

SUBCOMMITTEE NO. 4

Agenda

Senator Richard D. Roth, Chair
Senator Janet Nguyen
Senator Richard Pan



Thursday, March 3, 2016
9:30 a.m. or upon adjournment of session
State Capitol - Room 2040

Consultant: Farra Bracht

Part A

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Public Comment

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1700 DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**Issue 1: Enforcement Staffing and Resources**

Governor’s Budget Request: The Governor’s budget requests an increase of \$2.5 million General Fund for 28 positions to provide investigations of discrimination complaints. This funding would provide:

- 24 positions in the Enforcement Division to investigate claims;
- Two positions to establish a training unit; and
- Two positions to respond to an increased number of Public Records Act requests.

Background: The Department of Fair Employment and Housing (DFEH) is responsible for protecting the people of California from unlawful discrimination in employment, housing, and public accommodations, and from hate violence. DFEH receives, investigates, conciliates, mediates, and prosecutes complaints of alleged violations of the Fair Employment and Housing Act (FEHA), Unruh Civil Rights Act, Disabled Persons Act, and Ralph Civil Rights Act. The budget proposes expenditures of \$25.9 million (\$20.2 million from the General Fund and \$5.7 million federal funds) for support of the department in 2016-17. This represents an increase of \$2.7 million (11 percent) over estimated current-year expenditures.

DFEH receives approximately 23,000 employment and housing discrimination complaints annually and is required to investigate all complaints. Most of these are employment complaints. Approximately 50 percent of the claims are requests for "Right to Sue". This occurs when complainants decide to immediately sue rather than proceed through DFEH's investigation process and a "right to sue" letter from DFEH is required to file the lawsuit. The remaining 50 percent of claims are investigated by DFEH.

SB 1038, (Committee on Budget and Fiscal Review), Chapter 46, Statutes of 2012 made significant changes to DFEH’s workload by eliminating the Fair Employment and Housing Commission and transferring the duties of the commission to DFEH. As a result, some of the staff used to conduct investigations were transferred to other functions and the number of cases each investigator was responsible for increased significantly, from roughly 150 cases per investigator to over 200. According to DFEH, this high of a caseload per investigator is unmanageable and is resulting in complaints not being processed in a timely manner, which can have negative consequences for Californians in some cases. DFEH notes that federal departments with similar workloads average about 35-70 cases per investigator and it also used caseload information from the California Department of Industrial Relations, Division of Labor Standards Enforcement as a benchmark.

The figure below shows the total number of cases/complaints received, the number investigated, the number of investigator positions authorized and filled, and the average number of cases per investigator since 2006-07.

**Department of Fair Employment and Housing
Investigator Caseloads
2006-07 through 2015-16**

| | 2006-07 | 2007-08 | 2008-09 | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 |
|-----------------------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| Total Cases | 21,454 | 24,827 | 25,119 | 22,993 | 22,720 | 21,785 | 17,178 | 19,403 | 22,646 | 22,646 |
| Cases Investigated | 13,504 | 15,506 | 14,563 | 11,840 | 11,473 | 9,772 | 9,421 | 8,646 | 11,675 | 11,675 |
| Authorized Investigator Positions | 96 | 106 | 107 | 102 | 99 | 95 | 82 | 76 | 70 | 59 |
| Filled Investigator Positions | 87.7 | 98 | 92.8 | 85.5 | 73.9 | 64.2 | 58 | 53 | 47 | 51 |
| Average Cases per Investigator | 154 | 158.2 | 156.9 | 138.5 | 155.2 | 152.2 | 162.4 | 163.1 | 248.4 | 228.9 |

As shown in this figure, the number of cases received and investigated has remained relatively flat over the time period however, the number of investigator positions has declined, and the average number of cases per investigator has increased. While DFEH has had problems filling its vacant investigator positions, recent changes in the allowable qualifications for this job classification should help to resolve DFEH's problem with filling vacant positions.

Staff Questions:

- 1) Please describe the changes that have occurred at the department since 2012 and the impact this has had on the department and its ability to manage its workload.
- 2) What has been the impact of changing the investigator position classification to broader classifications such as staff services analyst and associate governmental program analyst in August 2015? Has this resulted in filling existing vacancies more easily?
- 3) Please discuss what types of performance measures would be useful for assessing what the effect would be on workload of adding more investigator positions?

Staff Comment: DFEH has a history of problems in completing investigations within statutory time limits. The 1996 Budget Act required the State Auditor to perform a comprehensive fiscal and performance audit of the department and to develop recommendations for improving administrative operations and management of complaints related to housing and discrimination. The auditor found DFEH could make changes to improve the efficiency and timeliness of its complaint processing. However, at the time, the department took issue with many of the recommendations.

Unfortunately, DFEH continues to struggle with processing complaints in a timely manner and complaints take staff about as many hours to process as they did 20 years ago. The problem has been compounded over time by a reduction in the number of staff responsible for conducting investigations.

The budget request does not provide a good justification for the number of additional staff requested or an explanation of why investigations take the amount of time they do to complete. It is clear that DFEH would benefit from having additional investigators; however it is difficult to determine what is the appropriate level of staff. As a result, concurrent with, or prior to approving a request for additional positions, it may be useful to have the auditor again assess DFEH's 1) organizational effectiveness; 2) caseload management practices for housing and employment complaints; 3) development of workload standards; and 4) the adequacy of DFEH's information technology systems. As an alternative to an audit, the Legislature may wish to adopt statutory reporting language that would require DFEH to report in 2017 on performance metrics under development. If the proposal is approved, it would be especially useful to have benchmark data to thoroughly assess the value of the additional investigative staff.

Staff Recommendation: Hold open.

2240 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**Issue 1: Consolidated Automated Program Enterprise System**

Governor's Budget Request: The Governor's budget requests \$568,000 in expenditure authority to use various Department of Housing and Community Development (HCD) funds to fund application development support for the Consolidated Automated Program Enterprise System (CAPES). HCD intends to hire five staff using these funds.

Background: HCD implemented CAPES in 2007 to serve as an enterprise-level data collection and organization system to accurately manage and report essential housing program and funding information. The system awards, tracks, monitors, and reports housing loans and grant information. However, because of inadequate funding, when CAPES was put into production in 2007, the implementation of some critical requirements needed to achieve program objectives was deferred.

HCD intends to use the funding augmentation to hire additional staff to design and implement required system enhancements and to ensure that the CAPES project is completed. In addition, these staff would help HCD address the backlog and ongoing requests for system enhancements and help to ensure that these are completed in a timely manner.

Staff Comment: The augmentation in expenditure authority would allow HCD to fund application development for CAPES which would better enable HCD to support its housing program operations.

Staff Recommendation: Approve as budgeted.

Vote:

Issue 2: Green Building Standards

Governor's Budget Request: The Governor's budget requests an augmentation of \$150,000 from the Building Standards Administration Special Revolving Fund (Building Standards Fund) to fund one position to enable HCD's State Housing Law (SHL) Program to meet its code development and adoption responsibilities associated with the California Green Building Standards Code (CALGreen).

Background: SHL mandates HCD to develop and implement regulations for the construction, maintenance, use, and repair of housing, hotels, motels, and other residential dwellings in California. These regulations are enforced by local governments to protect the health, safety, and welfare of Californians in residential buildings.

In 2007, the California Building Standards Commissions (CBSC) requested HCD to develop residential green building standards for new construction of buildings. The 2008 CALGreen provided voluntary green building standards for new construction, with an effective date of August 1, 2009. In general, CalGreen requires new buildings and renovations in California to meet certain sustainability and ecological standards. During the 2009 Triennial Building Code Adoption Cycle, HCD proposed to make the 2010 version of CALGreen mandatory. The 2010 CALGreen was approved by the CBSC as a mandatory green building code and became effective on January 1, 2011.

Funding for HCD's SHL program is a mix of General Fund dollars and funds from the Building Standards Fund which supports 6.5 permanent positions and one two-year limited term position.

According to HCD it has had to redirect staff from other workload to assist with research and development of CalGREEN provisions and to participate in special projects. In addition, HCD states that it has struggled to fully monitor and participate in rulemaking activities and participate in in-person policy meetings which could potentially impact residential green building standards. HCD has not been able to provide the optimal amount of annual CalGREEN training and outreach to stakeholders. In addition, HCD has not had the resources to keep up with international and national green building standards and programs that could possibly be applied to California.

Staff Comment: CALGreen is evolving and the associated workload continues to grow. The addition of \$150,000 may better enable HCD to complete activities associated with the implementation of CALGreen which include research and evaluating updates, conducting training and outreach, analyzing code changes submitted by other agencies, and participating in various work groups.

Staff Recommendation: Approve as budgeted.

Vote:

Issue 3: Habitat for Humanity Fund Appropriation

Governor’s Budget Request: The Governor’s budget proposes a \$250,000 appropriation for the Habitat for Humanity Fund (Fund), with authority for Department of Finance to augment the appropriation, if needed, in order to align program expenditures with the revenue collections associated with a voluntary tax check-off program. Additionally, proposed budget bill and trailer bill language would appropriate the funds to HCD and give HCD the authority to issue one grant to Habitat for Humanity of California, which will provide grants to local affiliates.

Background: California’s tax “check-off” programs allow taxpayers to donate to charitable causes by checking a box on their income tax returns. California taxpayers have 20 tax check-offs from which to choose, supporting a range of causes, from cancer research to endangered species. AB 1765 (Jones-Sawyer), Chapter 354, Statutes of 2014, authorized a tax-deductible voluntary check off contribution to raise funds for the Habitat for Humanity.

The Franchise Tax Board is authorized to collect these funds until January 1, 2021, with the first collection occurring during the 2014 tax year. Collections through June 2015 have yielded \$167,000. The State Controller distributes these funds according to the enacting statute, which generally requires an appropriation by the Legislature. This budget change proposal proposes budget bill language that would appropriate these funds to HCD.

For some check-offs, taxpayers’ contributions go directly to a state agency that administers a grant program. Other check-offs’ authorizing statutes direct the administering agency to allocate donations to a private nonprofit organization, like the American Red Cross. AB 1765 specified that HCD award these funds as grants through a competitive, project-specific grant process and oversee the grant program. According to HCD, its grant-making process is relatively intensive and costly and administrative costs for awarding such a small amount of funds could reach up to 25 percent of the collected funds. As a result, the competitive process required in AB 1765 may not be the most efficient way to award these funds.

The proposed trailer bill language (below) would allow HCD to disburse appropriated funds to the non-profit California Habitat for Humanity and required Habitat for Humanity to submit an annual audit of the program. The proposed language below:

SECTION 1. Section 18900.24 of the Revenue and Taxation Code is amended to read:

18900.24. All money transferred to the Habitat for Humanity Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board, the Controller, and the Department of Housing and Community Development for reimbursement of all costs incurred by the Franchise Tax Board, the Controller, and the Department of Housing and Community Development in connection with their duties under this article.

~~(b) The Department of Housing and Community Development for distribution of grants to Habitat for Humanity affiliates in California that are in active status, as described on the Business Search page of the Secretary of State's Internet Web site, and that are exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code. The Department of Housing and Community Development shall award grants through a competitive, project-specific grant process and be responsible for overseeing that grant program. A Habitat for Humanity affiliate shall not use a grant award for administrative expenses or for any purposes outside of California.~~

(b) (1) To the Department of Housing and Community Development for disbursement to Habitat for Humanity of California, Inc., a California nonprofit public benefit corporation representing and supporting California Habitat for Humanity affiliates as a state-support organization.

(2) Habitat for Humanity of California, Inc., shall submit a plan to the Department of Housing and Community Development, within 60 calendar days of receiving a disbursement, for the use and distribution of moneys pursuant to this article to Habitat for Humanity affiliates in California that are in active status, as described on the Business Search page of the Secretary of State's Internet Web site, and that are exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(c) Habitat for Humanity of California, Inc., shall not use more than 5 percent of the moneys received pursuant to this article for administrative expenses.

(d) A Habitat for Humanity affiliate shall not use the moneys received pursuant to this article for administrative expenses or for purposes outside of California.

(e) Habitat for Humanity of California, Inc., shall submit an annual audit of the program to the Department of Housing and Community Development within 60 calendar days of the completion of the audit.

SEC. 2. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

Staff Questions:

- 1) When AB 1765 was being considered did HCD raise any concerns about the costs of administering a relatively small competitive grant program? Did it offer any alternative approaches at the time?
- 2) Did HCD in its budget proposal consider a competitive approach for distributing funds for Habitat for Humanity? Why or why not?

Staff Comment: The Administration's proposed budget bill language would allow for the appropriation of the collected contributions to HCD. The proposed trailer bill language helps to address a problem sometimes associated with tax check-offs (described in more detail in the Senate Committee on Governance and Finance background paper for its December 9th hearing entitled "California's Tax Check-off Program: Room for Improvement". http://sgf.senate.ca.gov/sites/sgf.senate.ca.gov/files/oversight_background_12-9-15.pdf) that the programs can be administratively expensive and as a result, reduce taxpayer dollars available for program activities. However, the proposal seems to run counter to the original legislation which sought to establish a competitive process. It is reasonable that HCD would not want to spend a relatively large amount administering a relatively small competitive program. An alternative approach to consider is having Habitat for Humanity award grants through a competitive, project-specific grant process.

Staff Recommendation: Hold open.

Issue 4: Proposition 1C Adjustments

Governor's Budget Request: The Governor's budget requests the following adjustments to Proposition 1C local assistance budget authority:

- An appropriation of \$20 million in disencumbered Infill Infrastructure Grant (IIG) funds to provide awards for new projects (and budget bill language to allow for the liquidation of encumbrances until June 30, 2021.)
- A \$4.5 million increase to the Housing-Related Parks Program (HRPP) appropriation.
- Extension of the liquidation period for existing IIG awards, including California Recycle Underutilized Sites (CALReUSE) awards, until June 30, 2020, and the Transit Oriented Development (TOD) awards until June 30, 2019.

Adjustment to the January Budget Request: Since the release of the Governor's budget, the Department of Finance and HCD have made an additional request to increase the 2016-17 appropriation for the IIG Program by \$2.2 million for a total appropriation of \$22.2 million. The additional request is due to an unforeseen project cancellation.

Background: In 2006, California voters approved Proposition 1C, authorizing the largest state housing bond in the state's history. The bond provided continuously appropriated funding for various programs and funds for the following programs under annual appropriations:

- **IIG program.** Proposition 1C authorized \$850 million for the IIG program. The program uses competitive grants to fund infrastructure improvements to facilitate new housing developments in residential or mixed-use infill projects. The CALReUSE program is a grant and loan program administered by the California Pollution Control Financing Authority (Authority) that finances brownfield cleanup to promote infill residential and mixed-use development, consistent with regional and local land use plans. (SB 86 (Budget and Fiscal Review Committee), Chapter 179, Statutes of 2007, allocated \$60 million of IIG funds to the CALReUSE program.)
- **TOD Program.** Proposition 1C authorized \$300 million for the TOD Program to award loans for development and construction of housing projects or grants for infrastructure necessary for the development of higher-density housing in close proximity of transit stations.
- **HRPP.** Proposition 1C authorized \$200 million for the HRPP to award grants for the creation, development, or rehabilitation of community or neighborhood parks to cities, counties, and cities and counties with deficient parks or deficient park acreage. (This increase would provide total budget authority of \$32 million for HRPP.)

Budget Act appropriations are needed to award disencumbered or reallocated funds for IIG and HRPP, since they are not continuously appropriated. Additionally, infill developments are complex, multiyear projects that sometimes encounter unforeseen project delays and without an extension of the liquidation period, these projects would be cancelled or delayed until new funding is found.

HCD has disencumbered funds from IIG awards and funds previously set aside for program administration in the HRPP that are now available for additional awards. Additionally, although HCD initially awarded all Proposition 1C funds during the economic crisis, some project sponsors delayed their projects due to worsening market conditions and now need additional time for completion.

Staff Comment: Staff has no concerns with the proposal.

Staff Recommendation: Approve the proposal as budgeted, including the additional request to increase the IIG Program appropriation by \$2.2 million for a total appropriation of \$22.2 million in 2016-17.

Vote: