

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Jim Beall



Thursday, April 21, 2016  
Upon Adjournment of Joint Hearing, Subcommittee No. 4 and No. 5  
State Capitol - Room 113

Consultant: Anita Lee and Farra Bracht

## PROPOSED FOR VOTE-ONLY

<u>Item</u>	<u>Department</u>	<u>Page</u>
<b>7350</b>	<b>Department of Industrial Relations</b>	<b>3</b>
Issue 1	Enhanced Enforcement and Compliance (2015 Legislation)	3
<b>7501</b>	<b>Department of Human Resources</b>	<b>6</b>
Issue 1	Information Security Staffing	6
Issue 2	Developmental Disability Internship Program (SB 644)	7
Issue 3	Expansion of the Healthier U State Employee Wellness Program	8
<b>7920</b>	<b>California State Teachers' Retirement System</b>	<b>9</b>
Issue 1	Investment Portfolio Complexity	9

## ISSUES PROPOSED FOR DISCUSSION/VOTE

<u>Item</u>	<u>Department</u>	<u>Page</u>
<b>7100</b>	<b>Employment Development Department</b>	<b>10</b>
Issue 1	Unemployment Insurance Program Funding	11
Issue 2	Benefit Overpayment Collection Automation Resource	16
<b>7320</b>	<b>Public Employment Relations Board</b>	<b>20</b>
Issue 1	Augmentation to Reduce Backlog and Los Angeles Regional Office Relation	21

Continued

<b><u>Item</u></b>	<b><u>Department</u></b>	<b><u>Page</u></b>
<b>7350</b>	<b>Department of Industrial Relations</b>	<b>24</b>
Issue 1	Division of Labor Standards Enforcement	25
Issue 2	Private Attorney General Act	28
Issue 3	Revenue and Expenditure Alignment for Various Special Funds	34
Issue 4	Mining and Tunneling Safety Inspections	44
Issue 5	Amusement Ride and Tramway Staffing Increase	47
Issue 6	Process Safety Management Oversight	49
<b>7501</b>	<b>Department of Human Resources</b>	<b>53</b>
Issue 1	Civil Service Improvement	54
Issue 2	Human Resources Audits	57
Issue 3	Review of the Merit System Services Program	59

Public Comment

---

*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) 651-1505. Requests should be made one week in advance whenever possible.*

---

## PROPOSED VOTE-ONLY

### 7350 DEPARTMENT OF INDUSTRIAL RELATIONS

#### Issue 1: Enhanced Enforcement and Compliance (2015 Legislation)

The Department of Industrial Relations (DIR) requests 33.5 positions and \$5.970 million in fiscal year (FY) 2016-17, 28.5 positions and \$4.494 million in FY 2017-2018 and 22.5 positions and \$3.475 million on-going to assist DIR and its Division of Workers' Compensation (DWC) and Division of Labor Standards Enforcement (DLSE) in fulfilling the provisions of recently chaptered legislation.

#### Division of Workers' Compensation (DWC)

1. **AB 438** (Chiu), Chapter 515, Statutes of 2015, mandates DIR and DWC to make specified forms, notices, and fact sheets available In Chinese, Tagalog, Korean, and Vietnamese by January 1, 2018. The bill also requires the administrative director of DWC to make recommendations regarding any other documents that should be translated into languages other than English and requires the DIR and DWC to submit the recommendations and any translated documents to the Legislature. DIR requests one-time contract funds of \$175,000 FY 2016-17 to implement the requirements of the bill.
2. **AB 1124** (Perea), Chapter 525, Statutes of 2015, requires the administrative director of the Division of Workers' Compensation (DWC) to establish a drug formulary, on or before July 1, 2017, as part of the medical treatment utilization schedule, for medications prescribed in the workers' compensation system. The administrative director must meet and consult with stakeholders, as specified, prior to the adoption of the formulary. The legislation requires DIR to publish two interim reports on the DIR website regarding status of the creation of the formulary through implementation. Quarterly updates are required to allow for the provision of all appropriate medications, including medications new to the market. The administrative director is also to establish an independent pharmacy and therapeutics committee to review and consult with the administrative director in connection with updating the formulary, as specified.

DIR requests one industrial relations counsel III (specialist) position, one staff services manager I position, three associate governmental program analyst positions, and 0.5 staff services analyst (SSA) position for a total of 5.5 positions and an augmentation of \$1.6 million in 2016-17 and \$1.4 million ongoing to implement the requirements of the bill.

#### Division of Labor Standards Enforcement (DLSE)

1. **AB 219** (Daly), Chapter 739, Statutes of 2015, expands the definition of "public works" under the California Prevailing Wage Law to include "the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state." The amendments only apply to contracts awarded on or after July 1, 2016. DIR requests an augmentation of \$133,000 and one deputy labor commissioner I in FY 2016-17 and \$125,000 ongoing to implement the requirements of the bill.

- 
2. **AB 621** (Roger Hernández), Chapter 741, Statutes of 2015, creates the Motor Carrier Amnesty Program. Port drayage companies, who misclassified employees as independent contractors, will be provided an opportunity to voluntarily come forward to participate in a limited amnesty program by entering into a settlement agreement with the labor commissioner. Under the terms of the settlement agreement, the motor carrier must agree to pay all wages and benefits owed to previously misclassified independent contractors, and all taxes owed to the state as a result of such misclassification. In addition, the company must agree to classify any present or future commercial drivers as employees. In exchange, a motor carrier that enters into such a settlement agreement will be relieved of liability for statutory or civil penalties based on previous misclassification of drivers.

DIR requests \$960,000 in 2016-17 to support five deputy labor commissioner I (DLC I) positions and 0.5 staff services analyst (SSA), with an augmentation of \$170,000 to support one DLC I and 0.5 SSA ongoing. These resources are necessary to implement the requirements of the bill.

3. **AB 970** (Nazarian), Chapter 783, Statutes of 2015, gives the labor commissioner statutory authority to cite for violations of local wage law as well as for failure to reimburse or indemnify employees for business expenses - enhancing the Labor Commissioner's ability to enforce wage and hour laws to the fullest extent for all California workers. The main cost driver of this bill is anticipated to be the section that gives the Labor Commissioner authority to issue citations for violations of Labor Code 2802, which provides that an employer shall indemnify their employees against losses incurred through the course of performing their job. DIR requests one deputy labor commissioner I (DLC I) position and an augmentation of \$127,000 in FY 2016-17, and \$119,000 ongoing, to support the Division of Labor Standards Enforcement (DLSE) efforts in the implementation of the bill.
4. **AB 1513** (Williams), Chapter 754, Statutes of 2015, deletes three obsolete study requirements for the worker' compensation system; clarifies and codifies the pay requirements for piece rate workers for nonproductive time and rest and recovery period time; and establishes a process through which employers, during a prescribed time period, can make back wage payments for rest and recovery periods and nonproductive time in exchange for relief from statutory penalties and other damages. DIR requests \$117,000 in FY 2016-17 for one associate governmental program analyst position to implement the requirements of the bill.
5. **SB 358** (Jackson), Chapter 546, Statutes of 2015, and **AB 1509** (Roger Hernández), Chapter 792, Statutes of 2015. SB 358 prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, except where the employer demonstrates certain conditions.

AB 1509 extends current employment retaliation protections to an employee who is a family member of a person who engaged in, or is perceived to have engaged in, legally protected conduct. This bill also exempts household goods carriers from the client employer and labor contractor liability provisions in law.

DIR requests one deputy labor commissioner I and an augmentation of \$132,000 in the first year and \$124,000 ongoing to implement the requirements of these bills.

6. **SB 588** (de León), Chapter 803, Statutes of 2015, allows the labor commissioner to file a lien or levy on an employer's property in order to assist the employee in collecting unpaid wages when there is a judgment against the employer. DIR requests 13.0 positions and an augmentation of \$1.9 million in FY 2016-17, 13.0 positions and \$1.8 million in 2017-18, and nine positions and \$1.1 million ongoing to support DLSE's efforts in the implementation of this bill. To accomplish this, DIR plans 1.5 deputy labor commissioner II, six deputy labor commissioner I, 1.5 office technician, three industrial relations counsel III position (two-year limited-term funding), and one legal secretary position (two-year limited-term).

**Staff Recommendation:** Approve as budgeted.

**Vote:**

---

**7501 DEPARTMENT OF HUMAN RESOURCES****Issue 1: Information Security Staffing**

The Department of Human Resources (CalHR) requests one permanent position and \$154,000 (\$19,000 General Fund, \$11,000 Central Service Cost Recovery Fund, \$25,000 Deferred Compensation Plan Fund, \$99,000 Reimbursements) in FY 2016-17, and \$145,000 (\$17,000 General Fund, \$10,000 Central Service Cost Recovery Fund, \$24,000 Deferred Compensation Plan Fund, \$94,000 Reimbursements) in FY 2017-18 and ongoing, to address workload resulting from security assessments and the need to improve security practices in the department.

**Background.**

The Information Technology Division (ITD) within CalHR has the responsibility of providing information technology services for both CalHR and the State Personnel Board (SPB). ITD maintains web sites, applications and sensitive and confidential data sets that serve state departments, state employees, and the public.

The state runs a significant risk of liability if there were to be sensitive data loss and/or continues to have an inaccessible web presence. ITD handles sensitive data for all state employees. All departments, state employees, and the public interact with CalHR and SPB applications, data sets, and websites. If there were a data breach, the state would be responsible for notifying those affected by the breach.

ITD does not have a full-time Information Security Officer (ISO). As a result of security assessments, it has become evident that CalHR needs additional assistance in maintaining the proper and effective documentation, policies, procedures, or unbiased internal checks. CalHR handles several data sets that are considered sensitive. The workload for ensuring security compliance requires a dedicated ISO.

CalHR has a part-time ISO that is split between three different areas: 1) the department's lone quality assurance tester for all websites and software applications; 2) the department's privacy program manager (which is also recommended to be a dedicated position); and 3) serves as the department's ISO. If CalHR does not ensure the proper procedures, documentation and polices, it puts the sensitive data maintained by CalHR at risk. CalHR states that it needs to adhere to the state security standards, and notes that this cannot be accomplished with current resources.

According to CalHR, this request will allow the department to conduct biennial risk assessments, required by the State Administrative Manual, and certify risk and privacy program compliance on a yearly basis as required by the Statewide Information Management Manual.

**Staff Recommendation:** Approve as budgeted.

**Vote:**

---

**Issue 2: Developmental Disability Internship Program (SB 644)**

This proposal requests two permanent positions and \$164,000 (\$94,000 General Fund and \$70,000 Central Service Cost Recovery Fund) in FY 2016-17 and \$146,000 (\$83,000 General Fund and \$63,000 Central Service Cost Recovery Fund) ongoing.

**Background.** Senate Bill 644 (Hancock), Chapter 356, Statutes 2015 allows a person with a developmental disability to complete an internship (paid or unpaid) in lieu of the requirement to take and pass the Readiness Evaluation prior to being hired into state civil service. Upon successful completion of the internship the person would be eligible for appointment to the Job Examination Period. SB 644 requires the CalHR to create the internship program in coordination with the state departments of Developmental Services and Rehabilitation, and to refer the names of these eligible applicants to the appointing powers for examination appointments.

The requested resources will support the development and implementation of the new internship program, inclusive of internship tools and policy, as well as department implementation guidance and ongoing administrative support of Limited Examination and Appointment Program (LEAP) program operations.

Once the internship and readiness evaluation are established, CalHR anticipates operations must expand to address increased customer service requests by phone, email, and United States Postal Service mail, as well as document processing related to statewide coordination and oversight of LEAP internships. CalHR will develop a mechanism to support ongoing program usage by state agencies and job applicants with developmental disabilities.

**Staff Recommendation:** Approve as budgeted.

**Vote:**

---

**Issue 3: Expansion of the Healthier U State Employee Wellness Program**

This proposal requests \$100,000 in reimbursement authority for FY 2016-17 and \$250,000 in ongoing reimbursement authority beginning in FY 2017-18, to phase-in implementation and support of a wellness program service for all state employees.

**Background.** In 2012, the State Controller's Office, State Treasurer's Office, the California Public Employees' Retirement System (CalPERS), Service Employees International Union Local 1000 and CalHR partnered to create Healthier U, a model workplace wellness and injury prevention program. Due to budget constraints, funding from the California Endowment, California Wellness Foundation, California Health Care Foundation, Sierra Health Foundation, CalPERS, and Kaiser Permanente was obtained for the pilot. The pilot series included the Department of Public Health (DPH) and the Department of Health Care Services (DHCS) East End Complex and, because of the pilot's success, funders extended the two-year pilot to a third year.

In 2013, Healthier U piloted Thrive Across America, Kaiser Permanente's core intervention program with a goal of 20 percent participation at DPH and DHCS. Healthier U exceeded this goal with a 32 percent participation rate. In 2014-15, Healthier U piloted another wellness program Health Trails, that was addressed various health practices, including fruit and vegetable consumption, stress management, fitness, nutrition, and weight control. Kaiser provided funding for Health Trails annual license for online software that allowed participants to track their health practices, which ended June 2015. Healthier U partners plan to seek funding from Kaiser to sustain the wellness program service for CDPH and SHCS during 2016.

The 2015-16 May Revision provided CalHR with a position to expand the Healthier U program. The position allows CalHR to move forward to develop and release a Request for Proposal for a core wellness program accessible to all state employees.

The requested resources will be used to contract with a vendor, to develop and phase-in implementation of a core wellness program accessible to all state employees, including communication costs to train, promote and implement the program statewide.

**Staff Recommendation:** Approve as budgeted.

**Vote:**



---

**7920 CALIFORNIA TEACHERS' RETIREMENT SYSTEM****Issue 1: Investment Portfolio Complexity**

California Teachers' Retirement System (CalSTRS) requests a permanent funding augmentation of \$2.6 million for 15 positions and travel costs for investment branch staff. Eleven of these positions would allow each unit in the investment branch to 1) increase the number of assets managed internally to reduce the cost of externally managing the portfolios; 2) mitigate risk through research in new investment strategies, sustainability, as well as environmental, social, and governance issues that arise; and 3) manage the increased complexity and size of the investment portfolio. The other four positions will provide financial services (two positions) and human resources support (two positions) for the increased staff and volume of work associated with the size and complexity of the investment portfolio. CalSTRS estimates that for each staff added to support the internal management of portfolios, it saves about \$1.2 million in external management fees.

**Staff Recommendation:** Approve as budgeted.

**Vote:**

## ISSUES PROPOSED FOR DISCUSSION/VOTE

### 7100 EMPLOYMENT DEVELOPMENT DEPARTMENT

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

The department, with the assistance of the state Workforce Investment Board (WIB), also administers the federal Workforce Investment Opportunity Act (WIOA) program, which provides employment and training services. Local area WIBs partner with EDD's Job Services program to provide job matching and training services to job seekers. The chart below shows EDD's 2016-17 budget.

#### 3-YR EXPENDITURES AND POSITIONS

	Positions			Expenditures		
	2014-15	2015-16	2016-17	2014-15*	2015-16*	2016-17*
5900 Employment and Employment Related Services	1,222.4	1,329.7	1,329.7	\$162,307	\$192,207	\$188,770
5910 Tax Collections & Benefit Payments	5,552.2	-	-	12,091,029	-	-
5915 California Unemployment Insurance Appeals Board	477.1	474.3	450.3	79,627	75,408	72,508
5920 Unemployment Insurance Program	-	2,785.1	2,749.9	-	6,504,130	6,334,482
5925 Disability Insurance Program	-	1,299.7	1,299.7	-	6,139,876	6,496,828
5930 Tax Program	-	1,564.8	1,517.0	-	207,640	194,092
5935 Employment Training Panel	87.7	85.1	85.1	78,954	73,732	73,084
5940 Workforce Innovation and Opportunity Act	137.5	144.2	144.2	392,083	401,884	397,699
5945 National Dislocated Worker Grants	1.1	1.5	1.5	5,974	45,000	45,000
9900100 Administration	583.9	701.0	701.0	81,279	86,495	86,495
9900200 Administration - Distributed	-	-	-	-77,218	-86,095	-86,095
<b>TOTALS, POSITIONS AND EXPENDITURES (All Programs)</b>	<b>8,061.9</b>	<b>8,385.4</b>	<b>8,278.4</b>	<b>\$12,814,035</b>	<b>\$13,640,277</b>	<b>\$13,802,863</b>
<b>FUNDING</b>				<b>2014-15*</b>	<b>2015-16*</b>	<b>2016-17*</b>
0001 General Fund				\$266,315	\$194,483	\$147,259
0184 Employment Development Department Benefit Audit Fund				11,963	40,525	51,295
0185 Employment Development Department Contingent Fund				119,841	140,277	152,155
0514 Employment Training Fund				83,466	76,688	76,285
0588 Unemployment Compensation Disability Fund				5,628,525	6,196,873	6,553,537
0869 Consolidated Work Program Fund				398,057	446,884	442,699
0870 Unemployment Administration Fund				574,430	571,260	536,035
0871 Unemployment Fund				5,610,015	5,860,907	5,742,322
0908 School Employees Fund				103,352	80,918	73,980
0995 Reimbursements				17,226	27,244	27,296
3259 Recidivism Reduction Fund				845	4,218	-
<b>TOTALS, EXPENDITURES, ALL FUNDS</b>				<b>\$12,814,035</b>	<b>\$13,640,277</b>	<b>\$13,802,863</b>

---

**Issue 1: Unemployment Insurance Program Funding**

**Governor's Budget Proposal.** EDD requests a reduction of \$33.9 million and 148.2 Personnel Equivalents (PE) in Unemployment Administration Fund authority for 2016-17 due to updated workload estimates, reduced federal carryforward, and reduced Electronic Benefit Payment (EBP) earnings. To offset the decrease in federal earnings, carryforward, and EBP revenue, the EDD requests an increase of \$10.4 million of Contingent Fund and \$10.4 million of Benefit Audit Fund (BAF) to continue to support the Unemployment Insurance Program. The additional funding will allow the EDD to meet its service targets for answering telephone calls, scheduling eligibility determination interviews, processing claims, and responding to online inquiries.

The Governor's budget proposes budget bill language to allow the department to adjust its state supplemental funding in both BAF and Contingent Fund (CF). This would allow EDD, upon notification to DOF and the Legislature, to make current year and budget year changes to its state supplemental funding.

**Background**

The UI program is a federal-state program that 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 the individual's earnings during a 12-month base period. To be eligible, an applicant must have received enough wages during the base period to establish a claim, be totally or partially unemployed, be unemployed through no fault of his or her own, be physically able to work, be seeking work and immediately available to accept work, as well as meet eligibility requirements for each week of benefits claimed.

Over the past several years, the UI program has received multiple augmentations from state and special funds in order to address a structural funding deficit and to increase service levels. These augmentations have made it possible for EDD to continue to meet the service level targets which were identified as part of a 2014-15 Finance Letter. Specifically, these resources were used to increase the number of telephone calls answered and to reduce call demand by processing Internet and paper claims, Internet inquiries, and scheduling eligibility determination interviews more timely. The EDD was appropriated \$27.8 million of BAF and \$14.0 million of CF in the 2015 Budget Act to continue to maintain the level of service which began in 2013-14.

**Funding and PE History**  
(Dollars in millions)

	2013-14	2014-15	2015-16
<b>Base Program Funding</b>			
Federal Funds (Base/Above-Base)	417.8	384.7	374.6
Federal Carryover	79.8	48.8	16.7
Contingent Fund			68.1
Other Special Funds	74.0	23.7	17.7
<b>BCP/Finance Letter/Revise Augmentations</b>			
Federal Funds	35.4	21.0	
Contingent Fund	29.7	64.0	14.0
General Fund		24.9	
Benefit Audit Fund			27.8
<b>Grand Total Funding</b>	<b>636.7</b>	<b>567.1</b>	<b>518.9</b>
<b>Positions</b>			
Actual PEs	4,769.7	4,298.2	
Estimated PE's			3,984.0

**Actual and Estimated UI Workload**

Fiscal Year	Initial Claims	Weeks Claimed	Non-Monetary Determinations	Appeals Closed
2007-08	2,682,767	23,211,414	1,221,434	289,754
2008-09	5,082,849	48,585,669	1,384,178	333,415
2009-10	6,953,048	77,824,741	1,546,422	453,633
2010-11	6,899,259	69,629,674	1,343,179	468,804
2011-12	5,743,599	57,696,934	1,230,785	445,746
2012-13	4,807,433	44,905,472	1,306,238	415,203
2013-14	4,013,891	32,761,583	1,010,443	351,864
2014-15	2,706,390	21,627,694	848,335	266,187
2015-16 (forecast)	2,595,031	21,496,680	832,650	250,320
2016-17 (forecast)	2,486,000	20,620,160	809,750	237,030

**Service Levels.** The 2013-14, 2014-15, and 2015-16 augmentations have offset the program's underfunding at the federal level, resulting in increased service levels, and helping the EDD achieve the benchmarks set forth in each request. The federal underfunding is expected to continue, leaving the state to rely on ongoing alternate funding sources to maintain the gains in service that have been achieved to date.

This proposal will enable EDD to continue its efforts to provide acceptable levels of service to California's UI claimants. Additionally, this proposal establishes a baseline methodology to continue to address the federal underfunding issue annually, as well as continuing to maintain adequate service levels to California's UI population.

**Baseline Methodology.** The Governor proposes a single calculation that identifies the staffing needs of the UI program. The main difference between this methodology and the prior methodology is that the EDD leverages the existing model to fund specific workloads at 100 percent, as opposed to the 2012-13 service level of 85 percent. As illustrated below, this results in additional PE needs for those workloads which have been targeted in 2014-15 and 2015-16.

Maintaining the three service level workloads at 100 percent of the funded model eliminates the need for the Department to calculate an additional service level need, as had been the practice in 2014-15 and 2015-16. The additional service level calculation included in the 2015-16 Budget Act was 594 PEs.

#### PE Calculations Using New Method

Workload Category	Workload Estimate	SFY 2014-15 MPUs	2012-13 Service Levels (85%)	Current Service Levels (100%)	Variance
Initial Claims	2,486,000	34.420	720.0	847.1	127.1
Weeks Claimed	20,620,160	1.656	287.4	338.1	50.7
Non-Monetary Determinations	809,750	75.063	511.4	601.7	90.3
		<b>Total PE Need</b>	1,518.8	1,786.9	268.1

**Updated UI Workload Projections.** There has been a decrease in UI program workload over the last 12 months. The following table compares May 2015 workload projections for 2015-16 to October 2015 projections for 2016-17:

### Workload Comparisons

Workload Category	2015-16 May 2015	2016-17 October 2015	Variance	Percentage Change
Initial Claims	2,723,000	2,486,000	-237,000	-8.7%
Weeks Claimed	21,888,000	20,620,160	-1,267,840	-5.8%
Non-Monetary Determinations	818,470	809,750	-8,720	-1.1%
Appeals	253,150	237,030	-16,120	-6.4%

As a result of the workload changes and the new methodology for service levels, there is a decreased need for staff when compared to the staffing level of 3,984.0 which was established for 2015-16. Utilizing the new methodology, a PE need of 3,835.8 has been identified at a cost of \$509.9 million for 2016-17. This equates to a reduction of 148.2 PEs and \$9.0 million in expenditures.

**Funding Issues.** The drop in workload results in a reduction of expenditures. The reduction in expenditures results in EDD and California Unemployment Insurance Appeals Board receiving less money from the federal government. The decrease in federal dollars is estimated to be a \$12.6 million reduction in the new base grant allocation and updated above base earnings for 2016-17. Additionally, EDD anticipates that by the end of 2015-16 all of the UI carryforward (\$16.7 million) will be exhausted, leaving no UI carryforward going into 2016-17. Lastly, the existing EBP contract will be ending on July 31, 2016. The EDD solicited bids from vendors for a new EBP contract starting in 2016-17. The selected vendor's revenue share figure is almost 80 percent less than the current contract. Once this contract goes into effect in 2016-17, it is estimated that EDD will lose approximately \$800,000 a month, equating to a reduction of \$9.6 million over the course of the year.

The EBP revenues are shared between the UI and Disability Insurance programs. The UI revenue is deposited back into the program in order to offset program expenses. The DI revenue share is deposited back into the Unemployment Compensation Disability Fund. It is estimated that the UI Program EBP revenue will be reduced by \$4.8 million annually due to the change in the contract.

Because of the various decreases in funding, and by capturing additional resources through Control Section and Employee Compensation adjustments, the EDD has identified a need of \$20.7 million in order to fill the current funding gap. Due to the availability of funding in both BAF and CF, the EDD is proposing to split the need between the two fund sources evenly. The following table illustrates the identified funding gap:

**Funding and Expenditure Changes**  
(Dollars in millions)

	2015-16	2016-17	Variance
<b>Program Funding</b>			
Federal Funds (Base/Above-Base)	\$374.6	\$362.1	(\$12.5)
Federal Carryover	16.7	0.0	(16.7)
Contingent Fund	82.1	85.0	2.9
Other Special Funds	45.5	42.0	(3.5)
<b>Grand Total Funding</b>	\$518.9	\$489.2	(\$29.8)
<b>Estimated Expenditures</b>	\$518.9	\$509.9	(\$9.0)
<b>Funding Gap (Funding less Expenditures)</b>			(\$20.8)

**Budget Bill Language.** In order for the EDD to address funding changes (increases or decreases) and maintain adequate levels of service, EDD is proposing budget language that would allow the department to adjust its state supplemental funding in both BAF and CF. This would allow EDD, upon notification to DOF and the Legislature, to make current year and budget year changes to its state supplemental funding. The proposed language is currently included in the budget act for the UA Fund, the Unemployment Compensation Disability Fund, and the Consolidated Work Program Fund.

If additional budget language is not included in the budget act, and if sequestration reductions are applied to FFY 2017 UI grants, UI Program services would be severely impacted and would need to absorb an estimated \$24.1 million reduction in federal resources.

**Staff Recommendation: Approve as budgeted.**

**Vote:**

---

**Issue 2: Benefit Overpayment Collection Automation Resources – Spring Finance Letter**

**Spring Finance Letter.** The Governor requests a one-time budget augmentation of \$1.6 million in SFY 2016-17 and a one-time augmentation of \$6.1 million in FY 2017-18. This finance letter also requests an ongoing appropriation of \$1.1 million beginning in FY 2018-19 for the support of the new Benefit Overpayment Collection System (BOCS) application. These requests will be used to fund contracts, hardware, software, ongoing support, and 12.3 new temporary PEs to replace the existing application used to collect UI and DI overpayments with an integrated and automated system.

The proposed solution will significantly reduce the risk of failure of the existing system by integrating the BOCS application into the Accounting and Compliance Enterprise System (ACES), which will also allow for a new revenue collection tool in the form of bank levies, which is estimated to bring in almost \$23 million in additional funds annually once fully implemented.

**Background.**

The California Unemployment Insurance Code authorizes EDD to recover UI and DI fraud and non-fraud benefit overpayments paid to claimants.

**Resource History – Existing System Support of Benefit Overpayment Application**  
Dollars in thousands

<b>Program Budget</b>	<b>SFY 09/10</b>	<b>SFY 10/11</b>	<b>SFY 11/12</b>	<b>SFY 12/13</b>	<b>SFY 13/14</b>	<b>SFY 14/15<sup>1</sup></b>
Actual Expenditures	\$209	\$210	\$212	\$219	\$222	\$231
Revenues	\$ 138,355	\$158,963	\$183,040	\$176,037	\$176,644	\$363,387
Authorized Positions	2	2	2	2	2	2
Filled Positions	2	2	2	2	2	2
Vacancies	0	0	0	0	0	0

Currently, the Tax Branch is operating under two collection systems; the ACES and the BOCS application. The ACES is supported, scalable, and continuously receives version and service-pack updates. The BOCS application is written in Visual Basic 6.0 (VB6) programming language with an Access database (Access is not an EDD database standard), is no longer supported by or receiving software updates from Microsoft, and is at great risk of failure. BOCS is reliant upon the expertise of two programmers for support and maintenance.

BOCS application interfaces with other EDD systems to collect overpayments. At the end of FY 2014-15, the EDD's benefit overpayment accounts receivable totaled approximately \$1.3 billion, which was comprised of over 590,000 outstanding overpayments. If the current application were to fail, the ability to collect overpayment debt would be adversely affected, whereby the EDD benefit overpayment collections would revert to manual processes and result in a substantial loss of revenue. Therefore, due to the risk of failure associated with the current application and the continued need to collect benefit overpayments in the most cost effective manner, the EDD is proposing the existing application be retired and the functionality configured into the existing ACES.

---

<sup>1</sup> Includes Treasury Offset Program (TOP) revenue



---

## Major Project Objectives

- **Revenue Generation:** The EDD has the legal authority to issue bank levies (or freeze bank accounts) as a means of recovering UI and DI benefit overpayments. EDD proposes to use bank levies for the most egregious debtors with multiple fraudulent overpayments, high debt balances of at least \$5,000, accounts that meet minimum wage criteria standards, and accounts in which other collection methods have previously failed. Prior to issuing a bank levy, EDD will provide notices and billing statements that explain the reason for the debt, how to pay in full or set up a payment arrangement and, how to contact EDD to speak with a representative for additional information.

The current BOCS application does not have the necessary capabilities to collect money through a levy process. Failure to take advantage of the levy collection tool, as a means of generating additional revenue, results in missed opportunities to deposit monies into both the UI and DI funds, BAF and CF. The EDD estimates that once fully implemented, this solution will bring in an additional \$23 million annually tied to this new collection tool. The estimated revenue figures were derived by using the FY 2014-15 results from an existing tax program that also involves bank levies, the Financial Institution Records Match (FIRM) program. A percentage of what the Collection Division (CD) collected from FIRM was computed through a collection rate that used the FIRM recoveries by its associated Accounts Receivable (AR) from levies sent. The collection rate was then applied to the ending BOCS Fraud Overpayments AR from UI and DI fraud accounts that were greater than \$5,000 as of June 30, 2015.

- **Better Service to Customers:** Currently, customers cannot self-serve through the Internet. Customers must contact the BOCS staff during office hours to obtain or provide routine information related to their account, thereby preventing staff from working on high priority accounts and denying customers the ability to self-serve. The proposed system will provide self-service capabilities that will include general information and frequently asked questions. Authenticated customers will be provided access to view and update account information, establish payment arrangements, view history, and make payments. With the new self-service options, EDD estimates a savings of approximately 6.8 PEs; however, these staff will be redirected to address additional workload associated with the new bank levy process.
- **Automation of Existing Work Processes:** The UI-IAD manually posts all payment remittance transactions from scanned hard copy images to a claimant's benefit overpayment collection account. Payments are made with a credit card or via paper form (e.g. personal check, cashier's check, or money order) and are remitted with or without a payment coupon. Prior to posting a payment remittance to the Single Client Data Base (SCDB), a vast number of paper remittances require manual research and analysis to ensure the payment will be posted to the correct benefit overpayment collection account. Paper remittances received with a payment coupon do not require analysis prior to being posted to the SCDB. In FY 2014-15, the monthly average of processed paper remittances was 31,140, of which 16,274 were received with a payment coupon. Manually keying paper remittances introduces errors through data entry resulting in potential inaccurate postings, which may trigger erroneous collection actions. With this new integrated system the department estimates that the number of manual remittances would be cut in half within a year, resulting in a savings of approximately 1.1 PEs; however, these staff will be redirected to address additional workload associated with the new bank levy process.

**One-Time IT Resources.** In order to incorporate the BOCS functionality into the existing ACES application, the EDD will contract with FAST Enterprises as the primary vendor. FAST's key responsibility as the system integrator will be to transfer the BOCS functionality into the ACES application. Using the existing application and vendor will reduce the risk, effort, and cost in developing a benefit overpayment application. FAST is the chosen contractor because they are the only vendor with rights to maintain and support its proprietary COTS application, GenTax, which is used by ACES. Since GenTax is a proprietary product developed by FAST, only FAST has the core-code access and knowledge of their product to ensure the system is maintained and updated in a manner that is optimal. No other vendor or state staff has the access or capability of creating or distributing modifications to their core-code.

The project will also require 12.3 new PEs of state IT staff (4.8 in 2016-17 and 7.5 in 2017-18) to complete project-related activities, in addition to the activities performed by the vendor. Program staff will also be leveraged throughout the project lifecycle, acting as subject matter experts who will specify business requirements, rules, and workflows. Program staff will be required for testing, training, and organizational change support activities, as well. However, the program positions will be redirected from other duties throughout the duration of the project. EDD's IT staff will be performing the following functions in addition to the vendor:

- Project management including scheduling, identifying and managing project risk
- Requirements elicitation and refinement
- Primary vendor procurement and scanning vendor procurement
- System design sessions with the primary vendor
- Legacy system data migration and modification activities
- Document and Information Management Center (DIMC) related activities for adding the scanning and remittance transaction postings
- Developing and modifying interfaces with existing EDD systems
- Developing test scripts, test plans for system, interface, user, penetration, end to end and stress testing (these are done by non-prime vendor staff to ensure the solution truly meets the department's needs)

**Outcomes and Accountability.** EDD notes that the proposed solution will provide a modern, integrated and automated system that includes an improved payment remittance process and will use overpayment liability collection, storage, and account management to increase the effectiveness of the EDD's operations and staff.

Below are the EDD's projected outcomes if the implementation of BOCA moves forward:

- Increase system support by integrating the BOCS into the ACES after implementation.
- Collect approximately \$23 million through the levy process, within one year after implementation
- Improve access to the EDD by offering self-service options to benefit overpayment customers with a 10 percent adoption rate, within one year after implementation
- Reduce the number of manually posted paper remittances by 50 percent, within one year after implementation.
- Process incoming correspondence automatically following implementation.

- Provide customers with additional payment options to facilitate compliance by allowing customers to make electronic payments for billed liabilities, within 18 months after implementation.
- Leverage the ACES functionality to automate work processes requiring manual intervention by integrating the BOCS into the ACES system, within 18 months after implementation.

The schedule of the Benefit Overpayment Collection Automation project milestones and target completion dates are below:

<b>Major Milestones</b>	<b>Est. Completion Date</b>
Project Initiation	July 2016
Requirements Phase	October 2016
Vendor on Board	January 2017
Design Phase	April 2017
Development Phase	December 2017
Testing Phase	April 2018
Implementation	June 2018
System Acceptance	June 2018
Project Closeout	February 2019
PIER	February 2019

**Staff Recommendation.** Hold Open.

## 7320 PUBLIC EMPLOYMENT RELATIONS BOARD

The Public Employment Relations Board (PERB) is a quasi-judicial administrative agency charged with administering the eight statutes that establish the collective bargaining process for about 2.3 million governmental employees in California. In this role, PERB (1) ensures these laws are implemented and applied consistently and (2) mediates and adjudicates disputes between governmental employers and employees. Such disputes include “unfair labor practice” claims. Section 3541 of the Government Code establishes PERB and specifies that the board “shall be independent of any state agency.” The board consists of up to five members appointed by the Governor with the advice and consent of the Senate; however, the board can establish a quorum—allowing it to conduct business—with three members.

### 3-YR EXPENDITURES AND POSITIONS

	Positions			Expenditures		
	2014-15	2015-16	2016-17	2014-15*	2015-16*	2016-17*
6070 Public Employment Relations Board	51.5	47.6	52.6	\$8,854	\$9,287	\$10,338
<b>TOTALS, POSITIONS AND EXPENDITURES (All Programs)</b>	<b>51.5</b>	<b>47.6</b>	<b>52.6</b>	<b>\$8,854</b>	<b>\$9,287</b>	<b>\$10,338</b>
<b>FUNDING</b>				<b>2014-15*</b>	<b>2015-16*</b>	<b>2016-17*</b>
0001 General Fund				\$8,768	\$9,101	\$10,218
0995 Reimbursements				86	186	120
<b>TOTALS, EXPENDITURES, ALL FUNDS</b>				<b>\$8,854</b>	<b>\$9,287</b>	<b>\$10,338</b>

---

**Issue 1: Augmentation to Reduce Backlog and Los Angeles Regional Office Relocation**

---

**Governor’s Budget.** The Governor proposes two augmentations for PERB: (1) \$885,000 General Fund to fund five new positions—bringing the board’s total position authority to 62 positions—and (2) \$217,000 General Fund to pay for costs associated with relocating the Glendale office.

The Administration indicates that its proposal for five new positions and \$885,000 in 2016-17 (\$873,000 ongoing) is intended to address increased workload, reduce backlogs, and contribute towards meeting statutory requirements. The requested funding would support four of the five positions. The fifth position would be funded with existing departmental resources freed up by canceling a contract with the Department of General Services (DGS) to provide administrative services. The new positions would be distributed across PERB’s four divisions, with two new supervising attorney positions under the Office of the General Counsel (one based in Oakland and one in Glendale).

The Los Angeles regional office is located in Glendale. This regional office is PERB’s busiest regional office and processes more than 50 percent of cases. The board has occupied its current building since March 2009, with an annual rent of \$259,000. DGS determined that the existing office space does not fully comply with federal and state laws that establish standards to ensure buildings are accessible to people with disabilities. DGS directed PERB to move to a building that complies with these laws before February 2017, when the “soft term” of the existing lease expires. The Administration’s proposal provides \$100,000 one-time funding for moving to the new building, and \$117,000 on an ongoing basis, to pay for increased rental costs.

**Background**

Of PERB’s 57 total authorized positions, 13 positions are dedicated to the State Mediation and Conciliation Service (SMCS), which mediates public sector contract labor disputes between employers and unions and conducts representation elections. The other 44 positions are dedicated to PERB’s adjudication functions, including the Office of the General Counsel and the Division of Administrative Law.

**Budgetary Challenges.** Recently, PERB reportedly has had budget problems. For example, at the December board meeting, it was noted that PERB management, facing significant budget challenges, “opted to hold off pursuing the layoff process and instead decided to cut back its operating budget wherever possible and not fill vacancies.”

In many cases, departments hold authorized positions vacant and redirect the funds associated with vacant positions to pay for rising costs, such as operating expenses, equipment and merit salary adjustments. The 2016-17 Governor’s Budget estimates that in 2015-16 about nine percent of authorized non-higher education executive branch positions were held vacant statewide.

PERB has relied on about 9.5 positions (or 17 percent of its authorized positions) being vacant in order to redirect \$767,000 to pay for higher-than-budgeted costs associated with personnel and operations and equipment. These vacancies appear to have been in the adjudication sections of PERB, with no vacancies among the 13 SMCS positions. Instead, most of PERB’s vacancies are among attorney classifications reporting to the board’s General Counsel, an office that, among other duties, provides the first level of PERB review of unfair labor practice charges. This all suggests that over 20 percent of the 44 non-SMCS positions at PERB may have been vacant at some points in recent years, in part to redirect funds in the board’s budget. This is an inordinate number of vacant positions relative to what

is typical among state departments. Additionally, PERB has operated with a vacant seat on its appointed board. Board members each receive a salary of nearly \$140,000 and benefits. As the Administration indicates in one of the 2016-17 PERB budget proposals, relying on a vacant board seat to maintain operations “is inefficient and carries significant implications, particularly when the Governor appoints a full board.” Currently, PERB has one board vacancy.

### **Growth in Responsibilities and Backlogs**

Over the decades since PERB was established, PERB has become responsible for adjudicating labor disputes between an increasing number of governmental employers and employees. PERB’s jurisdiction has grown from overseeing one statute covering approximately 470,000 employees in 1976 to eight statutes covering approximately 2.3 million employees.

The Administration indicates there is a significant backlog in unfair labor practice charges filed with PERB. Over the past 20 years, the number of unfair labor practice charges filed with PERB doubled but the number of staff working on this workload has decreased as (1) the number of positions authorized for PERB’s non-SMCS workload remained relatively flat at about 45 positions and (2) positions in the Office of the General Counsel have been held vacant for budgetary purposes. The Administration’s budget proposal suggests that it should take the Office of General Counsel less than 60 days to complete its investigation and issue a determination for unfair labor practice charges. Currently; however, it typically takes more than five months for the office to do this work.

While considering the 2015-16 state budget, members of the Legislature’s budget committees considered a proposal to augment PERB’s budget by \$1 million. This augmentation ultimately was not included in the final 2015-16 budget. The Administration committed to working with PERB to determine its resource needs while developing its 2016-17 budget proposal.

### **Legislative Analyst’s Office Comments and Recommendations**

LAO notes that any appropriation for PERB’s lease must be based on estimated costs; however, the Administration has not yet identified the building to which PERB would move. The administration’s proposal is constructed on assumptions from one estimate DGS provided, however the actual cost could be higher or lower than this estimate. At PERB’s February board meeting, staff indicated that two prospective spaces (1) likely would be more expensive than the Administration assumes and (2) each were 600 square feet smaller than the amount of space DGS estimated would be necessary. To the extent that this is true, higher rental costs could force PERB to redirect money from elsewhere in its budget—including holding positions vacant—to cover these additional costs. In addition, the smaller office space could negatively affect PERB’s ability to process cases.

The LAO states that the Administration’s budget proposal would allow PERB to employ more people than it currently does, and this could have some effect in reducing the backlog. However, LAO notes that it seems unlikely that the Administration’s proposal would provide enough resources for PERB to significantly reduce the existing backlog of cases. In particular, the vacant positions PERB currently relies on for budgetary purposes may remain vacant. Moreover, if expenses for the board’s relocated office space in the Los Angeles area exceed budgeted amounts, there could be additional pressures to hold positions vacant.

LAO suggest the Legislature ask PERB and affected employer and employee groups their views on how fast cases should be addressed by the board. The Legislature may then wish to adopt budget bill language communicating clearly its goal for case processing times and requiring reporting over the

next year on PERB's progress in moving toward this goal. This desired timeline for case processing could help inform the Legislature's budget decisions for PERB.

LAO advises that the Legislature ask PERB what level of funding and staffing is necessary to process cases within the desired amount of time. Key questions that the Legislature can consider include:

- Are there additional efficiencies that can be realized in case processing to help reduce processing times and backlogs?
- In order to process cases within the desired amount of time, how many people would PERB need to employ? Would the existing or proposed mix of employee classifications need to be altered in order to achieve this goal?
- Are budgeted funds for the Glendale office relocation sufficient to cover associated costs and prevent the need to hold positions vacant in order to fund office costs?

### **Staff Comments**

Staff agrees with the LAO and recommends that PERB work with the Department of Finance to provide an alternative to the two budget proposals before the subcommittee that would identify adequate resources to address the backlog, short-term staffing needs, resources for the Los Angeles relocation, and the appropriate processing times for cases to be addressed by the board.

Staff agrees with the LAO on developing BBL or SRL requiring PERB to report to the Legislature the amount of time it takes it to process the average case in July 2016 to establish a baseline and again in January 2017 and May 2017 to inform the Legislature's decisions related to the 2017-18 budget.

### **Staff Recommendation. Hold Open**

## 7350 DEPARTMENT OF INDUSTRIAL RELATIONS

The Department of Industrial Relations (DIR) was established in 1927 to help improve working conditions for California's wage earners. DIR administers and enforces laws governing wages, workers' compensation insurance, hours and breaks, overtime, retaliation, workplace safety and health, apprenticeship training programs, and medical care and other benefits for injured workers. DIR also publishes materials and holds workshops and seminars to promote healthy employment relations, conducts research to improve its programs, and coordinates with other agencies to target egregious violators of labor laws and tax laws in the underground economy.

### 3-YR EXPENDITURES AND POSITIONS

	Positions			Expenditures		
	2014-15	2015-16	2016-17	2014-15*	2015-16*	2016-17*
6080 Self-Insurance Plans	21.7	22.9	22.8	\$4,390	\$6,356	\$6,313
6090 Division of Workers' Compensation	953.3	959.6	959.8	181,506	205,376	205,461
6095 Commission on Health and Safety and Workers' Compensation	7.7	6.8	6.8	2,735	3,520	3,475
6100 Division of Occupational Safety and Health	680.9	719.6	743.7	123,628	144,686	146,445
6105 Division of Labor Standards Enforcement	444.3	431.4	482.9	68,485	75,569	87,144
6110 Division of Apprenticeship Standards	49.6	51.9	51.9	10,321	10,811	10,850
6120 Claims, Wages, and Contingencies	-	-	-	87,608	181,712	181,712
9900100 Administration	352.2	357.4	373.2	51,542	56,836	60,346
9900200 Administration - Distributed	-	-	-	-51,541	-56,836	-60,346
<b>TOTALS, POSITIONS AND EXPENDITURES (All Programs)</b>	<b>2,509.7</b>	<b>2,549.6</b>	<b>2,641.1</b>	<b>\$458,674</b>	<b>\$628,030</b>	<b>\$641,400</b>



---

**Issue 1: Division of Labor Standards Enforcement Resources**

---

**Governor's Proposal.** The Division of Labor Standards Enforcement (DLSE) requests an increase of 28.5 positions and \$4.988 million from the Labor Enforcement and Compliance Fund (LECF) in FY 2016-17, 28.5 positions and \$4.756 million from LECF in FY 2017-18, with an on-going need of 26.5 positions and \$3.7 million from LECF resources to achieve the following for the Wage Claim Adjudication (WCA) unit and the Retaliation Complaints Investigation (RCI) unit. These additional resources seek to address the backlog that has accumulated due to an increase in caseload and the increase in complexity associated with evolving labor law requirements.

The positions under this proposal include:

- 2.0 deputy labor commissioner (DLC) IV for WCA
- 2.0 industrial relations counsel III for RCI
- 3.0 deputy labor commissioner (DLC) III for RCI
- 6.0 deputy labor commissioner (DLC) II for WCA
- 11.0 deputy labor commissioner (DLC) I for RCI
- 1.0 associate governmental program analyst for WCA
- 3.5 office technician (typing) for RCI

In addition to the positions, funding is requested for the reclassification of 16.0 deputy labor commissioner Is into deputy labor commissioner IIs for RCI, the reclassification of a management service technician into a deputy labor commissioner I, and limited-term temporary help/overtime funding to assist with backlogs for WCA.

**Background.**

**Wage Claim (WCA) Unit.** The Governor's budget proposes a total of 9.0 positions - six deputy labor Commissioner IIs, two deputy labor commissioner IVs and 1.0 Associate Government Program Analyst. The WCA unit within the Labor Commissioner's office accepts claims from individuals for unpaid wages, unpaid vacation or sick leave, missed meal and rest breaks, and other unpaid compensation. WCA is the largest unit within DLSE with approximately 200 positions. In the WCA unit, there are 16 offices across the state with each managed by a deputy labor commissioner (DLC) III, who report directly to the assistant chief over the WCA unit.

The WCA unit adjudicates claims filed by workers for nonpayment of wages, overtime, vacation pay, or other forms of compensation. WCA deputies (DLC I) hold informal conferences between employers and employees to resolve wage disputes. If a matter cannot be resolved at the informal conference, an administrative hearing (Berman hearing) is held by conducted by a hearing officer (DLC II) to make a final determination on the matter.

- **Hearing Referral.** In 2014, approximately half of the settlement conferences resulted in a referral for an administrative hearing. While this statewide referral rate has been steady for the last three years, the rate varies among the WCA offices throughout the state. Van Nuys referred only 32 percent of cases for a hearing, while Los Angeles referred 71 percent of their cases. This difference may indicate a disparity between these offices in how settlements conferences are approached. Additionally, there are significant differences in the length of time between when a case is filed and when it is referred to hearing. The statewide average length of time

---

from when cases are filed to when it is referred to a hearing is 75 days, however Sacramento took an average of 36 days compared to an average of 145 days in Van Nuys.

- **Hearings.** The statutory requirement between the end of settlement conferences and the start of a hearing is within 120 days, and while the state average in 2014 was four months, busier offices, this can take as long as eight months. For example, from the point of referral, the Oakland office took 36 days to start a hearing, whereas, San Bernardino took 243 days. In 2014, 11,568 Berman cases were referred for a hearing, but only 8,707 of those cases were heard, and as a result 2,861 hearings were not held. However, after taking into considering possible settlements, the remaining backlog is 1,704 hearings.

The Administration estimates that the additional six hearing officer positions (DLC IIs) will result in an additional 1,800 hearings annually. The Governor also proposes additional funding for temporary help and/or overtime funding equivalent to three DLC II positions on a two-year limited-term basis to help reduce the time it takes for a hearing to get scheduled. The Governor's proposes to provide a two additional DLC IVs to help the assistant chief oversees 16 district offices with over 200 staff.

Lastly, the Governor's budget proposes one associate governmental program analyst be added for data management and other support needs of the assistant chief. Currently, the assistant chief of WCA has no support staff. Extensive data collection and management tasks are all being managed by the assistant chief, which has required significant amounts of time for review and anomaly identification and resolution. This data is important because it helps management identify both problems and best practices and provide a means to identify when additional positions are needed.

**The Retaliation Complaints Investigation (RCI) Unit.** The Governor's budget requests a total of 19.5 positions (11.0 deputy labor commissioner I positions, three deputy labor commissioner III positions, 3.5 office technicians typing, and two industrial relations counsel III specialist positions).

The RCI unit accepts complaints from employees and job applicants who suffer retaliation because they engage in an activity protected by any law under the jurisdiction of the labor commissioner. The most common allegations of retaliation are for filing or threatening to file a labor law violation complaint with the labor commissioner or for complaining about dangerous working conditions. If an employee is afraid of losing their job for reporting unsafe working conditions or stolen wages, it will significantly decrease the likelihood that these violations get reported to DIR. The RCI unit has a northern and southern branch and each is managed by a DLC III who oversees the six offices within each, both reporting directly to the labor commissioner.

In 2014, the RCI unit received 3,800 complaints that alleged retaliation violation. The unit accepted 1,874 for investigation; others were rejected because they were outside of their jurisdiction. From 2011 to 2014, RCI acceptance rate of cases grew by 48 percent, an increase of 16 percent each year. It is assumed that the current growth will continue due to a recent change in Labor Code 98.6, which carries a \$10,000 civil penalty payable to the worker for most retaliation violations.

It currently takes an average of 122 days from when a case is opened to the time it is assigned to a DLC I, primarily due to the need to close out the backlog carryover of 2,247 unassigned cases. This results in a delay in the assignment of new cases. This delay can decrease the likelihood of a settlement because the employer's liability grows as the complainant remains unemployed therefore the resistance to settle is greater. Conversely, the complainant may simply give up on their case because they've found another job, thus, allowing the employer to avoid the consequences of engaging in retaliation.

For cases that are not settled, abandoned, or withdrawn, a DLC I will recommend a determination to the labor commissioner, chief of DLSE, who will then issue a final determination. These determinations are subject to appeal and are not legally binding. If an employer refuses to comply with the determination (payment of lost wages, offer of reinstatement, etc.), a court must prove the determination in order to be enforceable. This requires DLSE attorneys (industrial relations counsels (IRCs)) to try the case in court in order to enforce these determinations and to recover any wages and/or penalties on behalf of the worker. At the end of the year, there were 2,247 open cases, with 888 cases being first opened in 2013 or earlier. Of those 888 cases, 140 are pending determination to be upheld in court or for collection, and 30 remain on appeal.

In addition to this workload, the IRCs also provide consultative services to DLC Is on active investigations; conduct research on recent legislation to determine the impact on the retaliation cases; update RCI's legal manual and publications; address specific requests from the labor commissioner regarding retaliation law; and enforce judgments as they are issued by the court. Currently, there are three IRC positions to handle this workload, however, this is insufficient and there is now a backlog of 80 determination cases that have yet to even be filed in court.

The DIR notes that the additional resources will help close an additional 650 cases; however the backlog will not be fully eliminated. There has been a consistent accrual of about 400-500 new unassigned cases each year, and with these new resources, Department of Finance argues that RCI should be able reduce the number of new unassigned cases.

**Staff Recommendation:** Approve as budgeted.

**Vote:**

---

**Issue 2: Private Attorneys General Act**

---

**Summary.** The Labor and Workforce Development Agency and the Department of Industrial Relations (DIR) request 10.0 positions and \$1.6 million in resources from the Labor and Workforce Development Fund (LWDF) for the 2016-17 fiscal year and \$1.5 million ongoing to increase the number of staff to review notices and oversee the Private Attorneys General Act (PAGA)

The Governor also proposes trailer bill language to modify PAGA, including requiring additional information on PAGA proceedings and providing DIR the authority to create employer amnesty programs.

**Background.**

When an employer does not pay wages as required by law (such as overtime), statute allows employees to recover these wages, either through an administrative proceeding with the state's Labor and Workforce Development Agency (LWDA) or through private legal action in Superior Court. In addition to wages that may be recovered, statute also specifies civil penalties may be imposed on employers who violate Labor Code provisions. These civil penalties are intended to act as a deterrent against violations. The LWDA and the related state agencies that it oversees, including DIR, the Division of Labor Standards Enforcement (DLSE) and Division of Occupational Safety and Health (DOSH) within DIR, are responsible for enforcing the Labor Code and are authorized to impose civil penalties.

Employees may seek to recover wages improperly withheld through private legal action against the employer, and for those who do so, the PAGA—enacted by Chapter 906 of 2003 (SB 796, Dunn) and Chapter 221 of 2004 (SB 1809, Dunn)—grants employees the right to additionally seek civil penalties from employers. Prior to PAGA, penalties could only be pursued by LWDA and related state agencies. The general intent of PAGA is to allow employees to pursue civil penalties through the legal system when LWDA and related state agencies do not have the resources to do so. While civil penalties collected by LWDA are generally deposited in the state General Fund, any penalties collected under PAGA are split between the employee, who receives 25 percent, and LWDA, which receives the remaining 75 percent. The LWDA's portion of PAGA penalties is deposited into the Labor and Workforce Development Fund (LWDF), which is used for enforcement of labor laws and to educate employers and employees about their rights and responsibilities under the Labor Code.

**PAGA Process.** An individual who wishes to pursue civil penalties against an employer must provide a written notice to both the employer and LWDA of the alleged violations and his or her intent to pursue civil penalties under PAGA. This notice is the first step in a PAGA claim. This notification requirement is intended to allow LWDA to step in and investigate claims that it views as preferable to handle administratively rather than through the PAGA process, such as when the claim overlaps with other matters already under investigation by LWDA. LWDA notes that since 2014, only one position performs a high-level review of PAGA notices and determines which claims to investigate. As a result, less than half of PAGA notices were reviewed, and less than one percent of PAGA notices have been reviewed or investigated since PAGA was implemented.

In most cases, LWDA has 30 days to determine whether to investigate and, if it does investigate, 120 additional days to complete the investigation and determine whether to issue a citation. If LWDA does not investigate, or does investigate but does not issue a citation, or when an investigation is not completed, or not completed on time, the PAGA claim is automatically authorized to proceed. For certain violations that are considered less serious (for example, failing to correctly display the legal name and address of the employer on an itemized wage statement), employers are provided 33 days to

prevent a PAGA claim from proceeding by correcting the alleged violations. The number of PAGA notices received by LWDA over the past few years is displayed below.

### **PAGA Notices Filed With LWDA**

2010	4,430
2011	5,064
2012	6,047
2013	7,626
2014	6,307

When a PAGA notice is investigated, LWDA reports that it has difficulty completing the investigation within the timeframes outlined in PAGA.

Once the PAGA claim proceeds, LWDA typically receives no further information beyond payment of the portion of any civil penalties that is due to the LWDF. Civil penalties can be assessed through the PAGA process in two ways. When the court finds that the allegations in the PAGA claim have merit, they have the authority to impose civil penalties. Alternatively, the parties to the claim may settle out of court and include civil penalties as part of such a settlement. However, not all settlements include civil penalties. In fact, LWDA reports that in 2014-15 it received just under 600 payments for PAGA claims that resulted in civil penalties. This number is low relative to the amount of PAGA notices LWDA receives each year (roughly 10 percent of notices received in 2014), implying that the final disposition of a large portion of PAGA claims, and likely many settlements, do not involve civil penalties. When cases that involve a PAGA claim settle out of court and civil penalties are included as part of the settlement, PAGA requires court review and approval of the settlement.

**Reports of Undesirable Outcomes from PAGA Litigation.** The LWDA highlights concerns from stakeholders that the outcomes of PAGA litigation may not always be in the best interest of the state, as a whole. Specifically, the concern has been raised that some employers are incurring substantial legal costs to defend against PAGA claims that allege what might be viewed as relatively minor labor law violations. On the other hand, the department also claims that PAGA settlements may not achieve the same level of wage recovery and civil penalties as might be the case were LWDA to investigate. Parties to PAGA claims currently are not required to notify LWDA on the outcomes of PAGA claims after the agency declines to investigate or issue a citation (other than to forward any penalties due to the LWDF), as a result, the department states that complete information on the final disposition of PAGA claims is not available. This lack of information makes it difficult to evaluate whether, and how often, these potential undesirable outcomes are occurring.

**Governor’s Proposal.** The Governor’s proposal would provide \$1.6 million in 2016-17, and \$1.5 million ongoing, from the LWDF to support ten new positions—one at LWDA and nine at DIR.

Classification	Agency	Number of Positions
Assistant General Counsel	LWDA	1
Attorney IV	DIR	3
Deputy Labor Commissioner III	DIR	1
Investigator	DIR	1
Legal Analyst	DIR	1
Auditor I	DIR	2
Office Technician	DIR	1
<b>Total</b>		<b>10</b>
PAGA = Private Attorneys General Act; LWDA = Labor and Workforce Development Agency; and DIR = Department of Industrial Relations.		

The Administration estimates that the proposed positions would review about 900 additional PAGA notices (a more in-depth review than current resources allow) and investigate an additional 45 claims each year. The proposed positions would also help address some increased workload related to various proposed changes to the PAGA process described below.

The Governor proposes trailer bill language that makes several changes to the PAGA process, described below.

- **Require Additional Information to the LWDA.** The proposal would (1) require that initial PAGA notices filed with LWDA have more detail than is currently required about the legal contentions and authorities supporting each alleged violation, (2) require that DIR receive a copy of the complaint when the legal action is initiated, (3) require that DIR be notified of the terms of PAGA settlements, and (4) require all PAGA-related notices to LWDA or related state agencies be submitted through a new online system.
- **Require a Filing Fee for PAGA Notices.** The proposal would require that employees wishing to pursue a PAGA claim pay a fee of \$75 (or \$150 if the PAGA claim is seeking penalties on behalf of ten or more employees) when filing the initial PAGA notice with LWDA, except when the alleged violation relates to workplace safety or health. These fees would be deposited into the LWDF and used to offset some of the cost of the proposed new positions.
- **Require That PAGA Notices Involving Multiple Employees Be Verified.** The proposal would require that PAGA notices that are seeking penalties on behalf of ten or more employees be verified, meaning that the employee filing the notice must attest that the information in the notice is true.

- **Clarify That Employers May Request LWDA Investigation.** The proposal would amend PAGA to clarify that employers who receive a PAGA notice have the ability to request an investigation by LWDA or related state agencies. Employers would be required to pay a \$50 fee to file such a request.
- **Extend Investigation Time Lines.** The proposal would extend the time allotted for LWDA to consider whether to investigate the violations in a PAGA notice from 30 to 60 days and extend the time to investigate and issue a citation from 120 to 180 days.
- **Require Court Approval of All PAGA Settlements.** Currently, courts are generally required to review and approve only PAGA settlements that include civil penalties or that relate to violations of health and safety requirements. The proposal would require that all settlements be submitted to the court for review and approval.
- **Allow LWDA to Object to Proposed PAGA Settlements.** Currently, in addition to being reviewed by the court, PAGA requires that settlements related to health and safety requirements are also submitted to DOSH for comment and that courts give appropriate weight to DOSH comments when considering approval of the settlement. The proposal would extend this requirement to all PAGA settlements by allowing the director of DIR to object to any proposed settlement prior to the court's consideration of the settlement.

**Amnesty Program.** In some instances where a widespread industry practice has been found to be in violation of labor law, the Legislature has enacted temporary amnesty or safe harbor programs to allow affected employers to receive relief from potentially substantial penalties in exchange for quickly compensating employees for past violations. The Governor's proposal would give DIR the authority to create temporary amnesty programs when certain conditions exist, including:

1. A court decision or other legal development invalidates a common industry practice that a substantial portion of the industry believed, in good faith, to be legal;
2. A decision or legal development affects at least 10,000 employees and is likely to lead to PAGA claims against at least five employers;
3. An amnesty program is likely to provide more relief to employees than private legal action.

The process of creating a temporary amnesty program would begin after a petition from an interested party (such as an employer) is filed with DIR and an opportunity is given to other interested parties, including employees, employers, and worker or industry advocacy groups, to comment on the petition. Amnesty programs created under the proposed new authority would be limited to 18 months and would require that an employer fully compensate employees for any back wages due.

#### **Legislative Analyst's Office Comments and Recommendations.**

- **Approve Requested Funding and Positions.** To enable LWDA to more effectively fulfill its role of reviewing and, in some cases, investigating PAGA claims, the LAO recommends the Legislature approve funding for the ten positions requested in the Governor's proposal. If the Legislature does not approve the Administration's proposed fee on PAGA filings, the LWDF has a sufficient balance to pay the full cost of these positions for the next several years, but the ability of the fund to support the positions over the longer term is unclear because it depends on potential growth or decline in PAGA penalty payments (payments appear to have been

increasing in recent years). Should the Legislature approve the requested positions but reject the proposed fee, it will be important to monitor the condition of the LWDF and consider future adjustments to the expenditures of the fund or possibly identify an additional funding source, such as a potential fee on PAGA filings as proposed by the Governor, as necessary.

- **Amend PAGA to Require That Additional Information Be Provided to LWDA.** The Administration has raised concerns about possible negative outcomes from PAGA litigation for both employers and employees, but because comprehensive information about the final disposition of PAGA claims is not available to the LWDA, it is difficult to assess how seriousness or prevalence these issues. The LAO recommends adopting the Governor's proposal to require more detail in initial PAGA notices, require that LWDA receive copies of PAGA complaints and any settlement agreements, and require that notices to LWDA related to PAGA claims be submitted through an online system.
- **Reject Remaining Proposed PAGA Amendments Without Prejudice in Favor of Separate Legislative Deliberation on PAGA Priorities.** Specifically, the LAO recommends rejecting without prejudice (1) the proposed filing fee, (2) verification of PAGA notices involving more than ten employees, (3) clarifying that employers may request an LWDA investigation following a PAGA notice, (4) extending investigation time-lines, (5) requiring court approval of all PAGA settlements, and (6) allowing LWDA to object to proposed PAGA settlements. LAO states that these proposals should be reviewed through the legislative policy process, which allows for greater input from affected stakeholders to identify potential benefits and drawbacks, and allows for consideration of potential reporting requirements that would draw on the better information LWDA receives on the final outcomes of PAGA litigation.
- **Reject Proposed Language Allowing DIR to Create Ad Hoc Temporary Amnesty Programs.** LAO recommends rejecting proposed language to grant DIR the authority to create temporary amnesty programs on an ad hoc basis, in favor of reviewing proposals for such programs on a case-by-case basis through the regular legislative policy process. This approach may slow the creation of future amnesty programs relative to what might be possible under the Governor's proposal, but would preserve the Legislature's important role in determining when to relieve significant groups of employers from penalties associated with violating labor law.

#### **Staff Comments.**

The Governor's trailer bill language proposes fundamental policy changes to PAGA, such as, how long employees should wait for LWDA to conduct an investigation before the claim may proceed, and whether LWDA should be able to influence the outcome of a PAGA claim once it has decided not to investigate or issue a citation. The significant changes may be more appropriately considered in the legislative policy committee process rather than the state budget process.

Most significantly, the Governor's proposal grants DIR the authority to create an ad hoc temporary amnesty program. Giving DIR the authority to create future amnesty programs, under certain conditions but without specific legislative authorization in each case, would likely expedite the creation of such programs. However, LAO believes that the Legislature has an important role to play in considering when employers should be granted relief from penalties imposed for violating labor law, and under what terms this relief should be granted. LAO and staff is concerned that giving DIR the authority to establish amnesty programs on an ad hoc basis would undermine the Legislature's role in this area, and believe that this concern outweighs the potential benefit of establishing future amnesty programs more rapidly.



**Staff Recommendation:** Reject the pieces of the Administration's proposed trailer bill related to PAGA that seek to: (1) clarify that employers may request an investigation following the receipt of a PAGA claim, (2) require verification of PAGA notices involving more than ten employees, and (3) grant authority to DIR to create ad hoc employer amnesty programs under specified conditions.

Hold the balance of the proposal open pending continuing dialogue between interested stakeholders and the Administration, with a request that the subcommittee be advised of the status of the proposal prior to the May Revision.

**Vote:**

---

**Issue 3: Revenue and Expenditure Alignment for Various Special Funds**

---

**Summary.** The Governor's budget proposes to align expenditure authority and special fund revenue from various fees and permits to the appropriate program; increase resources for labor law enforcement in the car wash program to help bring its special funds into balance; delete decades-old statutory caps on certain fees to allow for proper cost recovery; and clean up and standardize language for various fees and permits. This proposal includes statutory changes to various sections of the Labor Code for the Division of Occupational Safety & Health (DOSHS) and the Division of Labor Standards Enforcement (DLSE).

Approximately \$1.6 million in regulatory licenses and permits are deposited into the General Fund each year as a result of the DIR's regulatory activities, even though the General Fund no longer provides any support to the department. These recommendations, if approved, will redirect these monies into DIR special funds, providing a commensurate offset to employers by reducing the annual employer assessment. This proposal will not affect the department's fine and penalty revenue, approximately \$25 million annually, which will continue to be deposited into the General Fund.

Included in this proposal is the elimination of seven positions related to the Child Performer Services Permit program; with one of these positions being redirected to the Asbestos and Carcinogen Unit and another four positions being redirected to labor law enforcement in the car wash industry.

- Redirect regulatory fees from the General Fund to offset employer assessments. The DIR formerly received significant support from the General Fund, and various regulatory fees were deposited into the General Fund to offset General Fund costs. Since 2014-15, DIR has not received any General Fund support and is now fully supported by assessments paid by all employers. In several instances, the proposal would redirect regulatory fees (about \$1.6 million) back to DIR to offset the amount of revenues needed from the employer assessment.
- Remove statutory caps on regulatory fees. In some cases, current law places caps on the fees that DIR may charge for various regulatory activities. The proposal would remove these caps to give DIR the flexibility to set fees that cover the costs of regulatory activities. This is intended to avoid the need, now or in the future, for additional funding from the employer assessment to cover the costs of regulatory activities that are not fully covered by capped fees.
- Clarify that regulatory fees may be set to cover indirect costs. In some cases, current law specifies that fees may be set to cover only the direct costs of inspections and approval processes. Previously, indirect overhead costs related to these activities would have been borne by the General Fund. Since the General Fund no longer supports DIR operations, overhead costs must either be supported by the regulatory fees or by the broad employer assessment. The proposal clarifies that regulatory fees may be set to cover a reasonable percentage of overhead that may be attributable to the regulatory activity, offsetting the revenues that need to be raised through the general employer assessment.
- Abolish certain funds with limited purposes and small appropriations. In some cases, DIR administers funds with narrow purposes and relatively small appropriations. The proposal would abolish some of these funds and redirect fee revenues to larger, general purpose funds that would pay for program operations going forward.

The table below, compiled by the LAO, summarizes the major issues identified and solutions proposed by DIR, along with the amount of General Fund dollars that would be redirected to offset the employer assessment.

Program/Activity	Issues Identified by DIR	Solutions Proposed by DIR	General Fund Revenue Redirected to Offset Employer Assessment
<p><u>Temporary Entertainment Work Permits</u></p> <p>Chapter 557 of 2011 (AB 1401, Committee on Arts, Entertainment, Sports, Tourism, and Internet Media) newly required temporary permits for minors under age 16 to be employed in the entertainment industry. Chapter 557 also created the Entertainment Work Permit Fund (EWPF) to receive permitting fees and to pay for the administration of the program by the Division of Labor Standards Enforcement (DLSE).</p>	<p>The amount of fees deposited into the EWPF and level of administrative expenditures was small are viewed as insufficient to justify maintaining a separate fund.</p> <p>Since the 2014-15 budget, administrative expenses of the program have been funded from the Labor Enforcement and Compliance Fund (LECF).</p>	<p>Amend the Labor Code to deposit permit fees in the LECF to support the administration of temporary entertainment work permits.</p> <p>Abolish the EWPF and transfer resources to the LECF.</p>	None
<p><u>Farm Labor Contractor Licenses</u></p> <p>Chapter 3 of Part 6 of Division 2 of the Labor Code (beginning with Section 1682) requires that farm labor contractors to be licensed by DLSEr. A portion of licensing fees are deposited into the Farmworker Remedial Account, which is used to compensate individuals for certain damages caused by farm labor contractors, a portion is dedicated to funding enforcement of farm labor contractor requirements, and a portion is deposited in the General Fund.</p>	<p>A portion of fees are deposited in the General Fund, even though the General Fund no longer supports DLSE's activities.</p>	<p>Amend the Labor Code to redirect the portion of farm labor contractor licensing fees currently deposited in the General Fund to the LECF to support enforcement of farm labor contractor requirements.</p>	\$670,000

Program/Activity	Issues Identified by DIR	Solutions Proposed by DIR	General Fund Revenue Redirected to Offset Employer Assessment
<p><u>Talent Agency Licensing Fee</u> Chapter 4 of Part 6 of Division 2 of the Labor Code (beginning with Section 1700) requires that talent agencies be licensed.</p>	<p>Talent agency licensing fees are deposited in the General Fund, even though General Fund no longer supports DLSE’s activities.</p>	<p>Amend the Labor Code to redirect talent agency licensing fees currently deposited in the General Fund to the LECF to support the administration of licensing activities.</p>	<p>\$174,000</p>
<p><u>Child Performer Services Permit</u> Chapter 634 of 2012 (AB 1660, Campos) requires individuals that represent artists who are minors to obtain a child performer services permit (CPSP) from DLSE. Chapter 634 also established the CPSP Fund to receive permit fees and pay for the costs of administering the program. The DLSE currently has nine positions associated with the CPSP program.</p>	<p>Seven positions are not needed to administer the CPSP program. The amount of fees deposited into the CPSP Fund and level of administrative expenditures was small are viewed as insufficient to justify maintaining a separate fund.</p>	<p>Reallocate one position to the Asbestos and Carcinogen Unit and four positions to enforcement in the car wash industry.</p> <p>Amend the Labor Code to deposit CPSP fees in the LECF to support the administration of the CPSP program.</p> <p>Abolish the CPSP Fund and transfer resources to the LECF.</p>	<p>None</p>
<p><u>Car Wash Worker Fund</u> Chapter 2 of Part 8.5 of Division 2 of the Labor Code (beginning with Sections 2054) requires that all employers that operate car washes to annually register with DLSE and pay fees. Current law sets the fee and provides that the fee may be adjusted to reflect inflation. A portion of registration fees are deposited in the Car Wash Worker Restitution fund to compensate car wash workers for unpaid wages. The remainder of the fees are deposited in the Car Wash Worker Fund (CWWF) and are used to pay for</p>	<p>The CWWF has a large surplus. Field enforcement in the car wash industry is inadequate.</p> <p>Field enforcement is currently funded from the LECF.</p> <p>The administration does not have the ability to increase or decrease the amount of fees paid by car wash employers.</p>	<p>Provide four positions (reallocated from the CPSP program) for increased field enforcement in the car wash industry, funded from the CWWF.</p> <p>Amend the Labor Code to allow DLSE to set the registration fee at levels necessary to support direct and indirect costs of administering car wash requirements.</p>	<p>None</p>

Program/Activity	Issues Identified by DIR	Solutions Proposed by DIR	General Fund Revenue Redirected to Offset Employer Assessment
administering the registration process and enforcing labor law requirements in the car wash industry.			
<u>Industrial Home Work License and Permit Fees</u> Part 10 of Division 2 of the Labor Code (beginning with Section 2650) provides that an individuals may not employ industrial homeworkers without obtaining a license, or be employed as an industrial homeworker without obtaining a permit, from DLSE and paying a fee.	Industrial homework licensing and permit fees are currently deposited in the General Fund, even though the General Fund does not support DLSE's activities.	Amend the Labor Code to redirect industrial homework license and permit fees currently deposited in the General Fund to the LECF to support the administration of licensing and permitting activities.	\$1,000
<u>Construction and Demolition Work Permits and Registrations</u> Chapter 6 of Part 1 of Division 5 of the Labor Code (beginning with Section 6500) requires that permits be obtained from the Division of Occupational Safety and Health (DOSH) prior to the initiation of specified projects and operations, including the construction of certain trenches, buildings, demolitions, or use diesel engines in mines and tunnels. Chapter 6 also requires contractors that work with asbestos to register with the state. Contractors pay fees to obtain permits and registrations under Chapter 6.	Permitting and registration fees are current deposited into the General Fund, even though the General Fund does not support DOSH's activities.	Amend the Labor Code to redirect construction and demolition work permits and registrations currently deposited in the General Fund to the Occupational Safety and Health (OSH) Fund.	\$492,000

Program/Activity	Issues Identified by DIR	Solutions Proposed by DIR	General Fund Revenue Redirected to Offset Employer Assessment
<p><u>Elevator Permits and Inspector Certifications</u> Chapter 2 of Part 3 of Division 5 of the Labor Code (beginning with Section 7300) requires that certain conveyances, including elevators, escalators, and other platform lifts, pay a fee and obtain a permit from DOSH prior to operation. Chapter 2 also requires conveyance inspectors pay a fee and obtain a certification from DOSH.</p>	<p>Current law allows permitting and certification fees cover only the cost of actual inspections and certifications, not indirect administrative costs. However, the General Fund no longer supports DOSH’s indirect administrative costs, such that indirect costs are borne by employers at large.</p> <p>Current law prohibits DOSH from charging a fee for the inspection of a conveyance that was inspected by an authorized inspector not employed by DOSH. However, current law does not specify that that DOSH may charge a fee to process and issue the required permit.</p>	<p>Amend the Labor code to clarify that permitting and certification fees may include a reasonable percentage of indirect administrative costs, in addition to the actual direct costs of permitting and certification activities.</p> <p>Amend the Labor Code to clarify that DOSH may charge a fee to process and issue operating permits when inspections are performed by authorized inspectors not employed by DOSH.</p>	<p>None</p>
<p><u>Aerial Passenger Tramways</u> Chapter 4 of Part 3 of Division 5 of the Labor Code (beginning with Section 7340) requires that passenger tramways must pay a fee and obtain a permit from DOSH prior to operation.</p>	<p>The term “aerial” is dated and does not apply to most tramways in operation today.</p> <p>Since 2007, tramway permitting fees have been currently deposited into the Elevator Safety Account (which also receives permitting fees for elevators and portable amusement rides). DOSH would prefer to deposit only elevator-related fees into the Elevator Safety Account.</p> <p>Current law allows permitting and certification fees cover only the cost of actual inspections and certifications, not indirect administrative costs. However, the General Fund no longer supports DOSH’s indirect administrative costs, such that indirect costs are borne by</p>	<p>Amend the Labor Code to delete the word “aerial.”</p> <p>Amend the Labor Code to redirect revenues and liabilities related to tramways from the Elevator Safety Account to the OSH Fund.</p> <p>Amend the Labor code to clarify that permitting and certification fees may include a reasonable percentage of indirect administrative costs, in addition to the actual direct costs of permitting and certification activities.</p>	<p>None</p>

Program/Activity	Issues Identified by DIR	Solutions Proposed by DIR	General Fund Revenue Redirected to Offset Employer Assessment
	<p>employers at large.</p> <p>Current law allows DOSH to charge a fee to process permit applications when the tramway is inspected by an inspector not employed by DOSH. However, current law places a \$10 cap on the fee that limit's DOSH's ability to recover its full costs.</p>	<p>Amend the Labor Code to remove the cap on fees to process permits for tramways inspected by an inspector not employed by DOSH.</p>	
<p><u>Tower Crane Permit and Inspector Certification Fees</u></p> <p>Chapter 5 of Part 3 of Division 5 of the Labor Code (beginning with Section 7370) requires that employers obtain a permit in order to operate tower cranes and requires DOSH to charge a fee to cover the cost of issuing permits and performing inspections as part of the permitting process.</p> <p>Additionally, Chapter 5 requires that certain cranes be certified by licensed certification agencies.</p>	<p>Current law allows permitting and certification fees cover only the cost of actual inspection, permitting, and licensing activities, not indirect administrative costs. However, the General Fund no longer supports DOSH's indirect administrative costs, such that indirect costs are borne by employers at large.</p> <p>Crane permitting fees and licensure fees for certifying agencies are currently deposited in the General Fund, even though the General Fund does not support DLSE's activities.</p>	<p>Amend the Labor code to clarify that permitting and licensing fees may include a reasonable percentage of indirect administrative costs, in addition to the actual direct costs of inspection, permitting, and licensing activities.</p> <p>Amend the Labor Code to redirect permitting and licensing fees currently deposited in the General Fund to the Occupational Safety and Health (OSH) Fund.</p>	<p>\$265,000</p>
<p><u>Pressure Vessel Certifications of Inspectors, Permits, Inspections, and Related</u></p> <p>Chapter 4 of Part 6 of Division 4 of the Labor Code (beginning with Section 7720) allows DOSH to collect fees for the inspection of pressure vessels and for other consultations, surveys and audits related to pressure</p>	<p>Unlike other statutes that require fees for inspections and permitting, the language in Chapter 4 is permissive.</p> <p>Current law allows DOSH to charge a fee to process permits for pressure vessels. However, current law places a \$15 cap on the fee that limit's DOSH's ability to recover its full costs.</p> <p>Unlike other statutes that allow fees to be charged for processing</p>	<p>Amend the Labor Code to require DOSH to collect fees for inspections and permitting.</p> <p>Amend the Labor Code to remove the \$15 cap on permitting fees.</p> <p>Amend the Labor Code to specifically permit DOSH to</p>	<p>None</p>

Program/Activity	Issues Identified by DIR	Solutions Proposed by DIR	General Fund Revenue Redirected to Offset Employer Assessment
vessel permitting.	<p>permits in cases when the inspection is made by a certified inspector not employed by DOSH, the language in Chapter 4 is inconsistent and prohibits the collection of any when the inspection is conducted by an inspector not employed by DOSH (even though DOSH still has to process the permit).</p> <p>Current law does not specifically state that fees may be set to cover both the direct and indirect overhead costs of activities related to pressure vessels. However, the General Fund no longer supports DOSH's indirect administrative costs, such that the current language could be interpreted to mean that indirect costs are borne by employers at large.</p>	<p>charge a fee to process a permit for pressure vessels when the inspection is performed by a certified inspector not employed by DOSH.</p> <p>Amend the Labor Code to clarify that fees may set to cover both direct and indirect costs of administering Part 6.</p>	
<p><u>Portable Amusement Ride Inspections</u> Part 8 of Division 5 of the Labor Code (beginning with Section 7900) requires portable amusement rides to be inspected and receive a permit to operate, and allows DOSH to collect fees for such inspections.</p>	<p>Unlike other statutes that require fees for inspections and permitting, the language in Part 8 is permissive.</p> <p>Current law allows fees to cover only the cost of actual inspection, not indirect administrative costs. However, the General Fund no longer supports DOSH's indirect administrative costs, such that indirect costs are borne by employers at large. In the case of California Portable Ride Operators, LLC v. Division of Occupational Safety and Health, the court found that DOSH could not levy a fee to cover indirect costs based on current law.</p> <p>Current law allows DOSH to charge a fee to process permits for amusement rides when</p>	<p>Amend the Labor Code to require DOSH to collect fees for inspection and permitting activities.</p> <p>Amend the Labor Code to clarify that fees may be set to cover both direct and indirect costs, and provide authority for emergency regulations to adjust fees.</p> <p>Amend the Labor Code to remove the \$10 cap on fees to process a permit when the inspection was performed by a certified inspector not employed by DOSH.</p>	None



Program/Activity	Issues Identified by DIR	Solutions Proposed by DIR	General Fund Revenue Redirected to Offset Employer Assessment
	<p>inspections are performed by a certified inspector not employed by DOSH. However, current law places a \$10 cap on the fee that may limit DOSH’s ability to recover its full costs.</p> <p>Current law deposits portable amusement ride fees into the Elevator Safety Account. DOSH would prefer for these revenues to be deposited into the OSH Fund.</p> <p>Current law requires DOSH to prepare an annual report summarizing all inspections of amusement rides and accidents and submit this report to the Division of Fairs and Expositions in the Department of Food and Agriculture. While the report may have value in general, the Department of Food and Agriculture does not need the report.</p>	<p>Amend the Labor Code to redirect portable amusement ride fees from the Elevator Safety Account to the OSH fund.</p> <p>Amend the Labor Code to require the annual report on amusement rides to be posted to the DIR website instead of submitting to the Department of Food and Agriculture.</p>	
<p><u>Permanent Amusement Ride Safety Inspection Program</u> Part 8.1 of Division 5 of the Labor Code requires permanent amusement rides to be inspected and certified and allows DOSH to collect fees to cover the cost of administering the inspection and certification process.</p>	<p>Unlike other statutes that require fees for inspections and permitting, the language in Part 8.1 is permissive.</p> <p>Current law allows fees to cover only the cost of actual inspection, not indirect administrative costs. However, the General Fund no longer supports DOSH’s indirect administrative costs, such that indirect costs are borne by employers at large.</p> <p>Current law deposits portable amusement ride fees into the Elevator Safety Account. DOSH would prefer for these revenues to be deposited into the OSH Fund.</p>	<p>Amend the Labor Code to require DOSH to collect fees for the inspection and certification of permanent amusement rides.</p> <p>Amend the Labor Code to clarify that fees may be set to cover both direct and indirect costs of inspection and certification activities.</p> <p>Amend the Labor Code to redirect permanent amusement ride fees from the Elevator Safety Account to the OSH</p>	<p>None</p>

Program/Activity	Issues Identified by DIR	Solutions Proposed by DIR	General Fund Revenue Redirected to Offset Employer Assessment
	<p>Part 8 requires that portable amusement ride owners that fail to pay required fees must also pay a penalty. Part 8.1 does not place a similar requirement on owners of permanent amusement rides.</p>	<p>fund.</p> <p>Amend the Labor Code to require the same penalty for nonpayment of permanent amusement ride fees as is required for portable amusement ride fees.</p>	
<p><u>Tunnels and Mines Blasters' Licenses and Certification of Gas Testers and Safety Representatives</u></p> <p>Chapter 3 of Part 9 of Division 5 of the Labor Code (beginning with Section 7990) requires that individuals must be licensed in order to work as a blaster (use explosives) in a mine or tunnel and sets a fee for obtaining such a license.</p> <p>Chapter 3 also requires that individuals must be certified before working as a gas tester or safety representative in a mine or tunnel, and sets a fee for obtaining such a certification.</p>	<p>Current law caps the fee for blasters licenses and gas testers/safety representative certifications at \$15, limiting DOSH's ability to cover costs.</p> <p>Current law does not specify that fees may be set to cover both direct and indirect costs of administering the licensing and certification process. However, the General Fund does not support DOSH activities, meaning that the costs of these activities are born by employers at large.</p> <p>Fees from license and certification applications are deposited into the General Fund. However, the General Fund no longer supports DOSH operations.</p>	<p>Amend the Labor Code to remove the cap on fees for blasters licenses and gas testers/safety representatives certifications.</p> <p>Amend the Labor Code to clarify that fees may be set to cover both direct and indirect costs of administering the licensing and certification processes.</p> <p>Amend the Labor Code to redirect fee revenues that had been deposited into the General Fund to the OSH fund.</p>	<p>\$5,000</p>
<p><u>Certification of Asbestos Consultants and Training Programs</u></p> <p>Chapter 3 of Part 10 of Division 5 of the Labor Code (beginning with Section 9020) provides for DOSH to certify asbestos consultants and allows DOSH to charge a fee for the certification process. These fees are deposited into the Asbestos Consultant Certification</p>	<p>Unlike other statutes that require fees for certifications and approvals, the language in Chapter 3 is permissive.</p> <p>Current law does not specifically state that fees may be set to cover both the direct and indirect overhead costs of activities asbestos consultant certification and training approval. However, the General Fund no longer supports DOSH's indirect administrative costs, such that</p>	<p>Amend the Labor Code to require DOSH to collect fees for asbestos consultant certification and training approval.</p> <p>Amend the Labor Code to clarify that fees may be set to cover both the direct and indirect costs of certification and approval activities.</p>	

Program/Activity	Issues Identified by DIR	Solutions Proposed by DIR	General Fund Revenue Redirected to Offset Employer Assessment
<p>Account in the Asbestos Consultant Certification Fund.</p> <p>Chapter 3 also provides for DOSH to approve training entities to conduct task-specific training programs based on the state’s asbestos health and safety standards and allows DOSH to charge a fee for the approval process. These fees are deposited into the Asbestos Training Approval Account in the Asbestos Consultant Certification Fund.</p>	<p>the current language could be interpreted to mean that indirect costs are borne by employers at large.</p> <p>Both the Asbestos Consultant Certification Account and the Asbestos Training Approval Account have surplus balances.</p> <p>The asbestos consultant certification and asbestos training approval processes are currently subsidized to a significant extent by the OSH Fund.</p> <p>The asbestos consultant certification and asbestos training approval processes are understaffed, resulting in backlogs.</p>	<p>Amend the Labor Code to abolish the Asbestos Consultant Certification Fund and both accounts within it, redirect fees to the OSH fund, and deposit the balance of the fund in the OSH fund.</p> <p>Going forward, activities would be paid for from the OSH fund.</p> <p>Provide funding from the OSH fund for 1.0 staff services analyst to increase DOSH’s ability to meet timelines.</p>	
<b>Total</b>			<b>\$1,607,000</b>

**Staff Comments.** The subcommittee received a letter from the Western Carwash Association (CWA) that expresses support for the four new positions being sought for carwash enforcement as part of this proposal, but CWA objects to the proposal to allow the labor commissioner the authority to periodically adjust the annual registration fees that would help to fund these four positions, and argues that Car Wash Worker Fund maintains a balance that can support these positions for the foreseeable future.

**Staff Recommendation.** Staff recommends that the Car Wash Worker Fund component of this issue be held open and that the balance of the BCP be approved, with the trailer bill proposal adopted as placeholder to allow for technical adjustments that may be necessary as part of the trailer bill process.

**Vote:**

<b>Issue 4: Mining and Tunneling Safety Inspectors</b>
--

**Governor’s Budget Proposal.** DIR requests two positions and \$563,000 for 2016-17 and \$548,000 ongoing, from the Occupational Safety & Health (OSH) fund for the Division of Occupational Safety and Health (DOSH) to provide resources to begin to close the gap between current inspections levels and current statutory requirements for inspecting California tunnels and mines. Included in the cost of this proposal is \$155,000 for overtime expenditures, which will effectively add one additional position, for the equivalent of three additional inspectors.

DOSH also plans to fund a study to examine the statutory requirements of the Tom Carrell Memorial Tunnel and Mine Safety Act of 1972, in conjunction with advancements in technology, state and federal standards and regulations, and any other industry factors to determine what changes, if any, to current statutory and/or regulatory requirements might be advisable.

**Background.** The Mining and Tunneling Unit’s responsibilities include:

1. Conducting pre-job safety conferences prior to any initial tunneling or underground mining operation;
2. Performing mandated periodic inspections of tunnels under construction, underground mines, surface mines, quarries and enforces compliance with Title 8 as required;
3. Conducting accident, complaint and referral inspections of activities at mines and tunnels under construction and enforces compliance with Title 8 as required;
4. Conducting certification exams for safety representatives and gas testers to work in tunnels and mines;
5. Giving licensing exams for blasters to use explosives and provides oversight on all demolition projects using explosives;
6. Issuing permits allowing the use of diesel engines in tunnels and mines and enforces compliance with the provisions of the permits.

**Resource History**

<b>Program Budget</b>	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>
Authorized Expenditures	3,643	3,707	3,083	3,627	3,758
Actual Expenditures	3,167	3,369	2,883	3,132	3,572
Revenues					
Authorized Positions	31.0	29.0	25.0	23.0	25.0
Filled Positions	24.4	24.4	20.8	20.6	21.5
Vacancies	6.6	4.6	4.2	2.4	3.5

**Workload History**

<b>Workload Measure</b>	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>
Complaints & Accidents	<b>21</b>	<b>35</b>	<b>36</b>	<b>49</b>	<b>27</b>
Tunnels - Total Mandated Inspections	<b>435</b>	<b>478</b>	<b>391</b>	<b>394</b>	<b>454</b>
Tunnels - Inspections	<b>103</b>	<b>93</b>	<b>46</b>	<b>79</b>	<b>118</b>
Tunnels - No Inspection	<b>332</b>	<b>385</b>	<b>345</b>	<b>315</b>	<b>336</b>
Mines - Total Mandated Inspections	<b>509</b>	<b>502</b>	<b>503</b>	<b>491</b>	<b>513</b>
Mines - Inspections	<b>353</b>	<b>336</b>	<b>226</b>	<b>194</b>	<b>313</b>
Mines - No Inspection	<b>156</b>	<b>166</b>	<b>277</b>	<b>297</b>	<b>200</b>
Tunnel Pre-Jobs	<b>256</b>	<b>281</b>	<b>267</b>	<b>232</b>	<b>275</b>
Examinations	<b>421</b>	<b>449</b>	<b>415</b>	<b>375</b>	<b>320</b>
Training <sup>2</sup> (days)	<b>396</b>	<b>352</b>	<b>220</b>	<b>264</b>	<b>352</b>
Administrative Duties <sup>3</sup> (hours)	<b>639</b>	<b>568</b>	<b>355</b>	<b>426</b>	<b>568</b>

As indicated by the workload history table, the division currently lacks the resources to fulfill its statutory mandate to conduct all required inspections of tunnels and mines each year. Those requirements are:

1. Surface mines require one inspection per year;
2. Underground mines require four inspections per year;

<sup>2</sup> Training - Mandatory classroom, web-based and field training for each inspector, averaging 36 days

<sup>3</sup> Administrative Duties - Average 71 hours per inspector per year, and include staff meetings, responding to phone inquiries, testing and calibration of equipment, completion of time sheets and travel expense claims, Acting Supervisor duties, providing technical support to the regulated community, reading Division's Policy and Procedure Manual and its updates, delivering speeches to public groups, etc.

3. Tunnels under construction require six inspections per year;
  - a. Large tunnel projects (i.e., tunnels under construction for 12 to 14 months) require six mandated inspections;
  - b. Medium tunnel projects (i.e., tunnels under construction for 4-6 months) require an average of two mandated inspections; and
  - c. Small tunnel projects (i.e., tunnels under construction for less than 4 months) require, in general, only one inspection.

**Tunnel Inspections.** DIR reports an average of 428 inspections of new tunnels has been required each year for the past six years as a result of new tunnel construction. An average of 77 percent of these mandated inspections (or 331 as reflected in the workload table) were not inspected in accordance with statutory requirements. However, an onsite pre-job conference is conducted for every tunnel project.

**Mine and Quarry Inspections.** DIR reports an average of 505 inspections of mines and quarries were required each year for the last six years. An average of 46 percent of these mandated inspections (or 231 as reflected in the workload table) were not inspected in accordance with statutory requirements. The federal Mine Safety and Health Administration conducted an additional 291 inspections of California mines over the past year, in accordance with federal regulations. However, federal standards for mine inspections differ from California's regulatory standards. Mandates in the Labor Code express legislative intent to protect workers from the hazards of operations conducted in tunnels, mines, and quarries, which are among the highest-risk workplaces in the state. Even without regard to the expected construction of 20 major tunnels over the next three years, additional resources are needed to meet the state mandates designed to protect these workers.

**Outcomes and Accountability.** With the resources provided by this proposal the Mining and Tunneling Unit will be able to conduct an additional 124 mandated tunnel inspections and 87 mandated mine inspections.

In addition, the study mentioned in the summary section will provide the division with recommendations regarding what steps, if any, could be taken to utilize a collaborative, coordinated, and/or complementary approach with regard to federal agency inspections of mines, and if additional resources could be needed in the future.

**Staff Recommendation:** Approve as budgeted.

**Vote:**

---

**Issue 5: Amusement Ride and Tramway Staffing Increases**

**Governor's Budget.** The Governor's budget proposal requests two associate safety engineer (ASE) positions for permanent and temporary amusement ride inspections and one senior safety engineer (SSE) position to supervise, review engineering plans and perform aerial passenger tramway inspections.

The Governor also proposes trailer bill language to eliminate redundant inspections, and allow DOSH to more fully exercise its statutory authority to inspect permanent amusement rides after receiving notification of an injury accident and temporary amusement rides (TAR) when a ride is disassembled, moved, and reassembled.

After enactment of the proposed trailer bill language submitted with the Governor's budget change proposal for "Revenue & Expenditure Alignment for Various Special Funds" these positions will be funded from the Occupational Safety and Health Fund.

**Background.**

ART Unit staff are based in two offices (Sacramento and Santa Ana) covering the entire state, with the tramway inspectors based only in one office (Sacramento). For all new rides and tramways and for any modifications (an average of 153 each year for the past five years) made to any of this equipment, an ART inspector must review engineering and design plans, operating specifications, and maintenance requirements in order to properly inspect these devices.

The ART Unit investigates many complaints and accidents. These activities are complex and time consuming. Due to the small size of the ART Unit, one or two significant accidents can significantly decrease the ability of ART Unit staff to complete all of the mandated ride and tramway inspections.

**Permanent Amusement Rides (PAR).** Currently there are approximately 1,434 permanent rides in California. Many permanent amusement rides are very complicated and take significant amounts of time to review and inspect. Due to insufficient staffing, the ART Unit is not able to complete all of its required PAR inspections. Pre-announced qualified safety inspector (QSI) inspections are prioritized, along with new ride and major modification inspections, because these types of inspections must be completed in order for the amusement ride to open and operate for the public. Consequently, ART Unit staff is not able to complete all other required types of inspections.

On average over each of the past five years, 491 accidents were reported to the Division, of which approximately 50 percent, warranted investigation because the accidents were caused by problems with the design, construction, maintenance, or operation of the ride. At current staffing levels, only an average of 89 accidents inspections were conducted each year, resulting in 64 percent significant accidents (or 157) not being investigated.

With the additional resources in this proposal, the department estimates that the ART Unit will be able to complete all its mandated annual ride inspections, approximately 4,138, and will conduct approximately 246 injury accident inspections annually.

**Temporary Amusement Rides (TAR).** Currently there are more than 950 temporary amusement rides in California. Operators of these rides must obtain a permit each year from the ART Unit as a

condition of operation. On average over the past five years, 922 permits were issued to temporary ride operators each year. Each permit may require up to three (or more) site inspections, depending on the condition of the ride. The ART Unit conducts an average of 1,182 permit inspections each year for temporary rides.

The ART Unit is authorized to inspect temporary rides each time a ride is disassembled and reassembled. There are more than 27,000 instances of rides being disassembled, moved, and reassembled during the year. However, at current staffing levels, the ART Unit does not have the capacity to perform inspections each time a ride is disassembled, moved, and reassembled.

On average over each of the past five years, 14 rides were inspected a second time during the annual permit cycle, which represents only 1.5 percent of the average number of 922 rides permitted annually and only 0.05 percent of over 27,000 instances of rides being disassembled, moved, and reassembled. The department estimates that the proposed resources will allow the ART Unit to conduct a second inspection of approximately 277 portable rides annually.

**Aerial Passenger Tramways (TRAMS).** Currently there are 344 aerial passenger tramways in California, many of them ski-lift type equipment. The ART Unit must inspect each tramway twice a year and issue permits for operation valid for up to one year. In addition, for all new and altered tramways, the ART Unit must review and approve plans and design information certified by an engineer before the tramway may be put into operation.

On average over the past five years, 691 inspections of existing tramways were required each year. Approximately 10 percent or 67 of these mandated inspections were not conducted.

The department estimates that the additional resources will allow the ART Unit to complete all of its mandated tramway inspections, approximately 691 in number..

Under the Governor's proposal, the increased number of inspections will be tracked and measured using the DOSH ART Public Inspection Safety Information Management System (PISIMS). Continuous monitoring, feedback, and communication will be maintained by the ART Unit regional manager and supervising senior safety engineers to support and require improved performance based on the increased staffing.

Previously, DOSH provided an annual report to the Division of Fairs and Expositions (Department of Food and Agriculture) summarizing its inspections, accident investigations, and temporary ride route information. Subject to the approval of the proposed trailer bill language (TBL) in DIR's Revenue & Expenditure Alignment for Various Special Funds proposal, DOSH would post this annual report on its website.

Lastly, under the Governor's proposal, the department notes that ART Unit inspectors will not incur overtime, the Tramway program will be managed by a supervising senior safety engineer who will review engineering for both rides and tramways and will conduct complex research needed for the older equipment, and the ART regional manager will provide the SSE assistance in producing future regulatory packages that need to be updated, since the TAR and TRAM regulations are old and outdated in reference to the current industry standards.

**Staff Recommendation.** Approve as budgeted.

**Vote:**



---

**Issue 7: Process Safety Management for Non-Refinery Facilities (Oversight Item)**

---

The Process Safety Management (PSM) Unit within the Division of Occupational Health (DOSH) enforces process safety management procedures for potentially hazardous processes that exist in a wide variety of industries, including oil refineries. The PSM Unit was established after the 1999 fire at the Tosco refinery in Martinez that killed four workers. California is the only state to have a dedicated unit for this function to inspect 15 refineries and 1,940 other facilities that use, process, or store large quantities of toxic, flammable, or explosive chemicals. These non-refinery facilities include, but are not limited to, ammonia refrigeration, water treatment and waste water treatment, chemical plants, and explosive manufacturers.

The 2014-15 budget approved \$2.4 million from the OSH Fund, and 11 positions to expand the PSM Unit to implement recommendations of the Governor's Interagency Working Group on Refinery Safety for the enforcement of workplace health and safety regulations in 15 refineries and over 1,800 other chemical facilities. These positions are funded by a new fee on the refinery industry, which is based on the amount of crude oil being processed at each refinery as a percentage of the state's total.

The 2014-15 budget also included budget bill language that required the department to report on the status of PSM effort, including the status of the department's annual workload evaluation of the staffing needed to meet the enforcement requirements for both refinery facilities and non-refinery facilities that meet the threshold for Cal-OSHA PSM regulatory oversight, and the aggregate fees needed to support the function; DIR's process or plan for categorizing non-refinery facilities that meet the threshold for Cal-OSHA Process Safety Management regulatory oversight by type of facility, risk level, and inspection cycles; and number of inspections performed, to date, during the current fiscal year, by both type of facility and type of inspection. The report noted that DIR would continue monitoring workload and inspection/enforcement needs to ensure staffing levels and fee amounts are sufficient to support enforcement of existing law.

As a follow up to the report described above, the 2015-16 budget included supplemental reporting language requiring DIR to report to the Joint Legislative Budget Committee (JLBC) by March 31, 2016, on (1) its methodology and criteria for assessing the risk of non-refinery facilities subject to PSM oversight; (2) the number and types of inspections and the number and types of violations at non-refinery facilities during the 2014-15 fiscal year; (3) an estimate of the additional staff and augmentation of resources needed to increase the portion of non-refinery facilities inspected annually to 10 percent, 25 percent, and 50 percent; and (4) the department's assessment of the adequate frequency of inspections at non-refinery facilities subject to PSM oversight.

**PSM Regulatory Oversight for Non-Refinery Facilities Report.** The report notes that given the high number of facilities in the state, resources have been prioritized based on federal criteria and ranking of facilities into risk levels. DIR notes that the PSM non-refinery program currently has six associate safety engineers that are trained to conduct program quality verification (PQV) inspections. A PQV inspection is a thorough assessment of a facility's safety preparations and emergency response procedures. Each inspector is able to conduct about 7.5 inspections per year, for an annual total of 45 PQV inspections statewide.

Planned inspections for 2016 include a combination of high (69 percent) and moderate/lower risk facilities (31 percent) that handle or process ammonia, chlorine, or other chemical types. In 2017 and 2018, continued emphasis will be placed on high risk facilities, reflecting half (49 percent) of the

annual number of inspections, displayed below. Additionally, a sample of facilities inspected and cited for violations in 2015 will be selected for follow up inspection in 2018.

### Proposed PSM Non-Refinery Inspection Composition

Level of Risk/ Chemical Type	Number of facilities selected for inspection (percentage of annual total)		Total number of facilities in state
	2017	2018	
High risk	22 49%	22 49%	58
Moderate risk	5 11%	5 11%	268
Lower risk	4 9%	4 9%	569
Ammonia	5 11%	5 11%	865
Chlorine	5 11%	3 7%	675
Other <sup>2</sup>	4 9%	3 7%	400
Follow up <sup>3</sup>	0 0%	3 7%	45
<b>TOTAL</b>	<b>45</b>	<b>45</b>	<b>1,940<sup>1</sup></b>

Number of high, moderate, and lower risk facilities determined according to [U.S. Congressional Research Service Memorandum: Risk Management Program \(RMP\) Facilities in the U.S. as of November 2012](#).

Percentage totals may not equal 100 due to rounding.

<sup>1</sup> Some sites may be double counted among risk types. For example, some ammonia facilities are also considered high risk, and some chlorine facilities are also considered moderate risk.

<sup>2</sup> Other includes referrals (other government agencies, unions), self-referrals (CSHO opens an inspection), high profile, media events, records inspection, permit inspection.

<sup>3</sup> Randomly selected from facilities inspected in 2015.

### Enforcement Results

In 2014-15, the PSM non-refinery unit completed 45 Program Quality Verification (PQV) inspections at non-refinery sites. The focus of the inspections was high-risk facilities and timely, effective abatement. In addition to the 45 programmed inspections, another 22 inspections were conducted in response to complaints, accidents or other referrals, totaling 67 inspections for the year.

### Non-Refinery Enforcement, FY 204-15

Inspection type	#	%
Program Quality Verification	45	67.1
Complaint	6	9.0
Accident	5	7.5
Other*	11	16.4
<b>TOTAL</b>	<b>67</b>	<b>100</b>

\* Other includes referrals (other government agencies, unions), self-referrals (CSHO opens an inspection), high profile, media events, records inspection, permit inspection.

### Non-Refinery Inspection Results, FY 2014-15

Violation type	#	%
Serious	63	26.7
General	159	67.4
Regulatory	14	5.9
Willful	0	0.0
Repeat	0	0.0
<b>TOTAL</b>	<b>236</b>	<b>100</b>

Of the 236 non-refinery inspection violations recorded during FY 2014-15 year, 26.7 percent were serious, meaning that they carry a realistic possibility that death or physical harm could result from the actual hazard created by the violation and the employer had knowledge of the workplace conditions or practices that created the hazard. Additionally, 67.4 percent were general violations, meaning that the injury or illness that would most likely result from the unsafe condition would probably not cause death or serious physical. The remaining 14 violations (5.9 percent) were regulatory, which refers to violations that pertain to permit, posting, recordkeeping, and reporting requirements as established by regulation or statute.

### Staffing Projections

The Legislature also required DIR to estimate the resources needed to meet specified annual inspection targets for non-refinery facilities. There are currently 1,940 facilities in California and each inspector can complete an average of 7.5 PQV inspections annually. The chart below displays the staffing projections needed to meet various inspection benchmarks.

### Non-Refinery PSM Unit Staffing Projections

% of Non-refinery Facilities	# Annual PQV Inspections	Total # Inspectors Required	Estimated Costs for Inspectors (\$, thousands)*	Estimated Benefit Costs for Inspectors (\$, thousands)
2	45	6 (current staffing level)	513—642	231—289
10	194	26	2,223—2,781	1,000—1,251
25	485	65	5,558—6,953	2,501—3,129
50	970	129	11,031—13,799	4,964—6,210

\*Estimated costs are based on the salary range for the associate safety engineer classification. This amount does not include administrative costs or supervisory staff support.

**Inspection Frequency.** DIR notes that non-refinery facilities will be randomly selected for inspection based on the risk level and type of chemical. Inspection resources will be prioritized by the severity of risk and industry composition in the state. DIR notes that facility composition will be monitored to ensure that the allocation of resources aligns with changes in the industry over time. Approximately ten percent of the inspected facilities that are found to be out of compliance will be randomly selected for a follow-up inspection three years later. Additionally, facilities that had citations for serious violations will also be prioritized in these follow-up inspections.

**Staff Comments.** As noted above, the Legislature approved additional staff in previous budget years to enhance PSM Unit resources in response to the Chevron refinery explosion. The PSM Unit plays a critical role in protecting workers and the communities in which the facilities operate. As described above, 26.7 percent of violations were noted as serious, meaning that they carry a realistic possibility that death or physical harm and the employer had knowledge of the workplace conditions or practices that created the hazard. However, under the current resources, only two percent of non-refinery facilities are annually inspected. The PSM Units inspections of non-refinery facilities are important, as highlighted by the Central Texas fertilizer plant explosion that killed 14 people and injured approximately 200, and the incident in which chemicals used to clean coal leaked into the Elk River in Charleston, West Virginia, contaminating drinking water of some 300,000 residents. These incidents demonstrate the critical need to ensure appropriate safety measures are in place.

## 7501 DEPARTMENT OF HUMAN RESOURCES

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

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

### 3-YR EXPENDITURES AND POSITIONS

	Positions			Expenditures		
	2014-15	2015-16	2016-17	2014-15*	2015-16*	2016-17*
6200 Human Resources Management	154.7	155.5	178.2	\$27,175	\$30,849	\$33,489
6205 Local Government Services	-	-	-	2,444	2,598	2,713
6210 Benefits Administration	55.5	57.5	57.5	20,620	26,864	26,869
6215 Benefit Payments	-	-	-	33,263	36,503	36,503
9900100 Administration	52.3	54.2	56.2	7,213	7,953	8,262
9900200 Administration - Distributed	-	-	-	-6,221	-6,904	-7,190
<b>TOTALS, POSITIONS AND EXPENDITURES (All Programs)</b>	<b>262.5</b>	<b>267.2</b>	<b>291.9</b>	<b>\$84,494</b>	<b>\$97,863</b>	<b>\$100,646</b>
<b>FUNDING</b>				<b>2014-15*</b>	<b>2015-16*</b>	<b>2016-17*</b>
0001 General Fund				\$6,802	\$8,723	\$9,227
0367 Indian Gaming Special Distribution Fund				6	75	75
0821 Flexelect Benefit Fund				20,433	27,743	27,601
0915 Deferred Compensation Plan Fund				10,814	14,983	15,020
0995 Reimbursements				26,913	30,649	31,831
8008 State Employees Pretax Parking Fund				1,613	1,400	1,400
8049 Vision Care Program for State Annuitants Fund				11,873	8,784	8,784
9740 Central Service Cost Recovery Fund				6,040	5,506	6,708
<b>TOTALS, EXPENDITURES, ALL FUNDS</b>				<b>\$84,494</b>	<b>\$97,863</b>	<b>\$100,646</b>

---

**Issue 1: Civil Service Improvement**

---

**Governor's Budget.** The Governor's budget requests the following resources over the next three years to implement civil service improvement reforms:

- 16 positions and \$1.92 million (\$606,000 General Fund, \$848,000 Reimbursement, \$462,000 Central Service Cost Recovery Fund) in fiscal year 2016-17;
- 17 positions and \$1.85 million (\$558,000 General Fund, \$864,000 Reimbursement, \$426,000 Central Service Cost Recovery Fund) in fiscal year 2017-18, and
- \$1.84 million (\$558,000 General Fund, \$855,000 Reimbursement, \$426,000 Central Service Cost Recovery Fund) in fiscal year 2018-19 to implement Civil Service Improvement reforms and identify new areas for improvement.

The Governor also proposes trailer bill language to:

- Simplify the exempt appointee reinstatement guidelines by consolidating various periods which an employee is required to make a request for reinstatement. The new guidelines require no break in state service, and submittal of a request within 10 working days after the effective date of termination, regardless of exempt appointment type. If an employee seeks reinstatement after more than 10 working days after the effective date of termination, reinstatement is at the discretion of the appointing power.
- Revise provisions to grant employees in exempt positions with reinstatement rights, who have at least 5 years of state service, within four years of termination, a right to obtain civil service appointment list eligibility by taking a deferred examination for any class that has a current eligible list and for which the employee meets the minimum qualifications of the class.
- Removes probationary period for individuals who successfully complete the Limited Examination and Appointment Program job examination period and are appointed to a position.
- Specifies that an overpayment of leave credits to state employees occurs when the employee receives compensation in exchange for leave erroneously credited to the employee for the purposes of an action to recover overpayment.
- Specifies managers, supervisors and Career Executive Assignment (CEAs) will be required to complete various leadership training and development as prescribed by the department.
- Repeal existing law that prohibits a non-clerical position under the Fair Political Practices Commission from inclusion in the same civil service classification with a position in another department or agency.

**Background** The proportion of state employees age 50 or older is nearly 41 percent. These potential retirees have critical experience and institutional knowledge that will leave with them. These circumstances make CSI critical to the state's overall efforts to maintain the talent needed to perform the missions and achieve the strategic goals of California's many civil service organizations.

The 2015-16 Budget Act adopted various civil service improvements, including:

- Consolidating various hiring eligibility list requirements into a single process, under the “Rule of Three Ranks,” which would allow hiring managers to consider all eligible persons whose examination scores result in them being in the top three ranks;
- Expanding the pool of candidates eligible to compete for a career executive assignment CEA position to include individuals from the private sector;
- Reconciling department budgets to help promote greater transparency in how departments develop their support budgets, which include vacant positions, personal services and operating expenses and equipment.

In 2016-17, CalHR intends to implement reforms that have already begun, identify new areas for improvement, and continue to state's comprehensive analysis of civil service to identify future modernizations and efficiencies. These include simplifying the state's outdated job classification system, working with each department to create a workforce development plan, and improving the state's outreach and recruitment efforts. The resources included in this budget proposal will directly address several Civil Service Improvement initiatives, specifically:

#### **Exams**

- Increase multi-departmental exams (e.g., consortium exams).
- Create a repository of job analyses and exams for departmental use to alleviate exam costs.

#### **Recruiting**

- Create an Online-Career Center to assist in determining eligibility for jobs/classifications.
- Align departmental and statewide recruitment efforts.
- Innovate statewide recruitment by using social media. Establish statewide recruitment program that promotes broad-based recruitment.
- Develop or make use of apprenticeship/internship/fellowship programs as a recruitment tool.
- Create and implement an employer-of-choice campaign for the State of California. Collaborate with state employee organizations to emphasize the importance of government work and job satisfaction

#### **Workforce Planning**

- Support departments' efforts to complete strategic and workforce plans (e.g., succession and future needs planning).
- Ensure all departmental workforce plans are submitted to CalHR to create a statewide workforce plan.

#### **Classification Consolidation**

- Consolidate and reduce the number of job classifications.

- Simplify job classification titles.
- Clarify job classifications descriptions.
- Abolish classes, automatically, that are vacant for more than two years.
- Establish clear and sensible allocation criteria that allows departments to allocate classes in a manner that addresses their programmatic needs.
- Create human resource/labor relations credentialing program to professionalize classes.

**Training**

- Develop multi-level training for supervisors, managers and executives aligned with the state's leadership competency models and the Administration's leadership philosophy.
- Provide employees broader training opportunities.
- Partner with unions to develop employee training that is consistent and comprehensive.
- Create a management development track. Develop high-performing CEAs for leadership roles.
- Partner with higher education to provide career advancement courses for state employees, including tuition, fee subsidies, and release time from work to attend courses.
- Train managers in performance measurement and management.
- Train supervisors and managers to deal with poor performance by using progressive discipline.

CalHR's requested positions will support statewide Human Resources efforts described above, rather than a department-level approach, which the Administration notes is costly and less effective at resolving statewide civil service trainings.

**Staff Comments.**

Staff agrees with the administration that additional efficiencies and transparency in the state civil service process would help in the recruitment and retention of the state's future workforce.

Last year, the Governor proposed significant policy changes to the state's civil service program during May Revision through trailer bill language giving the Legislature little time to review the proposal before the budget deadline. Additionally, members of the budget subcommittee noted these proposals may have been better discussed through the policy committee process. Similar to last year, staff questions whether some of the proposed trailer bill language may be better suited for a policy committee discussion.

**Staff Recommendation:** Hold Open



---

**Issue 2: Human Resources Audits**

---

**Governor's Budget.** The department requests 5.7 positions and \$701,000 (\$400,000 in General Fund, \$301,000 in Central Service Cost Recovery Fund) in FY 2016-17, and 9.4 positions and \$991,000 (\$565,000 in General Fund, \$426,000 in Central Service Cost Recovery Fund) in FY 2017-18 and ongoing to fund an audit program for human resource practices delegated to departments by CalHR.

**Background.** The Governor's Reorganization Plan Number One (GRP1) of 2011 consolidated all of the functions of the Department of Personnel Administration and the merit-related operational functions of the State Personnel Board (SPB) into CalHR. Specifically, SPB programs related to appointments consultation, career executive assignment allocations, test development, recruitment, examinations, psychological and medical screening, training, and the Office of Civil Rights transferred to CalHR.

The GRP preserved SPB's constitutional authority to administer the merit system. SPB currently retained an appeals unit and created the Policy Unit and Compliance Review Unit (CRU) to establish merit-related policy and conduct reviews of departmental merit related practices to ensure compliance. CRU currently performs standard reviews of four major areas including examinations, appointments, equal employment opportunity, and personal services contracts. CRU also does special investigations of certain agencies' merit-related personnel practices.

This budget proposal would allow CalHR to expand the scope of items departments are audited on beyond merit-related issues into more operational practices that have been delegated to departments, and for which CalHR provides policy direction. Some examples of these audits would include authorizing hiring above minimum salaries appropriately for new hires coming into state service; authorizing out-of-class pay appropriately, and ensuring its revisited determinations appropriately and ensuring arduous pay is authorized appropriately.

The goal of the Governor's vision for civil services improvement is to delegate more human resources functions to departments. Delegation will only be successful if oversight functions are built in early in the process to ensure that practices are consistent across departments.

The chart below is a comparison of current CalHR oversight functions, SPB audit functions, and proposed CalHR audit functions:

Human Resources Quality Review (HRQR)* (Review & Training)	Delegation Project* (Monthly Monitoring of Self-Reporting)	SPB Audits today (Dept. Audit Every 3 Years)	Audits proposed scope growth
Position Allocation (Review & Training)  Duty statements (Training)  Class Specifications (Training)  Out-of-Class Grievances (Training)	Unlawful Appointments  Exceptional Allocations  CEA Leveling/Salary Exceptions	EEO Program  Supervisor Training (Gov. Code § 19995.4)  Sexual Harassment Training (Gov. Code § 12950.1)  Ethics Training (Gov. Code § 11146)  Examinations (Review of Exam File)  Appointments including: <ul style="list-style-type: none"> <li>• Transfers/Permissive Reinstatements</li> <li>• Mandatory Reinstatements</li> <li>• Temporary Authorization Utilization (TAU)</li> <li>• Emergency Appointments</li> <li>• Training &amp; Developments Assignment</li> <li>• Personal Services Contracts (Gov. Code § 19130)</li> </ul>	Compensation: <ul style="list-style-type: none"> <li>• Hiring Above Minimum (HAM)</li> <li>• Out-of-Class Pay</li> <li>• Salary Determinations</li> <li>• Confidential Status</li> <li>• Arduous Pay</li> <li>• Administrative Time Off (ATO)</li> <li>• Timekeeping</li> </ul> Exams/Appointments: <ul style="list-style-type: none"> <li>• Withholds</li> <li>• Additional Appointments</li> <li>• Appropriate use of Special Consultants, Retired Annuitants, and Student Assistants</li> <li>• Limited-Term Appointments</li> <li>• Job Analysis</li> </ul> Layoff Process  Worker's Compensation  Citizenship  Bilingual Services

The Administration notes that the proposed resources will help develop and implement audit tools and plans for the proposed audit scopes listed above, as well as for implementation of the audit plan of departments statewide.

**Staff Recommendation. Approve as budgeted.**

**Note:**

---

**Issue 3: Review of the Merit System Services Program**

---

**Governor's Budget.** The department requests one-year limited-term funding of \$115,000 in reimbursement authority in FY 2016-17 to develop a strategy to transfer back state duties performed by Cooperative Personnel Services (CPS), the contractor that currently administers the Merit System Services (MSS) program on behalf of CalHR.

**Background.** Since 1939, the federal government has required the state to ensure that counties are administering a merit-based personnel system for programs receiving federal funds such as Medi-Cal, Child Support Services, and Cal-Fresh. Prior to 1970, predecessors of the current Department of Social Services (DSS) and Department of Health Care Services (DHCS) ensured county compliance with the merit system. In 1970, responsibility for administering all MSS programs was consolidated and transferred to the State Personnel Board (SPB). The SPB thereafter managed this program until 1985, when the entirety of the actual program operation work was contracted out to CPS.

The current contract with CPS expires on June 30, 2016. For the current fiscal year, the contract amount is approximately \$2.3 million. There has been some question about whether SPB should administer the program since the work performed by CPS is typically performed by civil service employees including personnel selection, appointments, workforce reductions, disciplinary actions, and other personnel related issues

When the program was transferred from SPB to CalHR on January 1, 2014, as part of GRP 1 (2011), the CalHR Legal Division researched the federal legal requirements and discovered that, although the federal law changed significantly in the mid-1990's affording increased flexibility to the states, California did not revise the existing regulations to take advantage of the streamlined oversight program permitted by the new federal law. The updated federal regulations simply require that states ensure that local personnel operations are consistent with six high-level principles of merit-based personnel management.

Under the current program, counties can either request to independently run their own merit system pursuant to county ordinances, in which case they are subject to a state audit, or they can have the state administer their personnel system for MSS program employees, in which case they are subject to existing state regulations.

For counties electing to have CalHR administer the county personnel system for their MSS program employees, the new regulations place greater emphasis on the employing county practices, even though CalHR will be doing the oversight work. The new regulations will enable all employees within the county to be treated similarly, regardless of the funding for their positions. CalHR anticipates that the revised regulations will encourage additional counties to manage their own merit system program employees independently and will shrink the state's role in the operation of the merit-based personnel systems for MSS employees in the counties. CalHR will adopt the revised regulations later this year.

CPS directly operates merit-based civil service systems for the MSS program employees in 28 of the 58 California counties and conducts audits of the remaining 30 counties who are approved to operate their own systems. CalHR currently has one half-time position dedicated to administration of the CPS contract. This half-time position is insufficient to analyze core CPS operations and then develop a plan to move the operations to CalHR. To assess and understand the staffing and approach CPS utilizes to operate the program, CalHR will need a temporary help position to gather information and plan for the assumption of CPS's duties by CalHR. This position will work with the counties and CPS to evaluate

the work CPS performs and to develop an implementation plan for assuming these duties. Developing this plan will require CalHR to gain a thorough understanding of CPS's current operations, and to work with counties to develop new, less duplicative, and more efficient practices.

The proposed resources will allow CalHR to a study and evaluate CPS's current operations and design an implementation plan and schedule for assuming these responsibilities and operating the program in-house. Additionally, these findings will help CalHR prepare a proposal for consideration in the 2017-18 Governor's Budget that will bring the MSS program under CalHR's authority and operation.

**Staff Recommendation. Approve as budgeted.**

**Vote:**