offs are not desirable, they are necessary as it is not an option to abandon the CCR project which is in its final 12 months. The CCR project will also result in more services becoming available to the public as "self-service" without any staff interventions. This will generate more efficiencies allowing staff to be redirected to serve customers who are not computer or on-line users. The CCR project will also assist EDD in its ongoing challenges with inadequate federal UI Admin funds (California receives \$98 million, or 22 percent less, than needed to fully fund the actual costs to administer the UI program).

On the point of vendor independence, and as with the DIA project, staff notes that EDD is in a difficult position. As the Subcommittee is aware, EDD has simultaneously pursued a number of large information technology projects. Through various budget actions, the Legislature supported these myriad efforts to modernize EDD's operations. As the projects collectively reach completion, EDD faces a challenge to acquire, train, and deploy sufficient state staff resources to transition to support of the projects and terminate its need for vendor support. In this vein, the Technology Agency has required EDD to provide an enterprise wide resource plan by January 31, 2013, outlining how EDD will provide sufficient state resources to these projects.

**Staff Recommendation:** Approve the May Revision request. Note, this request includes a conforming action to approve a May Revision request in Budget Item 0530, Office of System Integration (OSI), Health and Human Services Agency, to reduce OSI spending authority in both 2011-12, 2012-13, and 2013-14 to align the authority with the remaining project costs identified in SPR 4 for the CCR project.

**VOTE: Staff Recommendation approved by a vote of 2-0, with Senator Anderson absent. EDD shall also provide to the Subcommittee a copy of the January 31, 2013, report required by the Technology Agency.**

**Issue 12 – Department of Industrial Relations (7350): Implementation of 2011 Legislation, Prevailing Wage Violations (AB 551) and Willful Misclassification of Independent Contractor (SB 459)**

**Governor’s Budget Requests.** The January budget requests increased expenditure authority from the Labor Enforcement and Compliance Fund (LECF) to comply with two recent statutory changes, as follows:

**1. Prevailing Wage Violations (Chapter 677, Statutes of 2011 – AB 551)**

**Summary.** The January budget requests \$765,000 and four positions in 2012-13, and \$639,000 on-going, to comply with the requirements of Chapter 677, Statutes of 2011 (AB 551), related to prevailing wage violations. Of the requested resources in 2012-13, \$100,000 is for one-time costs to redesign and/or upgrade the existing database system.

**Background.** In its consideration of Chapter 551, the Legislature was presented with the following question: “Should the penalties for failing to pay prevailing wages on public works projects and failing to provide payroll records in a timely manner be increased, as well as create a process for debarment for failing to follow the laws governing public works contracts, to encourage compliance with public works laws and the payment of the prevailing wage?”

In answering that question, Chapter 677 (1) increases the penalty assessed from \$20 to \$80 to contractors and subcontractors with previous violations and from \$30 to \$120 for willful violations; (2) requires the Labor Commissioner to maintain a Web site listing of contractors who are ineligible to bid on or be awarded a public works contract and at least annually notify awarding bodies of the availability of the list of disbarred contractors; and (3) states that the Labor Commissioner notify the contractor or subcontractor that, in addition to any other penalties, the contractor shall be subject to disbarment if certified payroll records are not produced within 30 days after receipt of written notice. Failure to comply by that deadline would prohibit the contractor from bidding on or be awarded a contract for public work or performing work as a subcontractor on a public works project for three years.

**2. Willful Misclassification of Independent Contractor (Chapter 706, Statutes of 2011 – SB 459)**

**Summary.** The January budget requests \$1.7 million and 13 positions in 2012-13, and \$1.65 million on-going, to comply with the requirements of Chapter 706, Statutes of 2011 (SB 459), related to willful misclassification of independent contractors.

**Background.** In its consideration of Chapter 706, the Legislature was presented with the following question: “Should California employers and the DIR be required to take specified actions to decrease the incidence of misclassification of workers as independent contractors and should the law governing classification of persons as independent contractors provide civil penalties for willful misclassification of an employee as an independent contractor?”

In answering that question, Chapter 706 prohibits the willful misclassification of an individual as an independent contractor rather than as an employee and provides that persons or employers violating the prohibition are subject to specified civil penalties as assessed by the Labor and Workforce Development Agency or a court.

**May Revision Request.** In a May Revision Finance letter, the Governor requests to instead implement these statutory changes with fund support from the Labor and Workforce Development Fund.

The Labor and Workforce Development Fund (LWDF) was expected to have a fund balance of \$8.7 million in 2012-13; these requests would use a total of \$2.5 million from that fund. The LWDF is established in Labor Code Section 2699 and is a repository for funds awarded through civil actions by employees against employers. The fund is intended to be used by the Labor and Workforce Development Agency to enforce labor laws and educate employees and employers about labor laws.

**Staff Comment.** The May Revision proposal to support these workload requests from the LWDF responds to concerns raised by the Subcommittee when the requests were initially heard on March 8, 2012. The concerns centered on the fact that the Labor Enforcement Compliance Fund is only authorized until June 30, 2013; therefore, it would be difficult for the Subcommittee to fund a permanent workload request on a fund source with a quickly impending sunset. With the May Revision change, staff notes no concern with the requests. The fund source question has been satisfactorily resolved. The programmatic specifics of these requests are consistent with the legislation that was approved by the Legislature last year and staff concurs with the Administration's finding that implementation of Chapters 677 and 706 will result in increased workload for the Department of Industrial Relations.

**Staff Recommendation:** Approve the budget requests, as modified by the May Revision, to utilize the Labor and Workforce Development Fund as the fund source to support implementation of the requests.

**VOTE: Staff Recommendation approved on a five-year limited-term basis by a vote of 2-0, with Senator Anderson absent. Subcommittee also adopted SRL requiring DIR to provide a report by January 10, 2017, of workload and outcomes related to implementation of SB 459.**

### **Issue 13 – Department of Industrial Relations (7350): Employee/Employer Education and Outreach**

**Governor's Budget Request.** The January budget requests three-year limited-term increased expenditure authority of \$2.3 million in 2012-13, and \$1.6 million in 2013-14 and 2014-15, from the Labor and Workforce Development Fund (LWDF) and four redirected positions, to increase the overall efficacy of statewide enforcement of labor laws.

This request was initially heard on March 8, 2012. It was held open due to uncertainty regarding the availability of future funding from the Labor Enforcement Compliance Fund (LECF), which may necessitate prioritization of limited funding available to DIR, including LWDF funds, to meet its current obligations, including implementation of recent legislation.

**Background.** The mission of the DIR is to protect the California workforce, improve working conditions, and enhance opportunities for profitable employment. These responsibilities are carried out through three major programs: the adjudication of workers' compensation disputes; the prevention of industrial injuries and deaths; and the enforcement of laws relating to wages, hours, and working conditions. This request utilizes funding available and accrued from Chapter 906, Statutes of 2003. Chapter 906 allows employees to sue their employers for civil penalties for employment law violations. Any penalties recovered under this chapter are required to be distributed 75 percent to the Labor and Workforce Development Agency (LWDA) for enforcement of labor laws and education of employers and employees about their rights and responsibilities, and 25 percent to the aggrieved employee. The funds directed to LWDA are deposited in the LWDF. Currently, DIR does not receive an appropriation from this fund. Since its inception, the fund has been underutilized with revenue outpacing annual expenses.

**Staff Comment.** The Administration has affirmed that the resources in this request will not overlap or otherwise duplicate prior efforts. It will also build on lessons learned from prior outreach campaigns, such as that billboard and radio ads are the most effective communication tool. DIR indicates that this new outreach effort will not utilize television media.

With regard to outcomes, since this is a limited-term outreach effort, the Administration indicates that it will undertake a statistical analysis of the number of: citations issued; self-audits to reimburse employees for minimum wages and overtime; number of complaints alleging labor law violations; violations found during inspections; wages recovered for workers; number of attendees at outreach events and whether compliance increases following such outreach; and, litigation brought to protect workers and hold violators responsible. Given that this data will be collected, the Subcommittee may consider adding a report by March 10, 2013, requiring DIR to provide an update about the status of the implementation of this effort to increase the overall efficacy of statewide enforcement of labor laws.

**LAO Recommendation.** The Governor's proposed education and outreach activities are consistent with DIR's mission to protect California's workforce, improve working conditions, and enhance opportunities for profitable employment. Additionally, these activities are an appropriate use of LWDF funding.

**Staff Recommendation:** Approve the request with supplemental report language requiring the DIR to report to the Legislature by March 10, 2013, as to the status of the implementation of this effort to increase the overall efficacy of statewide enforcement of labor laws.

**VOTE: Staff Recommendation approved by vote of 2-0, with Senator Anderson absent.**

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



Wednesday, May 23, 2012  
1:30 p.m.  
Room 3191  
Part B

Consultant: Joe Stephenshaw

**Item Number and Title**

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**Vote Only**

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## Vote Only Items

Item Number	Department	Vote Only Calendar		Amount
		Issue	Action	
1	CDCR	Local Flexibility	Approve as Budgeted	\$0
2	CDCR	Shift Phase I Jail Funding to Phase II	Approve as Budgeted	\$0
3	CDCR	Authorize the Sale of the SYCC	Approve as Budgeted	\$0
4	CDCR	CDCR's Blueprint	Approve with Modifications, Page 7	See Issue, Page 4
5	CDCR	ISMIP Program	Approve as Proposed	\$0
6	CDCR	CDCR's Reorg	Approve as Proposed	\$0
1	BSCC	BSCC Workload	Approve as Proposed	\$750,000

## CA Department of Corrections and Rehabilitation (5225)

### Issue 1 – Local Flexibility

**Governor's Proposal.** The May Revision proposes trailer bill language to 1) allow a county to enter into an agreement with another county or multiple counties for the purpose of housing any adult offenders serving a term in a county jail and 2) allow local government entities to hire extra help for one-time or short-term events, such as high profile trials that require additional sheriff coverage, and to allow the retired person to be utilized as needed for these types of events for more than one fiscal year.

**Background.**

**County to County Transfers.** Under existing law counties can only contract with nearby counties for the housing of adult misdemeanants and any persons required to serve a term of imprisonment in county adult detention facilities as a condition of probation. Sheriffs are unable to contract with other counties for the housing of adult felony offenders who now serve their terms in local jails.

**Use of Temporary Employees by Counties.** This change allows retired persons to be appointed to vacant permanent positions. The intent is to allow local government entities to hire extra help for one-time or short-term events and allow the retired person to be utilized as needed for these types of events for more than one fiscal year. As an

example, Sheriffs currently use retired persons during significant criminal trials to provide additional security personnel for a short period of time, typically not exceeding two to three weeks. It would not be prudent to use a permanent employee for this work, as those positions would have to be redirected from patrols in the community or would have to be covered with more expensive overtime.

**Recommendation.** Approve as proposed.

## **Issue 2 – Shift Phase I Jail Funding to Phase II**

**Governor’s Proposal.** The May Revise proposes trailer bill language to shift \$171.3 million lease revenue bond authority relinquished in Phase I of the Local Jail Construction Financing Program to Phase II.

**Background.** Phase II of the Jail Financing Program, AB 900 (Solario 2007), was amended by 2011 trailer bill that allow counties that received awards in Phase I and had not yet encumbered state financing to relinquish their award and re-compete in Phase II. Three counties chose to relinquish their Phase I award: Kern (\$100 million), Santa Barbara (\$56.3 million), and San Benito (\$15 million). The proposed trailer bill language would move the relinquished financing authority to Phase II, where it would be awarded back to these counties.

**Recommendation.** Approve as proposed.

## **Issue 3 – Authorize the Sale of the Southern Youth Correctional Reception Center and Clinic**

**Governor’s Proposal.** The May Revise proposes trailer bill language to declare the Southern Youth Correctional Reception Center and Clinic surplus property and authorize the Department of General Services to sell it to Los Angeles County at market value.

**Background.** The Southern Youth Correctional Reception Center and Clinic is located in Norwalk, Los Angeles County and consists of 32 acres. The majority of the approximately 30 structures were built in 1954 and are in various stages of disrepair. The proposed trailer bill language would allow the sale to LA County to occur sooner than the traditional surplus property bill. Until LA County has acquired the property they intend to lease the property from the state.

**Recommendation.** Approve as proposed.

## Issue 4 – CDCR’s Blueprint

**Governor’s Proposal.** In order to achieve \$1 billion in savings in 2012-13 (growing to \$1.5 billion by 2015-16) related to the reduction in CDCR’s population driven by realignment, advance efforts to end various class-action lawsuits, and maintain an effective prison system, the May Revision includes a comprehensive plan for CDCR, *The Future of California Corrections (Blueprint)*, which includes the following:

1. A net reduction of \$1.9 million.
2. The addition of a budget item (5225-007-0001) in the amount of \$13.8 million to reflect continuation of the Community Correctional Program.
3. \$810 million in lease revenue bond authority to construct three level II dorm facilities.
4. Includes \$700 million in AB 900 (Solorio 2007) lease revenue authority for court-ordered medical upgrades.
5. Includes \$167 million in AB 900 lease revenue authority for the conversion of the Dewitt juvenile facility (1,133 beds, including 953 health care beds).
6. Reappropriates funding necessary to ensure completion of health care projects required to comply with court orders as well as maintain the safe and efficient operation of existing prison facilities.
7. Adds provisional language specifying \$2.8 million is available for expenditure on capital improvement projects at the Folsom Transitional Treatment Facility.
8. Eliminates duplicative provisional reporting language that will now be provided for in statute.
9. Amends provisional language to adjust contract dollars and average daily population figures for out-of-state facilities.
10. Adds the following TBL:
  - a. **Civil Addicts Program Sunset Date** – Ceases commitments of civil addicts to CDCR beginning January 1, 2013.
  - b. **Accountability Language** – Requires CDCR to establish appropriate oversight, evaluation, and accountability measures as part of the Blueprint.
  - c. **Reporting Language** – Requires CDCR to submit estimated expenditures, as specified, to the Department of Finance for inclusion in the annual Governor’s Budget and May Revision.
  - d. **AB 900** – Amends various code sections related to AB 900 as follows:
    - i. Eliminate approximately \$4.1 billion in lease revenue bond authority that is no longer needed for implementation of CDCR’s facilities plan.
    - ii. Delete various sections of the Penal Code related to construction of reentry facilities and the benchmarks associated with phase two of infill, reentry, and health care facilities.
    - iii. Allow for use of specific AB 900 funds for medication distribution facilities improvement projects.

- iv. Revise reporting requirements so that the remaining projects are subject to an approval process that is the same as other state capital outlay projects.
- v. Various clean-up amendments consistent with the changes outlined above.

**Background.** As noted in the Blueprint, for years, California's prison system has faced costly and seemingly endless challenges. Decades-old class-action lawsuits challenge the adequacy of critical parts of its operations, including its health care system, its parole-revocation process, and its ability to accommodate inmates with disabilities. In one case, a federal court seized control over the prison medical care system and appointed a Receiver to manage its operations. The Receiver remains in place today. The state's difficulty in addressing the prison system's multiple challenges was exacerbated by an inmate population that—until recently—had been growing at an unsustainable pace. Overcrowded prison conditions culminated in a ruling last year by the United States Supreme Court ordering the CDCR to reduce its prison population by tens of thousands of inmates by June 2013. At the same time that prison problems were growing, California's budget was becoming increasingly imbalanced. By 2011, California faced a \$26.6 billion General Fund budget deficit, in part because the department's budget had grown from \$5 billion to over \$9 billion in a decade.

To achieve budgetary savings and comply with federal court requirements, the Governor proposed, and the Legislature passed, landmark prison realignment legislation to ease prison crowding and reduce the department's budget by 18 percent. Realignment created and funded a community-based correctional program where lower-level offenders remain under the jurisdiction of county governments. In the six months that realignment has been in effect, the state prison population has dropped considerably—by approximately 22,000 inmates. This reduction in population is laying the groundwork for sustainable solutions. But realignment alone cannot fully satisfy the Supreme Court's order or meet the department's other multi-faceted challenges.

This Blueprint builds upon the changes brought by realignment, and delineates a comprehensive plan for the CDCR to save billions of dollars by achieving its targeted budget reductions, satisfying the Supreme Court's ruling, and getting the department out from under the burden of expensive federal court oversight.

In summary the Blueprint contains the following components:

**Improve the Inmate Classification System.** As a result of research produced by a panel of correctional experts and input from seasoned professionals, the department is modifying its classification system. The modified system will enable the department to safely shift about 17,000 inmates to less costly housing where they can benefit from more access to rehabilitative programs. These modifications will begin to be implemented within six months, and they will eliminate the need to build expensive, high-security prisons.

Return Out-of-State Inmates. The department began sending inmates out-of-state when overcrowding was at its worst in 2007. Currently, there are more than 9,500 inmates outside of California. The department will be able to bring these inmates back as the prison population continues to drop, classification changes are made, and additional housing units are constructed at existing facilities. Returning these inmates to California will stop the flow of taxpayer dollars to other states, and is expected to save the state \$318 million annually.

**Improve Access to Rehabilitation.** This plan enables the department to improve access to rehabilitative programs and place at least 70 percent of the department's target population in programs consistent with their academic and rehabilitative needs. Increasing access to rehabilitative programs will reduce recidivism by better preparing inmates to be productive members of society. In doing so, it will help lower the long-term prison population and save the state money.

The department will establish reentry hubs at certain prisons to concentrate program resources and better prepare inmates as they get closer to being released. It will also designate enhanced programming yards, which will incentivize positive behavior. For parolees, the department will build a continuum of community-based programs to serve, within their first year of release, approximately 70 percent of parolees who need substance-abuse treatment, employment services, or education.

**Standardize Staffing Levels.** Realignment's downsizing has left the department with uneven, ratio-driven staffing levels throughout the system. Continued use of these increasingly outdated staffing ratios as the inmate population declines would be costly and prevent efficient operations. This plan establishes new and uniform staffing standards for each institution that will enable the department to operate more efficiently and safely.

**Comply with Court Imposed Health Care Requirements.** In recent years, numerous measures have been implemented that have significantly improved the quality of the department's health care system. The Inspector General regularly reviews and scores the department's medical care system, and these scores have been steadily rising. In addition, the capacity of the health care system will soon increase. Slated for completion during the summer of 2013, the California Health Care Facility in Stockton is designed to house inmates requiring long-term medical care and intensive mental health treatment. Its annex, the DeWitt Nelson Youth Correctional Facility, will open in the summer of 2014 to create a unified Stockton complex, allowing both facilities to efficiently transition inmate-patients between the two, while avoiding transportation and security costs as well as the need for expensive services in community hospitals and clinics. These projects, in addition to ongoing mental health and dental projects and new plans to increase medical clinical capacity at existing prisons, will satisfy court imposed requirements.

**Satisfy the Supreme Court's Order to Reduce Prison Crowding.** As previously mentioned, the department's newly released spring population projections suggest that

the department may fall a few percentage points short of meeting the final court-ordered crowding-reduction benchmark even with realignment. In June 2013, the department's prison population is projected to be at 141 percent of design capacity rather than the 137.5 percent goal identified by the Supreme Court. The additional measures proposed in this plan will allow the state to seek and obtain from the court a modification to raise the final benchmark to 145 percent of design capacity. Otherwise, alternatives such as continuing to house inmates out-of-state will have to be considered.

In its order, the Supreme Court contemplated that appropriate modifications to its order may be warranted. The Court explained that as the state implements the order, "time and experience" may reveal effective ways of ensuring adequate health care—other than through population reductions. The state "will be free to move" the Court for modification of the order on that basis, and "these motions would be entitled to serious consideration." This plan sets forth necessary reforms to satisfy this order as well as other court imposed requirements related to the provision of health care services.

The reduced prison population has already substantially aided the department's ability to provide the level of care required by the courts. As the population further declines, the department's ability to provide the required level of prison health care will continue to improve. New health care facilities and enhanced treatment and office space at existing prisons will enable the department to maintain a health care system capable of providing this level of care for a higher density prison population than the Court originally contemplated. This plan will provide critical support for the state's ability to satisfy the Supreme Court's order without having to maintain expensive out-of-state prison beds or release inmates early.

Realignment has provided California an historic opportunity to create not just a less-crowded prison system, but one that is safer, less expensive, and better equipped to rehabilitate inmates before they are released. This plan seizes on that opportunity. Each of the following sections describes key aspects of a prison system that combines the inmate reductions achieved in realignment with a facility-improvement plan that will enable a more efficient inmate health care delivery system. This is the prison system that best serves California.

**Recommendation.** Approve CDCR's Blueprint with the following modifications:

1. Transfer \$643,000 to the Office of the Inspector General (OIG) to support 5 positions and adopt trailer bill language specifying the OIG's responsibility for oversight and review of various staffing and program aspects of the Blueprint.
2. Remove funding for inmate rehabilitative programs from CDCR's main item of appropriation and create a separate item of appropriation for inmate rehabilitative programs, including a provision specifying that any funds not spent for the appropriated purpose shall revert to the General Fund.
3. Revise the propose trailer bill language for the Medical Upgrade Program and Dewitt conversion and budget bill language for the Infill Projects to specify that authorized funding shall only be expended on these projects and that detail scope and cost information for the Medical Upgrade Program and the Infill

Projects shall be provided to the Joint Legislative Budget Committee in conjunction with submittal to the Public Works Board.

4. Add budget bill language that specifies that the intent of the Infill Projects is to provide a flexible design to satisfy the needs of housing subpopulations of inmates, such as those with disabilities or mental health needs, that the department has not had sufficient capacity for, as various court orders have identified.
5. Adopt Trailer Bill Language that mandates that the California Rehabilitation Center (Norco) shall close upon completion of the Infill Projects.

### **Issue 5 – ISMIP Program**

**Proposal.** Trailer bill language is proposed to improve the existing Integrated Services for Mentally Ill Parolee-clients (ISMIP) program strengthening the full spectrum of community services necessary to reduce recidivism and ensure a continuum of care for offenders with mental health needs by adding a focus on housing, collaboration with parole outpatient clinics, and ensuring providers work with county and regional services to help bridge services for parolees as they transition off of parole.

**Background.** Assembly Bill 900 authorized the California Department of Corrections and Rehabilitation to obtain day treatment and to contract for crisis care services for parolees with mental health problems. CDCR established and the Adult Parole Division implemented the ISMIP.

The ISMIP Program provides varied levels of care, supportive/transitional housing, and an array of mental health rehabilitative services to assist with the development of independent living in the least restrictive environment possible. Parole Agents and Parole Outpatient Clinic staff refer parolees to contracted ISMIP providers for day treatment and crisis care services. Mental health treatment is provided by contracted providers when the parolee has Medi-Cal or other resources established. Medication management is provided by POC to non-benefited parolees enrolled in ISMIP, as well as individual or group therapy when unavailable from other funding sources outside of CDCR.

**Recommendation.** Approve as proposed.

### **Issue 6 – CDCR Reorg**

**Proposal.** Trailer bill language is proposed to ensure that CDCR's current organizational structure is reflected in statute.

**Background.** CDCR's organizational structure has changed in recent years, primarily due to the absorption of budget cuts. This language codifies these reductions in

executives at CDCR and makes several positions confirmable by the Senate. Including, the Executive Director of the Board of State and Community Corrections.

**Recommendation.** Approve as proposed.

## **Board of State and Community Corrections (5227)**

### **Issue 1 – BSCC Workload**

**Governor’s Proposal.** The May Revise proposes \$750,000 General Fund for the Board of State and Community Corrections (BSCC) to provide additional administrative support for the BSCC necessary to assist local governments with the implementation of realignment.

**Background.** The 2011-12 Budget, Chapter 36, Statutes of 2011 (SB 92) as amended by Chapter 136, Statutes of 2011 (AB 116) established the BSCC, effective July 1, 2012, and consolidated various public safety programs within the BSCC. Specifically, SB 92:

Abolished the Corrections Standards Authority (CSA) within CDCR and established the BSCC as an independent entity.

- Transferred the powers and duties of CSA to the BSCC.
- Transferred certain powers and duties that currently reside with the California Emergency Management Agency (Cal EMA) to the BSCC.
- Eliminated the California Council on Criminal Justice, and assigned its powers and duties to the BSCC.
- Reestablished the Commission on Correctional Peace Officers Standards and Training within CDCR.

Effective July 1, 2012, SB 92 establishes the BSCC through the transfer of the CSA from CDCR and certain local assistance grant programs from Cal EMA. The BSCC’s mission is to provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California’s adult and juvenile criminal justice system, including providing technical assistance and coordination to local governments related to realignment. This mission reflects the principle of aligning fiscal policy and correctional practices, including prevention, intervention, suppression, supervision, and incapacitation. The goal is to promote a justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations.

The requested administrative resources are necessary for the BSCC to assist local governments with the implementation of realignment and to carry out its responsibilities to provide statewide leadership, coordination, and technical assistance to promote

effective state and local efforts and partnerships in California's adult and juvenile criminal justice systems.

**Recommendation.** Approve as proposed.

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Lois Wolk



Wednesday, May 23, 2012

1:30 p.m.

Room 3191

Part B

**OUTCOMES**

Consultant: Joe Stephenshaw

**Item Number and Title**

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**Vote Only**

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## Vote Only Items

		Vote Only Calendar			
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2	CDCR	Shift Phase I Jail Funding to Phase II	Approve as Budgeted	\$0	Approved 2-0 (Anderson not voting)
3	CDCR	Authorize the Sale of the SYCC	Approve as Budgeted	\$0	Approved 2-0 (Anderson not voting)
4	CDCR	CDCR's Blueprint	Approve with Modifications, Page 7	See Issue, Page 4	Approved 2-0 (Anderson not voting)
5	CDCR	ISMIP Program	Approve as Proposed	\$0	Approved 2-0 (Anderson not voting)
6	CDCR	CDCR's Reorg	Approve as Proposed	\$0	Approved 2-0 (Anderson not voting)
1	BSCC	BSCC Workload	Approve as Proposed	\$750,000	Approved 2-0 (Anderson not voting)

## CA Department of Corrections and Rehabilitation (5225)

### Issue 1 – Local Flexibility

**Governor’s Proposal.** The May Revise proposes trailer bill language to 1) allow a county to enter into an agreement with another county or multiple counties for the purpose of housing any adult offenders serving a term in a county jail and 2) allow local government entities to hire extra help for one-time or short-term events, such as high profile trials that require additional sheriff coverage, and to allow the retired person to be utilized as needed for these types of events for more than one fiscal year.

**Background.**

**County to County Transfers.** Under existing law counties can only contract with nearby counties for the housing of adult misdemeanants and any persons required to serve a term of imprisonment in county adult detention facilities as a condition of

probation. Sheriffs are unable to contract with other counties for the housing of adult felony offenders who now serve their terms in local jails.

**Use of Temporary Employees by Counties.** This change allows retired persons to be appointed to vacant permanent positions. The intent is to allow local government entities to hire extra help for one-time or short-term events and allow the retired person to be utilized as needed for these types of events for more than one fiscal year. As an example, Sheriffs currently use retired persons during significant criminal trials to provide additional security personnel for a short period of time, typically not exceeding two to three weeks. It would not be prudent to use a permanent employee for this work, as those positions would have to be redirected from patrols in the community or would have to be covered with more expensive overtime.

**Recommendation.** Approve as proposed.

## **Issue 2 – Shift Phase I Jail Funding to Phase II**

**Governor’s Proposal.** The May Revise proposes trailer bill language to shift \$171.3 million lease revenue bond authority relinquished in Phase I of the Local Jail Construction Financing Program to Phase II.

**Background.** Phase II of the Jail Financing Program, AB 900 (Solorio 2007), was amended by 2011 trailer bill that allow counties that received awards in Phase I and had not yet encumbered state financing to relinquish their award and re-compete in Phase II. Three counties chose to relinquish their Phase I award: Kern (\$100 million), Santa Barbara (\$56.3 million), and San Benito (\$15 million). The proposed trailer bill language would move the relinquished financing authority to Phase II, where it would be awarded back to these counties.

**Recommendation.** Approve as proposed.

## **Issue 3 – Authorize the Sale of the Southern Youth Correctional Reception Center and Clinic**

**Governor’s Proposal.** The May Revise proposes trailer bill language to declare the Southern Youth Correctional Reception Center and Clinic surplus property and authorize the Department of General Services to sell it to Los Angeles County at market value.

**Background.** The Southern Youth Correctional Reception Center and Clinic is located in Norwalk, Los Angeles County and consists of 32 acres. The majority of the approximately 30 structures were built in 1954 and are in various stages of disrepair. The proposed trailer bill language would allow the sale to LA County to occur sooner

than the traditional surplus property bill. Until LA County has acquired the property they intend to lease the property from the state.

**Recommendation.** Approve as proposed.

#### **Issue 4 – CDCR’s Blueprint**

**Governor’s Proposal.** In order to achieve \$1 billion in savings in 2012-13 (growing to \$1.5 billion by 2015-16) related to the reduction in CDCR’s population driven by realignment, advance efforts to end various class-action lawsuits, and maintain an effective prison system, the May Revision includes a comprehensive plan for CDCR, *The Future of California Corrections (Blueprint)*, which includes the following:

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8. Eliminates duplicative provisional reporting language that will now be provided for in statute.
9. Amends provisional language to adjust contract dollars and average daily population figures for out-of-state facilities.
10. Adds the following TBL:
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  - b. **Accountability Language** – Requires CDCR to establish appropriate oversight, evaluation, and accountability measures as part of the Blueprint.
  - c. **Reporting Language** – Requires CDCR to submit estimated expenditures, as specified, to the Department of Finance for inclusion in the annual Governor’s Budget and May Revision.
  - d. **AB 900** – Amends various code sections related to AB 900 as follows:

- i. Eliminate approximately \$4.1 billion in lease revenue bond authority that is no longer needed for implementation of CDCR's facilities plan.
- ii. Delete various sections of the Penal Code related to construction of reentry facilities and the benchmarks associated with phase two of infill, reentry, and health care facilities.
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**Comply with Court Imposed Health Care Requirements.** In recent years, numerous measures have been implemented that have significantly improved the quality of the department's health care system. The Inspector General regularly reviews and scores the department's medical care system, and these scores have been steadily rising. In addition, the capacity of the health care system will soon increase. Slated for completion during the summer of 2013, the California Health Care Facility in Stockton is designed to house inmates requiring long-term medical care and intensive mental health treatment. Its annex, the DeWitt Nelson Youth Correctional Facility, will open in the summer of 2014 to create a unified Stockton complex, allowing both facilities to

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**Recommendation.** Approve CDCR's Blueprint with the following modifications:

1. Transfer \$643,000 to the Office of the Inspector General (OIG) to support 5 positions and adopt trailer bill language specifying the OIG's responsibility for oversight and review of various staffing and program aspects of the Blueprint.

2. Remove funding for inmate rehabilitative programs from CDCR's main item of appropriation and create a separate item of appropriation for inmate rehabilitative programs, including a provision specifying that any funds not spent for the appropriated purpose shall revert to the General Fund.
3. Revise the propose trailer bill language for the Medical Upgrade Program and Dewitt conversion and budget bill language for the Infill Projects to specify that authorized funding shall only be expended on these projects and that detail scope and cost information for the Medical Upgrade Program and the Infill Projects shall be provided to the Joint Legislative Budget Committee in conjunction with submittal to the Public Works Board.
4. Add budget bill language that specifies that the intent of the Infill Projects is to provide a flexible design to satisfy the needs of housing subpopulations of inmates, such as those with disabilities or mental health needs, that the department has not had sufficient capacity for, as various court orders have identified.
5. Adopt Trailer Bill Language that mandates that the California Rehabilitation Center (Norco) shall close upon completion of the Infill Projects.

## **Issue 5 – ISMIP Program**

**Proposal.** Trailer bill language is proposed to improve the existing Integrated Services for Mentally Ill Parolee-clients (ISMIP) program strengthening the full spectrum of community services necessary to reduce recidivism and ensure a continuum of care for offenders with mental health needs by adding a focus on housing, collaboration with parole outpatient clinics, and ensuring providers work with county and regional services to help bridge services for parolees as they transition off of parole.

**Background.** Assembly Bill 900 authorized the California Department of Corrections and Rehabilitation to obtain day treatment and to contract for crisis care services for parolees with mental health problems. CDCR established and the Adult Parole Division implemented the ISMIP.

The ISMIP Program provides varied levels of care, supportive/transitional housing, and an array of mental health rehabilitative services to assist with the development of independent living in the least restrictive environment possible. Parole Agents and Parole Outpatient Clinic staff refer parolees to contracted ISMIP providers for day treatment and crisis care services. Mental health treatment is provided by contracted providers when the parolee has Medi-Cal or other resources established. Medication management is provided by POC to non-benefited parolees enrolled in ISMIP, as well as individual or group therapy when unavailable from other funding sources outside of CDCR.

**Recommendation.** Approve as proposed.

## Issue 6 – CDCR Reorg

**Proposal.** Trailer bill language is proposed to ensure that CDCR’s current organizational structure is reflected in statute.

**Background.** CDCR’s organizational structure has changed in recent years, primarily due to the absorption of budget cuts. This language codifies these reductions in executives at CDCR and makes several positions confirmable by the Senate. Including, the Executive Director of the Board of State and Community Corrections.

**Recommendation.** Approve as proposed.

## Board of State and Community Corrections (5227)

### Issue 1 – BSCC Workload

**Governor’s Proposal.** The May Revise proposes \$750,000 General Fund for the Board of State and Community Corrections (BSCC) to provide additional administrative support for the BSCC necessary to assist local governments with the implementation of realignment.

**Background.** The 2011-12 Budget, Chapter 36, Statutes of 2011 (SB 92) as amended by Chapter 136, Statutes of 2011 (AB 116) established the BSCC, effective July 1, 2012, and consolidated various public safety programs within the BSCC. Specifically, SB 92:

Abolished the Corrections Standards Authority (CSA) within CDCR and established the BSCC as an independent entity.

- Transferred the powers and duties of CSA to the BSCC.
- Transferred certain powers and duties that currently reside with the California Emergency Management Agency (Cal EMA) to the BSCC.
- Eliminated the California Council on Criminal Justice, and assigned its powers and duties to the BSCC.
- Reestablished the Commission on Correctional Peace Officers Standards and Training within CDCR.

Effective July 1, 2012, SB 92 establishes the BSCC through the transfer of the CSA from CDCR and certain local assistance grant programs from Cal EMA. The BSCC’s mission is to provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California’s adult and juvenile criminal justice system, including providing technical assistance and coordination to local governments related to realignment. This mission reflects the principle of aligning fiscal policy and correctional practices, including prevention, intervention, suppression, supervision, and incapacitation. The goal is to promote a

justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations.

The requested administrative resources are necessary for the BSCC to assist local governments with the implementation of realignment and to carry out its responsibilities to provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice systems.

**Recommendation.** Approve as proposed.