

---

# SUBCOMMITTEE NO. 2

---

# Agenda

Senator Lois Wolk, Chair  
Senator Jim Nielsen  
Senator Fran Pavley



Thursday, April 21, 2016  
9:30 a.m. or upon adjournment of session  
State Capitol - Room 112

Consultant: Catherine Freeman

**OUTCOMES**  
**ISSUES PROPOSED FOR DISCUSSION**

<u>Item</u>	<u>Department</u> .....	<u>Page</u>
<b>3930</b>	<b>Department of Pesticide Regulation</b> .....	<b>2</b>
	Vote-Only Items .....	3
Issue 1	Pollinator Protection Risk Evaluation .....	4
Issue 2	Mitigation of Pesticide Impacts on Workers .....	6
<b>3960</b>	<b>Department of Toxic Substances Control</b> .....	<b>7</b>
	Vote-Only Items .....	8
Issue 1	Independent Review Panel (Informational) .....	10
Issue 2	Permitting Budget Proposals .....	12
Issue 3	Program and Department Reform .....	14
<b>3900</b>	<b>Air Resources Board</b> .....	<b>15</b>
	Vote-Only Items .....	16
Issue 1	Short-Lived Climate Pollutant Budget Proposals .....	17
Issue 2	Low Carbon Transportation Fuels.....	21
<b>3970</b>	<b>Department of Resources Recycling and Recovery</b> .....	<b>22</b>
	Vote-Only Items .....	23
Issue 1	Beverage Container Recycling Program .....	24
Issue 2	Education and the Environment Initiative.....	32

---

*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.*

---

### 3930 DEPARTMENT OF PESTICIDE REGULATION

The California Department of Pesticide Regulation (CDPR) administers programs to protect public health and the environment from unsafe exposures to pesticides. The department (1) evaluates the public health and environmental impact of pesticide use; (2) regulates, monitors, and controls the sale and use of pesticides in the state; and (3) develops and promotes the use of reduced-risk practices for pest management. The department is funded primarily by an assessment on the sale of pesticides in the state.

**Governor's Budget.** The Governor's budget includes \$97.1 million and 291 positions for the Department of Pesticide Regulation. This is an increase of about \$6 million, mainly due to the shift of the cost of an approved information technology system to the budget year. Other funds include fees on registration of products, federal funds, and the California Environmental License Plate Fund.

#### EXPENDITURES BY FUND (in thousands)

Fund	Actual 2014-15	Estimated 2015-16	Proposed 2016-17
Department of Pesticide Regulation Fund	\$ 84,543	\$ 88,049	\$ 94,082
California Environmental License Plate Fund	461	470	466
Federal Trust Fund	2,253	2,011	2,006
Reimbursements	417	600	600
<b>Total Expenditures (All Funds)</b>	<b>\$87,674</b>	<b>\$91,130</b>	<b>\$97,154</b>

**VOTE-ONLY CALENDAR**

- 1. Reappropriation of Pesticide Registration Data Management System.** The department requests a technical budget adjustment to the previously approved information technology project due to additional review, so the project requirements, before funding, could be encumbered against the system integrator contract, the main contract for the project. There is no change to the total funding requested for the project.
- 2. Continuing the Air Monitoring Network.** The budget proposes ongoing resources of \$468,000 (Department of Pesticide Regulation Fund), and 1.5 positions, including contract funds for laboratory sample analysis. This will make permanent the previously approved, limited-term project, to monitor ambient air pesticide concentrations (including soil fumigants), and calculate the human health risk from exposure to multiple pesticides for long time periods.
- 3. Augmentation of the Food Safety Program.** The budget proposes \$391,000 one-time and \$313,000, ongoing (Department of Pesticide Regulation Fund), and three environmental scientist positions to address increased workload from pesticide residue detections.

**Staff Recommendation:** Approve as proposed.

**Vote:** 3-0 to approve.

**Issue 1: Pollinator Protection Risk Evaluation**

**Background.** A pesticide must be registered with the Department of Pesticide Regulation (DPR) before it can be used, possessed, or offered for sale in California. DPR is statutorily required to thoroughly evaluate the pesticides' toxic effects. One of the core functions of DPR is to ensure timely registration decisions while enhancing the protection of human health and the environment. In the last few years, both the U.S. Environmental Protection Agency (US EPA) and DPR have added new data requirements to allow assessment of the chronic risks of pesticide exposure to pollinators (honey and native bees). The new risk assessment framework is based on a tiered process, and focuses on the major routes of exposure (from overspray or direct contact with the pesticide on the plant surface). In June 2014, due to the significant decline of pollinators over the last several decades, President Obama issued a Presidential Memorandum "Creating a Federal Strategy to Promote the Health of Honey Bees and Other Pollinators." This strategy outlined a comprehensive approach to reducing the impact of multiple stressors on pollinator health, including pests and pathogens, and exposure to pesticides. Critical components of the strategy are to advance the science supporting regulatory decisions, as well as strategies for mitigation.

In the last year, California beekeepers lost 40 percent of their hives, nearly twice the national average. Wild bee populations have declined by 23 percent between 2003 and 2008 in the Central Valley and other key agricultural regions of the state. As an example, research suggests that widespread use of neonicotinoid (neonic) pesticides, which are a systemic pesticide designed to reduce or eliminate sap-eating pests (such as aphids), are negatively impacting hives in addition to other stressors. Although these products are used on a restricted basis in agricultural settings, they also can be purchased by consumers for home and garden use, and are often found in pre-treated seedlings at home and garden stores. A November 2015 U.S. Geological Survey study, found residue from one of three types of neonics in a majority of bees sampled.

In addition to the data requirement and assessment process, the US EPA also instituted various regulations and label revisions to currently registered pesticide products in order to provide further protection for pollinators. DPR staff was, as of last year, redirected to review the label amendments to currently registered pollinator-impacting pesticides. Despite DPR's attempt to redirect resources to assist with the label revisions to pollinator labeling language required for currently registered pesticide products, DPR states that it cannot efficiently and effectively address this; and the new evaluation of new pesticide products containing new active ingredients, without new resources.

**Governor's Proposal.** The Governor's budget requests two positions and \$335,000 in DPR Funds (\$308,000 ongoing) to address the increasing workload with pollinator protection issues. One position will help evaluate and assess ecotoxicology studies and to establish new pollinator data requirements in collaboration with the U.S. Environmental Protection Agency (EPA). The second position will organize onsite field events for growers and beekeepers, develop a California-managed pollinator protection plan, conduct enforcement training, create and disseminate brochures and educational materials, evaluate rulemaking, and investigate pollinator/pesticide bee damage incidents and causes.

Specifically, the department plans to:

- Develop and conduct collaborative educational field events between growers and beekeepers.
- Develop a state managed pollinator protection plan.
- Develop and conduct investigative enforcement training for local California Agricultural Commissioner inspectors on new label use restrictions and regulations.
- Make presentations to growers, applicators, beekeepers, regulators and landowners statewide.
- Create and disseminate pamphlets, brochures, leaflets and online information.
- Identify pollinator bee/pesticide incidents and investigate cause.
- Develop rulemaking to align with the Presidents directive on pollinator protection.

**Staff Comments.** Staff is supportive of increased scrutiny of pesticides affecting pollinators, particularly given the extreme changes to hives and pervasiveness of pesticides in the bee population. However, given the percentage of hives and plants that may be impacted by pesticides, the department's proposal could be more robust. It would seem more productive, in addition to those activities suggested by the department, for the department to take a more proactive approach to the protection of pollinators. The data is now available to show that the problem is current and of sufficient risk to move forward with a rulemaking package that is California-centric and stronger than the federal government's actions.

Staff recommends holding the item open for continued discussions with the department about its approach to: (1) increased label restrictions both in agricultural and commercial settings, including at individual consumer level, and (2) increased proactive regulations restricting the use of pollinator-impacting pesticides.

Staff supports increasing position authority and funding to meet California's pollinator challenges, not just those of the federal government. Additional funds could be directed to a research institution to provide the department with specific recommendations for a robust public policy approach to pollinators.

**Staff Recommendation.** Hold Open.

**Vote: 3-0 to approve with two additional positions to expedite the Governor's proposal, draft budget bill language:**

Item 3939-001-0106. Of the amount provided in this item, two positions shall be available to the expedite the development of a pollinator protection plan, develop and conduct investigative enforcement training for new label use restrictions and regulations, identify pollinator bee and pesticide incidents and investigate cause, and to expedite the development of a rulemaking on pollinator protection.

**Supplemental requiring reporting on the expedited actions at budget hearings next year.**

**Issue 2: Mitigation of Pesticide Impacts on Workers**

**Background.** In 2014, two new laws led to an increased workload for Worker Health and Safety Branch. First, AB 101 (Committee on Budget), Chapter 354, Statutes of 2013, included budget bill language that set the minimum number of risk assessments completed by DPR each year to five. While this language was removed from subsequent budget acts, there is an expectation among stakeholders that DPR will continue to meet this goal. Prior to this, there was no specific requirement for DPR to meet a specific quota. Second, AB 304 (Williams), Chapter 584, Statutes of 2013, requires DPR to adopt mitigation measures for pesticides determined to be a toxic air contaminant within two years of the department determining that additional mitigation measures are necessary. DPR received three positions in the 2013-14 Budget Act (AB 101), to conduct five risk assessments per year. However, DPR did not receive resources for the corresponding resources needed for the increased mitigation measures that address the unacceptable exposures identified in the risk assessments.

**Governor's Proposal.** The Governor's budget proposes \$482,000 from the DPR Fund and two permanent positions to address the growing need to develop strategies to mitigate pesticide impacts on workers and bystanders. This proposal includes ongoing contract funds for a facilitator (\$20,000) to lead public meetings and for mitigation research (\$150,000).

**Staff Comments.** This proposal will enable DPR to keep pace with the increased production of risk assessments and concomitant need for mitigation, in addition to the legal requirement to complete mitigation in two years for pesticides identified as toxic air contaminants. Further, it will allow the DPR to enter into contracts necessary to support the development and evaluation of practical and scientifically sound mitigation strategies to further protect fieldworkers, pesticide handlers, and bystanders.

**Staff Recommendation.** Approve as proposed.

**Vote:3-0 to approve.**

### 3960 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

The Department of Toxic Substances Control (DTSC) regulates hazardous waste management, cleans up, or oversees the cleanup of, contaminated hazardous waste sites, and promotes the reduction of hazardous waste generation. The department is funded by fees paid by persons that generate, transport, store, treat, or dispose of hazardous wastes; environmental fees levied on most corporations; federal funds; and General Fund.

**Governor's Budget.** The Governor's budget includes \$217 million from various funds for support of DTSC in 2016-17. This is a decrease of \$12.5 million or 5.7 percent from the current-year level.

#### EXPENDITURES BY FUND (in thousands)

Fund	Actual 2014-15	Estimated 2015-16	Proposed 2016-17
General Fund	\$ 26,632	\$ 27,382	\$ 29,347
Hazardous Waste Control Account	57,525	63,511	61,216
Site Remediation Account	24,019	11,047	10,503
Unified Program Account	1,064	1,224	1,229
Illegal Drug Lab Cleanup Account	818	810	828
Childhood Lead Poisoning Prevention Fund	40	53	51
California Used Oil Recycling Fund	244	408	410
Department of Pesticide Regulation Fund	34	46	45
Air Pollution Control Fund	32	44	43
Removal and Remedial Action Account	3,257	3,346	3,314
Expedited Site Remediation Trust Fund	-	3,425	-
Site Operation and Maintenance Account, Hazardous Substances Account	169	407	404
Toxic Substances Control Account	45,928	65,652	57,016
Federal Trust Fund	30,449	32,498	32,913
Reimbursements	12,821	13,075	13,075
Cleanup Loans and Environmental Assistance to Neighborhoods Account	259	1,000	1,000
Electronic Waste Recovery and Recycling Account, Integrated Waste Management Fund	1,974	2,204	2,226
State Certified Unified Program Agency Account	1,365	2,723	2,721
Birth Defects Monitoring Program Fund	171	136	146
Revolving Loans Fund	- 697	1,062	1,027
<b>Total Expenditures (All Funds)</b>	<b>\$206,104</b>	<b>\$230,053</b>	<b>\$217,514</b>

**VOTE-ONLY CALENDAR**

- 1. AB 276 Ability to Pay: Cost Recovery.** The budget requests \$200,000 and two permanent positions (\$180,000 Toxic Substances Control Account and \$20,000 Hazardous Waste Control Account) to implement the expanded information request authority pursuant to AB 276 (Assembly Committee on Environmental Safety and Toxic Materials), Chapter 459, Statutes of 2015). AB 276 allows DTSC to require a potentially responsible party (PRP) to provide information regarding the party's ability to pay for a response action at a site where there has been, or may be, a release of hazardous waste, hazardous substances, or hazardous materials in the environment.
- 2. Attorney General Independent Review and Panel Costs.** The budget requests an augmentation of \$50,000 in Fiscal Year (FY) 2016-17 (\$25,000 Toxic Substances Control Account and \$25,000 Hazardous Waste Control Account). The request also includes \$25,000 in FY 2017-18 split similarly between the two accounts. Funds will be used to reimburse the Attorney General for expenses associated with its support for the Independent Review Panel, which was established pursuant to Senate Bill 83 (Committee of Budget and Fiscal Review), Chapter 24, Statutes of 2015. The IRP is responsible for reviewing and making recommendations regarding improvements to the department's permitting, enforcement, public outreach, and fiscal management. The IRP consists of three appointed members.
- 3. Biomonitoring.** The budget requests to extend for two additional years, two limited-term positions and \$350,000 (Toxic Substances Control Account) in the Biomonitoring California Program. These two positions will continue to analyze specific toxic chemical contaminants in biological samples from ongoing population-based investigations. Biomonitoring California was established through SB 1379 (Perata and Ortiz), Chapter 599, Statutes of 2006. Biomonitoring California's principal mandates are to: (1) measure and report levels of specific environmental chemicals in blood and urine samples from a representative sample of Californians, (2) conduct community-based biomonitoring studies, and (3) help assess the effectiveness of public health and environmental programs in reducing chemical exposures.
- 4. Treated Wood Waste.** The Governor's budget requests an augmentation \$370,000 (Hazardous Waste Control Account) of for two years to implement SB 162 (Galgiani), Chapter 351, Statues of 2015, related to the management of treated wood waste. This proposal includes trailer bill language to extend the implementation period for an additional six months, to provide a full two years to implement the requirements of SB 162 to conduct a comprehensive evaluation of treated wood waste handlers, their compliance with the requirements, and the effectiveness of the standards. It requires DTSC to inspect at least 25 percent of treated wood waste generators and treated wood waste disposal facilities in conducting its evaluation.
- 5. Argonaut Mine Dam Retrofit.** The budget requests \$14.3 million (General Fund), one-time, to retrofit the Argonaut Mine Dam in Jackson, California. This follows various state and federal studies that concluded that the dam is structurally unstable and has a significant chance of complete failure with sustained rainfall.



6. Replacement of Laboratory Equipment. The budget requests \$2 million (Hazardous Waste Control Account) on a one-time basis to procure laboratory and investigatory equipment used for conducting investigations in support of criminal, civil, and administrative enforcement of hazardous waste laws. Available funding is the result of a settlement agreement that specifies the use of these funds.

**Staff Recommendation:** Approve as proposed.

**Vote:** Motion to approve.

**Items 1, 4, 5, 6: 3-0 to approve**

**Items 2,3: 2-1 (Nielsen, no) to approve.**

**Issue 1: Independent Review Panel (Informational)****Special Presentation by: Gideon Krakov, JD, Chair, Independent Review Panel**

**Background.** The Independent Review Panel (IRP) was established within the DTSC pursuant to SB 83 (Committee on Budget and Fiscal Review), Chapter 24, Statutes of 2015. The IRP is comprised of three members: an appointee of the Assembly Speaker with scientific experience related to toxic materials, an appointee of the Senate Committee on Rules who is a community representative, and an appointee of the Governor who is a local government management expert. The current IRP members are: Dr. Arezoo Campbell (scientist with experience related to toxic materials), Gideon Krakov, JD (community representative), and Mike Vizzier (local government management expert). The panel members are tasked with reviewing and making recommendations regarding improvements to DTSC's permitting, enforcement, public outreach, and fiscal management. The IRP also may make recommendations for other DTSC programs, may advise DTSC on its reporting obligations, and is required to advise DTSC on compliance with the mandate to institute quality government programs to achieve increased levels of environmental protection and public satisfaction.

On January 28, 2016, the IRP released its first report to the Legislature summarizing recommendations and data requests to DTSC in areas including: budget, permitting, enforcement, public outreach, and fiscal management. The report included the following recommendations:

- **Fiscal Management.** The IRP discusses DTSC's efforts, in response to a 2013 state audit that found a lack of due diligence on cost recovery, efforts to implement cost recovery changes to recoup its costs. The IRP recommends that DTSC report in its biennial report documentation on compliance with all goals and objectives.
- **Permitting.** The report highlights DTSC's permitting backlog and recommends that DTSC require adequate financial assurances be set aside for corrective action for existing hazardous waste releases and that DTSC obtain full cost recovery connected with its Hazardous Waste Facility Permit decisions. The IRP requests data from DTSC that includes a list of existing financial assurances for every hazardous waste facility permit site, and a list of all hazardous waste facility permittees that fall under AB 1075 (Alejo), Chapter 460, Statutes of 2015, violation categories.
- **Public Outreach.** The IRP recognizes that public participation is a cornerstone of DTSC's work, and that DTSC has a budget of \$1.5 million for 22 positions for DTSC's public participation program. The IRP recommends making categories of information available on one tab on the DTSC website to make it more user-friendly, and to review decisions made during the past five years by two staff members who were discovered to have sent offensive emails.

**Staff Comments.** The Independent Review Panel Chair has been asked to provide:

- Overview of IRP's charge and actions to date.
- Key findings and recommendations issued so far.
- Broader observations about functionality of DTSC and prospects for successful reforms.

**Staff Recommendation.** Information Item.

**Issue 2: Permitting Budget Proposals**

**Background.** The DTSC issues hazardous waste facility permits to facilities that manage waste that is toxic, corrosive, reactive, and ignitable. When DTSC issues hazardous waste facility permits it establishes conditions that the facility must meet in addition to the applicable laws and regulations for the management of public waste. There are 119 facilities permitted to manage hazardous waste in California (91 operating facilities and 28 post closure facilities) with a total of 132 permits. Facility permits are issued for 10-year terms, and facilities are required to apply for renewal six months prior to a permit's expiration. If the permit renewal application is submitted on time, the facility may continue to operate under an expired permit, known as a "continued" permit until the final application is approved. As well as permit renewal applications, DTSC makes decisions on applications for new permits and permit modifications. The DTSC's goal is to make decisions on 90 percent of permit applications within an average of two years. Towards achieving this goal, DTSC developed and is implementing the permitting enhancement work plan to create and update processes, guidance, and tools to support consistent processing of permit applications and more timely permit decisions.

There are currently 37 facilities operating under continued permits that are under review by DTSC. In addition to these 37 permits, DTSC anticipates that it will receive 57 permit applications over four years beginning in 2015-16 and the number of applications per year is expected to vary between 10 and 16. In 2014-15 the Legislature approved eight two-year limited term positions to address a backlog of 24 hazardous waste facility permits. The department made decisions on five of the backlogged permits in 2014-15 and plans to make 12 more decisions in 2015-16 and seven more decisions in 2016-17. According to the department, these eight limited-term positions, combined with other departmental resources, allow it to make decisions on about eight permits per year in the future.

**Governor's Proposal.** The Governor's budget includes several proposals. These include:

**February Proposal—Hazardous Waste Management Permitting Support.**

The Governor proposes an increase of \$1.2 million (Hazardous Waste Control Account) to make permanent eight limited-term positions that are set to expire at the end of the current year. These positions were previously provided to address a hazardous waste permit renewal backlog, as well as to update cost estimates associated with closing hazardous waste facilities.

**April Proposal—Enhanced Permitting Capacity and Support.**

The department requests \$2.4 million from the Hazardous Waste Control Account, and 15 positions within the permitting division, to fully implement process improvements under the permit enhancement work plan. The proposal is intended to sustain timely permitting actions, mitigate the incidence of facilities operating for extended periods of time on expired permits, and improve enforcement.

**April Proposal—Trailer Bill Language.**

The department requests trailer bill language to eliminate the option to pay a flat fee for a permit application in lieu of a fee for service so that permit applicants pay the full costs associated with

permitting efforts. The Administration believes this will significantly reduce staff time on permit applications and align revenues with expenditures in the future.

**LAO Analysis and Recommendations:** The LAO analyzed the Governor's February proposal and provided the following analysis and recommendation:

Based upon our own projections and DTSC's projections, the department will continue to have an ongoing backlog of permit applications even if the resources requested in the Governor's proposal are approved. The department projects it would need to make decisions on an average of 16 permit applications per year—instead of its estimated average of eight per year—in order to make timely decisions on renewals and process new and modified permits. Our own projections confirm that DTSC would need to roughly double the average number of decisions it makes per year, from 8 to 16, to address the existing backlog and move towards attaining its goal of making decisions on 90 percent of permit applications within an average of two years. The DTSC states that it is exploring options to fund the positions needed to complete an average of 16 permits per year, the level needed to ensure no future backlogs.

**Analyst's Recommendation.** We recommend approval of the Governor's proposal to augment the budget by \$1.2 million from the HCWA and convert 8 limited-term positions to permanent status. In our view, these positions are justified on a permanent basis to address ongoing workload. We further recommend that the department be required to report at budget hearings on: (1) the resources that DTSC would require in order to increase its average annual number of permit application decisions from 8 to 16 and thereby eliminate future backlogs; and, (2) the department's progress towards implementing the permitting enhancement work plan to create and update processes, guidance, and tools to support consistent processing of permit applications and more timely permit decisions. Specifically, the department should report on what efficiencies will be achieved by implementing the Permitting Enhancement Work Plan and whether it will result in faster permit decisions.

**Staff Comments.** Staff concurs with the LAO analysis regarding the February permitting proposal. The department's effort to reduce permitting backlogs and gaps, along with providing appropriate revenue sources is critical to the future of the department. Staff concurs with the concept of both proposals, and agrees with trailer bill language that would align staffing, revenues and expenditures. The subcommittee may wish to ask the department to address:

1. How these proposals, together, will align permitting with workload and the Independent Review Panel recommendations.
2. Whether there is a possibility, even in the short run, of a facility operating without a current permit and, if so, how the department will handle these incidents in the future.
3. What the trailer bill language will accomplish in terms of the structural deficit in the Hazardous Waste Control Account.

**Staff Recommendation.** Hold Open.

---

**Issue 3: Program and Department Reform**

---

**Background.** As discussed under the Independent Review Panel, the department is in the middle of a transformation that is intended to put it back on track to providing its basic statutory responsibilities—mostly permitting, tracking and regulating toxic and hazardous waste. The Legislature, over a number of years, has provided the public process by which change has occurred at the department, and continues to do so.

**Governor’s April Reform Proposals.** The Governor’s budget includes two proposals designed to improve the department’s internal programs and external communication, as follows:

- **Strategic Program Development.** The Governor requests an augmentation of \$747,000 (\$347,000 from Hazardous Waste Control Account and \$373,000 from the Toxic Substances Control Account), and conversion of five positions from limited-term to permanent. The department intends to have the five positions report, as a team, to the existing Special Assistant for Program Review. The team will work systematically through the department’s core programs and support services to evaluate the strengths, weaknesses, opportunities, and threat in program and service functions. The team will prioritize areas or issues for development.
- **Office of Environmental Justice and Tribal Affairs.** The Governor requests an augmentation of \$881,000 (\$441,000 from Toxic Substances Control Account and \$440,000 from Hazardous Waste Control Account), and six positions, to create the proposed Office of Environmental Justice and Tribal Affairs. The proposal is intended to strengthen the coordination of environmental justice and tribal affairs activities and to enhance engagement with impacted communities. The office will also identify and address gaps within its own programs that may contribute to unequal environmental protections or outcomes in these communities, and broaden the transparency of and access to DTSC programs.

**Staff Comments.** The department’s efforts for reform are laudable but lack a public process that allows stakeholders, community members, and advocates a regular and accessible method for addressing concerns, particularly with permitting and exposure, outside the legislative process. The Independent Review Panel has identified \$1.5 million and 22 positions within the DTSC public participation program.

Staff suggests the department comment on what would be different if there were a permanent board, much like the Air Resources Board or State Water Resources Control Board, to provide that permanent and public process for toxic and hazardous waste. Should a board concept be developed, how would the department effectively implement its strategic program development and Office of Environmental Justice and Tribal Affairs to support the director and board?

**Staff Recommendation.** Hold Open.

**Vote:**

### 3900 AIR RESOURCES BOARD (ARB)

In California, air quality regulation is divided between the ARB and 35 local air quality management districts. The local air districts manage the regulation of stationary sources of pollution (such as industrial facilities) and prepare local implementation plans to achieve compliance with the federal Clean Air Act. The ARB is responsible primarily for the regulation of mobile sources of pollution (such as automobiles) and for the review of local district programs and plans. Historically, the ARB's regulations focused on emissions that affect local or regional air quality, such as particulate matter and ozone-forming emissions. More recently, the ARB also began overseeing the state's efforts to reduce GHG emissions.

**Governor's Budget.** The Governor's budget proposes \$956 million for ARB in 2015-16, a net increase of \$397 million compared to estimated expenditures in the current year. This year-over-year increase is largely the result of increased greenhouse gas emission reduction proposals.

#### EXPENDITURES BY FUND (in thousands)

Fund	Actual 2014-15	Estimated 2015-16	Proposed 2016-17
Motor Vehicle Account, State Transportation Fund	\$ 131,452	\$ 133,665	\$ 134,099
Air Pollution Control Fund	112,117	117,291	115,929
Vehicle Inspection and Repair Fund	16,483	16,708	16,716
Air Toxics Inventory and Assessment Account	994	980	976
Public Utilities Commission Utilities Reimbursement Account	-	339	189
Federal Trust Fund	4,677	16,839	16,888
Reimbursements	9,056	11,749	11,749
Oil, Gas, and Geothermal Administrative Fund	1,344	1,386	1,497
Nontoxic Dry Cleaning Incentive Trust Fund	413	404	415
Air Quality Improvement Fund	56,136	24,244	31,808
Enhanced Fleet Modernization Subaccount, High Polluter Repair or Removal Account	-	2,800	2,800
Greenhouse Gas Reduction Fund	130,177	187,111	573,167
Cost of Implementation Account, Air Pollution Control Fund	39,719	45,432	49,836
CA Ports Infrastructure, Security, and Air Quality Improvement Account, Highway Safety, Traffic Reduction, Air Quality, and Port Security Fund of 2006	2,983	411	301
<b>Total Expenditures (All Funds)</b>	<b>\$505,551</b>	<b>\$559,359</b>	<b>\$956,370</b>

**VOTE-ONLY CALENDAR**

- 1. Refrigerant Management Program—Technical Adjustment.** The budget request a net-zero redirection of \$695,000, per year, collected from facilities subject to annual implementation fees under the AB 32 Refrigerant Management Program to fund four existing positions that are meeting the implementation needs of the program, and currently funded under the Cost of Implementation Account within the Air Pollution Control Fund. In addition to this next-zero redirection of funding for existing positions, ARB requests a net-zero redirection of \$180,000 in contract funding for continued maintenance and support of the registration and reporting system.
- 2. Air Quality Improvement Program (AQIP) Augmentation.** The budget requests an annual expenditure authority increase from \$24.2 million to \$31.7 million (Air Quality Improvement Fund) to align the average annual revenue of \$30 million for this program. The AQIP funds air quality improvement projects related to fuel and vehicle technologies to reduce criteria pollutant, air toxic and greenhouse gas emissions.
- 3. Realign Distributed Administration—Technical Adjustment.** The budget requests a technical adjustment to align administration and distributed administration program authority with administrative operating costs. The next-zero adjustment reflects a \$48 million alignment within the budget display.

**Staff Recommendation:** Approve as proposed.

**Vote:**

**Items 1, 2: 2-1 (Nielsen, no) to approve.**

**Item 3: 3-0 to approve**



**Issue 1: Short-Lived Climate Pollutant and Post-2020 Budget Proposals**

**Background.** The LAO has conducted an extensive review of the Governor’s various proposals to achieve the Administration’s post-2020 greenhouse gas (GHG) emission reduction goals. To that end, they offer the following background and analysis:

The ARB administers a wide variety of regulations intended to reduce GHG emissions and/or improve air quality. Some of these regulations include the Advanced Clean Cars program, Clean Truck and Bus standards, the refrigerant management program, and the landfill methane capture regulation. The ARB’s regulatory activities are driven by federal law, state law, executive orders, and various agency planning efforts. Some of the key drivers are:

- **AB 32 GHG Emissions Limit.** As discussed earlier in this report, AB 32 established the goal of limiting GHG emissions to 1990 levels by 2020 and directed ARB to develop regulations to achieve this goal. It directed ARB to develop a Scoping Plan to identify the regulations and programs needed to achieve the emission targets cost-effectively and update the plan periodically.
- **Federal Air Quality Standards.** The federal Environmental Protection Agency sets air quality standards for specified “criteria” pollutants—such as ozone—pursuant to the federal Clean Air Act. Certain areas of the state do not meet the current federal standards. In addition, federal standards become increasingly stringent in 2023 and 2031.
- **Governor’s 2030 and 2050 GHG Goals.** Two different executive orders establish the goals of reducing statewide emissions to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050. In addition, one of the executive orders directs ARB to update its Scoping Plan and implement measures, pursuant to statutory authority, to achieve the 2030 goal. A draft of ARB’s Scoping Plan is expected to be released this spring and the plan is expected to be finalized this fall.
- **SLCP Strategy.** SB 605 (Lara), Chapter 523 of 2014, requires ARB to develop a strategy to reduce SLCPs—such as methane and fluorinated gases—by January 1, 2016. The ARB is expected to finalize the SLCP strategy in the spring of 2016.

A variety of fund sources are used for these regulatory activities and planning efforts, including the AB 32 Cost of Implementation Account (COIA), the Motor Vehicle Account, the Vehicle Inspection and Repair Fund, and the Air Pollution Control Fund.

**Governor’s Proposals.** The Governor’s budget includes several proposals funded by the COIA. These are in addition to several major programs funded by the GGRF. The COIA proposals include:

- **Clean Truck and Bus Standards.** Develop more stringent GHG and criteria pollutant standards for trucks and buses, as well as improve compliance monitoring for existing standards. For example, of the resources requested, two positions and \$490,000 are requested to develop more stringent GHG standards to achieve the Governor’s long-term GHG goals.
- **Advanced Clean Cars Program.** Develop regulations to increase the number of zero-emission vehicles and reduce criteria pollutants and GHGs from light duty vehicles.
- **SLCP Strategy.** Develop and implement policies to reduce methane and fluorinated gases, improve monitoring of fluorinated gases, and improve enforcement of existing and near-term SLCP strategies.

All of these activities would be funded from the COIA, which is supported by a regulatory fee paid by certain GHG emitters. The account generally supports administrative activities performed by state agencies related to GHG emission reductions. The board might have to increase the fee to pay for the additional costs associated with these proposals. (The fee is currently set at about 15 cents per metric ton of carbon dioxide equivalent.)

#### Summary of Governor’s Proposals to Develop Regulations for Post-2020 GHG Goals

Proposal	Funding and Positions Requested	Primary Justification
Clean Bus and Truck Standards	\$1.2 million and four positions	Governor’s GHG goals, AB 32, and federal air standards
Advanced Clean Cars Program	\$580,000 and four positions	Governor’s GHG goals and federal air standards
SLCP (SB 605)	\$1.4 million and five positions	SLCP strategy, AB 32, and Governor’s GHG goals

GHG = greenhouse gas and SLCP = short-lived climate pollutant. Source: Legislative Analyst’s Office.

**Greenhouse Gas Emission Reduction Fund (GGRF) Proposal.** In addition to the above COIA-funded proposals, the Governor’s budget requests \$40 million from the GGRF to support a grant program for new residential wood-burning device replacement incentives. The request includes two positions. This item was heard in on February 18 in full budget committee.

**LAO Assessment and Recommendations.** The LAO offers the following assessment and recommendations:

**Certain Activities Do Not Appear Consistent With Current Statutory Direction.**

Assembly Bill 32 states that the 2020 GHG limit shall remain in effect unless otherwise amended or repealed. However, as shown in Figure 22, the Governor’s more stringent 2030 and 2050 GHG targets are identified as a justification for parts of each request. Although the Legislature has adopted major policies intended to achieve substantial GHG reductions beyond 2020—such as establishing a 50 percent renewable portfolio standard and doubling energy efficiency savings in electricity and natural gas by 2030—we are not aware of any statutory direction for ARB to develop regulations to achieve more stringent post-2020 GHG targets.

Furthermore, the ARB indicates that resources are needed to develop new SLCP regulations identified in the SLCP strategy to achieve the intent of the legislation. Although SB 605 directs the administration to develop a strategy to reduce SLCPs, it does not direct the administration to implement the measures contained in the strategy (such as by developing regulations). Therefore, it is unclear whether the proposed activities to develop new regulations are consistent with statutory direction.

**Resources to Develop Certain New Regulations Are Premature.** Even if the Legislature determines that it would like to adopt the more stringent post-2020 GHG targets, the budget requests to develop specific regulations to achieve such targets are premature until more analysis has been done. As discussed above, the administration is developing a Scoping Plan to identify a cost-effective mix of policies that could be used to achieve the 2030 GHG target. However, a draft Scoping Plan has not been released. It is unclear whether the specific regulations identified in these proposals will be part of the final Scoping Plan. Thus, we find that it is premature to provide resources to develop these specific regulations.

**Unclear Whether COIA Is an Appropriate Fund Source for Non-GHG Activities.**

All activities in these requests are funded from the COIA. However, it is unclear whether using the funds to support regulatory activities specifically intended to achieve federal air quality standards, but not GHG reductions, is an appropriate use of the funds.

**LAO Recommendation.** “We recommend modifying the Governor’s proposal in two ways: (1) rejecting requests related to the administration’s long-term GHG goals and implementing the SLCP strategy and (2) identifying alternative funding sources for air quality activities.” Specifically, the LAO recommends:

**Reject Requests Related to Long-Term GHG Goals and Implementing SLPC Strategy.**

The LAO recommends rejecting the proposed positions and funding intended to develop regulations to achieve the Governor’s long-term GHG goals and implement the SLCP strategy. These activities appear to be inconsistent with current statutory direction and are premature. Specifically, we recommend reducing the Clean Bus and Truck proposal by the two positions and \$490,000 identified by the administration as being related to long-term GHG goals. With respect to the Advanced Clean Cars request

and the SB 605 request, the administration did not provide a breakdown of the positions and funding related primarily to the Governor's post-2020 GHG targets and implementing the SLCP strategy. Therefore, the LAO recommends the Legislature direct the administration to provide this information at budget hearings so that similar adjustments can be made.

**Identify Alternative Funding Sources for Air Quality Activities.** The LAO further recommends that the Legislature direct the administration to identify an alternate fund source for activities specifically related to achieving federal air quality standards.

**Staff Comments.** The LAO provides a good analysis of the issues surrounding SLCP and the regulatory approach provided by ARB. After the LAO analysis was completed, the Administration reported on strategies to achieve GHG emission reductions from SLCP, which have a number of co-benefits including the reduction of public health, air and water quality impacts. Regulation of this important set of criteria pollutants is critical to the state's overall approach to reducing the impacts of greenhouse gas emissions. The use of the cost of implementation fee is appropriate for the development of the regulations and programs, which would likely be then followed by use of GGRF for broad program support.

**Staff Recommendations.** (1) Approve as proposed with trailer bill language clarifying the statutory direction to ARB to include short-lived climate pollutants in its regulatory approach to reducing greenhouse gas emissions. (2) Continue to hold open all GGRF-funded proposals for May Revision (including the proposed woodsmoke grant program).

**Vote: Hold Open**

**Issue 2: Low Carbon Transportation Fuels (AB 692)**

**Background.** AB 692 (Quirk), Chapter 588, Statutes of 2015, requires, beginning January 1, 2017, that at least three percent of the transportation fuel purchased by the state be procured from very low carbon transportation fuel sources. This percentage increases by one percentage point each year thereafter until 2024. Very low carbon transportation fuel has no more than 40 percent of the carbon intensity of the closest comparable petroleum fuel for that year, as measured by the methodology for the low carbon fuel standard (LCFS). (The LCFS is a regulatory program administered by ARB.) The legislation requires the Department of General Services (DGS) to coordinate with state agencies that are buyers of transportation fuel and submit an annual progress report to the Legislature.

**Governor's Proposal.** The Governor's budget does not propose any resources for DGS to implement AB 692. The ARB requests one permanent position and \$145,000 annually to support additional workload related to AB 692. The ARB indicates that the additional position would assist with the following tasks: (1) develop and maintain knowledge on market dynamics affecting the availability and price of very low carbon fuels and provide consultation to DGS; (2) support DGS and other state agencies in identifying sources of very low carbon transportation fuels; and, (3) provide analytical support to evaluate the carbon intensity of new very low carbon fuels expected to enter the market as a result of AB 692.

**LAO Analysis.** The LAO provides the following analysis and recommendations:

- **Insufficient Workload Justification at This Time.** In the short run, the additional workload for ARB to implement AB 692 appears minor and absorbable. The board has been implementing the LCFS for several years and approves dozens of carbon intensity pathways for low carbon fuels in the state each year. Based on our conversations with DGS, it has already identified a likely supplier for the fuel needed to meet the 2017 purchasing requirement. Therefore, it is unclear why there would be significant additional workload for ARB. In the long run, there could be additional workload associated with identifying additional fuel sources or approving additional fuel pathways. However, the additional workload is uncertain at this time and, therefore, the request for additional resources is premature.
- **Recommend Rejecting Proposal.** We recommend that the Legislature reject the proposed position and \$145,000 to implement AB 692 because there is insufficient workload justification at this time.

**Staff Comments.** Staff concurs with the LAO analysis. Though the legislation is laudable, the workload is not justified at this time.

**Staff Recommendation.** Reject proposal.

**Vote: 3-0 to reject.**

### **3970 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)**

The Department of Resources Recycling and Recovery (CalRecycle) protects public health and safety and the environment through the regulation of solid waste facilities, including landfills, and promotes recycling of a variety of materials, including beverage containers, electronic waste, waste tires, used oil, and other materials. CalRecycle also promotes the following waste diversion practices: (1) source reduction, (2) recycling and composting, and (3) reuse. Additional departmental activities include research, permitting, inspection, enforcement, market development to promote recycling industries, and technical assistance to local agencies.

**Governor's Budget.** The Governor's budget includes \$1.5 billion from various funds for support of CalRecycle in 2015-16. This is about the same level as current-year estimated expenditures.

#### **EXPENDITURES BY PROGRAM (in thousands)**

	<b>Program</b>	<b>Actual 2014-15*</b>	<b>Estimated 2015-16*</b>	<b>Proposed 2016-17*</b>
	Waste Reduction and Management	\$224,534	\$488,103	\$216,596
	Loan Repayments	- 2,993	- 3,745	- 178
	Education and Environment Initiative	1,903	2,623	3,310
	Beverage Container Recycling and Litter Reduction	1,325,313	1,312,872	1,308,360
	<b>Total Expenditures (All Programs)</b>	<b>\$1,548,758</b>	<b>\$1,799,853</b>	<b>\$1,528,088</b>

**VOTE-ONLY CALENDAR**

- 1. Extended Producer Responsibility Program Supervisor.** The budget requests \$175,000 in (various carpet, paint and mattress special funds), and one position, for reorganization and more efficient supervision of staff involved in implementing CalRecycle's extended producer responsibility programs. Staff managing these programs is currently dispersed in multiple units throughout the department.
  
- 2. Independent Hearing Officer.** The department requests one, permanent, attorney III position, and \$176,000 annually (multiple special funds through distributed administration), to handle a significant increase in mandated informal hearings required to be conducted by the director or his/her designee.

**Staff Recommendation:** Approve as proposed.

**Vote:**

**Item 2: 2-1 (Nielsen, no) to approve.**

**Item 1: 3-0 to approve.**

**Issue 1: Beverage Container Recycling Program**

**Background.** The Department of Resources, Recycling and Recovery (CalRecycle) oversees and provides guidelines for most household and commercial waste, including the garbage picked up outside homes and businesses, recycling and compost. CalRecycle’s mission is to restore, protect, and manage the state’s natural, historical, and cultural resources for current and future generations using creative approaches and solutions based on science, collaboration, and respect for all the communities and interests involved. The largest single program at CalRecycle is the Beverage Container Recycling Program (BCRP).

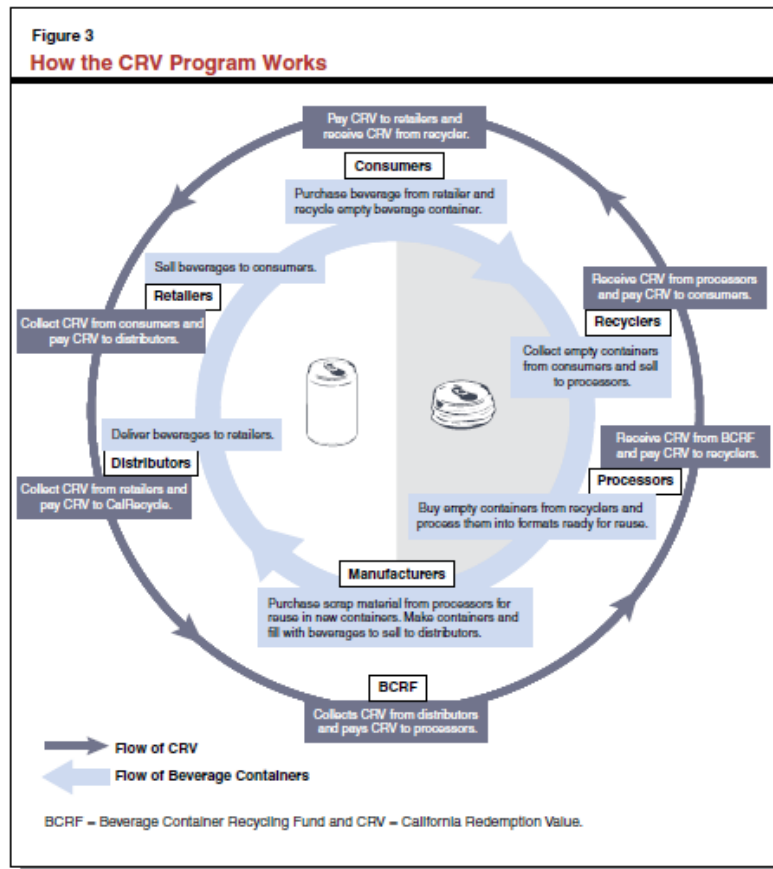
The BCRP was established almost 30 years ago with the enactment of AB 2020 (Margolin), Chapter 624, Statutes of 1986. The BCRP is intended to be a self-funded program that encourages consumers to recycle certain beverage containers. The program accomplishes this goal by first requiring consumers to pay a deposit for each eligible container purchased. The program guarantees consumers repayment of that deposit—the California Redemption Value, or “CRV”—for each eligible container returned to a certified recycler. Statute includes two main goals for the program: (1) reducing litter and (2) achieving a recycling rate of 80 percent for eligible containers.

Despite paying the CRV deposit, not all consumers recycle their CRV-eligible containers. In 2013–14, for example, the Beverage Container Recycling Fund (BCRF) received roughly \$1.2 billion in deposits, but only about \$1 billion—over 80 percent—was spent on redemption payments. The BCRF retains unredeemed deposits, and state law requires that much of the unredeemed CRV be spent on specified recycling-related programs. These supplemental programs are not directly involved in the exchange of CRV, but they are intended to help achieve the programmatic goals of increased recycling and reduced litter. There are currently ten supplemental programs funded from the BCRF (including program administration). Such programs include subsidizing glass and plastic recycling, encouraging supermarket recycling collection sites, and providing grants for market development and other recycling-related activities. CalRecycle estimates that a total of \$279 million will be spent on supplemental programs in 2015–16. The figure on the following page describes how the CRV works.

**Quarterly Report on the BCRP.** CalRecycle is required to report quarterly on the status of the BCRP in order to review the adequacy of resources in the Beverage Container Recycling Fund for purposes of making payments specified in Public Resources Code (PRC) Section 14581 and the processing fee offsets specified in PRC Section 14575. This statutorily-required report provides updates on the status of all five funds in the Beverage Container Recycling Program. This report also provides projections for sales, recycling volumes (returns), processing payments, processing fees, and processing fee offsets, by material type, and handling fees. Finally, this report provides an explanation of significant changes between the current projections and the projections presented in the previous year.



## How the California Redemption Value (CRV) Recycling Program Works



Source: Legislative Analyst's Office 2015

According to the most recent report, a combination of factors has imposed a strain on the Beverage Container Recycling Fund, resulting in an ongoing structural deficit. These factors include statutorily-prescribed payments established when the fund was running large surpluses, fraudulent activity, and ironically, the success of the program itself. In 2008-09, the recycling rate rose to 78 percent. Since then, the recycling rate has continued to increase. The current recycling rate is about 80 percent. Until now, the gap between expenditures and revenues has been temporarily bridged through repayments of loans, particularly to the General Fund, made from the fund when it was operating at a surplus. The final loan repayment, amounting to \$82.3 million, was paid in full at the end of 2014-15.

**Update from the Most Recent Quarterly Report.** According to CalRecycle, the BCRP is currently operating with an approximately \$100 million annual structural deficit as a result of the combination of historically high recycling rates, mandated program payments and general fund loans. This figure can fluctuate as much as tens of millions of dollars from quarter-to-quarter as a result of economic shifts and other factors (including scrap value rates). The structural deficit means that program expenditures exceed program revenues under the current mandated expenditure and revenue structure. Potential program reforms will be required to address the

structural deficit of the Recycling Fund and ensure the integrity and long-term viability of the BCRP.

In order to address the structural deficit, CalRecycle implemented several program reforms, including reduced daily load limits for redemption at recycling centers, increased monitoring of the importation of out-of-state beverage containers, and elimination of the commingled rate at buyback centers. This last reform allowed for slightly lower per-pound refund rates for loads containing a combination of CRV and non-CRV material. However, actions taken thus far have secured only partial success; while the gap is smaller, the amount of money coming into the BCRF is still insufficient to cover the amount being paid out. In order to eliminate the structural deficit and achieve a secure financial future for the fund and the programs it supports, further measures will be necessary.

**2014 State Auditor Report and Recommendations.** A recent audit by the Bureau of State Audits (BSA), released in November 2014, confirmed both the positive impact of the first round of reforms and the need for more. The audit confirmed the BCRF structural deficit, then approximately \$100 million, and recognized that changes such as reducing or eliminating administrative fees for beverage distributors, enacting changes to mandatory payments such as those for curbside programs or quality incentives to beverage program participants, or reducing or eliminating processing fee offsets, could improve the program's financial condition. The audit shows a decline in the projected average structural deficit, from \$56 million in January 2015 to \$27.9 million in 2014-15 through 2017-18, based on lower payouts, potentially stemming from the recent reforms, as well as higher revenues as beverage sales have increased with an improving economy.

The report made a series of recommendations, most of which the department has embraced. To ensure that it can demonstrate that its fraud prevention efforts are maximizing financial recoveries for the beverage program, BSA recommended CalRecycle modify and annually update its fraud management plan to include the following:

- Finalize a process to analyze the data the Department Food and Agriculture provided on out-of-state containers and act on the results to identify and prosecute those committing fraud.
- Develop fraud estimates—by type of fraudulent activity—that quantify the potential financial losses to the beverage program and the methodology CalRecycle used to develop these estimates.
- Identify the amount of actual fraud in the prior year by type of fraudulent activity, such as the financial losses resulting from the redemption of out-of-state beverage containers or the falsification of reports used to substantiate program payments.
- Identify the amount actually recovered for the beverage program in the form of cash for restitution and penalties resulting from fraud.
- Contract with the Board of Equalization (BOE) to determine the feasibility and cost of transferring its revenue collection duties and audit reviews to them.

- Should CalRecycle find that it is feasible and cost-effective, pursue legislative changes that enable the BOE to collect revenues for the beverage program at the point of sale and remit the money to the beverage fund.

**Legislative Analyst’s Office Review.** In 2015, the LAO conducted a thorough review of the BCRP and determined that not only is the shortfall accurate, certain offsets place additional costs on the program and the effectiveness of some of the supplemental programs are unclear. The LAO review found the following:

**High Recycling Rates and Spending on Supplemental Programs Create BCRF Shortfall.** The BCRF has operated under an annual structural deficit averaging about \$90 million since 2008-09. According to CalRecycle estimates, the fund is currently forecast to have an operating deficit of about \$60 million in 2015–16 and run an average deficit of \$56 million from 2014-15 to 2017-18, absent any changes made to reduce expenditures or increase revenues. This deficit is largely due to increased recycling rates in recent years, which have resulted in a greater share of BCRF revenue being paid out for CRV. Moreover, some supplemental programs are paid on a per container basis, and therefore these expenditures increase as the number of containers redeemed increases. The combined effects of higher recycling rates—more spending on CRV payments and certain supplemental program expenditures—make it much more difficult for the BCRF to operate with a structural balance.

#### Beverage Container Recycling Fund Expenditures

Expenditures	2015-16 Projection
Revenues (California Redemption Payments)	\$1,036.5
<b>Supplemental Program Expenditures</b>	
Processing fee offsets	75.4
Handling fees	55.3
CalRecycle administration	50.0
Administrative fees	44.7
Curbside supplemental payments	15.0
Payments to local governments	10.5
Plastic Market Development Payments	10.0
Quality Incentive Payments	10.0
Local Conservation Corps grants	6.4
Beverage Container Recycling Competitive Grants	1.5
<b>Total Expenditures</b>	<b>\$1,315.3</b>
<i>Deficit</i>	<i>(\$278.8)</i>

Source: Legislative Analyst’s Office 2015

For the last several years, the fund balance that accumulated when recycling rates were lower was able to support this expenditure level. However, the balance is being depleted further each year, and programmatic changes will need to be made in the next few years in order to keep the fund solvent and avoid statutorily required automatic funding cuts (referred to as “proportional reductions”). Acting sooner would provide the Legislature a greater number of options to address the deficit and allow for more flexibility when implementing any changes.

**Offsets Are Major Cost to BCRF and Do Not Clearly Support Goals.** The state subsidizes recycling by making “processing payments” from the BCRF to recyclers and processors. Processing payments are intended to cover the difference between a container’s scrap value and the cost of recycling it (including a reasonable rate of return). These payments are funded from two sources: (1) “processing fees” paid by beverage manufacturers and (2) the BCRF supplemental program, referred to as “processing fee offsets,” which reduces the amount of processing fees that manufacturers must pay. Processing fee offsets—the amount of processing payments covered by the BCRF—are projected to be \$75 million in 2015–16.

It is unclear how current processing fee offsets provided to manufacturers incentivize increased recycling. Additionally, providing offsets does not require manufacturers to consider the lifecycle costs of the materials that they use in their products. By reducing the amount of processing fees, the offsets effectively subsidize materials that are relatively more expensive to recycle.

**Effectiveness of Some Supplemental Programs Unclear.** While supplemental programs might have merit, we find that many of the programs have not been evaluated for their effectiveness at improving recycling. This lack of evaluation makes it difficult to compare the relative cost–effectiveness of supplemental programs and to determine how they help to achieve program goals of increasing recycling and reducing litter. This information is critical in determining the best use of limited program dollars. In addition, the existing structure of “handling fee” payments currently made to certain recyclers does not maximize convenience for many consumers, and may raise convenience–zone recycler costs, resulting in higher handling fee payments from the BCRF. Finally, the department has not evaluated whether administrative fees—funds that beverage container distributors, processors, and recyclers receive to cover their administrative costs to participate in the BCRP—accurately reflect costs for these program participants.

**2014 Proposal—Phase 2 Reform.** In January 2014, the budget proposed ten programmatic changes that were expected to result in a net increase to the BCRF annual fund balance of \$72.3 million in 2014–15, growing to \$127 million when fully implemented in 2016–17. The changes would have both raised revenue and decreased overall program expenditures, while at the same time modestly increasing specific expenditures for fraud prevention, data collection, and expanded grant programs. The Administration projected that these changes would eliminate the program’s structural deficit once fully implemented and avoid the need to implement proportional reductions.

**2014 Budget and Trailer Bill Actions.** The budget subcommittees did not approve trailer bill language and the budget proposals that would have provided the second phase of the BCRF reform. Instead, the Legislature approved trailer bill language to remove the Local Conservation

Corps (LCC) from the statutory provisions of the program funding and diversified the LCC funding similar to that proposed by the Governor under the program reform proposal.

The budget also included several positions to increase audit coverage of beverage manufacturers and distributors to better protect the integrity of the BCRF. The emphasis was on collecting revenues owed to CalRecycle and mitigating risk to the fund.

**2015 Legislative Oversight and Actions.** The Legislature took action in the 2015 budget to make additional changes to the BCRP, specifically to address issues raised by the Legislature and BSA related to audits and compliance. With these actions, the Legislature can more confidently address the structural deficit as described by the department. These actions included:

- **Targeted Activities to Improve Program Integrity.** \$357,000 (BCRF) and three positions, and \$717,000 (BCRF penalty account) and seven two-year, limited-term positions, to implement targeted activities to enhance program integrity, reduce expenditures, and mitigate potential program funding shortfalls. The budget converted eight existing limited-term positions to permanent for ongoing program certification workload.
- **Processor Oversight Activities.** \$933,000 and ten two-year limited-term positions to establish a pilot program with dedicated on-site investigation resources at certified processor facilities. These positions will create a new pilot program to expand current fraud investigation activities on recyclers to processing facilities.
- **Rigid Plastic Packaging Container Program.** \$296,000 (BCRF) and three positions, to conduct annual rigid plastic packaging container compliance certification reviews, pursuant to recently adopted regulations, and provide additional compliance assistance tools.

## GOVERNOR'S PROPOSAL

**Beverage Container Recycling Reform.** The budget includes only minor proposals to continue efforts to reform the BCRP, despite the continued volatility in the fund and the department's strong effort to address specific fraud and audit requirements. These efforts have reduced the potential impact of fraud-related activities on the BCRF estimates. The budget does include a related proposal that may impact the department's ability to address specific deficiencies related to the BCRP. Specifically, the budget requests:

- **Minor Proposal—Position Request.** \$110,000 (Beverage Container Recycling Fund) and one permanent associate governmental program analyst, beginning in 2016-17, to provide programmatic and fiduciary oversight of expenditures in the Beverage Container City/County Payment Program. This proposal is consistent with the CalRecycle approved corrective action plan, in response to a 2014 BSA report. The requested position would provide additional collaboration, training, and technical assistance to participants in the program to

ensure successful reporting and submittal of expenditure reports. This change would align this program with other CalRecycle payment programs to provide fiduciary accountability.

- **Cap-and-Trade Expenditure Proposal.** \$100 million (Greenhouse Gas Reduction Fund), conversion of nine positions to permanent, and an additional 17 positions to: (1) reduce methane emissions from landfills; and, (2) further greenhouse gas emission reductions in upstream management and manufacturing processes for organic and other recyclable materials. These programs support the expansion of existing, and the establishment of new, organic materials management facilities and recyclable commodities manufacturing facilities, as well as food waste prevention programs. The department's program (both loans and grants) are intended to result in commercial infrastructure for handling organic materials in food waste prevention projects (such as food rescue projects with food banks, food network projects that match generators with receivers, and to benefit food-insecure communities). Specific programs include in-vessel digestion facilities that produce biofuel and/or bioenergy to complement other alternative fuel programs in the state.

## ISSUES TO CONSIDER

**LAO Recommendations.** The LAO makes several recommendations that would help right-size the BCRP and shift the focus to programs that have demonstrated success. In order to do this, the Legislature would need to make several statutory changes and prioritize supplemental programs funded by the BCRP. Specifically, the LAO recommends:

- **Shift Processing Costs to Manufacturers.** The LAO recommends shifting processing costs to manufacturers. This would reduce BCRF expenditures significantly, probably eliminating the structural deficit. It would also require producers to cover the recycling costs of their products, which means that these costs are incorporated or “internalized” into the total cost of the product when it is sold. Therefore, the price that consumers pay reflects the entire cost of the product—its production and disposal. Shifting costs to manufacturers could be done in two ways, either by eliminating processing fee offsets or by moving to a market-based system where manufacturers are responsible for the recycling of materials. While either approach could work, the LAO states that the market-based approach would have several potential advantages.
- **Improve Cost-Effectiveness of BCRP.** The LAO makes several recommendations designed to improve the cost-effectiveness of the BCRP: including (1) evaluating supplemental programs to determine how cost-effective they are at achieving recycling and litter reduction goals; (2) giving recyclers more flexibility in where they locate and piloting a new payment structure in order to improve convenience for consumers; and, (3) adjusting the administrative fee to reflect the actual costs of program participation. In combination, the LAO believes these recommendations would improve the program's financial sustainability at current and potentially higher future recycling rates.

**Should the Legislature Re-Consider Trailer Bill Language to Reform the Program?** The department's approach to the management of the BCRP, including responding to audits, focusing efforts to reduce fraud, and improving management of the fund overall, has resulted in a more

robust forecasting of the BCRF. At this point, the department has produced nearly as much reform as it can without legislative change. The Legislature should consider whether the time has come for a more comprehensive approach to policy change, focusing on offsets, for the program overall.

**Should the Legislature Consider Program Reform Offsets Using Greenhouse Gas Emission Reduction Funds?** The department proposes to use most of the greenhouse gas emission funding allocated to the department for methane reduction and upstream management in recycling and composting programs. The Legislature could, to the extent possible, direct the department to adjust its budget proposal to provide as much co-benefits to the BCRP offset programs in order to shore up the BCRF long-term. As long as the department continues to use the funds to reduce greenhouse gases, this would be an allowable use of the fund.

**Should the Legislature Consider Interim Pilot Projects?** Certain jurisdictions feel they can achieve the goals of the recycling program in a more efficient and effective manner than the state. Given the likelihood that program reform will take multiple years, the Legislature should consider allowing temporary pilot programs to move forward to better inform the department as it reforms its overall recycling programs. This could be done in a manner so as not to harm the overall program, and with proper reporting and accountability.

**Staff Comments:** Staff has continued to work with the department to determine if there are reform proposals that would provide relief to the fund, while looking to the future of the program. The program has outgrown its original statute, which was designed to reduce litter, and should be revisited. Several options are available including: (1) approving minor changes such as proposed by the LAO, administration, or outside entities; (2) requiring the department to produce several reform options that integrate the BCRF into the overall recycling programs at the department; and, (3) asking an independent board or panel to review the current recycling programs overall, with the goal in mind to modernize the overall recycling programs, incorporating beverage container recycling as one of many commodities to recycle.

**Staff Recommendation:** **Hold Open**

**Issue 2: Education and the Environment Initiative**

**Background.** AB 1548 (Pavley), Chapter 665, Statutes of 2003, created the Office of Education and the Environment (OEE), within the former California Integrated Waste Management Board, and directed it to work in collaboration with the California Department of Education (CDE), the California Environmental Protection Agency, and the Natural Resources Agency, to develop a "model" environmental curriculum, known as the Education and Environment Initiative (EEI), for K-12 students. The intent of the law, as reiterated in SB 96 (Committee on Budget and Fiscal Review), Chapter 356, Statutes of 2013, was to provide that California students become environmentally-literate citizens. Between 2003 and 2009, OEE oversaw the creation of the EEI curriculum. In 2009, the State Board of Education approved the curriculum for use in all California public schools. The curriculum combines fundamental environmental principles and concepts with the traditional subject matter of science, history, social science, and English language arts. Statewide, the target audience is more than 150,000 teachers spread over 10,000 schools.

Since 2013, private sector philanthropists have shown their commitment to environmental literacy by contributing \$2.6 million to assist OEE in fulfilling its mission of implementing the EEI curriculum and advance other state supported environmental literacy initiatives. The EEI curriculum was designed as a print product and relies on three things for teachers to use it in their classrooms: marketing and awareness, professional learning of teachers, and distribution of printed materials. Philanthropists are looking to the state to provide the basic infrastructure of printing the materials for teachers to use in their classrooms, while they continue to contribute to the other two areas, as well as to larger state environmental literacy initiatives.

**Governor's Proposal.** The Governor requests \$700,000 (\$350,000 California Used Oil Recycling Fund and \$350,000 California Tire Recycling Management Fund) in one-time funding to develop a sustainable funding strategy for the Education and the Environment Initiative (EEI) program and address increased demand for the EEI curriculum. This proposal also includes budget bill language (BBL) providing additional flexibility to the Environmental Education Account.

**Staff Comments.** Teacher demand for the state-created, EEI curriculum has expanded and this proposal would help CalRecycle facilitate use of the curriculum and foster environmental literacy among all California students. The Governor's budget proposes an expenditure of \$700,000 to pay for the printing costs of the EEI curriculum for the 2016-17 school year. However, this amount is \$780,000 short of the cost needed for printing to fulfill teacher demands for the curriculum. If the state does not provide adequate funding for the printing of these materials, it could result in stagnation of the state's flagship environmental literacy program. It is important to note that this level of funding (or more) will be needed for the next 3.5 years, which is the estimated time it will take to adopt the required environmental principals and concepts into textbooks. The subcommittee may wish to ask the department about these concerns.

**Staff Recommendation.** Approve as proposed, plus \$780,000 additional funding for printing.

**Vote: 2-1 (Nielsen, no) to approve staff recommendation.**