Senate Budget and Fiscal Review—Mark Leno, Chair

SUBCOMMITTEE NO. 4 Agenda

Senator Richard D. Roth, Chair
Senator Steven M. Glazer
Senator Janet Nguyen
Senator Richard Pan

Thursday, May 19, 2016
Upon Adjournment of Session
State Capitol - Rose Ann Vuich Hearing Room 2040

Consultant: Mark Ibele

Part B

ITEMS PROPOSED FOR VOTE-ONLY

ITEMS FOR DISCUSSION AND VOTE

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ISSUES PROPOSED FOR VOTE ONLY

CONTROL SECTION 6.10

Issue 1: Funding for Deferred Maintenance Projects (BBL)

Governor's Proposal. Budget Control Section 6.10 gives the Department of Finance the authority to allocate $500 million General Fund in the amounts identified below for deferred maintenance projects for the following state entities:

Department of Water Resources	100,000,000
Department of State Hospitals	64,000,000
Judicial Branch	60,000,000
Department of Parks and Recreation	60,000,000
Department of Corrections and Rehabilitation	55,000,000
California State University	35,000,000
University of California	35,000,000
Department of Developmental Services—Porterville Facility	18,000,000
Department of Fish and Wildlife	15,000,000
California Military Department	15,000,000
Department of General Services	12,000,000
Department of Veterans Affairs	8,000,000
Department of Forestry and Fire Protection	8,000,000
State Special Schools	4,000,000
Network of California Fairs	4,000,000
California Science Center	3,000,000
Hastings College of the Law	2,000,000
Office of Emergency Services	800,000
California Conservation Corps	700,000
Department of Food and Agriculture	300,000
San Joaquin River Conservancy	200,000

In addition, the control section allows for DOF to allocate $18 million from the Motor Vehicle Account for deferred maintenance projects for the California Highway Patrol and Department of Motor Vehicles.

Under this proposal, departments would provide DOF a list of deferred maintenance projects for which the funding would be allocated. The DOF would review and provide the approved list to the Chairperson of the Joint Legislative Budget Committee (JLBC) 30 days prior to allocating any funds. The amounts specified above would be available for encumbrance or expenditure until June 30, 2018. If departments make a change to the approved list after the funds have been allocated, DOF's approval is required and quarterly the JLBC would be notified of any changes.

Background. The proposed control section is virtually identical (except for the amounts and departments) to that proposed last year as part of the Governor's budget. Outside of this program, most deferred maintenance is funded through the baseline support budget provided to individual departments. Departments have some discretion to use these funds for maintenance projects or other higher priority needs within the department.

The Legislative Analyst Office (LAO) continues to express concern regarding the Legislature's abrogation of its authority for capital outlay and deferred maintenance and recommends steps that would reinsert the legislative perspective in this process. For the current deferred maintenance proposal, the LAO recommends: (1) requiring lists of proposed projects to be funded by each department by April; (2) requiring individual departments to report at budget hearings regarding the projects; (3) modifying departments' funding levels based on project reviews; and (4) requiring that funded projects be listed in a supplemental report to the 2016 Budget Act.

Staff Comments. This issue was heard in this subcommittee on April 7, 2016 and May 12, 2016 and held open. A listing of deferred maintenance projects was provided by the Administration to the Legislature at the end of April, and these identified projects are being heard in the respective budget subcommittees. Staff recommends that the quarterly notification related to any project changes in excess of $1 million be altered to require a 30 day notice to JLBC.

Staff Recommendation. Approve proposed Control Section 6.10 with the change noted below in subdivision (d).

> *(d) Prior to making a change to the list, a department shall obtain the approval of the Director of Finance. The Director of Finance shall notify the Chairperson of the Joint Legislative Budget Committee no less than <u>30 days prior to approving any changes in excess of $1 million and</u> quarterly of any <u>and all</u> changes to the list of deferred maintenance projects. The <u>30–day and</u> quarterly notification<u>s</u> to the Joint Legislative Budget Committee shall identify the projects removed or added, the cost of those projects, and the reasons for the changes.*

Vote.

0509 GOVERNOR'S OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT

Issue 1: Membership of the California Travel and Tourism Commission (TBL)

Governor's Proposal and Background. The May Revision includes trailer bill language (TBL) that makes a technical change in the membership of the California Travel and Tourism Commission (CTTC). The measure would require the chairperson and vice chairperson of the CTTC be elected by the 12 commissioners appointed by the Governor. The CTTC membership is comprised of: the Director of the Governor's Office of Business and Economic Development (GO-Biz); 12 members appointed by the Governor; and, 24 members elected by industry category. Under current law, the Director of GO-Biz serves as the chairperson, and the vice chairperson is chosen by the commissioners from among the elected commissioners.

Staff Comments and Recommendation. Staff has no concerns with this proposal and recommends that TBL be approved.

Vote.

8880 FINANCIAL INFORMATION SYSTEM FOR CALIFORNIA

Issue 1: Establishing the Department of FI$Cal (TBL)

Governor's Proposal. The proposed trailer bill language (TBL) establishes the Department of FI$Cal effective July 1, 2016; establishes the director of the Department of FI$Cal, to be appointed by the Governor, who will oversee the day-to-day functions of the department and the implementation of the FI$Cal project documents; change the interim cost allocation plan to fund the FI$Cal project and Department of FI$Cal; make all automated accounting systems referred to in Government Code Section 13000 inoperative after required data and departments using the system have transitioned to the FI$Cal System

Background. Initially, FI$Cal was established as a statewide information technology (IT) project, approved through a Department of Finance (DOF) Feasibility Study Report (FSR) in 2005. Since then, it has gradually transitioned away from the DOF, becoming its own entity, with increasingly more authority, effectively transitioning to a fully-functioning state department. Total project costs include departmental functions such as human resources, accounting, budgeting, contracts and procurement, business services. During the development of SPR 6, existing positions and costs were re-evaluated and redirected to align with project or departmental functions. Additional resources are needed to fully staff the units where existing staff cannot be redirected.

LAO Comments. The LAO noted in its report that there may be alternative options to creating a new department at this time, including maintaining the current FI$Cal Service Center (FSC) or delegating responsibility for the project to one of the four participating state offices. The analysis indicates issues and potential difficulties with each of the three options. The analysis notes that accountability may continue to be a problem under the Governor's proposal and recommends additional steps to improve this regardless of the particular organizational structure chosen. It addition, LAO points out two potential solutions for accountability: (1) shift the role of the control agencies to one of advisory rather than formal decision-making and (2) elevate the project leader to the steering committee.

Staff Comments. Given the number of state entities responsible for fiscal and other control functions in the state, the design of the administrative structure with responsibility for FI$Cal is not likely to resemble that of a typical state department. The challenge is to design an organizational structure that maximizes the positives associated with the different control agencies and minimizes the potential drawbacks associated with multiple lines of authority and responsibilities. The committee discussed this proposal at its hearings on April 7 and May 12, 2016, and raised concerns regarding governance, accountability and reporting. The Administration has made substantial progress on the proposal, provided additional clarity regarding the organizational structure for the department, and briefed staff regarding the governance model envisioned. The design of the particular organization best suited for the FI$Cal project may well benefit from further discussions and analysis, but the current proposed framework is a suitable one. In particular, the revised language provides for ultimate authority and discretion on the implementation of changes in the FI$Cal system.

Staff Recommendation. Approve proposed TBL as revised.

Vote.

0984 CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

Issue 1: Administrative Costs (Budget Proposal and BBL)

Budget Proposal. The proposal would provide $1.5 million as a General Fund loan to the California Secure Choice Retirement Savings Investment Board (CSCRSIB) sufficient for the first two years of operations and implementation. These resources will provide for one executive director, one staff manager, and a program analyst, and operating expenses (to include external consultants). Budgeted costs are $850,000 in 2016-17, and $650,000 in FY 2017-18. The budget request is proposed pursuant to SB 1234 (De León) with budget bill language (BBL).

Background. The BBL would allow for administrative costs to be provided in the form of a loan of $1.5 million from the General Fund for the period of January 1, 2017 to June 30, 2018, which shall be sufficient to cover the board's projected administrative costs for its first two years of implementing the program. The loan would be expected to be repaid in five years, dependent on deposits in the amount sufficient to generate interest in excess of administrative costs.

Staff Comments. Staff has no concerns with the proposal.

Staff Recommendation. Approve the budget proposal BBL.

Vote.

0840 STATE CONTROLLER'S OFFICE

Issue 1: 21st Century Project Management Assessment and Project Approval (May Revision)

Governor's Proposal. The May Revision proposes additional support for the State Controller's Office (SCO) 21st Century Project assessment efforts and refine the scope of a future payroll project. The SCO requests $2,720,000 ($1,550,000 General Fund and $1,170,000 special fund) to support four positions (and eight continuing positions effective January 1, 2017) in 2016-17, and $2,831,000 ($1,060,000 General Fund, $799,000 special funds, and $972,000 reimbursements) in 2017-18, and $2,607,000 ($932,000 General Fund, $703,000 special fund, and $972,000 reimbursements) in 2018-19 to support eight positions to complete the project assessments, convey the results of the project management assessment in a post implementation evaluation report, perform business process re-engineering of human resource management and payroll processing practices to refine the scope of the future project and complete Department of Technology project approval. The proposal was heard in subcommittee hearing on May 18, 2016 and held open. Based on the discussion in the hearing, the department has limited the scope of the assessment and reduced the costs proportionately. The revised costs will result in funding of $2,377,000 in the budget year.

Background. The activities are related to assessment efforts and refinements regarding the scope of a future payroll project. The state's payroll technology needs are being met by a reconstituted legacy system. The proposal also includes components that will begin the process of assessing options and designing a new state wide payroll approach.

LAO Comments. The Legislative Analyst's Office (LAO) has recommended in that past that an independent third party assess the 21st Century Project. It appears, however, that the alternatives assessment would instead be conducted through the Department of Technology's new IT project approval process, which presumably would involve SCO working directly with the Department of Technology. LAO expresses concern that this approach would result in relatively narrow set of alternatives considered in the assessment. The LAO indicates that a fresh approach using an outside party may result in possible designs that depart from the state's current payroll practices. In light of the challenges of the 21st Century Project and the complexity of the state's workforce, the LAO indicates that new approaches should be considered before the state commits to spend hundreds of millions of dollars on a new project. LAO recommends that the Legislature approve the first year of the request only and the Legislature adopt supplemental reporting language requiring SCO to provide more detail on future assessment activities, as drafted:

> *It is the intent of the Legislature to continue funding assessment activities relating to the 21st Century Project efforts to replace the state's human resources and payroll management systems. No later than March 31, 2017, the State Controller's Office shall provide to the Joint Legislative Budget Committee and the fiscal committees of both houses a report that details proposed assessment activities beginning in 2017-18. The report shall at a minimum detail: (1) the results of assessments already completed; and (2) alternatives to be considered as part of Stage 2 of the Project Approval Lifecycle process before restarting efforts to replace the state's payroll system. Concerning the alternatives, the report shall address whether: (1) an independent third party should conduct the alternatives assessment; (2) the assessment should consider incrementally replacing business processes through a series of smaller projects; (3) the assessment should consider a decentralized model that integrates less complex payroll departments together and considers alternative approaches for modernizing the payroll systems of*

> *complex departments; and (4) other state departments or agencies should be involved in the project in addition to the State Controller's Office. This reporting requirement may be satisfied by the submission of a budget change proposal as part of the Governor's 2017-18 Budget that addresses the issues listed above.*

Staff Comments. Staff is in general agreement with the concerns raised by the LAO, especially the need to gain outside perspectives on an appropriate approach for the state's payroll needs. The technology in this area changes rapidly and external perspectives are an important means for the state to remain abreast of changes in this area. Prior to approval of the proposal, the committee should ascertain the manner in which outside or third-party perspectives will be incorporated in the project.

Staff Recommendation. Approve budget request, as revised, and SRL.

Vote.

ISSUES PROPOSED FOR DISCUSSION AND VOTE

0509 GOVERNOR'S OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT

Issue 1: Clarification of California Competes Authority (TBL)

Governor's Proposal. The proposed trailer bill language (TBL) would provide clean-up and clarifying language regarding considerations that may be taken into account in the award of California Competes Tax Credit (CCTC). The language would clarify the ability of Governor's Office of Business and Economic Development (GO-Biz) to negotiate tax credit agreements by explicitly stating that it may consider the following factors when deciding whether to enter into a tax credit agreement with a business: financial solvency and ability to finance its proposed expansion; current and prior compliance with federal and state laws; current and prior litigation involving the business; reasonableness of any fee arrangement with any third party providing services related to the CCTC; other factors GO-Biz deems necessary to ensure the administration of the CCTC is a model of accountability, transparency, and the effective use of the limited tax credits available is maximized.

Background. The CCTC program is one component of the Governor's Economic Development Initiative of 2013. The CCTC program authorizes GO-Biz to provide tax credits to businesses in exchange for California job creation and capital investments. However, unlike other tax incentive programs in which a business is automatically entitled to the incentive if it meets the statutory requirements, the CCTC enabling statutes provide GO-Biz the ability to negotiate tax credit agreements on behalf of the state with businesses committing to expand or locate in California.

The total amount of CCTC that can be awarded in any fiscal year is statutorily capped at $200 million, plus any unallocated or recaptured previously awarded credits. The legislative intent language in the bill that created the CCTC states that the program was enacted to be a model of accountability and transparency and to maximize the effectiveness of the state's limited economic development dollars. Consistent with this intent, in 2014 GO-Biz promulgated regulations that, among other requirements, require applicants for the CCTC to disclose information related to their financial condition, federal and state law violations, pending and resolved litigation, and the compensation and nature of agreements with third parties preparing applications for the CCTC. GO-Biz requires this information to ensure the efficacy of the CCTC program and to maximize benefits of the credits awarded. However, despite the clear legislative intent and authority vested in GO-Biz to administer the CCTC program, GO-Biz's ability to request and evaluate the above information required by its regulations has been called into question. The CCTC clean-up language would clarify and make explicit GO-Biz's authority in this regard and ensure that the program continues to operate as it has since its inception.

Staff Comments. The language provided by the Administration is a reasonable effort to clarify existing law, and will ensure that the state remains a careful steward of taxpayer dollars, such that any tax credits go directly to support job generating activities.

Staff Recommendation. Approved proposed TBL.

Vote.

7730 FRANCHISE TAX BOARD

Issue 1: Advanced Strategic Aircraft Tax Credit (May Revision TBL)

Governor's Proposal. The May Revision includes trailer bill language (TBL) that amends existing statute regarding the award of tax credits related to the manufacturing of aircraft for the use by the United State Air Force (USAF). The proposed language would shift the period during which the credit could be claimed out by one year.

Background. SB 718 (Roth), Chapter 189, Statutes of 2014, modified the definition of a "qualified taxpayer" under the aerospace tax credit program to include, in addition to a first-tier subcontractor, a taxpayer that is a contractor awarded a prime contract to manufacture property for ultimate use in, or as a component of, a new advanced strategic aircraft for the USAF. A "prime contractor" is defined as a contractor that was awarded a prime contract for the manufacturing of a new advanced strategic aircraft for the USAF.

When the Legislature passed the Advanced Strategic Aircraft Tax Credit, it was anticipated that the contract would be awarded by the USAF in early 2015. Due to federal procurement delays and a bid protest by competitors, the contract was not officially awarded to the "prime contractor" until 2016. The initial award date of the contract was October 27, 2015 with the Air Force upholding their decision after the US Government Accountability Office (GAO) ruled against the validity of the protest on February 16, 2016. Since the contract was not awarded in 2015, as anticipated, the $25 million tax credit available in 2015 will not be claimed. Instead, this proposal would push the Advanced Strategic Aircraft Tax Credit out one year to run 2016-2031 instead of 2015-2030, and extend the sunset by one year. The proposed language would allow the tax credit begin the same year the contract begins, as originally anticipated. There are no additional changes to the tax credit. The total amount of the credit and all other factors remain.

Staff Comments. The revenue impact of the delay in the claiming of the credit has already been reflected in Department of Finance revenue estimates.

Staff Recommendation. Approve proposed TBL.

Vote.

0860 BOARD OF EQUALIZATION

Issue 1: Centralized Revenue Opportunity System (May Revision and BBL)

Governor's Proposal. The Board of Equalization (BOE) requests $17.5 million and 43.1 positions (22.5 positions and 20.6 temporary help) in 2016-17, to ensure that the Centralized Revenue Opportunity System (CROS) project has the resources required to begin the implementation phase. During the first year, BOE staff, funded by temporary help or overtime, will staff the project. This approach results in 22.5 permanent positions and 20.6 temporary help for the CROS Project. The Contractor will be paid from revenue generated by the solution. BOE also requests budget bill language (BBL) to allow up to $5.0 million to be made available for possible contractor payments in 2016-17. The project will re-align the contractor payments in next year's 2017-18 budget after the contract award.

Background. BOE is in the process of consolidating and modernizing its existing taxpayer information systems through the CROS project. As designed, CROS would replace the BOE's two existing systems of tax information and return management, expand online business and taxpayer services, and provide an agency-wide data warehouse. CROS would replace two legacy systems, the Integrated Revenue Information System (IRIS) and the Automated Compliance Management System (ACMS).

The acquisition of CROS will be achieved through a performance-based, benefits-funded procurement approach. This approach is similar to that used by the Franchise Tax Board (FTB) and the Employment Development Department (EDD) for their respective information and data management systems. The approach does not require up-front vendor funding, as the development and implementation costs are paid under a benefits-funded contract, with payment allowed only when increased revenues are received. Contractor payments would be dependent on the generation of additional revenues attributable to the project and would be capped overall.

Staff Comments. The CROS project is a necessary undertaking for the state, given the age and status of the agency's legacy mainframe-based revenue and collection information systems. The budget proposal for continued funding of the CROS project is reasonable with respect to anticipated workload during the implementation phase. In addition, the benefits-based funding for the project is appropriate for the tax agency; a similar approach has been used successfully by the FTB.

Nevertheless, staff has significant misgivings regarding the ability of the agency to successfully undertake a project of this importance and magnitude. Several unrelated issues discussed at the committee's April 28 hearing highlight potential concerns for the governance of large and complex undertakings, like the CROS project, given the organizational structure and administrative capability of the agency. Clearly, the BOE, in most cases, functions adequately, but the following instances of questionable management and decision-making nevertheless raise concerns.

- The BOE, for over two years, misallocated revenues generated by the sales and use tax. This stemmed from various administrative control weaknesses and resulted in a one-time negative correction of $343 million to the General Fund.

- The BOE has pursued the continuation of physical office space despite the availability of less expensive electronic solutions for tax compliance and taxpayer access. The agency has more than three times the number of offices than FTB, with less revenue collection and fewer taxpayers.

- The policies that govern the opening of new offices appear to be ambiguous and open to various interpretations from both staff and board members. In addition, questions have been raised regarding instances of inconsistent application of audit processes and tax collection.

Previous information technology projects that have failed to meet expectations have generally fallen short, not because of technical challenges, but due to the failure of adequate oversight, management and governance. The state is dealing with the failure and termination of the 21st Century Project, in which the state invested approximately $300 million dollars. While the assessment of the project has not been completed, it is likely that the state will realize little by way of useful product from this investment. On the other hand, more positive examples are also available. FTB has given much thought and deliberation to working through project management and oversight issues related to its Enterprise Data to Revenue (EDR) project. Although this project was not without some uncertainties and delays, the structure of responsibility is such that the agency was able to adjust to these contretemps while keeping the overall project on track. Similarly, the Financial Information System for California (FI$Cal) project has devoted considerable discussion to the governance and management issues in order to maintain the integrity of the final product.

Undoubtedly, BOE has given careful thought to the governance and management of the CROS project; however, the documentation that has been provided to staff in the May Revision consists of a handful of organizational charts and a brief paragraph regarding accountability, as indicated below:

> *To ensure accountability and best practices, the Project reports directly to the Chief Information Officer (CIO) and has a governance structure that includes an Executive Sponsor from the Program. The Governance Plan defines how the BOE will make decisions and how risks and issues may be escalated for resolution.*
>
> *The BOE has retained the services of an independent Project Management consultant responsible for ensuring that project management activities, including schedule, costs, scope, and risk management are properly planned and executed. Also, Independent Verification & Validation (IV&V) consultants are being used to verify and validate CROS Project deliverables meet the requirements and fulfill contractual obligations.*

> *The Department of Technology will provide external oversight of the CROS Project's activities and management processes through both an onsite presence and through review and analysis of the CROS Project's monthly Project Reports to ensure that all applicable policies, rules, guidelines, and procedures are followed. The Department of Finance will provide fiscal oversight and monitors the compensation model.*

Project governance models and management structures are crucial, not because of routine decisions or quotidian activities, but rather for instances of technical challenge and impediments to implementation. Staff notes that IT projects, by their very nature, carry with them inherent unknowns both in design and timeline. Nevertheless, the CROS history to date is not at all encouraging. The project’s Feasibility Study Report (FSR) was approved five years ago, in 2011. Special Project Report 1 (SPR 1), outlining two strategies for procurement was submitted in March 2012. SPR 2 was then submitted in December 2013, addressing a nine month change in the procurement schedule and one year delay in implementation. SPR 3 was submitted in April 2016 to address an additional 19 month delay in the procurement phase. Meanwhile, the CROS project itself was without a director from September 2015 until March of this year. The incumbent is the project’s third director.

Staff Recommendation. Staff does not recommend action on this proposal at this point. The department should be prepared to walk through with the committee the proposed governance approach and management structure for the project, and focus on those areas that have proven to be weaknesses in other state projects. Depending upon further details regarding project management, the committee may wish to consider requiring more direct oversight by both the Department of Technology and the Department of Finance. Once the committee is satisfied with the overall design, it could consider approval at a later time in the budget process or in a supplemental appropriation measure later in the year.

Vote.

9210 LOCAL GOVERNMENT FINANCING

Issue 1: Local Law Enforcement Reimbursement (BBL)

Governor's Proposal. The budget includes $10 million for reimbursement of costs associated with AB 953 (Weber), Chapter 466, Statutes of 2015, which calls for tracking and reporting of stops by local law enforcement. The budget bill language indicates that the funds are to be awarded based on a schedule to be provided by the DOF and acceptance of the funds would preclude the local government from filing a claim for these costs with the Commission on State Mandates (CSM). This issue was heard by the committee on April 28, 2016 and held open

Background. AB 953 requires the Attorney General to establish the Racial and Identity Profiling Advisory Board, which is directed, among other duties, to investigate and analyze state and local law enforcement agencies' racial and identity profiling policies and practices across geographic areas in California and make publicly available its findings and policy recommendations. The measure requires each state and local agency that employs peace officers to annually report to the Attorney General, data on all stops conducted by the agency's peace officers, and requires that data to include specified information, including the time, date, and location of the stop, and the reason for the stop. The measure was identified as a state-mandated local program by Legislative Counsel. Whether the required activities constitute a reimbursable mandate (and if so, what are the allowable costs) will be determined by the CSM.

Staff Comments. Staff was informed initially that the proposal, as currently reflected in the budget, was a work in progress; however, no revision has been submitted to the Legislature. The intent to beginning 'saving' for the payment of likely mandate claims is commendable, but there are a number of questions that arise from the language. These include the basis on which funds are to be allocated and, more fundamentally, whether local governments conducting state-mandated activities can actually be precluded from receiving constitutionally-protected expense reimbursements or can waive the right to claim such reimbursements. This concern would be particularly relevant if the funds are accepted but prove inadequate to fully cover the allowable expenses established through the mandate process. Given this, staff recommends that language be adopted that treats any amounts awarded for activities undertaken by local governments in complying with the statute be treated as payments toward fulfilling any mandated reimbursements.

Staff Recommendation. Approve alternative BBL with the following language change:

9210-103-0001—For local assistance, Local Government Financing $10,000,000

Schedule:

(1) *7540-Aid to Local Government 10,000,000*

Provisions:

1. *The amount appropriated in this item is to reimburse local law enforcement agencies for*

costs related to the implementation of Chapter 466, Statutes of 2015.

2. *The funds appropriated in this item shall be allocated to the local jurisdictions by the Controller according to a schedule provided by the Department of Finance.*
3. ~~*Acceptance of these funds shall preclude recipient entities from filing a claim with the Commission on State Mandates for costs incurred under the provisions of Chapter 466, Statutes of 2015.*~~ *Funds received by local agencies from this appropriation shall offset future mandate claims submitted to the State Controller's Office."*

Vote.

Issue 2: Community-Based Transitional Housing Program (BBL and TBL)

Governor's Proposal. In January, the Governor proposed $25 million (General Fund), budget bill language (BBL) and trailer bill language (TBL) relating to hard-to-site state facilities. With the May Revision the Administration proposes additional trailer bill language and has renamed the proposal the Community-Based Transitional Housing Program. The funds will be dedicated to siting incentive payments to cities and/or counties that approve, between January 1, 2016 and June 30, 2017, new long-term permits for hard-to-site facilities that improve public safety and support the criminal justice system. This issue was heard in this subcommittee on April 28, 2016 and held open.

The revised TBL would accomplish the following:

- Direct the Department of Finance (DOF) to review applications for the program and award grants ranging from $500,000 to $2 million, which could be encumbered over a period of three years.
- Allow cities, counties, or cities and counties that approve permits to facilities providing transitional housing to persons released from state prison or county jail to apply for the grant.
- Provide that local governments would be eligible for funding for providing permits to transitional housing providers that offer at least two additional services (beyond housing), including by not limited to life skills training, employment counseling, and continuing education, would be considered eligible.
- Specify that local governments would be required to provide 40 percent to the transitional housing provider, which could be used be used to offset costs related to security

requirements of local government permits, and local governments may use the grant funds for local costs associated with permitting the facility.

- Require local governments to explain the planned use for the funds in their application to the DOF and provide other information about the facility being permitted and the amount of funds requested.
- Include a DOF report requirement to the Legislature regarding the number of applications submitted and approved, as well as basic information about the programs that applied for funding.
- Provide $500,000 to the State Auditor to determine whether the program is effective at increasing the supply of transitional housing facilities for persons recently released from prison or jail.

Background. Local governments have sole control over land use, zoning and permitting within their communities. When local communities are reluctant to allow the operation of programs for the rehabilitation of offenders in the criminal justice system, this local authority has slowed the ability of the state and local governments to provide meaningful rehabilitation programs. The appropriation would be used for siting costs related to such activities as substance use disorder treatment, mental health, and reentry programming.

LAO Comments. In its initial review of the proposal, the LAO noted several weaknesses, including the lack of: a full definition of the eligible facilities, specifics as to how the grants would be applied for and awarded, information regarding the amount of funding that could be received, and an indication of whether both state and local facilities would be eligible. LAO indicates that the new language reflects a significant improvement from January, but recommends one additional change. It notes that given that there could be meritorious applications for facilities with few beds, LAO recommends removing the minimum grant amount, noting that if a facility were to only serve 10 persons, awarding the city and the provider $500,000 would be a substantial award compared to a facility serving 100 persons and receiving $2 million

Staff Comments. The Administration's revision of this proposal is much improved. The issues relating to hard-to site facilities are numerous and complex and this particular program is unlikely to be a panacea. Nevertheless, the program could prove to be one method, among several, that can be developed to address hard-to-site facilities. The LAO-proposed change is reasonable. The committee may wish to ask DOF if this change is acceptable, given the potential of greater administrative costs associated with smaller grant. In addition, there may be some need to tighten the language with respect to capacity. While the state would not want the capacity of selected projects to diminish, but there may be some need for flexibility in situations involving violations. Approving placeholder language will allow for additional tightening of the proposal.

Staff Recommendation. Approve placeholder TBL, with the removal of the minimum grant requirement, and BBL.

Vote.

8885 COMMISSION ON STATE MANDATES

Issue 1: Reasonable Reimbursement Methodology for Mandate Claims (TBL)

Governor's Proposal. The Administration's January mandate proposal would require State Controller's Office (SCO) to audit all mandate reimbursement claims used in the development of any new reasonable reimbursement methodology (RRM), which is one approach to reimbursing local governments for mandate costs. The May proposal represents a slight revision, specifying that "a representative sample of claims" be audited. The Administration proposes this amendment based on its concern that the claims used to develop a particular RRM overstated actual costs. RRM proposals must use cost information from one of three sources: a representative sample of eligible claimants; information provided by local government associations; or, other projections of local costs. Under the Administration's proposal, if a proposed RRM uses cost information based on claims filed by local governments to the SCO, a representative sample of those claims would have to be audited before being used to develop a general allocation formula. An RRM developed through means other than claims data would not face this requirement. The language would apply to both education and local government mandates.

Background. Local governments can submit claims for mandates costs reimbursement based on the actual costs of the required activities or the CSM can adopt a RRM. The Legislature created the RRM process in 2004 with the intent to streamline the documentation and reporting process for mandates. An RRM allows local governments to be reimbursed based on general allocation formulas or other approximations of costs, rather than detailed documentation of actual costs. The Department of Finance (DOF), SCO, affected local governments, or an interested party may propose an RRM. Generally, when an RRM is proposed, the CSM cannot modify it, but must either adopt or reject the proposal. To be adopted by the CSM, an RRM must meet the following conditions:

- Use cost information from one of the following: a representative sample of eligible claimants; information provided by local government associations; or, other projections of local costs.
- Consider the variation in costs among local governments to implement the mandate in a cost-efficient manner.
- Be consistent with the mandated activities identified in the CSM's parameters and guidelines.

Once an RRM is submitted to the CSM for consideration, DOF, SCO, or affected local governments may file comments with the CSM. These comments are part of the administrative record and may outline the parties' support or opposition to the proposal. The parties may submit comments again after the CSM releases a proposed RRM decision. DOF has regular voiced concern that RRM may not be based on audited claims. There are currently six active mandates that have an RRM.

LAO Comments. The intent of the Legislature in establishing the RRM process was to reduce local governments' burden of documenting actual mandate costs, as well as reduce the work of state officials in reviewing and paying associated claims. But the RRM process has been seldom used to date. LAO notes that there are already several opportunities for DOF or other interested parties to weigh in on whether an RRM proposal meets the requirements of state law, and the proposed audit requirement likely would lengthen the process for developing an RRM. As a result, it could become more difficult for local governments to propose RRMs based on claims data in the future. Moreover, an increase in SCO's audit workload potentially could strain that department's resources in the future. LAO recommends caution in considering actions that could make the process less beneficial for local governments. For example, if the state suspends fewer local government mandates than it does today, there may be more RRM proposals. As one alternative, the SCO could be required to audit just a sample of the claims used for an RRM. LAO notes that the May revision is improved over the initial proposal in that it addresses auditing of claims.

Staff Comments. The proposal is intended to avoid potentially inflated mandate claims, and at the same time, improve the RRM process in order to expedite the determination of mandated costs. Although there may be some additional technical adjustments that may be warranted, the May changes are positive and the proposal is step in the right direction and warrants approval by the subcommittee. Subcommittee No. 1 took action to approve the language with respect to education mandates.

Staff Recommendation. Approve proposed TBL as revised.

Vote.