



## Senate Budget and Fiscal Review

# Subcommittee No. 5 2013 Agendas

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

**Agenda**

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

EDUCATION  
JACK SCOTT, CHAIR  
BOB MARGETT  
JOHN VASCONCELLOS

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# **SUBCOMMITTEE NO. 5**

# **Agenda**

**Senator Loni Hancock, Chair**  
**Senator Joel Anderson**  
**Senator Curren D. Price, Jr.**



**Thursday, March 7, 2013**  
**9:30 a.m. or Upon Adjournment of Session**  
**Room 113**

**Consultant: Kris Kuzmich**

## **DEPARTMENTS TO BE HEARD**

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

6645	CSU Health Benefits for Retired Annuitants
7100	Employment Development Department
7350	Department of Industrial Relations
7501	Department of Human Resources
7503	State Personnel Board
7900	Public Employees' Retirement System
7920	State Teachers' Retirement System
9650	Health and Dental Benefits for Annuitants
CS 3.60	Contribution to Public Employees' Retirement Benefits

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**DETAILED AGENDA**  
*Items 1-6 (and in Italics) are proposed Vote-Only*

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<b>6645</b>	<b>CSU HEALTH BENEFITS FOR RETIRED ANNUITANTS</b>
<b>9650</b>	<b>HEALTH AND DENTAL BENEFITS FOR ANNUITANTS</b>

**Issue 1 – Retiree Health Budget Bill Provisional Language**

**Governor’s Budget Request.** The January budget requests new budget bill provisional language to authorize the California Public Employees Retirement System (CalPERS) to correct a defined set of errors in the calculation of service credit for the vesting of post-retirement health and dental benefits that occurred prior to the implementation of the MyCalPERS system.

**Background.** Through the Public Employees’ Medical and Hospital Care Act (PEMHCA), the Legislature vests responsibility for managing health care programs for state workers, state retirees, and employees or retirees of participating local agencies with CalPERS. Budget Items 6645 and 9650 contain appropriations for these costs for state retirees. Item 6645 pertains to CSU health benefits for retirees and totals \$278.2 million GF (\$792,000 other funds). Item 9650 pertains to health and dental benefits for state retirees and totals \$1.5 billion GF (\$4 million other funds). Currently, nearly 270,000 state and CSU retirees and dependents are members of health plans administered by CalPERS.

Historically, CalPERS manually calculated service credit for the vesting of post-retirement health and dental benefits. When the new MyCalPERS system went “live” in 2011 it was revealed that a small number of errors had occurred in the initial vesting calculation for individual retirees. These errors impacted 92 retirees whose vesting percentage was set too low and three retirees whose vesting percentage was set too high. In sum, the underpayments totaled \$750,000 and the overpayments totaled \$2,100.

**Staff Comment.** CalPERS worked with the Department of Finance (DOF) to identify a solution to correct both the underpayments and overpayments; the result is the new budget bill provisional language in Budget Items 6645 and 9650. The proposed language applies to 2013-14 only. While this is expected to be one-time issue, it is possible that additional errors could come to light (albeit on an even smaller scale) in future years. If that proves to be correct, this language would repeat in future budget bills but the threshold would be lowered. DOF would be responsible for modifying the language in the fall through its work to develop the annual January Governor’s Budget proposal.

In considering this request, the Subcommittee may wish to: (1) place a limit on funding available for this purpose in 2013-14; and (2) incorporate a legislative reporting requirement. With regard to the latter, given that the total amount of the underpayments is known (\$750,000), it would be appropriate to limit the funding for the correction of calculation errors to “up to \$1 million” of the appropriation.

**Staff Recommendation:** Approve placeholder budget bill provisional language as modified:

*Items 6645 and 9650*

*Provision x. Up to \$1,000,000 of ~~This~~ appropriation shall also be available for the purpose of reimbursing state annuitants’ share of health premiums from prior years or*

*the current year due to a correction of errors or omissions in calculating service credit for the vesting of post-retirement health and dental benefits. The California Public Employees' Retirement System shall report to the Legislature before October 1, 2013 (1) the number of annuitants who received or will receive a reimbursement pursuant to this provision, (2) the amount of money reimbursed or will be reimbursed to annuitants pursuant to this provision, (3) the number of annuitants who reimbursed or will reimburse the state pursuant to this provision, and (4) the amount of money reimbursed or will be reimbursed to the state pursuant to this provision.*

<b><i>Items Proposed for Vote Only – Issue Descriptions</i></b>
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<b>7503 STATE PERSONNEL BOARD</b>
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**Issue 2 – Compliance Review Audit Program Budget Trailer Bill Language**

**Governor’s Budget Request.** The January budget requests budget trailer bill language to authorize the State Personnel Board to bill departments on a pro rata basis for the costs of its Compliance Review Audit Program.

**Background.** In part, the Governor’s Reorganization Plan No. 1 of 2011 (GRP 1-2011) consolidated the state’s human resource management functions and authorities previously vested with the State Personnel Board (SPB) and Department of Personnel Administration, except for the constitutional responsibilities of the SPB, into the California Department of Human Resources (CalHR). The GRP 1-2011 was effective on September 9, 2011.

Consistent with this aspect of the GRP 1-2011, the SPB continues to act as an independent five-member Board within CalHR, appointed by the Governor and serving ten-year terms, to hear merit appeals and oversight of the merit principle. CalHR continues to provide administrative and staffing support to enable the SPB to accomplish its mission. The GRP 1-2011 also retained within the SPB, 11 positions and \$1.5 million (reimbursements) to allow the SPB to reinstate its Compliance Review Audit Program. This program ensures that departmental level personnel policies are in compliance with civil service statutes and board regulations that enforce the merit principle.

**Staff Comment.** The SPB has not had a dedicated audit program since the early 1990s. The GRP-1 2011 addressed this and provided authorization for the SPB to bill departments in arrears for these reviews in order to restart this program. However, due to a number of factors, including the size of the reviewed department and the quality and quantity of identified merit related issues, the SPB is unable to provide departments with an accurate cost of a review to allow a given department to budget appropriately. The pro rata billing option presented in this request enables departments to budget for a set amount annually. Departments have expressed a desire to have the option to pay on a pro rata basis.

The SPB indicates that they will report annually to the board on the results of the Compliance Review Audit Program. In considering this request, the Subcommittee may wish to consider amending the trailer bill language to require the SPB to provide a copy of the annual report to the appropriate committees of the Legislature.

**Staff Recommendation:** Approve placeholder budget trailer bill language as modified to include transmission of the annual report on the Compliance Review Audit Program to the Legislature.

Government Code 18662 (e) On or before October 1, 2014, and every October 1 thereafter, the board shall report to the Chair of the Joint Legislative Budget Committee its audit and special investigation activities pursuant to this section from the preceding fiscal year. Specifically, the board shall report:

- (1) A summary of each audit and special investigation, including findings.
- (2) By department, the number and total cost of audits and special investigations.

**Items Proposed for Vote Only – Issue Descriptions Continued****7920 STATE TEACHERS' RETIREMENT SYSTEM****Issue 3 – Information Technology Project Budget Reappropriation Item**

**Prior Budget Action.** The Budget Act of 2012 established a new budget item and associated language to address funding continuation issues associated with some of the State Teachers' Retirement System (STRS) major information technology projects. The proposal allowed additional flexibility to address situations where projects entail complex and multi-year commitment of funds by authorizing three years for funds to be encumbered and two years for funds to be liquidated. Previously, the period of time for these two actions to occur was one year and two years. This budget item also incorporated an existing quarterly reporting requirement to the Legislature and Department of Technology detailing the status of STRS's technology projects.

**Governor's Budget Request.** The January budget, consistent with the prior budget action described above, reappropriates up to \$6.749 million (Teachers Retirement Fund-TRF) from the Budget Act of 2012 for costs associated with information technology projects.

**Staff Comment.** Each year, the budget act allocates \$18.5 million (TRF) for the support of technology projects. The changes in the Budget Act of 2012 brought additional transparency to these expenditures, as well as allowing STRS to use already appropriated funding for a longer period of time and thus the need to request additional resources in future years would be minimized or, in some cases, eliminated. At that time, STRS indicated its intent to "complete the loop" through the submission of reappropriation language.

In considering this request, the Subcommittee may wish to consider incorporating a quarterly report to the Legislature on the expenditure of the reappropriated funds. This approach would be modeled on the existing legislative reporting requirement tied to the \$18.5 million in base budget funding for technology projects.

**Staff Recommendation:** Approve the reappropriation item as modified to incorporate quarterly reporting to the Legislature on the expenditure of the reappropriated funds.

**Items Proposed for Vote Only – Issue Descriptions Continued****7100 EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)****Issue 4 – Disability Insurance Automation Project**

**Governor’s Budget Request.** The January budget requests a one-time augmentation of \$10.6 million from the Disability Insurance fund and a redirection of \$1.9 million from the same fund source to support a net of 26 positions (62 new positions less 36 existing positions) for the Disability Insurance Automation (DIA) project.

**Background.** Since 1946, the State Disability Insurance (SDI) program has provided temporary, partial wage replacement to eligible disabled workers who suffer a loss of wages when they are unable to work due to illness or injury. SDI is completely funded through employee payroll deductions and covers the majority of California employees.

Historically, the SDI program consisted of many complex manual operations; the paper based system was burdensome and inefficient to customers and EDD. The DIA project, which went “live” in October 2012, provides greater access to services for claimants, medical providers, and employers by allowing these individuals to use the Internet to submit claims data using a direct electronic interface or through web-based intelligent forms. This simplifies and automates the numerous manual work processes involved when a claim is filed with EDD. Further, optical character recognition has been implemented to convert remaining paper claims to electronic format. Automated business logic will allow “in pattern” claims to be paid automatically, further increasing service delivery.

The resources in this request will be used to support the DIA project during the second year of its operation and production, including enhancements and maintenance. Of the \$12.5 million being requested, \$10.6 is new Disability Insurance funds; the remaining \$1.9 million will be redirected from savings achieved through the reduction of 36 Key Data Operator positions to fund ongoing project costs. The reduction in Key Data Operators is a result of the DIA project providing Web-based intelligent forms, which removes key data entry tasks from Disability Insurance branch employees, thus saving on the amount of staff required to administer the program.

**Staff Comment.** When the DIA project went “live” in 2012, claim processing time increased. This was expected as part of the transition to the online system, as not all claimants and medical providers immediately switched to electronic filing, resulting in EDD processing both paper and e-forms. This dynamic created additional workload that impacted the entire program. The EDD has undertaken extensive outreach and communication to the field to increase the number of e-filers. For instance, 80 percent of Kaiser providers are now filing electronically and Kaiser represents 31 percent of all providers. The EDD expects claim processing time to continue to improve in the coming months. The resources in this request also continue the necessary training of EDD staff in preparation for taking over the maintenance and operations functions from the system integration vendor.

**Staff Recommendation:** Approve the request.

<b><i>Items Proposed for Vote Only – Issue Descriptions Continued</i></b>
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<b>7100</b>	<b>EMPLOYMENT DEVELOPMENT DEPARTMENT</b>
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**Issue 5 – Alternative and Renewable Fuel and Vehicle Technology Program Reimbursable Budget Authority**

**Governor’s Budget Request.** The January budget requests an ongoing reimbursable budget authority appropriation of \$3 million to allow the Employment Training Panel (ETP) to provide services and support, including workforce development and training needs, related to the Alternative and Renewable Fuel and Vehicle Technology Program (ARFVTP).

This request also includes budget bill provisional language to allow the Department of Finance to increase the reimbursement authority by up to an additional \$3 million for unused funds or additional grant awards from the California Energy Commission (CEC). Authority for reimbursements in excess of that amount will be requested via Control Section 28.50.

**Background.** Chapter 750, Statutes of 2007, created the ARFVTP, to be administered by the CEC, to develop and deploy innovative technologies that transform California’s fuel and vehicle types to attain the state’s climate change policies. In the years since the enactment of Chapter 750 and the ARFVTP, the CEC has partnered with the ETP via an interagency agreement to fund training required by California’s emerging green transportation industry and support the CEC’s workforce training goals for the ARFVTP.

**LAO Recommendation.** Approve the increase in reimbursements for the ETP but reject the provisional language. The provisional language would give the Administration authority to increase ETP’s reimbursement budget by up to \$3 million without legislative review. Control Section 28.5 already allows for mid-year reimbursement augmentations and includes a legislative review process.

**Staff Comment.** Staff has no concerns with the basic intent of this proposal, which is to provide reimbursement authority to allow the ETP to continue to partner with CEC and provide the necessary workforce training goals of the ARFVTP. However, similar to the LAO, staff finds no justification for the new budget bill provisional language allowing the reimbursement authority to be increased by up to an additional \$3 million.

**Staff Recommendation:** Approve the request but reject the budget bill provisional language allowing the reimbursement authority to be increased by up to an additional \$3 million.

<b><i>Items Proposed for Vote Only – Issue Descriptions Continued</i></b>
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<b>7350</b>	<b>DEPARTMENT OF INDUSTRIAL RELATIONS (DIR)</b>
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**Issue 6 – Child Performer Services Permits**

**Governor’s Budget Request.** The January budget requests \$701,000 (special fund) and eight positions in 2013-14, and \$625,000 ongoing, to implement Chapter 634, Statutes of 2012, which requires persons representing artists who are minors to obtain a Child Performer Services Permit from the Labor Commissioner. The ongoing costs are reduced by \$76,000 due to one-time equipment expenditures in the first year of implementation.

**Background.** Chapter 634 effectively creates a new permit process that will identify registered sex offenders and prohibit them from representing or providing services to minors who are performing or who are seeking to perform in the entertainment industry. Chapter 634 represents a new program for DIR; DIR currently estimates it will process 15,000 applications. Chapter 634 additionally requires individuals holding a Child Performer Services Permit to renew their permit on a biennial basis.

Chapter 634 requires DIR to collaborate with the Department of Justice (DOJ) and other law enforcement entities to ensure that each applicant is not a registered sex offender. An application fee will be charged to each applicant to pay for the full costs of administering the program. Applicants confirmed as non-sex offenders will be listed on a web site the Labor Commissioner is required to maintain of persons holding valid permits to provide these services to minors.

**LAO Recommendation.** Modify the Administration's request for eight permanent positions and \$701,000 by approving the request on a two-year limited-term basis. This is a new program and the permit processing workload is largely unknown. Limited-term approval of this request would require the Administration to justify the appropriate ongoing staffing level for this program in a future budget proposal.

**Staff Comment.** Staff concurs with the LAO recommendation. While the implementation of Chapter 645 represents increased workload for DIR, it is not clear that the DIR estimate will prove correct yet the requested resources are proposed as permanent. Further, DIR and DOJ have yet to finalize the scope of the agreement/services DIR will receive from DOJ making it impossible to establish the level of the applicant fee. Therefore, in considering this request, the Subcommittee may wish to consider authorizing the resources on a two-year limited-term basis to allow the resource level to be revisited in two years’ time when actual workload is known.

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

<b>SUMMARY CHART OF ITEMS PROPOSED FOR VOTE ONLY</b>
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	<b>Issue</b>	<b>Amount</b>	<b>Fund Source</b>	<b>Staff Recommendation</b>
	<b>CSU Health Benefits for Retired Annuitants (6645)</b>			
	<b>Health and Dental Benefits for Retired Annuitants (9650)</b>			
1	Retiree Health Budget Bill Provisional Language	BBL	N/A	Approve BBL as modified to limit the amount available for the correction of calculation errors and to institute a legislative reporting requirement.
	<b>State Personnel Board (7503)</b>			
2	Compliance Review Audit Program Budget Trailer Bill Language	TBL	N/A	Approve TBL as modified to include transmission of the annual report on the Compliance Review Audit Program to the Legislature.
	<b>State Teachers' Retirement System (1920)</b>			
3	Information Technology Project Budget Reappropriation Item	\$6.749 million BBL	Teachers Retirement Fund	Approve the reappropriation item including modified BBL to incorporate legislative reporting on the expenditure of the reappropriated funds.
	<b>Employment Development Department (7100)</b>			
4	Disability Insurance Automation Project	\$10.6 million (new) \$1.9 million (redirected) Net 26 positions	Disability Insurance Fund	Approve.
5	Alternative and Renewable Fuel and Vehicle Technology Program Reimbursable Budget Authority	\$3 million BBL	Reimbursements	Approve the item but reject the BBL allowing the reimbursement authority to be increased by up to an additional \$3 million.
	<b>Department of Industrial Relations (7350)</b>			
6	Child Performer Services Permits	\$701,000 8 positions	Special Fund	Approve on two-year limited-term basis.

**Vote:**

<b>7501</b>	<b>DEPARTMENT OF HUMAN RESOURCES</b>
<b>7503</b>	<b>STATE PERSONNEL BOARD</b>

**Department and Budget Overview – Department of Human Resources.** The California Department of Human Resources (CalHR) is responsible for managing the state's personnel functions and represents the Governor as the "employer" in all matters concerning state employer-employee relations. CalHR is responsible for issues related to recruitment, selection, salaries, benefits, and position classification, as well as provides a variety of training and consultation services to state departments and local agencies. CalHR also sets salaries and benefits for employees excluded from collective bargaining and employees exempted from civil service.

	2011-12* (actual)	2012-13 (estimated)	2013-14 (proposed)
Expenditures	\$66,302,000	\$93,643,000	\$92,901,000
General Fund	\$6,101,000	\$8,064,000	\$7,162,000
Positions	187.4	297.8	278.5

\*Prior to July 1, 2012, represents the former Department of Personnel Administration structure and budgetary resources.

**Department and Budget Overview – State Personnel Board.** The five-member State Personnel Board (SPB), whose members are appointed by the Governor for ten-year terms, was established in the California Constitution in 1934. The SPB is responsible for California's civil service system, ensuring it is free from political patronage and that employment decisions are based on merit.

	2011-12* (actual)	2012-13 (estimated)	2013-14 (proposed)
Expenditures	\$25,614,000	\$10,094,000	\$10,434,000
General Fund	\$2,907,000	\$1,059,000	\$1,104,000
Positions	169.1	69.7	69.7

<b><i>Issue Proposed for Discussion / Vote</i></b>
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<b>Issue 7: Additional Appointments of Exempt Employees</b>
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**Background.** In part, the 2011 Governor's Reorganization Plan No. 1 (GRP 1-2011) consolidated the human resource management functions and authorities previously vested with State Personnel Board (SPB) and Department of Personnel Administration, except for the constitutional responsibilities of SPB, into CalHR. The main goal of this aspect of the GRP 1-2011 was for state departments to have a single entity to offer guidance to non-merit personnel issues, while the SPB retained its autonomous constitutional authority over the interpretation of the civil service law and the merit-based system. Consistent with the GRP 1-2011, the SPB continues to act as an independent five-member Board independent of CalHR, appointed by the Governor and serving ten-year terms, to hear merit appeals and oversight of the merit principle. The SPB provides direction to departments through simplifying civil service laws, rules, and policy. Within its constitutional authority, the SPB audits departments for merit system compliance.

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

The federal Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments. State laws, rules, policies, and bargaining unit contracts govern most personnel and labor issues. CalHR uses Policy Memos (formerly called PMLs) to tell state departments and agencies about new policies, procedures, and to provide other important information.

Recent media reports have brought transparency to a state human resource practice common to eleven state departments whereby managers with a fixed salary also assumed a secondary rank-and-file position within the same department. Figure 1 below details the count of additional appointments as of January 11, 2013.

**Figure 1 – Count of Unique Employees with Additional Positions within the Same Department – January 11, 2013**

<b>Department</b>	<b>Unique Employee Count</b>
Corrections and Rehabilitation	227
Department of State Hospitals	173
Social Services	101
Public Employees' Retirement System	56
Employment Development Department	4
Education	2
Food and Agriculture	2
Motor Vehicles	2
Veterans Affairs	2
Consumer Affairs	1
Forestry and Fire Protection	1
<b>Total</b>	<b>571</b>

Source: State Controller's Office

On January 30, 2013, CalHR issued Policy Memo 2013-007 to prohibit departments from making any new additional appointments. CalHR is in the process of reviewing relevant laws, rules, and prior procedures that have been applied to additional appointments to date. CalHR further requested all departments report by February 15, 2013, details of their additional appointments. CalHR has begun a review of each additional appointment and indicates that it will take necessary and appropriate action on a case-by-case basis.

In response to questions from the Senate Budget and Fiscal Review Committee about what authority was utilized in making the additional appointments, the affected departments indicated that Section 350 of the Personnel Management Policy and Procedures Manual (PMPPM), dated January 1979, sets forth standards and guidelines surrounding eligibility for an additional appointment. Departments also point to Government Code Sections 19050-19237, as the statutes that deal with appointments.

**Staff Comment.** Current state law does not prohibit additional appointments. An additional appointment does not violate the FLSA. However, there are separate tests under the FLSA to ensure that the exempt status of the primary position is not compromised and to determine whether employees were compensated properly. Additional appointments are also not necessarily out of the norm as a human resources policy. For instance, at Stony Brook Medicine, the academic medical center affiliated with Stony Brook University, the State University of New York, “extra service/dual appointments” are utilized but under strict conditions. These conditions create an “arm’s length” transaction, in that the additional position is in a different department or unit from the primary position, compensation for the additional appointment cannot be used in lieu of overtime for employees deemed eligible under the FLSA and cannot exceed 20 percent of the primary position annual salary, and approval for the additional appointment must be obtained prior to the start of the service.

From the responses received from affected departments, it does not appear that there is a consistent statewide policy as to the use of additional appointments. Rather, the use of additional appointments appears in many ways to be an “underground” human resources policy. A PMPPM from 1979, that has not been updated or available since 2000, is not a prudent basis upon which to make appointments to civil service. The lack of a clear, updated policy is effectively a non-policy, and creates an atmosphere ripe for abuse and misunderstanding.

Staff acknowledges that departments have made additional appointments for a variety of reasons, including workload, perhaps salary compaction, and could even be an impact of furloughs (data has been requested from the State Controller to examine this specific question). But the use of additional appointments calls into question broader topics such as budget transparency, concerns about jeopardizing the civil service merit principle, and legal concerns about FLSA violations. Additional appointments are also a test of the GRP 1-2011 as it pertains to the consolidation of day-to-day operational personnel management functions into CalHR, with the SPB providing objective, independent oversight of the merit system. These broader questions warrant consideration by the Subcommittee.

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

1. Will the SPB and/or CalHR take the lead to ensure consistent human resources policy application across state service, not just for additional appointments but for human resources policies generally?
2. Did all departments meet the February 15, 2013, reporting requirement to CalHR? If not, which department(s) remain(s) outstanding?
3. Does the CalHR review include rank-and-file additional appointments, which may be permissible under collective bargaining agreements?
4. How long will it take for CalHR to review existing additional appointments?
5. Does CalHR plan to report to the SPB and Administration its findings from the review of the existing additional appointments?
6. Is the Administration considering any potential solutions? At a minimum, should dual appointments be prohibited in the same department or the same unit?

**Staff Recommendation:** Hold this issue open pending receipt of further information.

<b>7501</b>	<b>DEPARTMENT OF HUMAN RESOURCES</b>
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**Department and Budget Overview – Department of Human Resources.** The California Department of Human Resources (CalHR) is responsible for managing the state's personnel functions and represents the Governor as the "employer" in all matters concerning state employer-employee relations. CalHR is responsible for issues related to recruitment, selection, salaries, benefits, and position classification, as well as provides a variety of training and consultation services to state departments and local agencies. CalHR represents the Governor in collective bargaining with unions representing rank and file state employees and sets salaries and benefits for employees excluded from collective bargaining and employees exempted from civil service.

	2011-12* (actual)	2012-13 (estimated)	2013-14 (proposed)
Expenditures	\$66,302,000	\$93,643,000	\$92,901,000
General Fund	\$6,101,000	\$8,064,000	\$7,162,000
Positions	187.4	297.8	278.5

\*Prior to July 1, 2012, represents the former Department of Personnel Administration structure and budgetary resources.

<b><i>Issues Proposed for Discussion / Vote</i></b>
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<b>Issue 8: Implementation of In-Home Supportive Services Employer-Employee Relations Act</b>
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**Governor's Budget Request.** The January budget requests \$563,000 GF and four positions to implement Chapter 45, Statutes of 2012, a budget trailer bill pertaining to the In-Home Supportive Services (IHSS) Employer-Employee Relations Act.

**On March 1, 2013, this request was revised by the Administration to instead propose the costs be split 50 percent GF and 50 percent Reimbursements (federal funds). The Department of Social Services would apply for and receive federal funds for 50 percent of the costs and transmit those dollars, as reimbursement, to CalHR. The revised proposal includes budget bill provisional language providing a GF "backstop" should the federal funds not materialize as projected and requires notification to the Joint Legislative Budget Committee should this "backstop" be utilized.**

**Background.** The Budget Act of 2012 authorized the Coordinated Care Initiative, whereby persons eligible for both Medicare and Medi-Cal would receive medical, behavioral, long-term supports and services, and home- and community-based services coordinated through a single health plan in eight demonstration counties (Alameda, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, and Santa Clara). Chapter 45 contained the necessary statutory changes to implement the human services provisions related to the integration of services, including IHSS, into the CCI.

The IHSS program provides personal care services to approximately 420,000 qualified low-income individuals who are blind, aged (over 65), or who have disabilities. These services frequently help program recipients to avoid or delay more expensive and less desirable institutional care settings. County social workers determine IHSS eligibility and perform case

management after conducting a standardized in-home assessment of an individual's ability to perform activities of daily living. Based on authorized hours and services, IHSS recipients are responsible for hiring, firing, and directing their IHSS provider(s). In the vast majority of cases, recipients choose a relative to provide care.

In 2012, there were around 380,000 IHSS providers with hourly wages varying by county and ranging from \$8.00 to \$12.20 per hour. Prior to July 1, 2012, county public authorities or nonprofit consortia were designated as "employers of record" for collective bargaining purposes on a statewide basis, while the state administered payroll and benefits. Pursuant to Chapter 45, however, collective bargaining responsibilities in the eight counties participating in the Coordinated Care Initiative (CCI) will shift to an IHSS Authority administered by the state.

The scheduled phasing for the enrollment in CCI in the eight pilot counties has been delayed until September 2013, and the state has not yet developed a Memorandum of Understanding with the federal CMS to implement CCI. The Department of Health Care Services (DHCS) indicates that delay in timeline means that the first notices that any enrollees would receive about this transition would come no earlier than June 2013.

Statute requires that in the event DHCS has not received, by February 1, 2013, federal approval, or notification indicating pending approval, then effective March 1, 2013, the provisions of the dual demonstration project, enrollment of dual beneficiaries into Medi-Cal managed care, and long-term supports and services integration become inoperative. At the time of this agenda, the Legislature has not received notice of federal approval. Rather, on February 1, 2013, the Director of Centers for Medicare and Medicaid Services (CMS) sent a letter to DHCS indicating that "we have made significant progress," and that CMS "look[s] forward to finalizing the MOU in the near term and continuing to work in partnership toward a successful implementation beginning in September 2013."

This budget request assumes that in June 2014 collective bargaining responsibility will begin to transfer to the Statewide Authority and CalHR will be expected to bargain on behalf of the Statewide Authority. The Administration indicates that the four positions in this request will allow CalHR to begin to prepare a collective bargaining platform on behalf of the Statewide Authority, including examining current contracts, observing bargaining sessions, identifying bargaining complexities, building working relationships, and determining legal and health benefit complexities. These staff will also assess the resources needed to begin full implementation of this program in July 2014. Of the four positions, two are in the Labor Relations Division, one is in the Legal Division, and one is in the Benefits Division.

**Staff Comment.** Staff acknowledges that Chapter 45 presents new workload for CalHR and this workload is not absorbable within existing resources. However, many uncertainties remain as to the status of the CCI, as IHSS first has to come on-line as a Medi-Cal managed care benefit *prior* to the Statewide Authority being established for purposes of collective bargaining. The Administration reports that San Mateo County will be fully enrolled in September 2013; thus the Statewide Authority would be the employer and CalHR would be the designated collective bargaining representative for San Mateo County in September 2013. The remaining seven counties, with the exception of Los Angeles, will not be fully enrolled and transitioned until September 2014 at the earliest. However, this timing hinges on federal approval which has not yet been received. While the February 1, 2013, letter from CMS could be seen generally as notification of future pending approval, it is not clear upon which date that formal approval will be granted.

The Administration is working from the assumption that this program will become statewide and permanent. However, a separate budget trailer bill last year (Chapter 859) contained only intent language for that to be the case within three years of starting the demonstration. It will require further action of the Legislature to provide the actual statutory authority, as well as an appropriation, to expand the CCI beyond the eight pilot counties.

These considerations present a challenge for the Subcommittee in considering this request. At a minimum, staff cannot recommend any permanent resources at this juncture; given all the uncertainties, resources should only be approved on a limited-term basis. Further, the issue before this Subcommittee is a very small part of the much larger CCI which is in the jurisdiction of Subcommittee No. 3. As such, the Subcommittee may wish to delay action on this request until a later date to allow for further coordination and consultation with Subcommittee No. 3.

**Staff Recommendation:** Hold open pending further consultation with Subcommittee No. 3.

**Issue 9: Salary Compaction**

**Background.** Employees appointed to managerial and support positions by elected officials are not covered by the laws and rules of the California civil service and are referred to as "exempt" employees. Managerial and supervisory employees and employees involved in employee/employer relations (called "confidential" employees) are excluded from collective bargaining rights and are referred to as "excluded" employees. Often, when an agreement or Memorandum of Understanding (MOU) is reached with a state bargaining unit for represented employees, certain provisions of the agreement or MOU are also extended to related classes of excluded employees. For example, if represented employees are given a salary increase of three percent that same increase is often extended to excluded employees in related classes.

Current law requires that CalHR set salaries for excluded and exempt employees, and allows excluded employee representatives to meet and confer with CalHR, but does not otherwise make the state employer or excluded employees subject to collective bargaining requirements. There is no statutory requirement to extend, to excluded employees, a pay package that was bargained for represented employees, or to study the impact of the MOU on related excluded classes. According to CalHR, they do not routinely do compaction studies upon reaching a MOU agreement, nor do they routinely include estimated costs or savings of extending MOU provisions to related excluded classes when submitting the MOU package to the Legislature and LAO.

**LAO Comment.** In prior analyses of the budget, the LAO has recommended that the Administration pay attention to manager and supervisor pay; compaction is a problem because it reduces incentives for employees to seek promotion to supervisory positions and it encourages supervisors to demote to highly paid rank-and-file positions.

**Staff Comment.** "Salary compaction" generally occurs when managerial employees do not earn enough in relation to the employees they supervise. Managerial employees do not generally receive overtime pay and other protections afforded to rank-and-file employees. Moreover, they may have higher levels of stress and responsibility. If managerial compensation is not high enough, employees may be disincentivized from seeking promotions or, after promoting, may later decide to demote to non-managerial positions.

The state has, in the past, had a policy of ensuring a five to ten percent salary spread between rank-and-file employees and supervisors and managers. Many believe that ten percent is a minimum that managers and supervisors should earn above those employees they manage. Without this pay spread, supervisors and managers are often working longer hours, taking on greater responsibilities, and assuming higher stress levels for less pay than those they supervise due to the fact that they do not receive overtime pay like rank-and-file workers.

**Subcommittee Questions.** Based on the above information, the Subcommittee may wish to ask CalHR to respond to the following questions:

1. The lack of adequate pay for managers and supervisors has caused some capable managers to demote to non-managerial positions and encouraged others to forgo

promotion. How is CalHR monitoring salary compaction, and how pervasive is this problem? What is CalHR doing to address this issue?

2. In which departments and employee classifications are salary compaction issues more prevalent?
3. How does overtime play into this issue; i.e., is compaction more of an issue in departments where rank-and-file employees work a lot of overtime (such as in state prisons and hospitals) and/or where managers oversee mixed groups of employees?

**Staff Recommendation:** This is an informational item.

**7900****PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**Issue and Budget Overview.** The Legislature determines policies concerning state employee, both active and retired, health benefit programs. Through the Public Employees' Medical and Hospital Care Act (PEMHCA), the Legislature vests responsibility for managing health care programs for state workers, state retirees, and employees or retirees of participating local agencies with the California Public Employees' Retirement System (CalPERS). The state's contribution to employee health care is based on a negotiated percentage of the average cost of four health plans with the most enrolled state employees. Any health premium increases in a calendar year are negotiated by CalPERS with health plan providers; the CalPERS board typically adopts the next year's health premiums in June. The cost of state employer health and dental care benefits for active employees and retirees, and their dependents, is estimated to total \$2.9 billion GF (\$1.2 billion other funds) in 2013-14. This represents a year-to-year increase of \$322 million GF (\$59 million other funds) over the 2012-13 expenditure level, reflecting an estimated 8.5 percent increase in health premium rates.

***Issue Proposed for Discussion / Vote*****Issue 10: Administration of Health Benefits Programs for State Active Employees and Retirees**

**Background.** Existing budget bill provisional language encourages the CalPERS Board of Administration to use the means at its disposal under the law, consistent with requirements to provide benefits to public employees and others, to achieve low annual premium increases. CalPERS is required to annually report to the Legislature within 100 days of the adoption of annual health premium increases or decreases the methods it employed to moderate annual increases in premiums when taking that action.

In its September 2012 report to the Legislature, CalPERS reported that it expanded previously successful programs, such as the High Performance Provider Networks and the Blue Shield Medicare Advantage program, to achieve 2013 rate year savings of \$16 million, and pharmacy benefit modifications are estimated to achieve additional 2013 rate year savings of \$54 million. CalPERS also reported on future plans to reduce premium increases, including continued work to develop and implement 21 health initiatives adopted by the Board of Administration in January 2012. Included in the 21 initiatives was "risk adjustment" which is an actuarial tool used to calibrate payments to health plans based on the relative risk of the population. Risk adjustment required changes to both statutory and regulatory authority. The statutory authority was enacted in Chapter 445, Statutes of 2012; the CalPERS Board adopted the regulatory changes at its February 2013 meeting. CalPERS reports that risk adjustment will be implemented in the 2014 plan year.

CalPERS is also pursuing a family member eligibility verification review for health benefits coverage to ensure only those dependents eligible for coverage by state health benefits are, in fact, enrolled in state-funded plans. CalPERS estimates that four to six percent of current enrollees (roughly 29,000) are not eligible, which would result in full year savings of an estimated \$40 million. CalPERS instituted a three-month amnesty period, allowing employees to proactively remove ineligible individuals between April 1 and June 30 of this

year without penalty. Amnesty is proven to encourage voluntary disenrollment because employees and annuitants could otherwise be liable for prior health claims and employer contributions for premiums during the period of ineligibility. Beginning on July 1, 2013, CalPERS will begin a systematic review of all dependent enrollees and it will take until the end of calendar year 2014 to complete the review. If an enrollee is unable to validate eligibility for a dependent, the dependent will be disenrolled.

**Staff Comment.** All parties are concerned about the increases in health care costs, as they present a budgetary challenge not only for the state but also for local governments and private employers. As evidenced by the September 2012 report, including the continued implementation of the 21 initiatives intended to reduce future premium increases, and the family member eligibility verification review, CalPERS continues to work on multiple fronts to achieve savings in the Health Benefits Program. However, even with these extensive efforts, overall program costs continue to grow, presenting continuing challenges to CalPERS in its administration of PEMHCA health care programs and for the State in managing its overall budget.

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

1. What does CalPERS foresee will be the impact(s) of “risk adjustment” on the health plans CalPERS administers, from both the perspective of the employer and the plan enrollee? Why is risk adjustment not implemented until the 2014 plan year?
2. What is the timeline for the 2014 procurement? How many providers have responded to the Request for Proposal for the HMO and PPO plans?
3. In 2011-12, CalPERS hired an additional employee to work on converting Medicare-eligible members from the Kaiser Basic Plan to a Kaiser Supplemental Medicare Plan. This voluntary campaign to convert members resulted in savings of \$834,000 as reported to the Board in February 2013. What other efforts are underway to transfer Medicare-eligible retirees out of Basic plans?
4. What other initiatives are underway to address escalating health premium costs? Are these initiatives on-going or one-time in nature or a combination thereof?
5. CalPERS is the largest employer purchaser of health benefits in California and the second largest employer purchaser in the nation after the federal government. How, and in what specific ways, does CalPERS utilize its significant market share to benefit both the state (as the employer and payor) and plan enrollees?

**Staff Recommendation:** This is an informational item.

<b>CS 3.60</b>	<b>CONTRIBUTION TO PUBLIC EMPLOYEES' RETIREMENT BENEFITS</b>
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**Issue and Budget Overview.** Control Section 3.60 provides the mechanism for increases and decreases regarding the state's employer contribution to public employee retirement accounts, based on the determination of required funding levels. The control section holds department budgets harmless in the event of increases in employer CalPERS contribution rates and achieve budgetary benefit for the state when CalPERS contribution rates decline.

<b><i>Issue Proposed for Discussion / Vote</i></b>
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<b>Issue 11: Employer Pension Contribution Savings Directed to State's Unfunded Pension Liability</b>
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**Governor's Budget Request.** The January budget increases by \$48.7 million GF (\$46.5 million other funds) for the state's employer pension contribution. Included in the total is \$42.2 million GF (\$21 million other funds) directed at the state's unfunded pension liability to reflect the savings resulting from increased employee contributions under Chapter 296, Statutes of 2012 (Assembly Bill 340), Public Employees' Pension Reform Act of 2012.

**Background.** Chapter 296 enacted major revisions to the public retirement systems' laws in California, including for CalPERS. One of the major revisions was the adoption of a standard for employees to pay 50 percent of the normal cost and for employers not to pay the employee contribution. Chapter 296 therefore allowed for the adjustment of the employee contribution for legacy state employees in selected bargaining units (and related exempt and excluded employees) that were not at the 50 percent share of the normal cost standard. These bargaining units are primarily in the safety arena and Chapter 296 allowed for a multi-year phase-in of the increased employee contributions. The first increases are effective July 1, 2013. Chapter 296 requires any savings in employer contributions from increased employee contributions be directed to the state's unfunded pension liability, subject to appropriation in the annual budget act.

**Staff Comment.** Prior to the adoption of Chapter 296, generally any increased employee pension contributions offset the employer's contribution. Chapter 296 now directs any such savings to the state's unfunded pension liability subject to appropriation in the annual budget act. The Governor's January budget states that the CalPERS unfunded retirement liability is \$38.5 billion.

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

**Vote:**

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

	2011-12 (actual)	2012-13 (estimated)	2013-14 (proposed)
Expenditures	\$22,650,399	\$20,285,428	\$16,888,151
General Fund	\$344,217	\$329,875	\$313,314
Positions	9,386.4	9,696.1	8,932.4

Dollars in Thousands.

<b><i>Issues Proposed for Discussion / Vote</i></b>
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<b>Issue 12: Unemployment Insurance Loan Interest Payment</b>
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**Governor's Budget Request.** The January budget requests \$291.2 million GF to pay the third interest payment due to the federal government for the quarterly loans the EDD has been obtaining from the federal government since January 2009 to cover the Unemployment Insurance (UI) Fund deficit and make payment to UI claimants without interruption.

The January budget does not include a proposal to repay all or part of the 2011 and 2012 loans, totaling \$611.7 million, made from the Unemployment Compensation Disability Fund (DI) to the GF to make the required federal interest payments. The January budget is also silent on how to fund future interest payments for funds borrowed from the federal government to pay UI benefits and a proposed solution to address the insolvency of the UI Fund. The Administration indicates that proposals will be developed to address all three of these problems during a series of stakeholder meetings convened by the Secretary of the Labor and Workforce Development Agency that began in February 2013.

**Background.** The UI program is a federal-state program, authorized in federal law but with broad discretion for states to set benefit and employer contribution levels. The UI program provides weekly payments to eligible workers who lose their jobs through no fault of their own. Benefits range from \$40 to \$450 per week for up to 26 weeks (additional weeks available due to federally-funded extensions), depending on earnings in a 12-month base period. The program is financed by unemployment tax contributions paid by employers, based on the number of employees, on the first \$7,000 of taxable wages paid to each employee. The contribution schedule is comprised of seven schedules, ranging from AA to F, with a range of 0.1 percent (the lowest rate on Schedule AA) to 6.2 percent (the maximum rate on Schedule F). Current law also includes a provision to add a 15 percent emergency solvency surcharge when the UI fund reserve is low (Schedule F+). California employers have been on this emergency F+ schedule since calendar year 2004.

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

With the UI fund insolvent, the state began borrowing funds from the Federal Unemployment Account in order to continue paying UI benefits without interruption. The UI fund deficit was \$9.9 billion at the end of 2011 and is expected to increase to \$10.2 billion at the end of 2013. Generally, loans lasting more than one year require interest payments; the federal American Recovery and Reinvestment Act (ARRA) of 2009 provided temporary relief to states from making interest payments on UI loans through December 31, 2010. With the expiration of the ARRA provisions, interest of \$303.5 million was paid in September 2011 and interest of \$308.2 million was paid in September 2012. Interest will continue to accrue and be payable annually until the principal on the federal UI loan is repaid. Federal law requires that the interest payment come from state funds. Due to the condition of the GF, both the 2011 and 2012 interest payments were made by borrowing funds from the DI Fund. Under current law, the 2011 and 2012 loans are to be repaid from the GF to the DI Fund by June 30, 2016, and June 30, 2017, respectively.

Federal law also includes provisions to ensure that a state does not continue to incur loans over an extended period. Specifically, if a state has an outstanding loan balance on January 1 for two consecutive years, the full amount of the loan must be repaid before November of the second year or employers face higher federal UI taxes. The full federal unemployment insurance tax rate is six percent. Employers receive a 5.4 percent credit (Federal Unemployment Tax Act, or FUTA, Credit Reduction), resulting in an effective tax rate of 0.6 percent on the first \$7,000 of earnings per employee on an annual basis, or \$42 per employee. Due to California carrying an outstanding loan balance for two consecutive years, the FUTA credit reduction began decreasing in calendar year 2011, resulting in increased employer costs in calendar year 2012. Each year that the loans remain outstanding, the FUTA credits will continue to decrease by 0.3 percent, resulting in dramatically increasing costs for employers, as displayed in Figure 2 below. These additional federal taxes pay down the principal on the federal loan. Absent any corrective action, the Administration projects that the federal loan will not be fully repaid until sometime after 2020.

**Figure 2 – Federal Unemployment Tax Act Credit Reduction**

	2012*	2013*	2014*	2015*
Tax Rate	1.2%	1.5%	1.8%	2.1%
Estimated Additional Tax Collections Resulting from the FUTA Credit Reduction per Employee	\$24.00	\$48.00	\$72.00	\$100.00
Estimated Additional Tax Collections Resulting from FUTA Credit Reduction	\$290 million	\$582 million	\$894 million	\$1.2 billion

\*Calendar Year.

**Staff Comment.** The January budget estimated a federal interest rate of 2.9430 percent, resulting in the payment amount of \$291.2 million. The federal Department of Labor has since announced that the 2013 interest rate is 2.5765 percent. Consistent with prior years, the Administration plans to update the estimated interest payment amount in the spring based on the new interest rate and the May 2013 Unemployment Insurance Fund Forecast which estimates UI revenue and payments.

Similar to language contained in the 2011 Budget Act, this request is accompanied by budget bill provisional language that authorizes the Department of Finance to increase/decrease the actual amount paid/borrowed from the GF fund based on a more precise calculation of the estimated UI revenue and payments.

In considering this request, the Subcommittee may wish to request an update from the Administration as to the status of the stakeholder process to address the state's outstanding UI-related issues, as well as information as to the estimated timing when a formal proposal to restore solvency to the UI Fund might be finalized.

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

**Vote:**

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

	2011-12 (actual)	2012-13 (estimated)	2013-14 (proposed)
Expenditures	\$391,107,000	\$412,471,000	\$586,119,000
General Fund	\$4,321,000	\$2,385,000	\$2,468,000
Positions	2,378.8	2,706.6	2,796.6

<b><i>Issues Proposed for Discussion / Vote</i></b>
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<b>Issue 13: Implementation of Workers Compensation Reform</b>
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**Governor's Budget Request.** The January budget requests \$152.9 million and 82 positions, and \$146.5 million ongoing, from the Workers' Compensation Revolving Fund (including \$13 million in reimbursement authority) to implement Chapter 363, Statutes of 2012, which enacted comprehensive reforms to the state's workers' compensation system.

**Background.** California's workers' compensation system was established in 1913 and provides exclusive remedy for industrial injuries, irrespective of the fault of the employee or employer. All employers in California, except the state, must secure payment of workers' compensation insurance through the purchase of an insurance policy or obtaining a certificate of self-insurance with DIR's Office of Self Insurance Plans. Injured workers receive medical treatment without cost, as well as a variety of benefits to compensate for injuries arising out of, and in the course of, employment. These benefits include: temporary disability indemnity (weekly benefits paid during time lost from work); permanent disability indemnity (weekly benefits paid to compensate the injured employee's permanent impairment that affects his/her ability to compete in the open labor market); supplemental job displacement benefit (to provide a voucher for the retraining of those injured workers who are unable to return to their usual employment as a result of the injury); and death benefits (to compensate total and partial dependents of a worker who dies as the result of an industrial injury).

The DIR's Division of Workers' Compensation is the lead agency that oversees the administration of workers' compensation benefits to over 500,000 Californians who are injured on the job each year. One of the DWC's core responsibilities is the administration of California's exclusive judicial system for resolution of work injury claims.

Fundamentally, workers' compensation is an agreement between employers and employees to each give up a right in exchange for the stability and certainty of the workers' compensation system. Over the years, the principles of relatively certain benefits and relatively timely delivery have been seriously eroded. Inconsistency in parties' abilities to ascertain exactly what benefits an injured worker is entitled to have forced the system to develop a complex, cumbersome, and slow litigation-based dispute resolution system.

Chapter 363 was enacted to comprehensively reform the system and return to the principles of relatively certain defined benefits and relatively timely delivery of those benefits. Chapter 363 made changes to: the measurement of permanent disability; the compensation for permanent disability; the process for resolving disputes over appropriate medical treatment; medical fees, billing, and collections; taking steps to ensure self-insurance program solvency and the methods of securing the payment of compensation by self-insurance; and other aspects of the workers' compensation system. Each of the components of Chapter 363 drive program changes and/or requirements that inherently creates a need to capture, integrate, and/or manage data in a more effective manner. The resources included in this request are as follows:

1. *Special Earnings Loss Supplement Program (referred to in Chapter 363 as a "return-to-work" program)*. \$125 million, including \$120 million as stipulated in Chapter 363 to pay annual claims for supplemental payments to injured workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. A study has been commissioned to assess the program's eligibility requirements. The remaining \$5 million is for program administration and to support 27.5 positions.
2. *Division of Workers' Compensation*. \$25.3 million and 36.5 positions to administer the following: Independent Medical Review; Lien Filing Review/Process Program; Interpreter Certification Program; Medical Provider Network; Resource Based Relative Value Scale (RBRVS) adoption; and additional Workers' Compensation Appeals Board workload.
3. *Office of Self Insurance Plans (OISP)*. \$2.4 million and six positions to improve the oversight capacity of the OISP to evaluate the costs of administration, workers' compensation benefit expenditures, and solvency and performance of public self-insured employer workers' compensation programs.
4. *Division of Administration*. \$1.5 million and 12 positions for general administrative support staff workload in accounting, business management, and human resources.
5. *Additional Studies*. \$317,000 in 2013-14, and \$217,000 in 2014-15, to conduct the following studies: provisions in the event of insolvencies for public workers' compensation programs, as well as the evaluation requirements of OSIP listed above; the average loss earnings of employees with a permanent disability rating under the schedule; and a study on high quality medical care in the workers' compensation system.

The January budget also includes budget bill provisional language that would allow the Administration, subject to Department of Finance approval and legislative notification, to increase funding for the RTW program to pay claims that exceeded the \$120 million appropriation in Chapter 363.

**LAO Analysis.** With regard to the Return to Work (RTW) program, the Administration's proposed budget bill language would potentially broaden the scope of the program beyond that intended by the Legislature and create a potentially larger funding obligation than was provided in Chapter 363. Until DIR adopts regulations establishing program eligibility and benefit levels, it is difficult to determine what level of funding would be necessary to fund eligible injured workers pursuant to DIR's program guidelines. The Administration's proposed program model may conflict with the \$120 million RTW program specified in Chapter 363. Instead of studying eligibility requirements and developing benefit levels that could be sustained by the funding provided in Chapter 363, the Administration is requesting broader funding authority. Because the Administration has not yet developed the eligibility requirements and benefit levels for the RTW program, the LAO is unable to estimate the potential financial obligation, and the corresponding increase in workers' compensation employer assessments, for the RTW under the Administration's proposal.

**LAO Recommendation.** The Legislature should clarify its intent in funding the RTW program created by Chapter 363. If the Legislature intended for a capped program allocation of \$120 million annually, the Legislature should reject the Administration's proposed budget bill language, and instruct DIR to develop program eligibility and benefit levels consistent with the appropriation level provided in Chapter 363. Consistent with this action, the Legislature should reduce DIR's expenditure authority in the Workers' Compensation Administration Revolving Fund by \$5 million in 2013-14 (and reject the related request for 23 positions) to reduce the RTW program's budget to the \$120 million appropriation provided by Chapter 363.

Alternatively, if the Legislature did not intend for a \$120 million annual cap on the RTW program, then the Legislature will need to evaluate whether it wants to cede some of its oversight during the annual budget process by allowing midyear budget augmentations, with more limited legislative review, as proposed by the budget bill language. Also, if the Legislature did not intend for a \$120 million annual cap on the RTW program, then there is no issue with the \$5 million additional funding proposed in the 2013-14 budget for program operations.

**Staff Comment.** Staff finds no issues with the overall resources requested to implement Chapter 363. The implementation of Chapter 363, and within the timelines specified in the bill, is an immense task for the DIR. It logically follows that new resources will be needed.

With regard to the RTW program, staff understands that the Legislature intended \$120 million per year to fund this program. Any administration costs would be additive. While the Administration's proposed budget bill provisional language addresses the scenario of "what if the \$120 million is insufficient to pay all eligible claims," an equally legitimate question can be raised about the reverse; i.e., "what happens if claims total less than the funding available?" The Administration has indicated that if claims should total less than the funding available in a given year, this will result in an increased balance in the fund which will offset (reduce dollar for dollar) the next year's assessment consistent with the existing assessment authority. Given that this program was effective with the enactment of the bill on January 1, 2013, it does not appear likely that the entire \$120 million will be claimed in year one of the program. Rather, it is far more likely that less than \$120 million will be claimed in year one of the program. Another outstanding question about the RTW program is clarity about the effective date. As stated above, staff understands that the legislative intent was to make the fund available for injuries that occur on or after January 1, 2013. In considering this request,

the Subcommittee may wish to reinforce and clarify both of these issues related to the implementation of Chapter 363.

**Staff Recommendation:** Approve the request, modified as follows: (1) reject the budget bill language that would allow the Administration to increase funding for the RTW program to pay claims that exceeded the \$120 million appropriation in Chapter 363; and (2) adopt placeholder budget trailer bill language to clarify that any unexpended RTW funds are added to the following year appropriation and reinforce that the effective date of the RTW program is January 1, 2013.

**Vote:**

**Issue 14: Cal/OSHA Program, Enforcement of Workplace Safety and Health Standards**

**Background.** The Division of Occupational Safety and Health (Cal/OSHA) is responsible for enforcing occupational safety and health standards, investigating occupational injuries, and inspecting and permitting elevators, amusement rides, and passenger tramways. Funding for Cal/OSHA has historically come from the General Fund, several special funds, and federal funds. Since 2009, Cal/OSHA no longer receives GF support (except for \$431,000 in support of a federally matched injury and illness program). As part of the Budget Act of 2009, GF was replaced with revenue from the Occupational Safety and Health (OSH) Fund, which is an employer assessment on an employer's total workers' compensation insurance premium or on total "indemnity" (workers' compensation losses) for self-insured employers. OSH funding represents roughly 60 percent of the total funding for Cal/OSHA, with the remaining percentage funded by the Targeted Inspection and Consultation Fund and federal OSHA dollars.

Cal/OSHA staffing levels have remained fairly constant since 2009, although they reflect several across the board workload (staffing) reductions between 2009 and 2012 and as required by the Administration, including, but not limited to, the reduction of "salary savings" or "vacant" positions, which could not be filled in any case. The same can be stated about staffing in the Process Safety Management (PSM) Unit within Cal/OSHA, whose purpose is preventing or minimizing the consequences of catastrophic releases of toxic, flammable, or explosive chemicals (Labor Code Sections 7855-7870). Figure 3 on the next page displays Cal/OSHA filled positions from June 30, 2009, until June 30, 2012.

**Figure 3 – Cal/OSHA Staffing Levels 2009-2012**

	6/30/2009	6/30/2010	6/30/2011	6/30/2012
<b>Cal/OSHA Positions</b>				
Regional Manager	5	5	5	5
District Manager	22	20	20	17
Field Staff	170	179	171	164
Senior SE (Ind)	8	11	11	11
Field Staff	13	13	10	8
Senior SE (M&T)	4	3	4	4
Prin SE (M&T)	1	1	1	1
<b>PSM Staffing (subset of Cal/OSHA positions)</b>				
Field Staff	10	10	10	9*
District Manager	2	2	2	1

"SE" is Safety Engineer; "Ind" is Industrial; and "M&T" is mining and tunneling.

\*Currently, the number of Field Staff, or inspectors, in the PSM unit is 7.

The PSM unit enforces "process safety management" procedures that have broad applicability to potentially hazardous processes that exist in a wide variety of industries, although the primary focus is on the chemical and allied products industry and on the petroleum refining and related industries. These regulations require these industries to implement a comprehensive safety plan that includes a precise determination of what hazards exist and procedures to eliminate or reduce them. Employers must ensure that machinery and equipment are in good condition, that work procedures are safe, that hazards

are controlled, and that workers are trained to safely operate the equipment, recognize hazards, and respond appropriately in emergency situations.

Based on data the PSM unit gathers from its own research and from other agencies, a programmed Program Quality Verification (PQV) inspection is scheduled typically for one particular unit or process within a refinery and one element of the PSM regulations for each of the fifteen refineries in California each year. Given resource constraints, these PQV inspections are not “wall-to-wall” comprehensive inspections.

The LAO reported in February 2013 that employer assessments are an appropriate funding mechanism for Cal/OSHA on a policy basis because it is appropriate for the costs of regulatory activities to be paid for by the regulated community that creates the societal need for the regulation and benefits from the regulation (such as being issued a permit to operate a business). For most state programs, it has been the policy of the Legislature to fund regulatory activities from fees.

**Staff Comment.** On August 6, 2012, a fire broke out at Chevron Richmond refinery when a severely corroded pipe in the refinery’s #4 Crude Unit began leaking. Chevron managers did not shut down the unit but instructed workers to remove insulation, which led to the pipe’s rupture and a massive fire. While there were no serious worker injuries, a reported 15,000 residents of surrounding communities sought treatment after breathing emissions from the fire.

Cal/OSHA immediately began an investigation into the fire and the leak repair procedures. In findings released in January 2013, Cal/OSHA found that Chevron did not follow the recommendations, dating back to 2002, of its own inspectors and metallurgical scientists to replace the corroded pipe that ultimately ruptured and caused the fire. Chevron also did not follow its own emergency shutdown procedures when the leak was identified, and did not protect its employees and employees of Brand Scaffolding who were working at the leak site.

Also in January 2013, Cal/OSHA issued close to \$1 million in fines against Chevron, the biggest penalty in the department’s history and the maximum allowable under current law, for failing to replace the corroded pipe, not implementing its own emergency procedures, and violating leak-repair procedures. Cal/OSHA issued 25 citations against Chevron, 23 of which were classified as “serious” due to the realistic possibility of worker injuries and deaths in the fire. Eleven of these serious violations were also classified as “willful” because Cal/OSHA found Chevron did not take reasonable actions to eliminate refinery conditions that it knew posed hazards to employees, and because it intentionally and knowingly failed to comply with state safety standards.

Cal/OSHA has ongoing investigations for Chevron at its El Segundo refinery in the Los Angeles area and its oilfield in Lost Hills near Bakersfield.

The issue before the Subcommittee is not the Chevron Richmond refinery per se, but rather broader questions about the Cal/OSHA program and the degree to which the existing enforcement and inspection process and program is adequate to ensure workplace health and safety, particularly with regard to the PSM unit.

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

1. Given that DIR determined that Chevron did not follow the recommendations, dating back to 2002, of its own inspectors and scientists to replace the corroded pipe that ultimately ruptured and caused the fire, this raises several questions about the PSM unit:
  - a. Should the PSM unit inspection process/schedule have identified the corroded pipe at the center of the recent refinery fire?
  - b. Could a wall-to-wall inspection, which is not currently possible due to existing resource constraints, have identified the corroded pipe and prevented the refinery fire?
2. Is the PSM unit staffed adequately for the number of refineries in the state?
3. What is the amount of staffing hours that were consumed by the Richmond Refinery fire? What does that translate to as a percentage of the annual PSM unit budget?
4. From a historical standpoint, have there been any recruitment and/or retention issues with Cal/OSHA staffing?
5. Has DIR promulgated regulations under Labor Code Section 7870?
6. Has DIR considered assessing an additional fee on oil refineries to fund additional staff/inspections in the PSM unit?

**Staff Recommendation.** Direct subcommittee staff to continue to work with the Administration on identifying possible improvements to the Cal/OSHA program. As an interim step, and as part of the next issue on this agenda, consider redirecting \$350,000 and four positions that are currently attached to workload associated with the High Hazard program to the Cal/OSHA program.

**Issue 15: Regulatory Assessment Related Budget Proposals**

**Governor's Budget Request.** In three separate but inter-connected proposals, related to DIR regulatory assessments in support of existing enforcement and compliance workload in occupational health and safety and labor standards, the January budget requests the following:

1. Budget trailer bill language to eliminate the sunset date and increase the annual revenue caps for the Occupational Safety and Health Fund (OSHF) and Labor Enforcement and Compliance Fund (LECF) assessments, from \$52 million to \$57 million and from \$37 million to \$46 million, respectively. These increases (in part) will backfill existing DIR Prevailing Wage Determinations (\$2 million) and Injury and Illness Prevention (\$431,000) programs whose GF will be permanently redirected to support the Compliance Monitoring Unit.
2. Budget trailer bill language to suspend collection of the high hazard assessment in years that the OSHF assessment is collected.
3. One-time loan of \$5 million from the Targeted Inspection and Consultation Fund (TICF) for support of Compliance Monitoring Unit (CMU) operations. Further support the CMU with: (a) permanent redirection of \$2.4 million GF internally from existing DIR programs; and (b) the adoption of budget trailer bill language to authorize DIR to recoup CMU enforcement costs that exceed the existing 0.25 percent cap on bond proceeds on CMU fees by requiring awarding bodies to reimburse the CMU using "other funding sources tied to the project." The trailer bill also removes the 0.25 percent cap on total project costs for projects that were not state bond-funded.
4. Budget trailer bill language to eliminate TICF funding for Cal/OSHA and backfill this funding with an offsetting OSHF assessment increase.
5. Budget trailer bill language to shift civil penalties that were previously deposited into the Construction Industry Enforcement Fund to the LECF.

**Background.** The Division of Occupational Safety and Health (Cal/OSHA) is responsible for enforcing occupational safety and health standards, investigating occupational injuries, and inspecting and permitting elevators, amusement rides, and passenger tramways. Funding for Cal/OSHA has historically come from the GF, several special funds, and federal funds. One special fund source for Cal/OSHA, the TICF, is supported by a special assessment on high hazard employers. TICF funds are used for workplace inspections and safety consultation services for high hazard employers. Cal/OSHA is also supported by the OSHF, which is an employer assessment on an employer's total workers' compensation insurance premium or on total "indemnity" (workers' compensation losses) for self-insured employers.

The Division of Labor Standards Enforcement (DLSE) enforces labor laws and investigates employers for issues related to wages, work hours, prevailing wage on public works projects, and discriminatory retaliation in the workplace. Similar to Cal/OSHA, funding for DLSE has historically come from GF, special fund, and federal fund sources.

In 2008-09, about \$24 million of Cal/OSHA's operations and \$38 million of DLSE's operations were funded by the GF. The 2009-10 budget eliminated GF support for Cal/OSHA and increased the assessment and funding in the OSHF to offset the GF reduction. The 2009-10 budget package also created an assessment on all employers, for deposit in the newly created LECF, to pay for DLSE costs formerly funded from the GF. GF support for DLSE

was reduced to \$19.6 million in 2009-10 and eliminated entirely in 2010-11 through increased LECF assessments. Both the OSHF and LECF assessments are subject to an annual cap on total revenue collections and a sunset date of July 1, 2013.

Chapter 7, Statutes of 2009-10 of the Second Extraordinary Session, established the Compliance Monitoring Unit (CMU) within DIR to enforce prevailing wage requirements on specific public works projects as a replacement for enforcement through third-party Labor Compliance Programs. Chapter 7 also authorized DIR to charge a fee not to exceed 0.25 percent of state bond funds allocated to a project for CMU operations. To begin program operation, the CMU received a \$1.3 million GF loan in 2009-10. However, program operation for the CMU was ultimately delayed until 2011 due in part to legal issues related to using state bond funding for CMU enforcement. Chapter 378 (2011) was enacted to ensure that money spent on monitoring and enforcement of a project is only paid with proceeds from that particular project. However, the nature of bond funding requires that CMU program expenses may only be charged in arrears, and may not exceed actual expenses incurred. Therefore, in addition to the 2009-10 GF loan, the CMU received a special fund loan in 2011-12 and the Budget Act of 2012 instituted a cash flow loan on an annual on-going basis to allow the CMU to operate and fulfill its statutory mandate.

DIR reports that this approach still does not address a fundamental flaw with the CMU funding structure: (1) exclusive dependence on restrictive bond funding; and (2) an arbitrary spending cap of 0.25 percent of the state bond proceeds for each project developed without regard to the level of enforcement needed in the aggregate, or on a project-by-project basis. The 2013-14 budget proposal is a combination of a one-time \$5 million loan from the TICF, permanent funding redirections totaling \$2.4 million GF, as well as budget trailer bill language to authorize DIR to recoup CMU enforcement costs that exceed the existing cap on bond proceeds on CMU fees by requiring local awarding bodies to reimburse the CMU using "other funding sources tied to the project." The legislation would also remove the 0.25 percent cap on total costs for projects that were no state bond-funded. This proposal is intended to provide a stable funding mechanism for the CMU.

**LAO Analysis.** The OSHF and LECF assessments pay for what would otherwise be GF costs in Cal/OSHA and DLSE. Employer assessments are an appropriate funding mechanism for Cal/OSHA and DLSE on a policy basis because it is appropriate for the costs of regulatory activities to be paid for by the regulated community that creates the societal need for the regulation and benefits from the regulation (such as being issued a permit to operate a business). For most state programs, it has been the policy of the Legislature to fund regulatory activities from fees. If the Legislature does not reauthorize the OSH and LECF assessments, there would be an approximate \$80 million GF cost pressure in 2013-14 and ongoing.

High hazard employers currently pay both the high hazard and OSHF assessments. The Administration proposes a statutory change to suspend the high hazard assessment during a period when the OSHF assessment is being collected. The Administration states this will simplify the assessment process for occupational safety and health operations and eliminate the "double billing" of high hazard employers. The Administration's proposal creates greater efficiency in the assessment process, although the proposal has the effect of decreasing assessments on high hazard employers and increasing assessments for all other employers because suspending the high hazard assessment would be accompanied by a commensurate increase in the OSHF assessment (to make the proposal revenue neutral). However, high hazard employers would continue to pay higher assessments than less

hazardous employers under the Administration's proposal because OSHF assessments are calculated based upon an employer's workers' compensation premium or total indemnity, and high hazard employers would typically have higher premiums or indemnities.

The January budget estimates a \$13 million fund balance in the TICF (which is net of the \$5 million proposed loan for the CMU). Because of the existing fund balance, there is no budgetary need to eliminate TICF funding for Cal/OSHA and backfill the eliminated funding with an increased OSHF assessment in 2013-14 as the Administration proposes. TICF funding for Cal/OSHA could continue at its historical level of approximately \$9 million in 2013-14.

The January budget proposes permanent solutions for the CMU, including a total shift of \$2.4 million GF from other DIR programs to permanently fund the CMU. The proposed \$431,000 GF redirection from Cal/OSHA's injury and illness statistics program to the CMU, and the corresponding funding backfill to Cal/OSHA through increased OSHF fees and expenditure authority, is an appropriate way to provide some base funding for the CMU. Cal/OSHA's injury and illness statistics program is a regulatory program affecting employers at large, and thus the program could be appropriately funded through the OSHF (which receives fee revenue from all employers for regulatory functions related to occupational safety).

In contrast to the Cal/OSHA redirection, the proposed \$2 million GF redirection from general prevailing wage activities to the CMU, and the corresponding backfill of the redirected funding through increased LECF fees, raises policy concerns. The Governor is proposing to backfill funding for prevailing wage enforcement, which affects a small subset of the state's employers, with a general fee on all employers (the LECF fee). In this case, there appears to be an insufficient nexus between fee payer and the activities proposed to be funded by the fee to support the proposed backfill mechanism on policy grounds.

The Governor's proposal attempts to solve the CMU's funding challenges by allowing the CMU to recoup a greater share of its enforcement costs. The Governor's proposed legislation would allow the CMU to charge the awarding bodies for the difference between what the existing capped CMU fee pays for state bond-funded projects and actual CMU enforcement costs through "other funding sources tied to the project," and would also remove the CMU fee cap for projects that were not state bond-funded. However, since approximately 68 percent of the projects overseen by the CMU are projects that are entirely state bond-funded, the majority of CMU projects would not provide any additional funding for CMU enforcement costs under the Governor's proposal. It is likewise uncertain how feasible the proposal would be with respect to construction projects that included funding other than state bond funding, as it is uncertain whether project funding from sources other than state bond funds would be available in sufficient amounts to reimburse the CMU for its enforcement costs. Even if the CMU could fully recoup its costs in respect of projects with funding sources other than state bonds under the Governor's proposal, the Governor's proposal would still fund only a portion of the CMU's total enforcement costs given the large number of projects, the solely state bond-funded ones, that would be unaffected by the Governor's funding proposal. Additionally, in requiring local awarding bodies to pay CMU enforcement costs through "other available funding sources," the Governor's proposal raises concern over potential state mandate costs.

**LAO Recommendations.** Please see Figure 4 below for a summary of the LAO's recommendations.

**Staff Comment.** The Subcommittee has before it an inter-connected package of three separate budget proposals related to DIR regulatory assessments in support of existing workload. These proposals are necessary to ensure DIR’s continued regulatory enforcement and compliance for two key program areas: occupational health and safety and labor standards enforcement. These proposals, as a package, also begin to streamline the myriad special fund funding mechanisms that support DIR’s existing workload.

With regard to the CMU, staff notes that 2013-14 is a transition year, during which the CMU will operate at a funding level of \$8.1 million with a dedicated source of funding that is not 100 percent reliant on billing. This is a keystone for making the CMU not only financially viable, but programmatically sound. The Administration indicates that it plans to undertake further reviews of the CMU during 2013-14, likely resulting in additional budget proposals in 2014-15.

**Staff Recommendation:** Adopt the staff recommendation as displayed in Figure 4 below and on the following page.

**Figure 4: Recommendations on the Regulatory Assessment Related Budget Proposals**

Administration Proposal	LAO Recommendation	Staff Recommendation
TBL to eliminate the sunset date and increase the annual revenue caps for the OSHF and LECF assessments.	Approve.	Adopt placeholder TBL per Administration proposal, including a technical correction to add a reference to the California Code of Regulation that was inadvertently omitted.
TBL to suspend collection of the high hazard assessment in years that the OSHF assessment is collected.	If the Legislature reauthorizes the OSHF assessment, <u>repeal</u> the high hazard assessment.  If the Legislature <u>does not reauthorize the OSHF assessment</u> , allow the high hazard assessment to continue.	Adopt placeholder TBL to repeal the high hazard assessment <u>contingent</u> on the adoption of TBL to reauthorize the OSHF and LECF assessments.
Retain the staffing support for the high hazard assessment within the DIR budget.	<u>Contingent</u> on reauthorization of the OSHF assessment and repeal of the high hazard assessment, reduce OSHF expenditure authority by an additional \$350,000 and four authorized positions.	<u>Contingent</u> on reauthorization of the OSHF assessment and repeal of the high hazard assessment, redirect the \$350,000 and four positions previously associated with the collection of the high hazard assessment to the PSM unit within the Cal/OSHA program.
TBL to eliminate TICF funding for Cal/OSHA and backfill this funding with an offsetting OSHF assessment increase.	Given the availability of TICF fund balances, decrease OSHF expenditure authority in 2013-14 by \$9 million and increase TICF expenditure authority by a like amount. Direct DIR to reduce the OSHF assessment for 2013-14 by \$9 million.	Adopt placeholder TBL to sunset the TICF and designate the OSH fund as the successor fund. On a one-time basis in 2013-14, decrease the OSHF assessment level by the remaining balance in the TICF.

**Figure 4 continued: Recommendations on the Regulatory Assessment Related Budget Proposals**

<p>TBL to shift civil penalties that were previously deposited into the Construction Industry Enforcement Fund to the LECF.</p>	<p>Approve.</p>	<p>Approve Administration proposal.</p>
<p>One-time loan of \$5 million from the TICF to support CMU operations.</p>	<p>Approve.</p>	<p>Approve Administration proposal.</p>
<p>Permanently redirect \$431,000 GF from the Injury and Illness Prevention program to support CMU operations.</p>	<p>Approve.</p>	<p>Approve Administration proposal.</p>
<p>Permanently redirect \$2 million GF from the Prevailing Wage Determinations program to support CMU operations.</p>	<p>Reject.</p>	<p>Approve Administration proposal.</p>
<p>Adopt TBL to authorize DIR to recoup CMU enforcement costs that exceeded the existing 0.25 percent cap on bond proceeds on CMU fees by requiring awarding bodies to reimburse the CMU using “other funding sources tied to the project.” The TBL would also remove the 0.25 percent cap on total project costs for projects that were not state bond-funded.</p>	<p>Reject and consider the following alternatives for the CMU:</p> <ol style="list-style-type: none"> <li>1.Reduce expenditure authority and authorized positions in the CMU to a level supported by the \$431,000 GF redirection.</li> <li>2.Direct the Administration to develop an alternative and sustainable fee-based funding source for the CMU.</li> <li>3.Increase General Fund support for the CMU.</li> <li>4.Raise the caps on the existing CMU fee to increase funding for CMU operations.</li> </ol>	<p>Approve Administration proposal.</p>

**Vote:**

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Curren D. Price, Jr.



Thursday, March 7, 2013  
9:30 a.m. or Upon Adjournment of Session  
Room 113

Consultant: Kris Kuzmich

## OUTCOMES

### DEPARTMENTS TO BE HEARD

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

6645	CSU Health Benefits for Retired Annuitants
7100	Employment Development Department
7350	Department of Industrial Relations
7501	Department of Human Resources
7503	State Personnel Board
7900	Public Employees' Retirement System
7920	State Teachers' Retirement System
9650	Health and Dental Benefits for Annuitants
CS 3.60	Contribution to Public Employees' Retirement Benefits

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**DETAILED AGENDA**  
*Items 1-6 (and in Italics) are proposed Vote-Only*

<u>Item</u>	<u>Department</u>	<u>Page</u>
<b>6645/9650</b>	<b><i>Health and Dental Benefits for Annuitants (Including CSU)</i></b> .....	<b>3</b>
	<i>Issue 1 – Retiree Health Budget Bill Provisional Language</i> .....	<i>3</i>
<b>7503</b>	<b><i>State Personnel Board</i></b> .....	<b>5</b>
	<i>Issue 2 – Compliance Review Audit Program Budget Trailer Bill Language</i> .....	<i>5</i>
<b>7920</b>	<b><i>State Teachers’ Retirement System</i></b> .....	<b>6</b>
	<i>Issue 3 – Information Technology Project Budget Reappropriation Item</i> .....	<i>6</i>
<b>7100</b>	<b><i>Employment Development Department</i></b> .....	<b>7</b>
	<i>Issue 4 – Disability Insurance Automation Project</i> .....	<i>7</i>
	<i>Issue 5 – Alternative and Renewable Fuel and Vehicle Technology Program Reimbursable Budget Authority</i> .....	<i>8</i>
<b>7350</b>	<b><i>Department of Industrial Relations</i></b> .....	<b>9</b>
	<i>Issue 6 – Child Performer Services Permits</i> .....	<i>9</i>
	<b>SUMMARY CHART OF PROPOSED VOTE ONLY ITEMS</b> .....	<b>10</b>

**Staff recommendation (as detailed in the below chart) on Issues 1-6 approved by a 2-0 vote with Senator Anderson absent.**

	Issue	Amount	Fund Source	Staff Recommendation
<b>CSU Health Benefits for Retired Annuitants (6645)</b>				
<b>Health and Dental Benefits for Retired Annuitants (9650)</b>				
1	Retiree Health Budget Bill Provisional Language	BBL	N/A	Approve BBL as modified to limit the amount available for the correction of calculation errors and to institute a legislative reporting requirement.
<b>State Personnel Board (7503)</b>				
2	Compliance Review Audit Program Budget Trailer Bill Language	TBL	N/A	Approve TBL as modified to include transmission of the annual report on the Compliance Review Audit Program to the Legislature.
<b>State Teachers’ Retirement System (1920)</b>				
3	Information Technology Project Budget	\$6.749 million BBL	Teachers Retirement Fund	Approve the reappropriation item including modified BBL to

	Reappropriation Item			incorporate legislative reporting on the expenditure of the reappropriated funds.
<b>Employment Development Department (7100)</b>				
4	Disability Insurance Automation Project	\$10.6 million (new) \$1.9 million (redirected) Net 26 positions	Disability Insurance Fund	Approve.
5	Alternative and Renewable Fuel and Vehicle Technology Program Reimbursable Budget Authority	\$3 million BBL	Reimbursements	Approve the item but reject the BBL allowing the reimbursement authority to be increased by up to an additional \$3 million.
<b>Department of Industrial Relations (7350)</b>				
6	Child Performer Services Permits	\$701,000 8 positions	Special Fund	Approve on two-year limited-term basis.

**7501/7503 Department of Human Resources/State Personnel Board..... 11**  
 Issue 7 – Additional Appointments of Exempt Employees..... 11

***Item held open pending receipt of further information.***

**7501 Department of Human Resources ..... 14**  
 Issue 8 – Implementation of In-Home Supportive Services  
 Employer-Employee Relations Act..... 14

***Item held open pending further consultation with Subcommittee No. 3.***

Issue 9 – Salary Compaction ..... 17

***No action taken – informational item.***

**7900 Public Employees’ Retirement System..... 19**  
 Issue 10 – Administration of Health Benefits Programs for State  
 Active Employees and Retirees ..... 19

***No action taken – informational item.***

**3.60 Contribution to Public Employees’ Retirement Benefits .....21**  
 Issue 11 – Employer Pension Contribution Savings Directed to  
 State’s Unfunded Pension Liability.....21

***Budget request approved by a vote of 2-0 with Senator Anderson absent.***

**7100 Employment Development Department.....22**  
 Issue 12 – Unemployment Insurance Loan Interest Payment.....22

***Budget request approved by a vote of 2-0 with Senator Anderson absent.***

**7350 Department of Industrial Relations .....25**  
 Issue 13 – Implementation of Workers Compensation Reform.....25

***Staff recommendation to approve the request, modified as follows: (1) reject the budget bill language that would allow the Administration to increase funding for the RTW program to pay claims that exceeded the \$120 million appropriation in Chapter 363; and (2) adopt placeholder budget trailer bill language to clarify that any unexpended RTW funds are added to the following year appropriation and reinforce that the effective date of the RTW program is January 1, 2013, approved by a vote of 2-0 with Senator Anderson absent.***

Issue 14 – Cal/OSHA Program, Enforcement of Workplace Safety  
 and Health Standards .....29

***Staff recommendation to direct subcommittee staff to continue to work with the Administration on identifying possible improvements to the Cal/OSHA program approved by a vote of 2-0 with Senator Anderson absent.***

Issue 15 – Regulatory Assessment Related Budget Proposals .....32

***Staff recommendation as detailed in Figure 4 below approved by a vote of 2-0 with Senator Anderson absent.***

**Figure 4: Recommendations on the Regulatory Assessment Related Budget Proposals**

<b>Administration Proposal</b>	<b>LAO Recommendation</b>	<b>Staff Recommendation</b>
TBL to eliminate the sunset date and increase the annual revenue caps for the OSHF and LECF assessments.	Approve.	Adopt placeholder TBL per Administration proposal, including a technical correction to add a reference to the California Code of Regulation that was inadvertently omitted.
TBL to suspend collection of the high hazard assessment in years that the OSHF assessment is collected.	If the Legislature reauthorizes the OSHF assessment, <u>repeal</u> the high hazard assessment.  If the Legislature <u>does not reauthorize the OSHF assessment</u> , allow the high hazard assessment to continue.	Adopt placeholder TBL to repeal the high hazard assessment <u>contingent</u> on the adoption of TBL to reauthorize the OSHF and LECF assessments.
Retain the staffing support for	<u>Contingent</u> on reauthorization of the	<u>Contingent</u> on reauthorization

<p>the high hazard assessment within the DIR budget.</p>	<p>OSHF assessment and repeal of the high hazard assessment, reduce OSHF expenditure authority by an additional \$350,000 and four authorized positions.</p>	<p>of the OSHF assessment and repeal of the high hazard assessment, redirect the \$350,000 and four positions previously associated with the collection of the high hazard assessment to the PSM unit within the Cal/OSHA program.</p>
<p>TBL to eliminate TICF funding for Cal/OSHA and backfill this funding with an offsetting OSHF assessment increase.</p>	<p>Given the availability of TICF fund balances, decrease OSHF expenditure authority in 2013-14 by \$9 million and increase TICF expenditure authority by a like amount. Direct DIR to reduce the OSHF assessment for 2013-14 by \$9 million.</p>	<p>Adopt placeholder TBL to sunset the TICF and designate the OSH fund as the successor fund. On a one-time basis in 2013-14, decrease the OSHF assessment level by the remaining balance in the TICF.</p>
<p>TBL to shift civil penalties that were previously deposited into the Construction Industry Enforcement Fund to the LECF.</p>	<p>Approve.</p>	<p>Approve Administration proposal.</p>
<p>One-time loan of \$5 million from the TICF to support CMU operations.</p>	<p>Approve.</p>	<p>Approve Administration proposal.</p>
<p>Permanently redirect \$431,000 GF from the Injury and Illness Prevention program to support CMU operations.</p>	<p>Approve.</p>	<p>Approve Administration proposal.</p>
<p>Permanently redirect \$2 million GF from the Prevailing Wage Determinations program to support CMU operations.</p>	<p>Reject.</p>	<p>Approve Administration proposal.</p>
<p>Adopt TBL to authorize DIR to recoup CMU enforcement costs that exceeded the existing 0.25 percent cap on bond proceeds on CMU fees by requiring awarding bodies to reimburse the CMU using "other funding sources tied to the project." The TBL would also remove the 0.25 percent cap on total project costs for projects that were not state bond-funded.</p>	<p>Reject and consider the following alternatives for the CMU:</p> <ol style="list-style-type: none"> <li>1.Reduce expenditure authority and authorized positions in the CMU to a level supported by the \$431,000 GF redirection.</li> <li>2.Direct the Administration to develop an alternative and sustainable fee-based funding source for the CMU.</li> <li>3.Increase General Fund support for the CMU.</li> <li>4.Raise the caps on the existing CMU fee to increase funding for CMU operations.</li> </ol>	<p>Approve Administration proposal.</p>

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Curren D. Price, Jr.



Thursday, March 14, 2013  
9:30 am or Upon Adjournment of Session  
Room 113

Consultant: Joe Stephenshaw

**Item Number and Title**

**Page**

**Vote Only**

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(1) Courthouse Projects: Reversions .....	2
(2) Supreme Court: Operating Budget Realignment and Augmentation .....	2
(3) Courts of Appeal: Increased Appellate Court Trust Fund Appropriation Authority.....	3

**To be Heard**

0250 Judicial Branch	
(1) Trial Court Funding .....	6
(2) Trial Court Efficiency Proposals.....	7
(3) Informational Item: Notification of Firearms Possession Prohibition .....	9
(4) New Long Beach Courthouse .....	10
(5) Third District Court of Appeals: Rent .....	12

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**Vote Only**

**Issue 1 – Courthouse Projects: Reversions**

**Governor’s Proposal.** The Governor’s Budget proposes the reversion of \$30.5 million to the Immediate and Critical Needs Account (ICNA) from the unencumbered balances of acquisition phase appropriations of nine courthouse projects.

**Background.** The table below lists the projects and the amount reverting for each project. Shasta, Santa Barbara and Siskiyou are reverting due to the completion of acquisition. The remaining projects are reverting due to Judicial Council direction, pursuant to action taken to mitigate funding transfers from ICNA.

(dollars in thousands)

<b>Project</b>	<b>Amount</b>
1. Kern: New Delano Courthouse	\$749
2. Kern: New Mojave Courthouse	\$113
3. Los Angeles: New Santa Clarita Courthouse	\$1,166
4. Los Angeles: New Glendale Courthouse	\$14,308
5. Placer: New Tahoe Area Courthouse	\$2,800
6. Plumas: New Quincy Courthouse	\$738
7. Santa Barbara: New Santa Barbara Criminal Courthouse	\$8,602
8. Shasta: New Redding Courthouse	\$1,589
9. Siskiyou: New Yreka Courthouse	\$406

**Recommendation.** Approve as proposed.

**Issue 2 – Supreme Court: Operating Budget Realignment and Augmentation**

**Governor’s Proposal.** The Governor’s budget proposes a permanent realignment of \$1.3 million GF from the Supreme Court of California Court Appointed Counsel program

to the court's operating budget and an ongoing augmentation of \$212,000 from the Appellate Court Trust Fund.

**Background.** The combined funding realignment and augmentation will partially mitigate the impacts of GF reductions to the Supreme Court's budget and help enable the court to discharge its duties, including, but not limited to: determining legal questions of statewide importance, resolving conflicts among the intermediate appellate courts, deciding thousands of petitions for review and writ petitions annually, and resolving all death penalty appeals and related habeas corpus proceedings.

The Supreme Court projects an operating deficit of \$4.1 million in the budget year. This proposal will assist in offsetting the budget shortfall. The realignment of Court Appointed Counsel program funds proposed because of a growing fund balance for the program that has resulted from difficulties in recruiting counsel. In both 2010-11 and 2011-12, the budget for this program exceeded expenditures by \$1.8 million. The augmentation from the Appellate Court Trust Fund is consistent with prior increases in appellate court filing fees.

**Recommendation.** Approve as proposed.

<b>Issue 3 – Courts of Appeal: Increased Appellate Court Trust Fund Appropriation Authority</b>
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**Governor's Proposal.** The Governor's budget proposes an ongoing augmentation of \$1.97 million (\$2.2 million on one-time basis in the current year) from the Appellate Court Trust Fund to reflect new and increased appellate court filing fee revenues authorized pursuant to AB 110 (Stats. 2012, Chapter 193) and SB 1021 (Stats. 2012, Chapter 41).

**Background.** AB 110 authorized a new appellate response fee of \$325 and SB 1021 authorized a 20 percent increase to existing appellate filing fees. This proposal adjusts the Appellate Court Trust Fund appropriation authority to reflect the revenue generated by these actions.

**Recommendation.** Approve as proposed.

## Items to be Heard

### Judicial Branch (0250)

Article VI of the California Constitution creates the Supreme Court of California and the Courts of Appeal to exercise the judicial power of the state at the appellate level. Article VI also creates the Judicial Council of California to administer the state's judicial system. Chapter 869, Statutes of 1997, created the California Habeas Corpus Resource Center to represent any person financially unable to employ appellate counsel in capital cases.

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

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

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

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

Currently, the state maintains 58 trial court systems, each having jurisdiction over a single county. These courts have trial jurisdiction over all criminal cases (including felonies, misdemeanors, and traffic matters). They also have jurisdiction over all civil cases (including family law, probate, juvenile, and general civil matters).

The mission of the Judicial Branch is to resolve disputes arising under the law and to interpret and apply the law consistently, impartially, and independently to protect the rights and liberties guaranteed by the Constitutions of California and the United States, in a fair, accessible, effective, and efficient manner.

**Major Trial Court Realignment Legislation**

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

**Budget Overview.** The Governor’s Budget proposes total funding of \$3.1 billion (\$1.2 billion GF) for the Judicial Branch in 2013-14. The following table displays three-year expenditures and positions for the Judicial Branch as presented in the Governor’s Budget.

(dollars in thousands)

Program	2011-12	2012-13	2013-14
Supreme Court	\$40,706	\$43,773	\$43,500
Courts of Appeal	199,112	202,492	204,886
Judicial Council	120,601	148,862	150,795
Judicial Branch Facilities Program	173,796	224,312	263,083
State Trial Court Funding	2,680,140	2,267,631	2,430,566
Habeas Corpus Resource Center	12,425	13,576	13,576
Local Property Tax Revenue Offset	-126,681	-	-
<b>Total</b>	<b>\$3,100,099</b>	<b>\$2,900,646</b>	<b>\$3,106,406</b>
<b>Positions</b>	<b>1,832.0</b>	<b>1,980.2</b>	<b>1,979.9</b>

## Issue 1 – Trial Court Funding

**Governor’s Proposal.** The Governor’s budget proposes \$2.4 billion for the state’s trial courts in 2013-14. This includes a \$200 million augmentation that is offset by a corresponding transfer from court construction funds (the Immediate and Critical Needs Account). In addition, the Administration is proposing trailer bill language to address trial court operational issues caused by the trial court reserve limit of one percent that goes into effect on July 1, 2014.

**Background.** During the mid-1990s there were significant reforms in the Judicial Branch, court unification and the state assumption of funding responsibility for trial courts. Prior to state funding, many small courts were in financial crisis and needed emergency state funding to keep their doors open. One of the goals of state funding was to promote equal access to justice so that a citizen’s access to court services was not dependent on the financial health of an individual county. Upon realignment of funding responsibility to the state, trial courts benefitted financially, as the state was initially able to stabilize and increase funding.

Since 2008-09, state General Fund support for the Judicial Branch has been reduced by \$724 million on an ongoing basis. However, the Administration, the Legislature and the Judicial Council have mitigated these reductions through a mix of permanent and one-time offsets, including transfers from special funds, fee increases, and use of trial court reserves. Overall expenditures for the trial courts have remained relatively flat due to these offsets. However, many of the one-time solutions have been exhausted and, according to the Legislative Analyst’s Office (LAO), trial courts are currently faced with the need to operationalize \$234 million in ongoing reductions by 2014-15.

In addition, even though the total level of trial court expenditures has remained relatively flat, impacts of the funding reductions have varied by court, with many courts forced to take actions that have resulted in significant impacts on trial court services. These actions have included courtroom and courthouse closures, reductions in clerk services, reductions in self-help and family law assistance and domestic violence services, and reductions in trial court staffing.

Another significant change to trial court funding limited the amount of reserve funds that a trial court is allowed to maintain to one percent of its prior year budget, beginning in 2014-15, and was included in a trailer bill associated with the current year’s budget. Trial courts have raised numerous concerns with this change, particularly around cash flow issues.

As part of the current budget, a collaborative workgroup was established between the executive and judicial branches to conduct a comprehensive evaluation of the state’s progress in achieving the goals outlined in the Trial Court Funding Act of 1997, particularly the goal of providing "equal access to justice" and trial court workload and funding. Comprised of six members appointed by the Governor and four members appointed by the Chief Justice, the Trial Court Funding Workgroup began conducting

monthly public meetings in November 2012 and is expected to provide a final report by April 2013.

**LAO.** The LAO has prepared a handout for the subcommittee that provides background on trial court funding issues and options that their office has proposed that the Legislature may wish to consider.

**Recommendation.** Hold Open. The subcommittee should continue to assess trial court funding issues throughout the budget process and take necessary action after the Administration submits its April and May budget proposals and there is a clearer picture of the state's overall fiscal position and plan for the budget year.

## **Issue 2 – Trial Court Efficiency Proposals**

**Governor's Proposal.** The Governor proposes trailer bill language for a range of statutory changes to reduce trial court workload through administrative efficiencies and increase user fees to support ongoing workload at the trial courts.

**Background.** In May 2012, the Judicial Branch identified 17 proposals for trial court efficiencies in a report to the Legislature. The Governor is proposing to implement 11 of the 17 options. Of the 11 proposed changes, five changes would reduce trial court workload and operating costs, and six would increase user fees to support ongoing workload. These changes would provide the courts with approximately \$30 million in ongoing savings or revenues to help address prior-year budget reductions. Following is an outline of the 11 proposals, as presented by the LAO:

1. ***Court-Ordered Debt Collection.*** Courts (or sometimes counties on behalf of courts) may choose to utilize the state's Tax Intercept Program, operated by the Franchise Tax Board (FTB) with participation by the State Controller's Office (SCO), to intercept tax refunds, lottery winnings, and unclaimed property from individuals who are delinquent in paying fines, fees, assessments, surcharges, or restitution ordered by the court. Current law allows FTB and SCO to require the court to obtain and provide the social security number of a debtor prior to running the intercept. Under the proposed change, courts will no longer be required to provide such social security numbers to FTB. Instead, FTB and SCO (who issues payments from the state) would be required to use their existing legal authority to obtain social security numbers from the Department of Motor Vehicles. This change will reduce court costs associated with attempting to obtain social security numbers from debtors.
2. ***Destruction of Marijuana Records.*** Courts are currently required to destroy all records related to an individual's arrest, charge, and conviction for the possession or transportation of marijuana if there is no subsequent arrest within two years. Under the proposed change, courts would no longer be required to destroy marijuana records related to an infraction violation for the possession of up to 28.5 grams of marijuana, other than concentrated cannabis. This proposed

change would reduce staff time and costs associated with the destruction process.

3. **Preliminary Hearing Transcripts.** Courts are currently required to purchase preliminary hearing transcripts from certified court reporters and provide them to attorneys in all felony cases. In all other cases, the courts purchase transcripts upon the request of parties. Under the proposed change, courts would only be required to provide preliminary hearing transcripts to attorneys in homicide cases. Transcripts would continue to be provided upon request for all other case types. This change reduces costs as the court will no longer be required to purchase copies of all non-homicide felony cases from the court's certified court reporter, but will only need to purchase them when specifically requested.
4. **Court-Appointed Dependency Counsel.** Current law states that parents will not be required to reimburse the court for court-appointed counsel services in dependency cases if (1) such payments would negatively impact the parent's ability to support their child after the family has been reunified or (2) repayment would interfere with an ongoing family reunification process. Designated court staff currently has the authority to waive payment in the first scenario, but are required to file a petition for a court hearing to determine whether payment can be waived in the second scenario. Under the proposed change, staff would be permitted to waive payments under this second scenario, thereby eliminating the need for some court hearings.
5. **Exemplification of a Record.** Exemplification involves a triple certification attesting to the authenticity of a copy of a record by the clerk and the presiding judicial officer of the court for use as evidence by a court or other entity outside of California. The fee for this certification is proposed to increase from \$20 to \$50. The cost of a single certification is \$25. The increased fee is estimated to generate \$165,000 in additional revenue.
6. **Copies or Comparisons of Files.** The fee for copies of court records is proposed to increase from \$0.50 to \$1 per page, which is estimated to generate an additional \$5.9 million in revenue. Additionally, fees to compare copies of records with the original on file would increase from \$1 to \$2 per page.
7. **Record Searches.** Current law requires court users to pay a \$15 fee for any records request that requires more than ten minutes of court time to complete. Typically, courts interpret this to mean that the fee can only be applied when the search for any single record takes more than ten minutes to complete, regardless of the total number of requests made by the requester. Under the Governor's proposal, courts would charge a \$10 administrative fee for each name or file search request. A fee exemption is provided for an individual requesting one search for case records in which he or she is a party.
8. **Small Claims Mailings.** The fee charged for mailing a plaintiff's claim to each defendant in a small claims action would increase from \$10 to \$15 to cover the cost of postal rate increases that have occurred over the past few years.
9. **Deferred Entry of Judgment.** Courts would be permitted to charge an administrative fee—up to \$500 for a felony and \$300 for a misdemeanor—to cover the court's actual costs of processing a defendant's request for a deferred entry of judgment. This occurs when the court delays entering a judgment on a

non-violent drug charge pending the defendant's successful completion of a court-ordered treatment (or diversion) program.

10. **Vehicle Code Administrative Assessment.** Courts would be required to impose a \$10 administrative assessment for every conviction of a Vehicle Code violation, not just for subsequent violations as required under current law. This new assessment is estimated to generate \$2.2 million in annual revenue.
11. **Trial by Written Declaration.** Currently, defendants charged with a Vehicle Code infraction may choose to contest the charges in writing—a trial by written declaration. Originally implemented to allow individuals living far from the court to contest the charge, courts have discovered that more and more individuals living close to the court have been using this service. If the local violator is unsatisfied with the decision rendered in the trial by declaration process, they may then personally contest the charges in court as if the trial by written declaration never took place. In recognition of the unintended increased workload, this proposal would eliminate the right to a trial in front of a judge after a defendant has chosen to proceed with a trial by written declaration.

**Staff Comments.** Staff notes that there have been concerns raised with some of these trial court efficiency proposals. In particular, there is concern that providing preliminary hearing transcripts in felony cases, other than homicide cases, only upon request, will create a significant burden for defense counsel. Additionally, court user fees have been a primary solution in addressing reductions to trial court funding, shifting the burden from the General Fund to users. However, with the need to operationalize trial court funding reductions as outlined in the first issue, the Legislature should strongly consider these proposals.

**Recommendation.** Hold open. While these proposals merit strong consideration, staff recommends that action be withheld until all budget proposals and trailer bill language related to trial courts have been presented to the Legislature.

<b>Issue 3 – Informational Item: Notification of Firearms Possession Prohibition</b>
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**Background:** When a person is convicted of a felony, certain other firearms-related crimes or is identified as being addicted to narcotics, that person is prohibited by law from owning, purchasing, receiving, possessing, or controlling a firearm. Violation of that prohibition is a felony or an alternative felony/misdemeanor (wobbler), depending on the original offense. Existing law requires the court to provide, at the time judgment is imposed, a form notifying a defendant convicted of an offense causing the person to fall into a prohibited class of the fact that he or she may not possess a firearm. The form is to be supplied by the Department of Justice and is to also include a form to facilitate the transfer of firearms from the defendant to a non-prohibited person or persons.

At the March 4, 2013 hearing of the Senate Budget and Fiscal Review Committee on SB 140 (Leno), the Committee discussed whether offenders who become prohibited from possessing a firearm are consistently and adequately made aware of the prohibition at the time of their conviction.

**Staff Comments.** Members may wish to ask the AOC, as the administrative arm of the Judicial Council, what the Judicial Council does to ensure the courts are meeting their legal obligation to notify prohibited persons of the loss of their right to possess a firearm.

#### **Issue 4 – New Long Beach Courthouse**

**Governor’s Proposal.** The Governor’s Budget proposes \$34.8 million (\$54.2 million in 2014-15) from the Immediate and Critical Needs Account (ICNA) for the initial annual service fee for the New Long Beach Court Building.

**Background.** The 2007-08 Budget Act directed the Administrative Office of the Courts (AOC), to gather information regarding the possible use of a public private partnership (P3) for the construction of a new facility to replace the existing courthouse in Long Beach. In December 2010, the AOC entered into a P3 contract that required a private developer to finance, design, and build a new Long Beach courthouse, as well as to operate and maintain the facility over a 35-year period. At the end of this period, the judicial branch will own the facility. In exchange, the contract requires the AOC to make annual service payments totaling \$2.3 billion over the period. Occupancy of the new Long Beach courthouse will begin in September 2013.

The type of P3 used for this project is when a single contract is entered into with a private partner (often a consortium of several companies) for the design, construction, finance, operation, and maintenance of an infrastructure facility. In order for a private partner to be willing to finance these costs, the contract must specify a mechanism for repaying the partner. In many cases, this involves a revenue source created by the project (such as a toll or user fee on the infrastructure facility), with the private partner taking on the risk that the projected revenues will materialize at the level anticipated. Alternatively, the state can commit to making annual payments to the partner from an identified funding source. In this case, the Governor is proposing that the annual payments for the new Long Beach courthouse be made from ICNA.

The Judicial Branch has two primary court construction funds, the State Court Facilities Construction Fund, which receives approximately \$130 million annually from fees and penalty assessments to support trial court construction projects, and ICNA, which receives approximately \$320 million annually from various civil and criminal fines and fees originally intended to support 41 trial court construction projects that were deemed to be immediate and critical by the Judicial Council.

The Long Beach courthouse project was not originally on the list of projects the judicial branch planned to be funded from ICNA. Instead, the branch had assumed that the

project would be funded from the General Fund. Therefore, the plan to use ICNA funds for these service payments, combined with other reductions to ICNA's fund balances, resulted in a Judicial Council decision to indefinitely delay four court construction projects (the Fresno County, Southeast Los Angeles, Nevada City, and Sacramento Criminal courthouses).

**Staff Comments.** Given the substantial commitment of resources required to support this project (\$2.3 billion over 35 years) and the continuing pressures on the GF, ICNA seems to be a reasonable funding source for this project. However, the Legislature should examine not only this project's impact on ICNA, but, also other budget actions that have diverted resources from the fund. These actions have included significant transfers to the GF to offset trial court funding reductions (including an ongoing \$50 million annual transfer to the Trial Court Trust Fund) and a \$90 million loan to the GF that was originally scheduled to be repaid in the budget year (the Governor's Budget does not include this repayment). In order to effectively move forward with a court construction plan utilizing ICNA resources, the fund must be stabilized to a degree that provides certainty that scheduled projects can proceed.

Staff notes that the LAO released a report in November of 2012, *Maximizing State Benefit from Public Private-Partnerships*, in which they analyzed recent state P3 projects including the new Long Beach Courthouse. The LAO found that the P3 practices used by the state entities carrying out the projects they reviewed are not necessarily aligned with the P3 best practices identified in research. For example, the departments did not use clear P3 processes and appear to have selected projects not well suited for a P3 procurement. In addition, the LAO found that the analyses done to compare project costs under different procurement options were based on several assumptions that are subject to significant uncertainty and interpretation, and tended to favor the selection of a P3 approach.

Based on the LAO's review and findings, they identified several opportunities for the state to further maximize its benefits when deciding to procure a state infrastructure project as a P3. Specifically, they recommend that the Legislature:

- Specify P3 project selection criteria in state law in order to provide for greater consistency across departments in terms of how P3s are selected.
- Require a comparative analysis of a range of procurement options (including design-bid-build, design-build, and P3) for all potential P3 infrastructure projects in order to better determine which procurement option would most effectively benefit the state, as well as allow the state to better balance the potential benefits of increased private sector involvement with the potential risks unique to each project.
- Require the existing Public Infrastructure Advisory Commission (PIAC) to approve state P3 projects in order to improve the consistency of the state's P3 approval process.
- Require PIAC to 1) have a broad mix of expertise related to P3 and state finance and procurement, 2) develop additional best practices for the state's use of P3s,

and (3) evaluate other state departments to determine if they would benefit by having P3 authority.

**Recommendation.** 1) Approve the proposal to fund the service payment for the new Long Beach courthouse from ICNA. The new Long Beach courthouse will be ready for occupancy in the budget year and the state is obligated to meet the annual service agreement. While funding the annual service payment from ICNA will impact other planned projects, this is an appropriate use of ICNA funds and relieves the GF of a significant long-term obligation.

2) Adopt place holder trailer bill language to maximize the benefit of P3 projects to the state, as recommended by the LAO in their November 2012 report.

### **Issue 5 – Third District Court of Appeals – Rent**

**Governor’s Proposal.** The Governor’s Budget proposes \$4.6 million GF for increased rent related to debt services, administration fees, insurance, and operational/maintenance costs for the newly-renovated State Library and Courts building in Sacramento.

**Background.** The Department of General Services (DGS) is scheduled to complete renovations to the historic State Library and Courts Building on Capitol Mall in the current fiscal year. The renovations consist of fire, life, safety, infrastructure improvements and rehabilitation of historically significant elements of the circa 1928 building, which is a registered federal and state landmark.

The building’s major tenants will be the State Library and the Courts of Appeal, Third District Court of Appeal. DGS will maintain a small office for their Building and Property Management personnel that will maintain the facility.

The state sold lease-revenue bonds to finance the cost of the renovations and the monthly rental rate is increasing from \$.85 to \$8.26 per square foot to cover the cost of debt service, administration fees, insurance, and operations/maintenance. The new annual rental costs will be \$5.6 million. The amount requested in this proposal reflects an offset of base rental funds.

**Recommendation.** Approve as budgeted.

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Curren D. Price, Jr.



Thursday, March 14, 2013  
9:30 am or Upon Adjournment of Session  
Room 113

## OUTCOMES

Consultant: Joe Stephenshaw

**Item Number and Title**

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**Vote Only – All Vote Only Items Approved: 3-0**

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	(2) Supreme Court: Operating Budget Realignment and Augmentation .....	2
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**To be Heard**

0250	Judicial Branch	
	(1) Trial Court Funding .....	6 (Held Open)
	(2) Trial Court Efficiency Proposals.....	7 (Held Open)
	(3) Informational Item: Notification of Firearms Possession Prohibition	9 (No Action)
	(4) New Long Beach Courthouse .....	10 (Held Open)
	(5) Third District Court of Appeals: Rent	12 (Approved 2-0, Anderson Not Voting)

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# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Curren D. Price, Jr.



Wednesday, March 20, 2013  
1:00 pm  
Room 2040

Consultant: Joe Stephenshaw

**Item Number and Title**

**Page**

**To be Heard**

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## Items to be Heard

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

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

Legislation associated with the 2011 Budget Act abolished the CSA and established the Board of State and Community Corrections (BSCC) as an independent entity, effective July 1, 2012. The BSCC absorbed the previous functions of the CSA as well as other public safety programs previously administered by the California Emergency Management Agency (CalEMA). Specific statutory changes included:

- Abolishing the CSA within CDCR and established the BSCC as an independent entity.
- Transferring the powers and duties of the CSA to the BSCC.
- Transferring certain powers and duties from the California Emergency Management Agency (CalEMA) to the BSCC.
- Eliminating the California Council on Criminal Justice and assigning its powers and duties to the Board.

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

As part of the 2011 Budget Act legislation, the BSCC was tasked with providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system. Particularly, in coordinating with, and assisting local governments, as they implement the realignment of many adult offenders to local government jurisdictions that began in 2011. The intent is for the BSCC to guide statewide public safety policies and ensure that all available resources are maximized and directed to programs that are proven to reduce crime and recidivism among all offenders.

The BSCC is an entity independent from CDCR. However, the BSCC continues to be chaired by the Secretary of the CDCR, and it's vice chair is a local law enforcement

representative. The BSCC consists of 12 members, streamlined from both its immediate predecessor (CSA), with 19 members, and its former predecessor (BOC), which had 15 members. Members reflect state, local, judicial, and public stakeholders. The current members of the BSCC are:

Jeffrey Beard (Chair)	Secretary of CDCR
Daniel Stone	Director of Adult Parole Operations, CDCR
Dean Growdon	Sheriff of Lassen County
Leroy Baca	Sheriff of Los Angeles County
Susan Mauriello	County Administrative Officer, Santa Cruz County
Linda Penner	Chief Probation Officer, Fresno County
Adele Arnold	Chief Probation Officer, Tuolumne County
William R. Pounders	Retired Judge, Los Angeles County
David L. Maggard Jr.	Chief of Police, City of Irvine
Vacant	Community Provider of Rehabilitative Treatment Services for Adult Offenders (Speaker of the Assembly appointment)
David Steinhart	Director of Juvenile Justice Program Commonwealth
Mimi H. Silbert	Chief Executive Officer and President of Delancey Street Foundation

The Governor's Budget proposes total funding of \$129.2 million (\$44.3 million GF) and 80.8 positions for the BSCC.

*(dollars in millions)*

	<b>Funding</b>	<b>Positions</b>
Program 10 - Administration, Research and Program Support	\$ 4.0	23.0
Program 15 - Corrections Planning and Grant Programs	99.7	23.8
Program 20 - Local Facilities Standards, Operations and Construction	3.4	21.0
Program 25 - Standards and Training for Local Corrections	22.1	13.0
<b>BSCC Total</b>	<b>\$129.2</b>	<b>80.8</b>

## **Issue 1 – Information Item: Public Safety Data Collection and Analysis**

### **Opening Comments/Overview:**

**Scott Frizzie**, Executive Director (A), BSCC

**Evonne Garner**, Deputy Director, BSCC

**Tor Tarantola**, Analyst, Legislative Analyst's Office

### **Panel:**

**Joan Petersilia**, Adelbert H. Sweet Professor of Law, Faculty Co-Director,  
Stanford Criminal Justice Center, Stanford University

**Ryken Grattet**, Research Fellow, Public Policy Institute of California

**Sharon Aungst**, Director, The Partnership for Community Excellence

**Background.** One of the primary drivers in establishing the BSCC was the need for a state/local body that could serve as the backbone of California's public safety continuum. To facilitate local success, California needs to strategically coordinate support, foster local leadership, target resources and provide technical assistance.

Pursuant to the establishing statute, the BSCC is charged with collecting and maintaining available information and data about state and community correctional policies, practices, capacities, and needs, including, but not limited to, prevention, intervention, suppression, supervision, and incapacitation, as they relate to both adult corrections, juvenile justice, and gang problems. The BSCC shall seek to collect and make publicly available up-to-date data and information reflecting the impact of state and community correctional, juvenile justice, and gang-related policies and practices enacted in the state, as well as information and data concerning promising and evidence-based practices from other jurisdictions.

At its January 17, 2013 meeting, the BSCC moved to establish The Data and Research Standing Committee in order to benefit the BSCC by providing expertise and stakeholder input in this subject area. In addition, the BSCC reports that it is in the process of realigning staff and resources to be better positioned to address high-priority issues. From May 2012 through February 2013, the members of the Board identified priorities, which they are utilizing as the basis of a strategic plan currently under development by the BSCC staff. Through a collaborative strategic planning process with the Crime and Justice Institute, BSCC has developed the following four goals:

1. Collect, analyze, and report corrections data in a manner that meets mandates and informs effective policy and practice at the state and local level.
2. Support the implementation of best practices and policies to produce better outcomes for the criminal justice system and provide comprehensive training and technical assistance.

3. Promote the effective utilization of local corrections facilities and quality alternatives to incarceration to maximize public safety and resource efficiency.
4. Serve as a primary information source on managing criminal and juvenile populations.

These four goals are used as the basis of the third quarterly transition report that the BSCC will submit to the Legislature and stakeholders next month. The information in this report focuses on the activities of the BSCC in the assumption of its new responsibilities.

**Legislative Analyst's Office (LAO).** In analyzing the budget change proposal that is outlined in issue 2, the LAO has found that more needs to be done in order to 1) provide proactive technical assistance to local officials, 2) improve data collection in the near term, and 3) develop a longer-term data collection strategy that allows policymakers and stakeholders to meaningfully evaluate the outcomes of criminal justice policies and programs.

**Staff Comment.** Staff commends the efforts that the BSCC is currently undertaking to assume its new responsibilities, particularly in respect to enhancement of data collection capabilities. However, approximately a year and a half into public safety realignment, concerns have been raised that the state may be risking an opportunity to set and gather baseline and initial metrics and data that will be critical to assessing success and appropriately informing policymakers for future decisions. For instance, while allocation of 2011 public safety realignment funds is a local responsibility, performed at the statewide level by the California State Association of Counties (CSAC), a permanent annual allocation formula is scheduled to be put into place for the 2014-15 fiscal year. The Legislature will likely have to act to codify this formula. In addition, various bills have been proposed that would impact or alter parts of the 2011 Public Safety Realignment. The data and analysis needed to make informed and objective decisions regarding these matters may not be available.

Although the BSCC was established on July 1, 2012, as mentioned above, the BSCC's predecessor agencies had historic responsibilities centered on standards for the construction and operation of local jails and juvenile detention facilities and for the employment and training of local corrections and probation personnel, facility inspection, and grant administration. The majority of the BSCC's personnel have carried over from the CSA and have experience and core competencies in these historic responsibilities. In addition, the BSCC has assumed an increase in responsibilities related to local facility construction and grant management. In assessing the BSCC's assumption of responsibilities related to 2011 Public Safety Realignment data, the Legislature may wish to consider spreading responsibility to take advantage of academic or private resources.

There has been significant interest in researching and reporting on aspects of the 2011 public safety realignment from within academic and private foundations communities, and other public entities. Projects of note include:

- The Partnership for Community Excellence (The Partnership) established by California Forward, was developed as a “hub” to coordinate efforts to assist local governments in implementing public safety realignment.
- The Stanford Criminal Justice Center is undertaking a number of research projects aimed at better understanding the implementation and effect of California’s Public Safety Realignment legislation. In particular, through four research projects, they are analyzing the extent to which California’s move to downsize state prisons through 2011 public safety realignment has changed the decision-making and resource allocation of the primary actors in the criminal justice system. In addition, they are convening thought leaders across the state to study and identify solutions to the biggest challenges arising from Realignment’s implementation.
- The Center on Juvenile and Criminal Justice continually publishes reports regarding the state’s criminal justice system, including the 2011 public safety realignment.
- The Public Policy Institute of California has also published reports related to the 2011 public safety realignment and is currently working on an effort that they will outline for the committee at today’s hearing.
- CPOC has established “Dashboards” to display data that they have collected related to the 2011 public safety realignment and maintains a webpage that contains various information regarding realignment.

The BSCC has worked with stakeholders in developing data collection standards and reporting capabilities. However, members may wish to explore whether the state may benefit from contracting or entering into a partnership for alternative data collection and reporting services.

## Issue 2 – Baseline Budget Adjustment

**Governor’s Budget.** The Governor’s Budget proposes 9 positions, funded from existing resources, for research activities, the administration of the local jail construction financing program authorized by Chapter 42, Statutes of 2012 (SB 1022), and other administrative functions necessary for the Board to operate as an independent entity. These positions consist of 5 research positions (1 Research Specialist V, 1 Research Specialist III, 2 Research Program Specialist I’s, and 1 Research Analyst), 3 Associate Governmental Program Analysts, and 1 Executive Assistant.

**Background.** This BCP reflects BSCC’s identification of workload priorities. Each division, as well as the management team, assessed its operations and identified whether staffing levels and classifications were adequate and appropriate. This

proposal requests positions that were identified as needed to fill gaps. The 9 positions will be funded by the redirection as existing resources as follows:

- Temporary help will be reduced to \$148,000, from \$351,000, and budgeted overtime will be reduced from \$40,000 to \$0 for a net savings of \$243,000.
- \$321,000, of \$531,000 in funds budgeted to match federal fund expenditures for administration of various juvenile justice grants (Title II, Title V, and Juvenile Justice Accountability Block Grant); will be redirected due to a decline in awards.
- Approximately \$306,000 will be redirected from grant administration programs that would instead be eligible for federal grant program funding.

According to the Administration, the two proposed administrative positions would provide support to the board that was previously provided by CDCR prior to BSCC becoming a separate state entity. According to the board, the new research unit would be tasked with revising BSCC's correctional surveys, managing the collection of data, as well as developing and carrying out a research agenda. The BSCC also plans to utilize these researchers to help develop a web-based reporting system for counties to submit correctional data, as well as an online dashboard to make the data more readily available to the public.

SB 1022 provides up to \$500 million in state lease-revenue bond financing for construction, expansion or renovation of adult local criminal justice facilities in California. Consistent with the stated legislative intent, applicant counties are expected to judiciously consider programming needs to manage the offender population, and the range of alternatives to incarceration that may affect bed space needs, while employing the least restrictive options.

The legislation specifies funding consideration shall be given to counties that are seeking to replace existing compacted, outdated, or unsafe housing capacity or are seeking to renovate existing or build new facilities that provide adequate space for the provision of treatment and rehabilitation services, including mental health treatment.

**Staff Comment.** This proposal represents BSCC's efforts to prioritize existing resources in light of their new responsibilities, many of which are outlined in the first issue. However, the subcommittee should assess this request in relation to the Legislature's overall expectations and priorities. The subcommittee should determine whether the BSCC's efforts and strategies align with Legislative priorities prior to taking action on this proposal.

**Recommendation.** Hold Open.

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Curren D. Price, Jr.



Thursday, April 4, 2013  
9:30 am or Upon Adjournment of Session  
Room 113

Consultant: Joe Stephenshaw

**Item Number and Title**

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**To be Heard**

0552/5225 Office of the Inspector General/California Department of Corrections and Rehabilitation	
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(2) Oversight Issue: Blueprint Monitoring .....	7

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## Items to be Heard

### **Office of the Inspector General (0552)**

The Office of the Inspector General (OIG) protects public safety by safeguarding the integrity of California's correctional system. The OIG is responsible for contemporaneous oversight of the California Department of Corrections and Rehabilitation's (CDCR) internal affairs investigations, use of force, and the employee disciplinary process. When requested by the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, the Inspector General reviews the policies, practices, and procedures of the CDCR. The Inspector General reviews the Governor's candidates for appointment to serve as warden for the state's adult correctional institutions and as superintendents for the state's juvenile facilities; conducts metric-oriented inspection programs to periodically review delivery of medical care at each state prison and the delivery of reforms identified in the department's document, released in April 2012, entitled "The Future of California Corrections: A blueprint to save billions of dollars, end federal court oversight, and improve the prison system." The OIG receives communications from individuals alleging improper governmental activity and maintains a toll-free public telephone number to receive allegations of wrongdoing by employees of the CDCR; conducts formal reviews of complaints of retaliation from CDCR employees against upper management where a legally cognizable cause of action is present; and reviews the mishandling of sexual abuse incidents within correctional institutions. The OIG provides critical public transparency for the state correctional system by publicly reporting its findings.

In addition, the Public Safety and Offender Rehabilitation Services Act of 2007, Chapter 7, Statutes of 2007, created the California Rehabilitation Oversight Board (Board) within the OIG. The Board's mandate is to examine the CDCR's various mental health, substance abuse, educational, and employment programs for inmates and parolees. The Board meets quarterly to recommend modifications, additions, and eliminations of offender rehabilitation and treatment programs. The Board also submits biannual reports to the Governor, the Legislature, and the public to convey its findings on the effectiveness of treatment efforts, rehabilitation needs of offenders, gaps in offender rehabilitation services, and levels of offender participation and success.

Following is the total funding and positions for the OIG, as proposed in the Governor's Budget. The OIG is funded exclusively from the General Fund.

(dollars in thousands)

<b>Funding</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
General Fund	\$15,186	\$14,964	\$15,496
<b>Total</b>	\$15,186	\$14,964	\$15,496
<b>Positions</b>	90.9	91.4	91.4

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

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

The mission of the California Department of Corrections and Rehabilitation (CDCR) is to enhance public safety through safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities.

The CDCR is organized into the following programs:

- Corrections and Rehabilitation Administration.
- Juvenile: Operations and Offender Programs; Academic and Vocational Education; Health Care Services.
- Adult Corrections and Rehabilitation Operations: Security; Inmate Support; Contracted Facilities; Institution Administration
- Parole Operations: Adult Supervision; Adult Community-Based Programs; Administration
- Board of Parole Hearings: Adult Hearings; Administration.
- Adult: Education, Vocation, and Offender Programs; Education; Substance Abuse Programs; Inmate Activities; Administration.
- Adult Health Care Services.

The Governor’s Budget proposes \$8.97 billion and 59,736.2 positions for the CDCR in 2013-14. The table on the following page shows CDCR’s total operational expenditures and positions for 2011-12 through 2013-14.

(dollars in thousands)

<b>Funding</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
General Fund	\$9,206,232	\$8,662,460	\$8,694,201
General Fund, Prop 98	19,492	18,204	18,778
Other Funds	87,731	71,973	72,501
Reimbursements	107,394	179,469	179,897
<b>Total</b>	<b>\$9,420,849</b>	<b>\$8,932,106</b>	<b>\$8,965,377</b>
<b>Positions</b>	<b>53,688.4</b>	<b>58,607.0</b>	<b>59,736.2</b>

## Issue 1 – OIG Trailer Bill Clean-Up

**Proposal.** The Office of the Inspector General (OIG) has proposed trailer bill language to address concerns that are the result of significant budget and statutory restructurings of the OIG's office and to codify co-location of staff with the California Department of Corrections and Rehabilitation's (CDCR) Office of Internal Affairs (OIA).

**Background.** The 2011 Budget Act and associated trailer bill contained budget reductions and statutory changes to the OIG's mission, which resulted in a reorganization and downsizing of the office; removed the peace officer status of OIG employees; removed the mandate that the OIG conduct audits and investigations of the CDCR and replaced it with the requirement that the OIG instead conduct reviews of the CDCR (at the request of the Governor, the Senate Rules Committee, or the Speaker of the Assembly); removed the requirement that the OIG conduct quadrennial facility operation reviews and one-year warden follow-up audits; and codified the OIG's medical inspection plan.

To operationalize the budget reductions and statutory changes, the OIG abolished its bureaus and restructured its operations into regions to reduce travel and overtime costs. Deputy Inspector Generals are being cross-trained in the eight primary disciplines that are statutorily mandated; use of force monitoring, policy and performance reviews, warden and superintendent vetting, retaliation complaint investigations, Sexual Abuse in Detention Elimination Act reviews, independent intake complaint processing, medical inspections, and critical incident monitoring.

The proposed language makes the following changes that in effect clean-up issues that resulted from previous trailer bills:

- Deletes Penal Code (PC) Section 6131 because, for the most part, the section is no longer applicable since the OIG no longer initiates audits or investigations.
- Moves the only remaining relevant language, which requires the OIG to prepare a public report of its reviews, from PC 6131 to PC 6126.
- Makes a clarifying change to PC 6126.2 regarding a prohibition on hiring any person known to be involved in an open internal affairs investigation.
- Deletes a provision that refers to wardens who have been appointed but not yet confirmed as of July 1, 2005. There are no such wardens remaining at CDCR.
- Changes references to "review" in PC 6129 to "investigation." This section is the only section under which the OIG still conducts investigations (for retaliation complaints), and, therefore, should not have been changed to review.

Additionally, the proposed language codifies that the OIG shall have staff physically co-located with the CDCR's OIA. This practice was put in place as part of the *Madrid* lawsuit (pertaining to use of force remedy). According to the OIG, it is now necessary to codify the practice in order to ensure that co-location continues as offices are moved.

**Recommendation.** Approve the proposed OIG trailer bill language.

## Issue 2 – Oversight Issue: Blueprint Monitoring

**Background.** The Future of California Corrections (Blueprint) was developed as CDCR's plan to 1) allow the department to satisfy the Supreme Court's order, 2) end the class-action cases, 3) maintain an effective prison system, and 4) achieve significant savings, as assumed in public safety realignment. The key components of the Blueprint include:

- **Improve the Inmate Classification System.** As a result of research produced by a panel of correctional experts and input from seasoned professionals, the department has modified its classification system. The modified system will enable the department to safely shift about 17,000 inmates to less costly housing where they can benefit from more access to rehabilitative programs.
- **Return Out-of-State Inmates.** The department began sending inmates out-of-state when overcrowding was at its worst in 2007. The department plans to bring these inmates back as they complete their sentences, the prison population drops, classification changes are made, and additional housing units are constructed at existing facilities.
- **Improve Access to Rehabilitation.** This plan enables the department to improve access to rehabilitative programs and place at least 70 percent of the department's target population in programs consistent with their academic and rehabilitative needs. Increasing access to rehabilitative programs will reduce recidivism by better preparing inmates to be productive members of society. In doing so, it will help lower the long-term prison population and save the state money.

The department will establish re-entry hubs at certain prisons to concentrate program resources and better prepare inmates as they get closer to being released (within 48 months). It will also designate enhanced programming yards to incentivize positive behavior.

- **Standardize Staffing Levels.** The Blueprint establishes new and uniform staffing standards for each institution that will enable the department to operate more efficiently and safely.
- **Gang Management.** The Blueprint identified several measures, recommended as a result of a 2007 study, to commence new and targeted strategies to minimize the negative impacts of gangs in prisons. The department's policy for identifying prison-based gang members and associates and isolating them from the general population is being replaced with a new model that identifies, targets, and manages Security Threat Groups and utilizes a behavior-based Step Down Program for validated affiliates.

- **Comply with Court Imposed Health Care Requirements.** In recent years, numerous measures have been implemented that have significantly improved the quality of the department's health care system. The Inspector General regularly reviews and scores the department's medical care system, and these scores have been steadily rising. In addition, the capacity of the health care system will soon increase. Slated for completion during the summer of 2013, the California Health Care Facility in Stockton is designed to house inmates requiring long-term medical care and intensive mental health treatment. Its annex will open in the summer of 2014 to create a unified Stockton complex, allowing both facilities to efficiently transition inmate-patients between the two, while avoiding transportation and security costs as well as the need for expensive services in community hospitals and clinics. These projects, in addition to ongoing mental health and dental projects and new plans to increase medical clinical capacity at existing prisons, will satisfy court-imposed requirements.

**Prior Subcommittee Action.** As part of the current year's budget, the subcommittee approved the Governor's plan for the Blueprint in order to achieve \$1.5 billion in annual savings by 2015-16 related to the reduction in CDCR's population driven by realignment, advance efforts to end various class-action lawsuits, and maintain an effective and efficient prison system. The Blueprint, included the following components that were approved by the subcommittee:

1. A net reduction of \$1.9 million GF.
2. Added a new budget item (5225-007-0001) in the amount of \$13.8 million to reflect continuation of the Community Correctional Program.
3. \$810 million in lease-revenue bond authority to construct three level II dorm facilities.
4. \$700 million in AB 900 (Solorio 2007) lease-revenue authority for court-ordered medical upgrades.
5. \$167 million in AB 900 lease-revenue authority for the conversion of the Dewitt juvenile facility (1,133 beds, including 953 health care beds).
6. Reappropriated funding necessary to ensure completion of health care projects required to comply with court orders, as well as maintain the safe and efficient operation of existing prison facilities.
7. Added provisional language specifying \$2.8 million is available for expenditure on capital improvement projects at the Folsom Transitional Treatment Facility.
8. Eliminated duplicative provisional reporting language that will now be provided for in statute.
9. Amended provisional language to adjust contract dollars and average daily population figures for out-of-state facilities.

Blueprint Trailer Bill Language

1. **Civil Addicts Program Sunset Date** – Ceased commitments of civil addicts to CDCR beginning January 1, 2013.

2. **Accountability Language** – Required CDCR to establish appropriate oversight, evaluation, and accountability measures as part of the Blueprint.
3. **Reporting Language** – Required CDCR to submit estimated expenditures, as specified, to the Department of Finance for inclusion in the annual Governor’s Budget and May Revision.
4. **AB 900** – Amends various code sections related to AB 900 as follows:
  - a. Eliminated approximately \$4.1 billion in lease-revenue bond authority that was no longer needed for implementation of CDCR’s facilities plan.
  - b. Deleted various sections of the Penal Code related to construction of re-entry facilities and the benchmarks associated with phase two of infill, re-entry, and health care facilities.
  - c. Allowed for use of specific AB 900 funds for medication distribution facilities improvement projects.
  - d. Revised reporting requirements so that the remaining projects are subject to an approval process that is the same as other state capital outlay projects.
  - e. Various clean-up amendments consistent with the changes outlined above.

In addition to the above components that were proposed by the Administration, the Legislature adopted the following revisions to the Blueprint:

1. Transferred \$645,000 to the Office of the Inspector General (OIG) to support 5 positions and adopted trailer bill language specifying the OIG’s responsibility for oversight and review of various staffing and program aspects of the Blueprint.
2. Removed funding for inmate rehabilitative programs from CDCR’s main item of appropriation and created a separate item of appropriation for inmate rehabilitative programs, including a provision specifying that any funds not spent for the appropriated purpose shall revert to the General Fund.
3. Revised the proposed trailer bill language for the Medical Upgrade Program, Dewitt conversion, and the Infill Projects to specify that authorized funding shall only be expended on these projects and that detail scope and cost information for the Medical Upgrade Program and the Infill Projects shall be provided to the Joint Legislative Budget Committee in conjunction with submittal to the Public Works Board.
4. Added trailer bill language that specified the intent of the infill projects to provide a flexible design to satisfy the needs of housing subpopulations of inmates, such as those with disabilities or mental health needs, that the department has not had sufficient capacity for, as various court orders have identified.
5. Adopted trailer bill language that mandates that the California Rehabilitation Center (Norco) shall close upon completion of the infill projects.

**OIG Oversight.** As previously mentioned, to monitor implementation of the Blueprint, the Legislature passed and the Governor signed legislation adding language to the California Penal Code section 6126 mandating the OIG to periodically review delivery of the reforms identified in the Blueprint, including, but not limited to, the following specific goals and reforms:

- Whether the department has increased the percentage of inmates served in rehabilitative programs to 70 percent of the department's target population prior to their release;
- The establishment of, and adherence to, the standardized staffing model at each institution;
- The establishment of, and adherence to, the new inmate classification score system;
- The establishment of, and adherence to, the new prison gang management system, including changes to the department's current policies for identifying prison-based gang members and associates and the use and conditions associated with the department's secured housing units; and
- The implementation of, and adherence to, the comprehensive housing plan described in the Blueprint.

The OIG released its initial report at the beginning of this week. In summary, the OIG found that the department has demonstrated much progress in implementing its Blueprint goals in most categories reviewed. Specifically:

- Various rehabilitation measures have been established or are in development.
- The department has established, and for the most part is adhering to, the standardized staffing model at each institution.
- The department has established, and for the most part is adhering to, the new inmate classification scoring system.
- The department has established the new prison gang management system and is undergoing a 24-month pilot to implement and assess the new procedures.
- The department has implemented, and for the most part is adhering to, the comprehensive housing plan described in the Blueprint.

Overall, the OIG reports that the department has demonstrated good initial progress implementing its Blueprint goals. The initial report will serve as a baseline review of the department's initial efforts, and subsequent reports will assess its progress meeting specified future benchmarks and goals of the Blueprint.

**Staff Comment.** As the OIG notes, many of the reforms contained in the Blueprint have implementation dates well into 2015 (and beyond). Because of this, and a lack of interim benchmarks, it may be difficult to effectively assess the department's progress in implementing the Blueprint at this point. However, it is encouraging that the OIG has initially found that the department is, for the most part, making significant progress in implementing its Blueprint goals and the OIG is establishing a baseline review. Further, in addition to the scope of the OIG's review of the Blueprint, the CDCR reports that it is

operating within its budget for the current fiscal year, which is a significant factor in determining successful implementation of the Blueprint (the Department of Finance's Office of Statewide Audits and Investigations has performed a review of the fiscal aspects of the Blueprint, which has also been released this week).

Notwithstanding the progress that the CDCR is making in implementing the Blueprint, some components of the Blueprint are still years away from targeted goals and appear to lack a comprehensive roadmap with interim benchmarks. In particular, an area that this subcommittee has focused on in recent years, inmate rehabilitative programming, has an identified date of June 30, 2015 (per CDCR's Strategic Plan) for meeting the department's goal of serving 70 percent of the target population. While the CDCR has identified enhancements to programs and establishment of new programs and re-entry hubs, the Legislature has not been provided with a plan that details a timeline or benchmarks that will ultimately lead to the target.

This subcommittee has held hearings specifically regarding inmate rehabilitative programs in the past (most recently in May of 2010 and December of 2011). It is unclear how some of the key issues that were raised at these hearings are currently being addressed. In particular, how the department sets and measures program outcome goals is not clear.

Another component of the Blueprint that appears to lack a comprehensive implementation plan is the new gang management pilot program. In particular, the new step-down program that provides for a graduated process of moving out of security housing units relies on enhanced programs. However, it is unclear exactly what programs will be required and how and when they will be implemented.

Notwithstanding these issues, the OIG's overall findings in its initial review of Blueprint implementation are encouraging. If the department maintains its commitment to implementing the Blueprint, our state's ability to manage our prisons and provide inmate services will continue to improve.

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Curren D. Price, Jr.



Thursday, April 11, 2013  
9:30 am or Upon Adjournment of Session  
Room 113

Consultants: Joe Stephenshaw  
Brady Van Engelen

**Item Number and Title**

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## Items to be Heard

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

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

The mission of the CDCR is to enhance public safety through safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities.

The CDCR is organized into the following programs:

- Corrections and Rehabilitation Administration
- Juvenile: Operations and Offender Programs, Academic and Vocational Education, Health Care Services
- Adult Corrections and Rehabilitation Operations: Security, Inmate Support, Contracted Facilities, Institution Administration
- Parole Operations: Adult Supervision, Adult Community-Based Programs, Administration
- Board of Parole Hearings: Adult Hearings, Administration
- Adult: Education, Vocation, and Offender Programs, Education, Substance Abuse Programs, Inmate Activities, Administration
- Adult Health Care Services

The adult inmate average daily population is projected to decrease from 132,223 in 2012-13 to 128,605 in 2013-14, a decrease of 3,618 inmates, or 2.7 percent. The average daily parolee population is projected to decrease from 57,640 in 2012-13 to 42,958 in 2013-14. These decreases are primarily due to shifting the responsibility of short-term, lower-level offenders from the state to counties, pursuant to AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, reductions in the number of felony probationers entering state prison, and the 2012 passage of Proposition 36, which revised California's "Three Strikes" law.

The Governor's Budget proposes \$8.97 billion and 59,736.2 positions for the CDCR in 2013-14. The following table shows CDCR's total operational expenditures and positions for 2011-12 through 2013-14.

(dollars in thousands)

<b>Funding</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
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General Fund, Prop 98	19,492	18,204	18,778
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<b>Total</b>	<b>\$9,420,849</b>	<b>\$8,932,106</b>	<b>\$8,965,377</b>
<b>Positions</b>	<b>53,688.4</b>	<b>58,607.0</b>	<b>59,736.2</b>

## Issue 1 – Technical Budget Adjustment

**Governor’s Proposal.** The Governor’s Budget proposes a no-cost technical adjustment to CDCR’s items of appropriation to better align spending authority with program costs. This proposal moves \$1.5 million for the Family Liaison Services contract from Program 48 (Adult Education, Vocation and Offender Programs – Administration) to Program 29 (Adult – Institutions Administration), moves \$569,000 and an associated position for the LA County Court Contract from Program 29 to Program 31 (Parole Operations – Adult Community Based Programs), and moves \$1.9 million and 17 positions for the Parole Hearing Team (related to the Victims Bill of Rights Act of 2008 [Marcy’s Law]) and four positions associated with the *Armstrong* lawsuit (American with Disabilities Act (ADA) remedies) from the Office of Legal Affairs (OLA) to the Board of Parole Hearings (BPH).

### Background.

**Family Liaison Contract.** The Family Liaison Contract provides services to inmates and their families, such as pre-release planning and communication with inmates’ families and friends. This contract is managed by the Division of Adult Institutions (DAI) and not the Division of Rehabilitative Programs, as such, funding for the contract is being realigned to the DAI.

**LA County Court Contract.** The LA County Court Contract provides services to parole violators as an alternative to incarceration. Because the contract provides services to parolees, it is better suited to be administered by Parole Operations, rather than DAI.

**Board of Parole Hearings.** With the passage of “Marcy’s Law”, the BPH is required to maintain an independent legal staff to establish an independent legal operation for the BPH. Consistent with this directive, a new Chief Counsel gubernatorial appointment to the Board was established. The primary functions of the ADA legal positions currently in OLA are to ensure the BPH is in compliance with the Armstrong Remedial Plan, including researching and analyzing source information concerning critical issues, monitoring and evaluating revocation units at institutions and county jails and assisting in ADA training. Transfer of the 21 total positions from the OLA will appropriately align the Chief Counsel’s managerial, personnel and budgetary authority over the unit.

**Staff Comment.** This proposal aligns expenditure authority with departmental operations and does not change the intended objectives of resource use.

**Recommendation.** Approve as budgeted.

## Issue 2 – Minor Capital Outlay Projects

**Governor's Proposal.** The Governor's Budget proposes \$2.7 million in general obligation bond funds remaining in the 1988 Prison Construction Fund for the construction of five minor capital outlay improvements at CDCR's adult and juvenile facilities.

### **Background.**

**Mule Creek State Prison, Central Control Staircase.** The proposal includes \$600,000 to support the design and construction of an enclosed staircase to provide staff carrying weapons, tools and equipment with safe and secure roof access. The existing "ships ladder" poses safety concerns and has contributed to numerous staff injuries in the past.

### **N. A. Chaderjian Youth Correctional Facility, Install HVAC System in Housing Unit**

**I.** The proposal includes \$600,000 to support the removal of the existing evaporative cooling system and the installation of a new HVAC system for Housing Unit I. This proposal moves toward compliance with a CDCR guideline requiring that mixed-use (inmate and staff) areas maintain a maximum indoor temperature of 89 degrees Fahrenheit. Further, the Administration contends that this HVAC upgrade is necessary to mitigate serious health concerns for the youth residing in this building who are taking heat-sensitive medications.

### **N. A. Chaderjian Youth Correctional Facility, Install HVAC System in Housing Unit**

**II.** The proposal includes \$600,000 to support the removal of the existing evaporative cooling system and the installation of a new HVAC system for Housing Unit II. This proposal moves toward compliance with a CDCR guideline requiring that mixed-use (inmate and staff) areas maintain a maximum indoor temperature of 89 degrees Fahrenheit. Further, the Administration contends that this HVAC upgrade is necessary to mitigate serious health concerns for the youth residing in this building who are taking heat-sensitive medications.

### **California Correctional Center, Air Cooling Units, Sierra Unit.**

The proposal includes \$442,000 to support the design and installation of an evaporative cooling system for the Sierra Living Unit. This proposal moves toward compliance with a CDCR guideline requiring that mixed-use (inmate and staff) areas maintain a maximum indoor temperature of 89 degrees Fahrenheit. Further, the Administration contends that this cooling system upgrade is necessary to mitigate serious, heat-related, health concerns for staff and inmates.

### **California Correctional Center, Air Cooling Units, Cascade Unit.**

The proposal includes \$442,000 to support the design and installation of an evaporative cooling system for the Cascade Living Unit. This proposal moves toward compliance with a CDCR guideline requiring that mixed-use (inmate and staff) areas maintain a maximum indoor temperature of 89 degrees Fahrenheit. Further, the Administration contends that

this cooling system upgrade is necessary to mitigate serious, heat-related, health concerns for staff and inmates.

**Staff Comment.** These proposals are consistent with annual proposals from the CDCR to perform high priority minor capital outlay projects within adult and juvenile facilities statewide. For the most part, there have not been concerns raised with these proposals. However, the LAO has raised a concern regarding the costs of the Mule Creek staircase project. The LAO noted that of the \$600,000 in funding proposed for the project, about \$347,000 is for labor costs and \$253,000 is for materials and other expenses. Many of these costs, especially the labor costs, are directly the result of the project's total estimated timeline. This includes an assumption that the staircase and its protective security fencing will take 110 work-days, almost half a year, to install after they are fabricated.

**Recommendation.** Approve the minor capital outlay request. However, schedule the Mule Creek project out separately, which will allow for a Joint Legislative Budget Committee review period, at the completion of preliminary plans, to reevaluate the project's cost.

### **Issue 3 – Ironwood State Prison – Heating, Ventilation and Air Conditioning**

**Governor's Proposal.** The Governor's Budget proposes \$5.4 million General Fund to support the Working Drawings phase of the Ironwood State Prison (ISP) HVAC project.

**Background.** In the late 1980s and early 1990s, the state built four prisons in the remote areas of Imperial County near Blythe and El Centro. Two of these prisons (ISP and Chuckwalla Valley State Prison [CVSP]) were constructed with an evaporative cooling system that prematurely deteriorated. The evaporative cooling systems installed were undersized and were not well adapted to the extreme temperatures in this area of the state. Furthermore, the systems were located on the roofs of the housing units and leaked and caused extensive damage to the roof and walls of the housing units, which could compromise the structural integrity of the building. Finally, the cooling units are not designed to generate enough air flow, which regularly results in housing unit temperatures in the summer that are well over the CDCR guideline of 92 degrees Fahrenheit.

In October of 2003, the department completed a Building Repairs Assessment Study. In the study, the current and proposed systems for both ISP and CVSP were amortized over a 30-year life-cycle to determine the most economical and practical system to support the environmental demands. The most practical, long-term, and economic solution was determined to be the installation of the centralized chiller plant system.

The scope of this project includes replacing the deteriorated "swamp cooler" cooling system at ISP through the construction of a central chill plant with an energy efficient HVAC system, repairing the collateral damage caused by the deteriorated system, and upgrading the emergency smoke evacuation system to be used during facility fires. Preliminary plans for this proposal were funded in the 2008 Budget Act and approved by the Public Works Board in 2010. The total estimated cost of this project is \$149 million (\$5.8 million for Preliminary Plans, \$5.4 million for Working Drawings, and \$138 million for construction). The Governor's 2014-15 budget proposal will likely include \$138 million General Fund to support the construction phase of the project.

**Staff Comment.** Although this project requires the commitment of substantial resources, it is necessary to ensure adequate conditions for staff and inmates (ISP housed 3,526 inmates as of November 2012) and remedy ongoing facility maintenance issues. As noted above, the Legislature has previously recognized this need through the funding of preliminary plans.

**Recommendation.** Approve as budgeted.

#### **Issue 4 – Statewide Budget Packages and Advanced Planning**

**Governor's Proposal.** The Governor's Budget proposes \$750,000 in general obligation bond funds to support workload associated with planning capital outlay projects at youth and adult correctional facilities. This workload typically consists of site assessments, environmental reviews, and the development of scope, cost, and schedule projections.

**Background.** The CDCR currently operates 33 adult prisons and three juvenile facilities, along with more than 40 adult or juvenile conservation camps. The range of capital outlay needs across the facilities is broad and varied. The development of well-documented and justified capital outlay requests requires the development of budget packages. Additionally, the need arises during the fiscal year to perform advance planning functions such as environmental reviews and site assessments to determine the feasibility of future capital outlay requests.

To perform these functions, the CDCR has typically been provided with a Statewide Budget Packages and Advance Planning appropriation in the annual Budget Act. Provisional language is included with this appropriation limiting it to projects that meet both of the following two criteria: 1) the project being studied has not already received funding for the Legislature, and 2) the project is being prepared for funding consideration in either of the next two state budget acts.

**Recommendation.** Approve as budgeted.

## Issue 5 – DeWitt Nelson Correctional Annex

**Governor’s Proposal.** The Governor’s Budget proposes \$16.2 million General Fund and 135.4 positions for the activation of the DeWitt Annex, which would increase to \$36.6 million and 333.5 positions upon full implementation by 2014–15. This includes costs related to administrative, security, health care, and support staff, as well as the equipment and supplies necessary to operate the facility.

**Background.** The DeWitt Nelson Correctional Annex project is the re-purposing of the existing Division of Juvenile Justice facility previously known as the DeWitt Nelson Youth Correctional Facility to a semi-autonomous, non-licensed Adult Male Level II facility located in Stockton. The DeWitt Annex will be a part of the adjourning California Health Care Facility (CHCF) project for primary administration and support. DeWitt will use shared services from the CHCF for the materials service center, kitchen, receiving and release, and administration. All medical services provided within the Diagnostics and Treatment complex of the CHCF will also be available to the DeWitt population.

The Dewitt Annex project includes housing, programming, mental health care facilities, a medical clinic, inmate visiting and support facilities. It will contain three new celled-housing units and four renovated dorm-housing units to house the proposed inmate population. The new housing units and existing dorms will provide housing capacity for 1,133 inmates, as follows: 528 Specialized General Population, 375 Enhanced Outpatient Program (EOP), 50 EOP Administrative Segregation Unit, and 180 General Population Work Crew. These beds are primarily for CDCR inmates with health care or mental health needs and are a component of getting out from under court supervision in these areas. In November 2009, the CDCR, working collaboratively with the Federal Receiver, filed a Long-Range Integrated Strategy Plan to reduce overcrowding and provide for increased medical and mental health treatment beds. This project is part of the *Coleman* court’s long-range bed plan.

**Staff Comment.** Staff notes that a Spring Finance Letter adjusts funding and resources for the DeWitt Annex based on a scope change to the perimeter fence. This adjustment is reflected in the next item (Issue 6).

**Recommendation.** Approve as budgeted.

## Issue 6 – California Health Care Facility

**Governor’s Proposal.** The Governor’s Budget proposes \$2.3 million (\$1.9 million ongoing) General Fund and 76.7 positions to support the ongoing operation of the California Health Care Facility (CHCF).

**Spring Finance Letter.** A Spring Finance Letter proposes a reduction of \$137,000 and 1.8 positions (\$701,000 and 7 positions ongoing) to account for operational savings associated with a scope change to construct one electrified fence for CHCF and the DeWitt Annex, and to provide a warden and executive assistant to oversee operations at CHCF.

### Background.

**Governor’s Budget.** In November 2009, the CDCR, working collaboratively with the Federal Receiver, filed a Long-Range Integrated Strategy Plan to reduce overcrowding and provide for increased medical and mental health treatment beds. Construction of the CHCF was included in the long-range plan and is key to ultimately satisfying both the *Coleman* (mental health) and *Plata* (medical) courts.

The CHCF is currently under construction with intake of inmates scheduled for July 22<sup>nd</sup> of this year. The facility will include 1,722 beds of all security levels and will provide all necessary support and rehabilitation program spaces. CHCF establishes specialized housing with necessary health care treatment for a population of seriously and chronically, medically and mentally ill inmates. Funding for CHCF was approved in the 2011 and 2012 budget acts. This proposal includes adjustments based on continued evaluation of operating needs.

**Spring Finance Letter.** In the planning stages of CHCF, there has been uncertainty regarding overall responsibility for the facility. In March of 2012, it was determined that the facility would have a chief executive officer responsible for both health care and custody functions. As the activation has grown closer, it has been determined that a warden is necessary for the institution to effectively operate. This will allow the CHCF to have the same management structure as all other institutions and ensure that the appropriate level of oversight is in place for the custody side of operations.

Funding and positions in the Governor’s Budget DeWitt Annex request assumed that the facility would have a separate perimeter fence. This would have required resources to manage the transfer process between the DeWitt facility and CHCF, where a lot of medical services will be delivered to those inmates. It has since been determined that a single perimeter fence will result in operational and fiscal efficiencies. The scope change was submitted to the Joint Legislative Budget Committee, which did not object, and, subsequently, approved by the State Publics Works Board in February of this year. With the fence combined to enclose the two facilities, the project is able to remove 9 Correctional Officers.

**Recommendation.** Approve both the Governor's Budget proposal and Spring Finance Letter.

## **Issue 7 – Medication Management Nursing Staff**

**Governor's Proposal.** The Governor's Budget proposes \$15 million General Fund to make the 211 temporary nursing positions permanent.

**Background.** In 2010-11, the Legislature approved 237 permanent nursing positions in prisons to distribute medication to inmates in a more efficient manner, including 70 positions initially approved for other purposes that were later redirected to medication distribution. Subsequently, the 2012-13 budget provided an additional 211 positions on a two-year limited-termed basis, for a total of 448 nursing positions related to medication distribution.

At the time the above positions were requested, the Receiver's office indicated that the additional nursing positions were needed to reduce the use of overtime and registry nurses, which generally are more expensive than using department staff. The Receiver reported that it spent about \$51 million in 2009-10 on overtime and registry for nurses responsible for distributing medications to inmates and that providing additional positions would result in overtime and registry savings that would more than offset the cost of the new positions. According to the Receiver, reducing the reliance on registry staff can also improve the quality of care provided to inmates. This is because registry staff are generally less familiar with CDCR processes and procedures than state employees and are less likely to be invested in meeting performance standards due to their temporary status.

The 211 positions approved in 2011-12 were limited to a two-year term for a couple of reasons. First, the Receiver was still gathering data to determine whether the nurses hired in 2010-11 were reducing the use of overtime and registry nurses. Second, the ongoing need for nursing staff had not been determined because the Receiver was implementing several operational changes with the potential to effect both the overall number of medication distribution nurses needed statewide and how these nurses are allocated among the state's prisons. These changes included the activation of new medical facilities (such as the CHCF and the Dewitt Annex in Stockton) and the consolidation of "medically complex" inmates, those with chronic medical treatment needs, at certain prisons with more medical clinic space and staff (often referred to as medical care "hubs").

The Receiver has now determined that the additional positions have reduced the use of overtime and registry nurses and should be continued on a permanent basis to avoid future increases in the usage of such staff. In addition, the Receiver indicates that the additional positions have improved the quality of medical care provided to inmates.

**Legislative Analyst Office (LAO).** The LAO has raised a concern that the future need for these positions is unclear. According to the LAO, the Receiver's ongoing medication distribution workload, and thus the future need for the 211 nursing positions, remains unclear and data provided by the Receiver indicates that the medication distribution workload is declining. The LAO points out that between May 2009 and the first quarter of the 2012-13 fiscal year, the number of medications distributed to inmates by nursing staff declined about 20 percent (from 84,000 to 67,000 per month). The declining workload appears to be driven primarily by two factors. First, the number of prescriptions written per inmate has decreased from 3.9 in June 2009 to 3.7 in December 2012. Second, the prison population decreased by about 31,000 inmates over the same period. This includes a decline of about 2,000 mentally ill inmates who generally receive more medications than other inmates. As a result, changes in the mentally ill inmate population have a relatively greater impact on medication distribution workload.

The LAO also points out that, in addition to the declining workload, several of the Receiver's major initiatives that could potentially impact the need for medication distribution nurses remain incomplete. For example, the CHCF and Dewitt facilities are not yet activated. In addition, the Receiver reports that the consolidation of medically complex inmates at medical hubs is only about halfway complete and will not be finished for a couple of years. These changes will involve the transfer of thousands of medically complex inmates, many of whom require multiple medications, throughout the prison system. As the Receiver reallocates nursing staff among prisons to deliver medication to these inmates, there may be opportunities for the Receiver to achieve efficiencies that would decrease the overall staffing need.

According to the Receiver's office, the reduction in workload to date has not been accompanied by a commensurate reduction in staffing. This is because of the way the office has allocated staff among prisons and among yards within prisons.

Moreover, the Receiver claims that, in the future, the new staffing methodology will make annual adjustments to nursing staff levels to account for reductions in the inmate population and future operational changes. However, it is impossible to evaluate this claim because the Receiver has not provided any details on the new staffing methodology.

Finally, the LAO has pointed out that, in 2012, the Receiver's office provided notice of the development of a new staffing methodology for inmate medical services. According to the Receiver, the new methodology will allocate staff among prisons based on the amount and types of medical services provided at each location. The new methodology is expected to result in staffing reductions and fiscal savings.

In order to monitor the Receiver's progress in implementing the new staffing methodology, the 2012 Budget Act required the Receiver to report on the methodology not later than 30 days following its approval by the Department of Finance. The Receiver's office is in the process of implementing this new staffing methodology and reported to the LAO that over 800 positions are being eliminated. However, the

Receiver has not provided the report required by the 2012 Budget Act or any other detail regarding the new staffing methodology.

**Staff Comment.** It is concerning that the Receiver is making significant staffing adjustments without providing detail to the Legislature. The Receiver's new staffing plan includes the positions contained in this proposal. Without the detail of this plan, it is difficult to assess the actual medication management staffing need. However, the Receiver has reported that these positions have been cost neutral because they have reduced expenditures on overtime and registry by approximately \$32 million and the positions have improved the quality of care.

In the last couple of years, the state has made significant progress in improving the provision of inmate medical care. Public safety realignment has contributed to addressing the biggest impediment identified by the court (overcrowding), the Office of Inspector General's inspections have shown improvements in most areas of care, and numerous facility and technology improvements have been made or are in progress (including the two new Stockton facilities discussed in previous items of this agenda). Notwithstanding the concerns raised with this proposal, it is critical that the state continue to take steps that will ultimately result in ending federal court oversight of inmate medical care.

**Recommendation.** Approve as budgeted.

## **CALIFORNIA DEPARTMENT OF JUSTICE (0820)**

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

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

**Budget Overview.** The Governor's 2013-14 Budget proposes \$723.38 million (\$174.2 million General Fund) and 4,713.3 personnel years.

### **Expenditures**

<b>Program</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
Directorate and Administration	\$85.10	\$90.03	\$91.32
Legal Services	\$371.71	\$397.57	\$375.59
Law Enforcement	\$187.54	\$191.46	\$187.75
California Justice Information Services	\$141.67	\$156.22	\$158.03
<b>Totals</b>	<b>\$585.17</b>	<b>\$727.75</b>	<b>\$723.38</b>
<b>Personnel Years</b>	<b>4351.8</b>	<b>4698.3</b>	<b>4713.3</b>

## Issue 1 – GRP2 Gambling Control Commission

**Governor’s Budget Request.** The Gambling Control Bureau, within the DOJ, is requesting authority for \$4.778 million and 33 positions that are set to be transferred from the Gambling Control Commission (Commission), on July 1, 2013.

**Background.** The Governor’s Reorganization Plan Number 2 moved some activities related to gaming regulation from the independent Commission to the Gambling Control Bureau within the DOJ. Support, auditing and some licensing functions currently performed by the Commission will be transferred to the DOJ. The Commission will retain its role as a policy-making entity and also will retain its responsibility for the establishment of regulations, license approval, and monitoring revenues to the funds for which it is responsible.

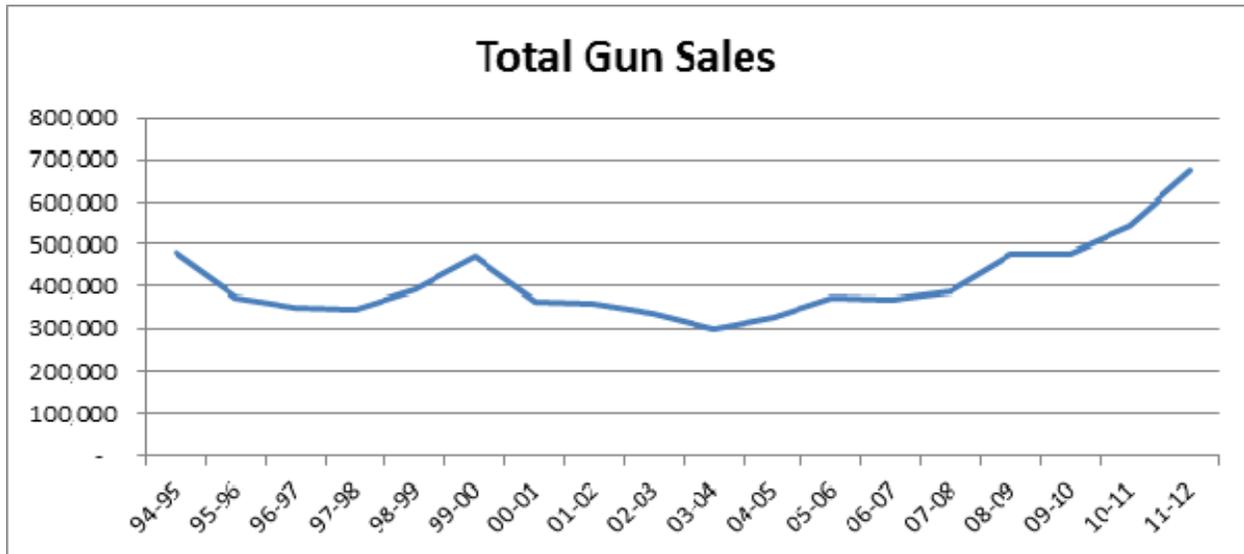
Effective July 1, 2013 the Gambling Control Bureau (Bureau) within the DOJ will assume responsibility for the following job functions that have been performed by the Gambling Control Commission; Compliance, Licensing and certain functions performed by the Legal Division. The Compliance Division has responsibilities associated with the compacts and executive orders and monitors tribal compliance with the compacts’ obligations for implementing gaming operations. Within the Compliance Division there is a Tribal Audits Team that regularly performs audits to ensure that required contributions are made in accordance with the terms of the compacts. The Compliance Division also included a Technical Inspection Program that conducts field testing of electronic gaming devices regularly and a support team that maintains tribal information in the Licensing Information System. The Bureau will also assume responsibility over the Licensing Division which is responsible the receipt and processing of all applications for licenses and licensing-related documents and legal responsibility for the review of purchase agreements, loan transactions, transfer of shares, and processing registrations.

**Staff Recommendation:** Approve request to increase the DOJ budget as it is consistent with the reorganization plan enacted in 2012-13, and adopt conforming BCP submitted by the Gambling Control Commission.

## Issue 2 – Dealers’ Record of Sale Workload Increase

**Governor’s Budget Request.** The Governor’s 2013-14 Budget requests a 2-year increase of \$2.512 million in Dealers’ Record of Sale (DRoS) Special Account spending authority to fund 20.0 limited-term positions in order to conduct firearms eligibility background checks within California’s statutorily mandated ten day period. The positions will be redirected within the Division of Law Enforcement (DLE).

**Background.** In accordance with Penal Code Section § 26815, the DOJ, Bureau of Firearms is required to process eligibility checks within ten days before a firearm is delivered to the purchaser. According to the DOJ, there has been an increasing number of gun purchases since Fiscal Year 2003-04. The chart below displays the increase in gun sales according to the DOJ.



The Bureau of Firearms currently has 13 Criminal Identification Specialist's (CIS) assigned to analyze criminal history and other firearms eligibility-related records to determine the eligibility of an individual. According to the DOJ, CIS personnel have worked nearly 10,000 hours of overtime on DROS to ensure that they are able to meet the legislatively mandated 10 day timeframe.

The DOJ is requesting that authority for 20.0 two-year limited-term positions be authorized. Specifically, the department is asking for 1.0 CIS III, 18.0 CIS II's, and 1.0 Program Technician. The Program Technician will be responsible for the majority of communications with either the court or district attorney when necessary.

Additionally, the DOJ uses an outside vendor to support the collection, validation and forwarding the pertinent DROS-related data from one of the approximately 1,700 gun dealers that utilize DROS. The DOJ has authorized funding that would allow for 400,000 DROS transactions, but the department projects a need closer to one million total transactions. The DOJ intends on ending the contract with the vendor on December 31, 2013 and managing the data internally at a much cheaper rate (\$3.53 vs. \$0.83), but the funding will still be deficient. The department has calculated that a one-time increase of \$894,017 dollars would be necessary to fund the remaining DROS transactions that are to be done internally.

**Staff Comment:** There clearly is a need to ensure that the department is adequately resourced and capable of meeting statutory mandates that ensure a ten-day waiting period for eligibility background checks. Staff has no issue with this request.

**Staff Recommendation:** Approve as budgeted.

### **Issue 3 – Dealers Record of Sale Customer Support Center**

**Governor’s Budget Request:** The Governor’s 2013-14 Budget requests a permanent increase of \$659,000 in (Dealers Record of Sale) DROS special account authority to fund 7.0 positions to establish a DROS Entry System Customer Support Center.

**Background.** Since 1997, the DOJ has relied on a vendor (Verizon Business Services) to administer the DROS Entry System (DES). Firearms dealers have been using the DES to transact all statewide sales and/or transfers of firearms. The DES collects the necessary data, remits the \$25 transaction fee, and forwards the the application information to the DOJ. Additionally, the vendor operates a customer support center that addressed DROS billing and submission inquiries seven days a week. The DOJ currently pays the vendor \$3.53 for each firearm transaction processed via the DES.

Beginning January 1, 2014, the DOJ will no longer be in contract with Verizon Business Services. In 2011, Verizon Business Services notified the DOJ that they were no longer interested in administering the DES and that they intended on letting the contract expire on December 31, 2013. The DOJ will assume all responsibilities associated with the management of DES, including the customer support center.

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

**Staff Recommendation:** Approve as budgeted.

### **Issue 4 – Pawnbrokers and Secondhand Dealers Fund**

**Spring Finance Letter:** The Administration has submitted a Spring Finance Letter requesting a one-time appropriation of \$1.31 million (Secondhand Dealer and Pawnbroker’s Account) to develop a single, statewide uniform electronic reporting system. Additionally, the Attorney General’s office is requesting ongoing authority of \$497,000 from the Secondhand Dealers and Pawnbrokers fund and authority for three positions to maintain the new system as per AB 391 (Chapter 172, Statutes of 2012).

**Background.** Per statute, pawnbrokers must complete a DOJ form (DOJ Form JUS-123) for every pawn or secondhand dealer purchase transaction. This form includes information regarding the item being either sold or pawned and the individual either pawning or purchasing the item. Prior action taken by the Legislature has mandated that the DOJ develop a single, statewide, uniform electronic reporting system to be used to enter secondhand dealer reports, and to make this information available to law enforcement entities. The funding for this system will be drawn from a \$300 increase to the biennial application and renewal fees currently being paid by pawnbrokers and secondhand dealers.

According to the DOJ, ongoing costs associated with this request will be \$497,000 for the maintenance of the system. According to DOJ calculations, the fund will generate \$720,000 annually, which will be sufficient to ensure there is adequate funding to pay for maintenance and the current costs associated with the processing of applications.

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

**Staff Recommendation:** Approve as budgeted.

#### **Issue 5 – Data Sharing Working Group**

**Background.** The DOJ's Criminal Justice Statistics Center (CJSC) is responsible for the collection, analysis, and development of statistical reports which provide valid measures of crime and the criminal justice process in California. The primary goal of the CJSC is to provide key decision-makers at the state and local level with accurate data through a variety of publications and services.

Currently, the DOJ lacks an information system that has the capacity to share uniform data across multiple jurisdictions at the local level. Conversely, most local entities do not input data in the same fashion which has limited their ability to provide data with another jurisdiction. The need for uniform data to be shared across multiple jurisdictions became more pressing after the passage of SB 92 (Chapter 36, Statutes of 2011). To address this, the DOJ has taken the lead with key stakeholders to determine if there is a more uniform method in which the data can be conveyed. The intent of the group is to develop a statewide data-sharing mechanism that can capture more informative data.

**Staff Comment.** This item is informational and included for discussion purposes.

## Issue 6 – Controlled Substance Utilization and Review System (CURES)

**Background.** The DOJ maintains the Controlled Substance Utilization and Review System (CURES), an electronic database of prescription drugs issued by doctors. In 1996, the Legislature initiated the development of the CURES system in an attempt to identify solutions addressed while utilizing an antiquated system of triplicate copying.

The implementation of CURES represented a significant improvement over the state's prior utilization of a triplicate copying system, however, it did not address the need for providing healthcare practitioners and pharmacists with access to timely information to proactively diminish and deter the use of controlled substances. To address this issue with CURES, the DOJ initiated the Prescription Drug Monitoring Program (PDMP), which allows prescribers and dispensers to access data at the point of care. The PDMP system is utilized by the DOJ to collect and store data on the prescription of controlled substances (Schedule II through Schedule IV). State law mandates that the DOJ assist law enforcement and regulatory agencies with the diversion and resultant abuse of controlled substances.

The California Budget Act of 2011 eliminated all General Fund support of CURES/PDMP, which included funding for system support, staff support and related operating expenses. To perform the minimum critical functions and to avoid shutting down the program, the department opted to assign five staff to perform temporary dual job assignments on a part-time basis.

In accordance with Health and Safety Code §11165(a), the DOJ is under contract with five healing arts boards; Nursing Board, Dental Board, Medical Board, Pharmacy Board, and the Osteopathic Medical Board. The 2012-13 budget provided the DOJ with \$296,000 to manage the CURES program. Funding to support the program is derived from fees assessed on the boards, which support the operation and maintenance costs of the CURES program at the DOJ. The DOJ also has approximately \$550,000 in grant funds that can be used on CURES. However, similar to the funding derived from the healing arts boards, the grant funding can only be used to support the operation and maintenance of the program. DOJ has expressed an interest in utilizing the \$550,000 in grant funds currently available to modernize the Prescription Drug Monitoring Program, which may offset the overall cost of any upgrades.

**Staff Comment.** Currently, the DOJ is redirecting resources to support the operation of CURES/PDMP. The redirection is not sustainable for the long term. A long-term funding source has not been identified for either program, and the available funding sources provide funding only for the operation and maintenance of the program, not support staff that would be required to manage the program.

According to the DOJ, modernization costs will be approximately \$2.09 million for PDMP. The PDMP modernization would occur over a two-year period, and the costs

associated with maintaining the current system while the modernization occurs would be \$1.8 million. Total modernization costs would be approximately \$3.8 million. The DOJ estimates that ongoing costs associated with PDMP will be \$700,000.

The current PDMP system is significantly underutilized by practitioners. The DOJ estimates that only 3.6 percent of licensed prescribers are utilizing the system in the state. However, it is worth noting that the DOJ does not believe that the current software platform could accommodate the additional 236,000 registrants that are in the state.

This item is informational and included for discussion purposes.

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Curren D. Price, Jr.



Thursday, April 11, 2013  
9:30 am or Upon Adjournment of Session  
Room 113

## OUTCOMES

Consultants: Joe Stephenshaw  
Brady Van Engelen

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Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-651-1505. Requests should be made one week in advance whenever possible.

## Items to be Heard

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

#### Issue 1 – Technical Budget Adjustment

**Governor’s Proposal.** The Governor’s Budget proposes a no-cost technical adjustment to CDCR’s items of appropriation to better align spending authority with program costs. This proposal moves \$1.5 million for the Family Liaison Services contract from Program 48 (Adult Education, Vocation and Offender Programs – Administration) to Program 29 (Adult – Institutions Administration), moves \$569,000 and an associated position for the LA County Court Contract from Program 29 to Program 31 (Parole Operations – Adult Community Based Programs), and moves \$1.9 million and 17 positions for the Parole Hearing Team (related to the Victims Bill of Rights Act of 2008 [Marcy’s Law]) and four positions associated with the *Armstrong* lawsuit (American with Disabilities Act (ADA) remedies) from the Office of Legal Affairs (OLA) to the Board of Parole Hearings (BPH).

**Recommendation.** Approve as budgeted.

#### Issue 2 – Minor Capital Outlay Projects

**Governor’s Proposal.** The Governor’s Budget proposes \$2.7 million in general obligation bond funds remaining in the 1988 Prison Construction Fund for the construction of five minor capital outlay improvements at CDCR’s adult and juvenile facilities.

**Recommendation.** Approve the minor capital outlay request. However, schedule the Mule Creek project out separately, which will allow for a Joint Legislative Budget Committee review period, at the completion of preliminary plans, to reevaluate the project’s cost.

### **Issue 3 – Ironwood State Prison – Heating, Ventilation and Air Conditioning**

**Governor’s Proposal.** The Governor's Budget proposes \$5.4 million General Fund to support the Working Drawings phase of the Ironwood State Prison (ISP) HVAC project.

**Recommendation.** Approve as budgeted.

### **Issue 4 – Statewide Budget Packages and Advanced Planning**

**Governor’s Proposal.** The Governor's Budget proposes \$750,000 in general obligation bond funds to support workload associated with planning capital outlay projects at youth and adult correctional facilities. This workload typically consists of site assessments, environmental reviews, and the development of scope, cost, and schedule projections.

**Recommendation.** Approve as budgeted.

### **Issue 5 – DeWitt Nelson Correctional Annex**

**Governor’s Proposal.** The Governor’s Budget proposes \$16.2 million General Fund and 135.4 positions for the activation of the DeWitt Annex, which would increase to \$36.6 million and 333.5 positions upon full implementation by 2014–15. This includes costs related to administrative, security, health care, and support staff, as well as the equipment and supplies necessary to operate the facility.

**Recommendation.** Approve as budgeted.

## **Issue 6 – California Health Care Facility**

**Governor’s Proposal.** The Governor’s Budget proposes \$2.3 million (\$1.9 million ongoing) General Fund and 76.7 positions to support the ongoing operation of the California Health Care Facility (CHCF).

**Spring Finance Letter.** A Spring Finance Letter proposes a reduction of \$137,000 and 1.8 positions (\$701,000 and 7 positions ongoing) to account for operational savings associated with a scope change to construct one electrified fence for CHCF and the DeWitt Annex, and to provide a warden and executive assistant to oversee operations at CHCF.

**Recommendation.** Approve both the Governor’s Budget proposal and Spring Finance Letter.

## **Issue 7 – Medication Management Nursing Staff**

**Governor’s Proposal.** The Governor’s Budget proposes \$15 million General Fund to make the 211 temporary nursing positions permanent.

**Recommendation.** Approve as budgeted.

## **CALIFORNIA DEPARTMENT OF JUSTICE (0820)**

### **Issue 1 – GRP2 Gambling Control Commission**

**Governor’s Budget Request.** The Gambling Control Bureau, within the DOJ, is requesting authority for \$4.778 million and 33 positions that are set to be transferred from the Gambling Control Commission (Commission), on July 1, 2013.

**Staff Recommendation:** Approve request to increase the DOJ budget as it is consistent with the reorganization plan enacted in 2012-13, and adopt conforming BCP submitted by the Gambling Control Commission.

### **Issue 2 – Dealers’ Record of Sale Workload Increase**

**Governor’s Budget Request.** The Governor’s 2013-14 Budget requests a 2-year increase of \$2.512 million in Dealers’ Record of Sale (DROS) Special Account spending authority to fund 20.0 limited-term positions in order to conduct firearms eligibility background checks within California’s statutorily mandated ten day period. The positions will be redirected within the Division of Law Enforcement (DLE).

**Staff Recommendation:** Approve as budgeted.

### **Issue 3 – Dealers Record of Sale Customer Support Center**

**Governor’s Budget Request:** The Governor’s 2013-14 Budget requests a permanent increase of \$659,000 in (Dealers Record of Sale) DROS special account authority to fund 7.0 positions to establish a DROS Entry System Customer Support Center.

**Staff Recommendation:** Approve as budgeted.

#### **Issue 4 – Pawnbrokers and Secondhand Dealers Fund**

**Spring Finance Letter:** The Administration has submitted a Spring Finance Letter requesting a one-time appropriation of \$1.31 million (Secondhand Dealer and Pawnbroker's Account) to develop a single, statewide uniform electronic reporting system. Additionally, the Attorney General's office is requesting ongoing authority of \$497,000 from the Secondhand Dealers and Pawnbrokers fund and authority for three positions to maintain the new system as per AB 391 (Chapter 172, Statutes of 2012).

**Staff Recommendation:** Approve as budgeted.

#### **Issue 5 – Data Sharing Working Group**

This item is informational and included for discussion purposes.

#### **Issue 6 – Controlled Substance Utilization and Review System (CURES)**

This item is informational and included for discussion purposes.

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Curren D. Price, Jr.



Thursday, May 9, 2013  
9:30 am or Upon Adjournment of Session  
Room 113

Consultants: Joe Stephenshaw

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## Vote Only

### California Horse Racing Board (1750)

The California Horse Racing Board (CHRB) regulates parimutuel wagering for the protection of the public and promotes the horse racing and breeding industries. Jurisdiction and supervision over meetings in California where horse races with wagering on their results are held, and over all things having to do with the operation of such meetings, are vested in the seven-member California Horse Racing Board, who are appointed by the Governor. Principal activities of the Board include:

- Protecting the public's interests.
- Licensing of racing associations and participants in the racing industry.
- Enforcing laws, rules, and regulations pertaining to horse racing in California.
- Acting as a quasi-judicial body in matters pertaining to horse racing meets.
- Encouraging agriculture and the breeding of horses in the state.
- Collecting the State's lawful share of revenue derived from horse racing meets.
- Tabulating, analyzing, and publishing statistical racing information.
- Conducting research to determine the cause and prevention of horse racing accidents and the effects of drug substances on horses, and to detect foreign drug substances.

The Governor's budget proposes \$11.6 million, from the California Horse Racing Fund, and 57 positions for the CHRB in 2012-13.

### Issue 1 – Exchange Wagering

**Governor's Proposal.** An April finance letter proposes \$443,000 from the Horse Racing Fund, per-year on a two-year limited-term basis, to implement exchange wagering in California.

**Background.** Chapter 283, Statutes of 2010 (SB 1072), authorizes the California Horse Racing Board (CHRB) to license entities to operate exchange wagering systems. Exchange wagering is based on a stock exchange model allowing account holders the ability to buy and sell the outcome of horse races in a manner similar to day trading on the stock exchange. The departure from traditional pari-mutual wagering is that exchange wagering allows account holders to bet on a horse to lose a race. This raises the possibility of race fixing, making the integrity of the wager a particularly important task.

License fees collected, proportionately paid by the total number of providers each racing year will be deposited into the Horse Racing Fund to enable the department to recover the costs for licensing, enforcing, auditing and regulating exchange wagering. The CHRB will issue two-year licenses.

The CHRB will need to dedicate staff to real-time monitoring. Current audit and enforcement staff must be trained in the intricacies of fraud investigations and online fraud trends and patterns. The current CHRB network will undergo modifications to be compatible with case management systems and the exchange providers wagering platforms in order to conduct meaningful audits.

The CHRB's auditing staff will be assigned bet monitoring responsibilities in real-time, using software to ensure exchange wagering is being conducted fairly and to identify unusual or suspicious patterns.

**Recommendation.** Approve as budgeted.

## Items to be Heard

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

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

The mission of the CDCR is to enhance public safety through safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities.

The CDCR is organized into the following programs:

- Corrections and Rehabilitation Administration
- Juvenile: Operations and Offender Programs, Academic and Vocational Education, Health Care Services
- Adult Corrections and Rehabilitation Operations: Security, Inmate Support, Contracted Facilities, Institution Administration
- Parole Operations: Adult Supervision, Adult Community-Based Programs, Administration
- Board of Parole Hearings: Adult Hearings, Administration
- Adult: Education, Vocation, and Offender Programs, Education, Substance Abuse Programs, Inmate Activities, Administration
- Adult Health Care Services

The adult inmate average daily population is projected to decrease from 132,223 in 2012-13 to 128,605 in 2013-14, a decrease of 3,618 inmates, or 2.7 percent. The average daily parolee population is projected to decrease from 57,640 in 2012-13 to 42,958 in 2013-14. These decreases are primarily due to shifting the responsibility of short-term, lower-level offenders from the state to counties, pursuant to AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, reductions in the number of felony probationers entering state prison, and the 2012 passage of Proposition 36, which revised California's "Three Strikes" law.

The Governor's Budget proposes \$8.97 billion and 59,736.2 positions for the CDCR in 2013-14. The following table shows CDCR's total operational expenditures and positions for 2011-12 through 2013-14.

(dollars in thousands)

<b>Funding</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
General Fund	\$9,206,232	\$8,662,460	\$8,694,201
General Fund, Prop 98	19,492	18,204	18,778
Other Funds	87,731	71,973	72,501
Reimbursements	107,394	179,469	179,897
<b>Total</b>	<b>\$9,420,849</b>	<b>\$8,932,106</b>	<b>\$8,965,377</b>
<b>Positions</b>	<b>53,688.4</b>	<b>58,607.0</b>	<b>59,736.2</b>

## Issue 1 – Proposition 36 Workload

**Governor’s Proposal.** An April Finance Letter proposes \$766,000 General Fund in 2013-14 (\$153,000 General Fund in 2014-15) to fund overtime needed to address workload resulting from the passage of the Three Strikes Reform Act of 2012 (Proposition 36).

**Background.** Proposition 36 amended provisions of law pertaining to “Three Strike” offenders by restructuring the sentencing guidelines for repeat offenders whose current conviction is a non-serious, non-violent offense from an indeterminate (life) term to a determinate (non-life) term. Offenders convicted and sentenced prior to the passage of Proposition 36 who are currently serving a life term may petition the court for re-sentencing. CDCR is required to provide the court with information related to the petitioners’ disciplinary and rehabilitation records while incarcerated and any other evidence the court determines to be relevant in deciding whether a new sentence should be established.

CDCR reports that there are approximately 10,000 offenders currently serving a life term pursuant to the “Three Strikes” law and, of these, approximately 2,800 are eligible for re-sentencing under Proposition 36. It is anticipated that the majority, if not all, of these 2,800 eligible offenders will petition the court for re-sentencing.

CDCR’s Case Records Administrative Services has developed and implemented an approach to manage the increase in requests from inmates and their attorneys filing petitions for re-sentencing with superior courts and from county district attorneys, probation departments, and superior court judges responsible for responding to the petitions. In addition, CDCR’s litigation and case records offices are responsible for responding to document requests via the subpoena process from courts or written requests from inmates and the department must perform duties related to the rights of victims.

**Staff Comment.** Given the workload associated with Proposition 36, this is a reasonable request. However, in regard to Proposition 36, staff notes that concerns have been raised regarding availability of treatment and/or services for offenders released pursuant to the proposition.

According to CDCR, the court dispositions under Proposition 36 cases fall into the following categories: discharged, Post Release Community Supervision (PRCS), parole or future release date. Those offenders falling in the categories of PRCS or parole are linked to services provided by the counties (for PRCS) and Division of Adult Parole Operations (for parolees).

CDCR reports that they have been working collaboratively with various stakeholders and advocacy groups to assist these offenders in accessing resources once released. For example, Stanford Law School has taken on the task of developing an update resources manual identifying the various programs provided at the local level for all 58

counties in California. Likewise, CDCR is working with the Delancey Street program in San Francisco, where representatives from this agency conduct prison visits to explain the program and interview Proposition 36 eligible inmates for admission upon release. The Delancey Street program has the ability to place released offenders in programs in California and out-of-state. This program will provide housing and training to springboard their successful reentry into society.

CDCR is also pursuing discussions with the Santa Clara Reentry program for similar services. Various public defenders and inmate advocacy groups are assisting inmates file Prop 36 petitions. These entities provide services and information that to inmates through the process. They also work with eligible inmates on family reunification, to the extent they can.

Inmates resentenced and requiring a release from prison as a result of Proposition 36 are screened to determine if they have any medical conditions which require facilitated placement upon release. Once determined that the need is present, staff work on community-based case arrangements and benefit entitlements, as needed.

**Recommendation.** Approve as proposed.

## **Issue 2 – Sex Offender Treatment for Non-High Risk Sex Offender Parolees**

**Governor’s Proposal.** An April Finance Letter proposes \$5 million General Fund in 2013-14 (\$12.4 million ongoing, beginning in 2014-15) in order to provide mandatory sex offender treatment to both high-risk and non-high-risk sex offenders.

**Background.** Chapter 219, Statutes of 2010 (AB 1844), which is also known as the Chelsea King Child Predator Prevention Act of 2010 or “Chelsea’s Law,” requires that the Division of Parole Operations (DAPO) provide sex offender treatment to all sex offender parolees in a program certified by the California Sex Offender Management Board, including both High-Risk Sex Offender (HRSO) and Non-High-Risk Sex Offender (Non-HRSO) parolees.

Prior to the passage of Chelsea’s Law, DAPO received \$42.7 million for HRSO treatment (based on \$14,010 per offender for a population of 3,050). After Chelsea’s Law went into effect, DAPO continued to receive this level of HRSO funding and additional funding provided for polygraph testing. Pursuant to CDCR’s *Blueprint*, DAPO’s budget was zero-based and the average treatment services cost was reduced to \$6,759, based on the existing HRSO treatment contracts, which included polygraph testing. Currently, there is no sex offender treatment funding provided for the Non-HRSO population.

As of the Governor’s budget, DAPO’s funding for HRSO treatment in 2013-14 was \$27.7 million, based on an average daily population of 4,097. However, the department has had trouble obtaining adequate treatment services. At the start of 2012-13, there were only 600 filled contracted sex offender treatment slots. CDCR reports that, since then, DAPO has significantly increased the number of contracted HRSO treatment slots and is working to enroll HRSO parolees.

**Recommendation.** Approve as proposed.

### Issue 3 – Office of Legal Affairs Attorney General Fees

**Governor’s Proposal.** An April Finance Letter proposes \$11.5 million General Fund to augment CDCR’s, Office of Legal Affairs’ budget for payment of fees and costs to the Office of the Attorney General (OAG) for litigation services provided to CDCR.

**Background.** Prior to the 2011 budget act, the OAG had a billable relationship with clients whose budgets are supported by special funds. However, for clients whose budgets are supported by the General Fund, the OAG received a direct General Fund appropriation to provide legal services. The 2011 budget revised this process to make all of the OAG’s state clients billable, including the General Fund clients. This change was driven by OAG resource pressures and was meant to allow the OAG and its state clients to manage their legal services resources in a more efficient manner. Pursuant to this change, the OAG began billing CDCR directly for legal services. In order to pay for these services, CDCR received an appropriation of \$40.4 million.

At the end of 2011-12, the OAG billed CDCR \$51.9 million, leaving an \$11.5 million shortfall that was covered by redirection of other resources. The CDCR anticipates that they will continue to utilize OAG legal services at a similar rate, which is driving the current request.

**Staff Comment.** In the year and a half since the OAG began billing CDCR for legal services, CDCR’s costs have clearly outpaced their budget. However, staff would note that one of the justifications presented to the Legislature for allowing the OAG to bill state departments for legal services was that each department would manage their use of OAG resources in a more efficient manner, thereby, reducing costs. As such, the CDCR reports that it has taken steps to improve efficiencies in its working relationship with the OAG, including:

- In 2012, CDCR, in conjunction with the OAG, undertook a pilot project which serves to delegate settlement authority to the OAG, in appropriate cases. The purpose of the pilot project is to settle certain cases early in the litigation and streamline settlement approval processes, thus reducing overall litigation costs to CDCR.
- Attorneys on CDCR’s litigation management team continue to evaluate individual cases in an effort to balance liability exposure with the cost of defense to determine the most reasonable and cost-efficient resolution of those cases for CDCR. Those attorneys also make every effort to resolve cases of clear liability as soon as possible to reduce the amount of litigation costs incurred on those cases. The above-described pilot project greatly reduces the need for CDCR’s litigation management team attorneys and OAG counsel to spend time evaluating cases with minimal liability exposure, thus allowing them to focus their time managing and resolving cases with more significant exposure to liability and cases with the potential to affect CDCR’s policies and procedures.

- Utilizing CDCR staff as often as possible for nonspecific litigation functions; e.g., review of documents for discovery responses, drafting discovery responses, drafting necessary declarations for filings, drafting of regulations and policy to address litigated issues.

However, even with these efforts, CDCR has not been able to reduce the number of OAG billable hours. In the two years prior to the switch to billable hours, 2008-09 and 2009-10, the OAG estimated that CDCR required 295,071 and 243,638, hours of staff time, respectively. Since the switch to billable hours, CDCR has been billed for 311,057 hours in 2011-12 and 145,911 hours in 2012-13 (thru 12/31/12).

One of the means used to cover the cost of OAG services has been the redirection of resources available through staffing vacancies. CDCR's Office of Legal Affairs is currently authorized for 187.7, positions of which 150.7 are filled.

Staff acknowledges that there appears to be a gap between the amount of funding provided to CDCR to pay for OAG legal services and the actual cost of these services. However, the driver of this gap is unclear and, in fact, the department has recently indicated that there are OAG costs that CDCR was responsible for, prior to the 2011-12 switch, that are a significant factor. In addition, before additional funding is provided, the department should provide greater detail on the actions that have been taken to contain OAG legal services costs, the savings associated with these actions, and the reasons that further cost savings measures are not feasible.

**Recommendation.** Reject the proposal. Adopt budget bill language requiring CDCR to report to the Legislature, by April, 1 2014, on 1) the efforts the department has taken to contain OAG legal services costs, 2) the savings associated with these actions and the extent to which these savings may increase in future years, and 3) any additional steps the department could take to create efficiencies and the amount of savings such steps would create or the reasons that further cost savings measures are not feasible. In addition, the report should contain detail regarding drivers of these costs, including: 1) the types of cases that drive the need for OAG services, 2) the extent to which any of these cases can be handled by CDCR staff in the Office of Legal Affairs, 3) the number of cases in each type, and 4) a breakout of the type of services provided by the OAG for each case type, along with a breakout of costs, or billable hours, associated with the services performed.

## Issue 4 – Correctional Officer Academy Budget Bill Language

**Governor’s Proposal.** An April Finance Letter proposes budget bill language to authorize the Department of Finance, upon notification to the Legislature, to augment CDCR’s Correctional Officer (CO) academy, based on a need to train cadets above the currently-funded level.

**Background.** As part of the *Blueprint*, the CDCR received funding to accommodate 720 cadets for 2013-14. The assumptions that drove this level of funding included recognition that the CDCR would be reducing a significant number of parole agents, who would then transfer to CO positions. As such, a transitional academy was established through funding provided in the 2012 budget act.

The Department of Finance is now reporting that the CO and cadet availability assumptions have not materialized to the extent necessary to ensure that CO vacancies are appropriately filled in 2013-14. Based on updated projections, it appears CDCR will have a significantly higher cadet need in 2013-14 (approximately 2,000 cadets). As such, the following language has been proposed to augment the CO academy based on cadet need:

*Upon order of the Director of Finance, the amount available for expenditure in this item may be augmented by the amount necessary to address the department’s projected Correctional Officer cadet need. The Department of Finance shall provide notification in writing to the Joint Legislative Budget Committee of any augmentation approved under this provision not less than 30 days prior to the effective date of the augmentation. This 30-day notification shall include: a) a comprehensive analysis of the Correctional Officer need including vacant, filled, and temporary positions, b) assumptions relating to attrition rate, available resources, and processing timelines, and c) a detailed workload and cost analysis that compares the current funding level to the overall cadet need.*

**Staff Comment.** It appears that the actual cadet need in 2013-14 will likely be significantly higher than the 720 cadets that were assumed in the Governor’s budget. Because of the multiple factors that impact this need (including; staffing of the Correctional Health Care Facility and DeWitt Annex, layoffs resulting from realignment, and attrition), the proposed approach for budget bill language to augment the academy, as necessary, is reasonable. However, the language should be amended to cap the amount by which funding can be augmented, based on the department’s academy capacity. This cap should be \$16.6 million based on a total capacity to train an additional 680 cadets.

**Recommendation.** Approve the requested budget bill language, revised to set a cap of \$16.6 million.

## **Commission on State Mandates (8885)**

The objective of the Commission on State Mandates is to fairly and impartially hear and determine if local agencies and school districts are entitled to reimbursement for increased costs mandated by the state, consistent with Article XIII B, Section 6 of the California Constitution. The Commission was created as a quasi-judicial body to determine state-mandated costs. The Commission consists of the Director of Finance, the State Controller, the State Treasurer, the Director of the Office of Planning and Research, a public member with experience in public finance, and two additional members from the categories of city council member, county supervisor, or school district governing board member, appointed by the Governor and approved by the Senate.

### **Issue 1 – Domestic Violence Background Checks**

**Governor’s Proposal.** The Governor’s budget proposes to suspend the mandate that requires local prosecutors to review criminal histories of defendants accused of domestic violence-related crimes and provide specified information to the courts. It also would allow the state to defer, to a future date, its obligation to pay the \$15.9 million related to this mandate, owed to local governments. Suspending the mandate would make local compliance optional in the budget year.

**Background.** Chapter 572, Statutes of 2001 (SB 66, Kuehl), made several changes to state law related to domestic violence proceedings in criminal and family courts. Among these changes, Chapter 572 required that, in all criminal domestic violence cases, prosecutors must (1) review specified criminal justice databases in order to identify prior convictions and current restraining orders issued against the defendant, (2) present this information to the court at the bail consideration hearing and when the court considers a plea agreement, and (3) send information regarding a new conviction or restraining order to any other California criminal courts with existing restraining orders involving the same or related parties.

In July 2007, the Commission on State Mandates found that the state must reimburse cities and counties for specified costs associated with the three above requirements. On September 28, 2012, based on claims filed by 25 cities and counties for 2001-02 through 2010-11, the commission estimated the state’s costs for this mandate to be \$15.9 million.

The Legislative Analyst’s Office (LAO) recommends that the Legislature eliminate future state costs for this mandate by amending statute to eliminate all the elements of state law that have been found to be a state-reimbursable mandate, as they are unnecessary to achieve the Legislature’s objective of ensuring that judges have pertinent information regarding defendants’ criminal histories.

The LAO suggests that, to the extent that the Legislature is concerned that eliminating this mandate would result in judges and prosecutors not consistently reviewing criminal histories before pertinent decisions in domestic violence cases, it could also amend state law to require judges to consider this information without specifically mandating that prosecutors provide it to them. Since the requirement would be placed on judges rather than local governments, this likely would not be considered a state-reimbursable mandate.

**Recommendation.** Approve the suspension, as proposed by the Administration.

## Issue 2 – Identity Theft Investigations

**Governor’s Proposal.** The Governor’s budget proposes to suspend the mandate requirements that local law enforcement take police reports on cases of suspected identity theft and begin subsequent investigations. Suspending the mandate would make local compliance optional in 2013-14. It also would allow the state to defer to a future date, its obligation to pay the \$67.7 million owed to local agencies.

**Background.** Chapter 956, Statutes of 2000 (AB 1897, Davis), made several statutory changes designed to make it easier for victims of identity theft to clear their names. The law permits individuals who believe they are victims of identity theft to initiate a criminal investigation by filing a report with their local law enforcement agency, as well as seek an expedited judicial process certifying their innocence when their identity was falsely used in a crime. Committee analyses of the bill indicate that the Legislature expected these provisions to be state-reimbursable mandates, but that the costs would be minor.

In March 2009, the Commission on State Mandates found that local law enforcement costs associated with two elements of Chapter 956, requirements to take police reports on cases of suspected identity theft and begin subsequent investigations, are reimbursable. In September 2012, the commission adopted a statewide cost estimate of \$67.7 million based on claims submitted by about 200 cities and counties for the years 2002-03 through 2010-11.

According to the administration, local law enforcement entities have inherent reasons to continue these activities, even without state reimbursement.

The LAO has recommended that the Legislature eliminate future state costs for this mandate by amending the requirements that local law enforcement agencies take a police report and begin an investigation when a person residing in their jurisdiction reports suspected identity theft. According to the LAO, taking police reports for and beginning investigations of alleged crimes, including identity theft, are basic responsibilities of local law enforcement agencies, and the associated costs should be borne by local governments and not the state.

**Recommendation.** Approve the suspension, as proposed by the Administration.

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Curren D. Price, Jr.



Thursday, May 9, 2013  
9:30 am or Upon Adjournment of Session  
Room 113

Consultants: Joe Stephenshaw

## OUTCOMES

Item Number and Title

Page

### Vote Only

- 1750 California Horse Racing Board
  - (1) Exchange Wagering ..... (Approved 2-0, Price absent)

### To be Heard

- 5225 California Department of Corrections and Rehabilitation
  - (1) Proposition 36 Workload.....(Approved 2-0, Price absent)
  - (2) Sex Offender Treatment for Non-High Risk Parolees (Approved 2-0, Price absent)
  - (3) Office of Legal Affairs Attorney General Fees(Approved \$6.4 million on a one-time basis and budget bill language as outlined in the Staff Recommendation, 2-0, Price absent)
  - (4) Correctional Officer Academy Budget Bill Language (Approved with revisions to limit expenditures to the academy, exclude from 9840, and cap at \$16.6 million, 2-0, Price absent)
- 8885 Commission on State Mandates
  - (1) Domestic Violence Background Checks .....(Approved 2-0, Price absent)
  - (2) Identity Theft Investigations .....(Approved 2-0, Price absent)

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**Vote Only**

**California Horse Racing Board (1750)**

**Issue 1 – Exchange Wagering**

**Governor’s Proposal.** An April finance letter proposes \$443,000 from the Horse Racing Fund, per-year on a two-year limited-term basis, to implement exchange wagering in California.

**Recommendation.** Approve as budgeted.

**Items to be Heard**

**California Department of Corrections and Rehabilitation (5225)**

**Issue 1 – Proposition 36 Workload**

**Governor’s Proposal.** An April Finance Letter proposes \$766,000 General Fund in 2013-14 (\$153,000 General Fund in 2014-15) to fund overtime needed to address workload resulting from the passage of the Three Strikes Reform Act of 2012 (Proposition 36).

**Recommendation.** Approve as proposed.

## **Issue 2 – Sex Offender Treatment for Non-High Risk Sex Offender Parolees**

**Governor’s Proposal.** An April Finance Letter proposes \$5 million General Fund in 2013-14 (\$12.4 million ongoing, beginning in 2014-15) in order to provide mandatory sex offender treatment to both high-risk and non-high-risk sex offenders.

**Recommendation.** Approve as proposed.

## **Issue 3 – Office of Legal Affairs Attorney General Fees**

**Governor’s Proposal.** An April Finance Letter proposes \$11.5 million General Fund to augment CDCR’s, Office of Legal Affairs’ budget for payment of fees and costs to the Office of the Attorney General (OAG) for litigation services provided to CDCR.

**Recommendation.** Reject the proposal. Adopt budget bill language requiring CDCR to report to the Legislature, by April, 1 2014, on 1) the efforts the department has taken to contain OAG legal services costs, 2) the savings associated with these actions and the extent to which these savings may increase in future years, and 3) any additional steps the department could take to create efficiencies and the amount of savings such steps would create or the reasons that further cost savings measures are not feasible. In addition, the report should contain detail regarding drivers of these costs, including: 1) the types of cases that drive the need for OAG services, 2) the extent to which any of these cases can be handled by CDCR staff in the Office of Legal Affairs, 3) the number of cases in each type, and 4) a breakout of the type of services provided by the OAG for each case type, along with a breakout of costs, or billable hours, associated with the services performed.

## **Issue 4 – Correctional Officer Academy Budget Bill Language**

**Governor’s Proposal.** An April Finance Letter proposes budget bill language to authorize the Department of Finance, upon notification to the Legislature, to augment CDCR’s Correctional Officer (CO) academy, based on a need to train cadets above the currently-funded level.

*Upon order of the Director of Finance, the amount available for expenditure in this item may be augmented by the amount necessary to address the department’s projected Correctional Officer cadet need. The Department of*

*Finance shall provide notification in writing to the Joint Legislative Budget Committee of any augmentation approved under this provision not less than 30 days prior to the effective date of the augmentation. This 30-day notification shall include: a) a comprehensive analysis of the Correctional Officer need including vacant, filled, and temporary positions, b) assumptions relating to attrition rate, available resources, and processing timelines, and c) a detailed workload and cost analysis that compares the current funding level to the overall cadet need.*

**Recommendation.** Approve the requested budget bill language, revised to set a cap of \$16.6 million.

## **Commission on State Mandates (8885)**

### **Issue 1 – Domestic Violence Background Checks**

**Governor’s Proposal.** The Governor’s budget proposes to suspend the mandate that requires local prosecutors to review criminal histories of defendants accused of domestic violence-related crimes and provide specified information to the courts. It also would allow the state to defer, to a future date, its obligation to pay the \$15.9 million related to this mandate, owed to local governments. Suspending the mandate would make local compliance optional in the budget year.

**Recommendation.** Approve the suspension, as proposed by the Administration.

### **Issue 2 – Identity Theft Investigations**

**Governor’s Proposal.** The Governor’s budget proposes to suspend the mandate requirements that local law enforcement take police reports on cases of suspected identity theft and begin subsequent investigations. Suspending the mandate would make local compliance optional in 2013-14. It also would allow the state to defer to a future date, its obligation to pay the \$67.7 million owed to local agencies.

**Recommendation.** Approve the suspension, as proposed by the Administration.

# **SUBCOMMITTEE NO. 5**

# **Agenda**

**Senator Loni Hancock, Chair**  
**Senator Joel Anderson**  
**Senator Curren D. Price, Jr.**



**Thursday, May 23, 2013**  
**10:00 a.m.**  
**Room 113**

**Consultants: Mark Ibele & Brady Van Engelen**

## **Part A**

### **DEPARTMENTS TO BE HEARD**

*(Page 2 Lists Specific Departments and Issues)*

0820	Department of Justice
7100	Employment Development Department
7350	Department of Industrial Relations
7501	Department of Human Resources
7503	State Personnel Board
7900	Public Employees' Retirement System
7920	State Teachers' Retirement System
9650	Health and Dental Benefits for Annuitants
9800	Augmentation for Employee Compensation
CS 3.60	Contribution to Public Employees' Retirement Benefits
CS 4.20	Contribution to Public Employees' Contingency Reserve Fund

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**AGENDA – PROPOSED “VOTE ONLY” ITEMS**

*Please see Summary Chart on Page 4  
Issue descriptions begin on Page 5*

<u>Item</u>	<u>Department</u>	<u>Page</u>
<b><i>VARIOUS PUBLIC EMPLOYMENT AND RETIREMENT BUDGET ITEMS: TECHNICAL ADJUSTMENTS</i></b>		
<b>7501</b>	<b>Department of Human Resources .....</b>	<b>5</b>
	Issue 1 – Alternative Retirement Program: Extension of Reimbursement Expenditure Authority-Budget Bill Language .....	5
<b>7900</b>	<b>Public Employees’ Retirement System.....</b>	<b>5</b>
	Issue 2 – Incorporate CalPERS Board Approved Budget into the Budget Act .....	5
<b>7900/CS 4.20</b>	<b>Public Employees’ Retirement System/Contribution to Public Employees’ Contingency Reserve Fund.....</b>	<b>6</b>
	Issue 3 – Dependent Eligibility Verification Audit .....	6
<b>7920</b>	<b>State Teachers’ Retirement System .....</b>	<b>6</b>
	Issue 4 – Revised 2011-12 Creditable Compensation .....	6
<b>9800</b>	<b>Augmentation for Employee Compensation .....</b>	<b>7</b>
	Issue 5 – Updated Health Care Enrollment Figures and CAPS Adjustments.....	7
<b>3.60</b>	<b>Contribution to Public Employees’ Retirement Benefits .....</b>	<b>8</b>
	Issue 6 – California State University Employer Contribution to CalPERS Budget Bill Language.....	8
<b><i>OTHER DEPARTMENTS</i></b>		
<b>7100</b>	<b>Employment Development Department.....</b>	<b>8</b>
	Issue 7 – Unemployment Insurance Loan Interest Payment Amount Update .....	8
	Issue 8 – May Revision Updates on Unemployment Insurance, Disability Insurance, and School Employees Fund Adjustments .....	9
<b>0820</b>	<b>Department of Justice .....</b>	<b>9</b>
	Issue 9 – Remote Caller Bingo .....	9



**Summary Chart of Issues Proposed for Vote Only:**

#	Issue	Amount	Fund Source	Staff Recommendation
<b>Department of Human Resources (7501)</b>				
1	Alternative Retirement Program: Extension of Reimbursement Expenditure Authority Budget Bill Language	BBL	N/A	Approve
<b>Public Employees' Retirement Fund (7900)</b>				
2	Incorporate CalPERS Board Approved Budget into the Budget Act	Various increases and decreases	Public Employees Retirement Fund	Approve
<b>Public Employees' Retirement System/Contribution to Public Employees' Contingency Reserve Fund (7900/CS 4.20)</b>				
3	Dependent Eligibility Verification Audit	\$2,005,000	Various Funds	Approve
<b>State Teachers' Retirement System (7920)</b>				
4	Revised 2011-12 Creditable Compensation	\$2.1 million	GF	Approve
<b>Augmentation for Employee Compensation (9800)</b>				
5	Updated Health Care Enrollment Figures	\$3,609,000 \$1,467,000	GF Other Funds	Approve
<b>Contribution to Public Employees' Retirement Benefits (CS 3.60)</b>				
6	California State University Employer Pension Contribution to CalPERS Budget Bill Language	\$49.7 million and BBL	GF	Approve adjusted amount
<b>Employment Development Department (7100)</b>				
7	Unemployment Insurance Loan Interest Payment Amount Update	Decrease of \$29.744,000	General Fund	Approve
8	May Revision Updates, Unemployment Insurance, Disability Insurance, and School Employees Fund Adjustments	Various increases and decreases	Other Funds	Approve
<b>Department of Justice (0820)</b>				
9	Remote Caller Bingo	\$48,000	Other Funds	Approve

**VOTE:**

<b><i>Items Proposed for Vote Only – Issue Descriptions</i></b>
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<b><i>Issue 1 – Department of Human Resources (7501): Alternative Retirement Program Extension of Reimbursement Expenditure-Authority Budget Bill Language</i></b>
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**Governor’s Budget Request.** In a Spring Finance Letter, the Governor requests budget bill provisional language allowing the Department of Human Resources (CalHR) to extend the expenditure period for reimbursed funds, received from the administration of the Alternative Retirement Program (ARP) in 2013-14, until June 30, 2017.

**Background.** Prior to the enactment of Chapter 296, Statutes of 2012, the ARP was a retirement savings program that certain state employees were automatically enrolled in for their first two years of employment. The ARP provided up to two years of retirement savings, in place of retirement service credit under CalPERS. Chapter 296, the Public Employees’ Pension Reform Act of 2012, effectively eliminated the ARP by specifying that no new employees will enter the ARP on or after January 1, 2013.

However, the ARP will still exist as state employees who enter the ARP up to December 31, 2013, will be “active” and making contributions until their two years are up (no later than December 31, 2014). Those final employees will then be “inactive” until December 31, 2016. The period goes two years past the end of the ARP program because once an employee enters ARP, they are in the program for four years; however, the employee’s department only reimburses CalHR during the first two years while the employee is active; and does not pay for the employee once they reach the inactive status. The funds a department pays in the first two years is sufficient for the four years that employee will be in ARP (hence the reason for needing an extension on the availability of the funds, but not needing additional funds). The Administration added a six-month buffer to allow billing to be received, and be paid, beyond the time when the last employee will leave the ARP program.

**Staff Comment.** Staff has no concerns with this request.

<b><i>Issue 2 – Public Employees’ Retirement System (7900): Incorporate CalPERS Board Approved Budget into the Budget Act</i></b>
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**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests various adjustments (both increases and decreases) to the CalPERS Board of Administration Budget, to reflect the request by the CalPERS Board to incorporate its approved budget into the 2013-14 Budget Act.

**Background.** The annual budget act displays, for informational purposes only, the CalPERS’ Board of Administration budget, as CalPERS’ has continuous appropriation authority. The Governor’s January budget includes the estimated CalPERS’ Board of Administration budget for the upcoming fiscal year. On April 17, 2013, the CalPERS Board adopted a final budget. Adoption of this request will ensure that the final 2013-14 Budget Act will accurately reflect the CalPERS Board approved budget.

**Staff Comment.** Staff has no concerns with this request. It represents a necessary technical adjustment to the January budget.

***Issue 3 – Public Employees’ Retirement System/Contribution to Public Employees’ Contingency Reserve Fund (7900/CS 4.20): Dependent Eligibility Verification Audit***

**Governor’s Budget Request.** In a Spring Finance Letter, the Governor requests a one-time augmentation of \$2.005 million to support CalPERS’ Dependent Eligibility Verification Audit of state employees and annuitants with dependents enrolled in health plans. The request includes \$169,000 to audit members of the California Association of Highway Patrolmen and the California Correctional Peace Officers’ Association, who elected to enroll in their unions’ Benefit Trust plans, instead of plans covered by CalPERS.

In a conforming action, the Spring Finance Letter also requests that Control Section 4.20, the administrative rate paid by employers, be increased from 0.30 percent to 0.33 percent in Fiscal Year 2013-14, to provide increased revenue to the Contingency Reserve Fund, to cover the one-time augmentation.

**Background.** This subcommittee heard the Dependent Eligibility Verification Audit at its March 7 hearing as an informational item. That agenda provides details about the audit parameters and schedule. The Spring Finance letter provides the necessary resources to support the audit. It is estimated that removing ineligible dependents from employees’ plans could result in approximately \$21.5 million in health claims cost avoidance.

**Staff Comment.** Staff has no concerns with this request.

***Issue 4 – California State Teachers’ Retirement System (7920, 6300, 6878 and 6305): Revised 2011-12 Creditable Compensation***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests an increase of \$2.1 million GF, over the Governor’s January budget level, due to an increase in the creditable compensation reported by the California State Teachers’ Retirement System (CalSTRS) for fiscal year 2011-12, which increases the GF retirement contribution for fiscal year 2013-14.

**Background.** This May Revision proposal constitutes a technical correction regarding the amount of GF contribution to CalSTRS, based on a revision of creditable compensation as reported for 2011-12. The true-up is a percentage-driven calculation and is the result of a lag in reporting of actual compensation. The January budget estimated 2013-14 contributions of \$1.358 billion, based on an October 2012 report of prior-year teacher payroll by CalSTRS. The actual amount is based on the April 2013 submission by CalSTRS, which updated the prior-year teacher payroll.

This request represents a necessary technical adjustment to the GF CalSTRS payment for 2013-14. The budgeted payment amount consists of four separate components, as dictated by state law. The revision in the creditable compensation results in a total increase in

funding of \$2.1 million. This increase consists of \$814,000 in the Defined Benefit payment, \$310,000 in the Pre-1990 Defined Benefit Level payment, and \$1,009,000 for Supplemental Benefit Maintenance Account contribution.

**Staff Comment.** Staff has no concerns with this request. It represents a necessary technical adjustment to the January budget.

***Issue 5 – Augmentation for Employee Compensation (9800): Updated Health Care Enrollment Figures***

**Governor's Budget Request.** In a May Revision Finance letter, the Governor requests an increase of \$3.509 million GF (\$1.467 million other funds); over the Governor's January Budget, level to reflect updated health care enrollment figures.

**Background.** This statewide budget item allows for adjustments in departmental budgets to account for changes in employee compensation, including salaries and health and retirement benefits, based on a determination regarding the required funding levels.

Additionally, the Subcommittee may consider a "like pay-like work" salary adjustment for 14 supervisory scientist classifications. Beginning in 2006, the supervisory division of the California Association of Professional Scientists has argued their members were performing similar work as certain engineering supervisors and should be paid similar salaries. The Department of Personnel Administration (DPA) held a hearing on the issue and on April 28, 2008 recommended salary increases for the supervisory scientist classifications.

Despite this ruling, the classifications have never received an increase. This salary adjustment has never been included in a Governor's January budget proposal. If the adjustment were made for Fiscal Year 2012-13, it would add \$12.1 million in costs, with only \$2.3 million coming from the General Fund.

**Staff Comment.** Staff has no concerns with this request. It represents necessary technical adjustments to the January budget.

With regard to the supervisory scientist classifications, litigation involving CAPS and the state over this issue led to a state Court of Appeals decision in May 2011. The court found that the Department of Finance has no obligation to fund DPA-approved budget changes, but that Government Code section 13337 states that the information should be provided to the Legislature to allow it to make additional appropriations to fund proposed salary changes.

To address the DPA ruling that is now more than five years old, staff recommends creating a new Budget Bill Control Section to allow the salary changes.

**Staff Recommendation.** Approve May Revision request and an additional \$100,000 and approve a new Budget Bill Control Section to appropriate the funds necessary to adjust salaries for the 14 supervisory scientist classifications.

***Issue 6 – Contribution to Public Employees’ Retirement Benefits (CS 3.60): California State University Employer Pension Contribution to CalPERS Budget Bill Language***

**Governor’s Budget Request.** The January budget provided a GF increase to fund the annual increase in costs for the California State University’s (CSU) required employer pension contribution to CalPERS. In future years, and under proposed budget bill provisional and trailer bill language, CSU will continue to receive annual GF adjustments based on the 2012-13 payroll level; however, if CSU chooses to increase payroll expenditures above that level, CSU would be responsible for the associated pension costs.

**Background.** Senate Budget Subcommittee No. 1 heard the Governor’s proposal on March 14, 2013, and took action to approve the proposal in concept, withholding determination of the “base payroll”, year pending receipt of further information from the Administration. Subcommittee No. 1 will revisit this issue post the May Revision.

**Staff Comment.** Staff recommends approval of \$49.7 million increase as a ‘placeholder’ amount pending receipt of the final notification of the required amount. Given that rates have not been determined as yet, the funding ‘placeholder’ will allow for the adoption of the final amount once rates have been determined.

***Issue 7 – Employment Development Department (7100): Unemployment Insurance Loan Interest Payment Amount Update***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests a decrease of \$29.744 million, in the amount of the General Fund interest payment due to the federal government, for borrowing that has occurred to provide unemployment insurance (UI) benefits.

**Background.** The January budget proposed utilizing \$291.2 million GF to make the third interest payment, due to the federal government, for the quarterly loans that the EDD has been obtaining from the federal government since January 2009, to cover the UI Fund deficit (estimated at \$10.2 billion at the end of 2013). The January budget estimated a federal interest rate of 2.9430 percent, resulting in the payment amount of \$291.2 million. The federal Department of Labor has since announced that the 2013 interest rate is 2.5765 percent. Consistent with prior years, the department has updated the estimated interest payment amount in the spring based on the new interest rate and the May 2013 Unemployment Insurance Fund Forecast which estimates UI revenue and payments.

**Staff Comment.** Staff has no concerns with this request as it represents a necessary technical adjustment to the January budget. The subcommittee approved the GF payment for the interest payment due to the federal government at its March 7, 2013, hearing.

***Issue 8 – Employment Development Department (7100): May Revision Updates, Unemployment Insurance, Disability Insurance, and School Employees Fund Adjustments***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests to adjust funding for the new estimates of claims and payments for the Unemployment Insurance (UI) Program, the Disability Insurance (DI) Program, and the School Employees Fund, as follows:

- UI Program and Benefit Adjustments. The May Revision Finance Letter includes a request to decreased UI benefits authority by \$351.1 million in the Current Year (2012-13), and that the UI benefits authority be decreased by \$72.0 million for the Budget Year.
- DI Program. The May Revision includes a request for a reduction of 22.9 temporary help personnel years (PY) and a decrease of \$2.3 million for administrative support funding for the current year. Additionally, this request includes an increase of \$181.2 million in DI benefits authority for 2012-13. For 2013-14, the May Revision Finance Letter includes a request for a reduction of 42.5 temporary positions and a \$3.8 million decrease in administrative support funding. Included in this request for the budget year, is a request for an increase of \$153.1 million in DI benefits authority.
- School Employees Fund (SEF). The May Revision includes a request to decrease payments to the School Employees Fund by \$4.0 million. The reduction is due to an improving economy and a reduced contribution paid into the program by public schools and community college districts. Additionally, this May Revision request includes a request to reduce Current Year benefit authority by \$33.418 million.

**Staff Comment.** Staff has no concerns with this request. It represents necessary technical adjustments to the January budget.

***Issue 9 – Department of Justice (0820): Remote Caller Bingo***

**Governor’s Budget Request.** The Governor’s May Revise includes a request for \$48,000 from the California Bingo Fund in order to complete backlogged workload from the Gambling Control Commission, and associated licensing and field enforcement oversight of remote caller bingo charitable organizations, manufacturers, distributors, and vendors as mandated by SB 1369 (Chapter 748, Statutes of 2008). This request also includes trailer bill that would increase annual licensing fees.

**Background.** The Gambling Control Commission assumed responsibility of procedures related to the licensing of vendors wishing to conduct remote caller bingo related activities. Those responsibilities have subsequently been transferred to the Department of Justice’s Gambling Bureau of Gambling Control (Bureau).

The workload required of the bureau is as follows: three initial license applications, sixteen renewal applications and forty-five individual renewal license applications. The Bureau

estimates that the current workload of processing these applications could be completed on an overtime basis by utilizing existing staff.

**Staff Comment:** In 2011 the Gambling Control Commission (Commission) ceased processing all workload associated with the Remote Caller Bingo program due to fiscal constraints. However, the decision to cease the program was met with opposition by vendors who had already been licensed or had the desire to be licensed. Legal action was taken against the Commission to continue all activities associated with remote caller bingo under the statutory requirements of SB 1369. In May of 2012 the parties entered into a stipulation and order, thereby staying the program's cessation. A court ruled in favor of the plaintiffs and ordered the Commission to continue to regulate the remote caller bingo program and to renew any licenses.

In accordance the Governor's GRP No. 2 the Bureau will assume the background investigation related workload on July 1, 2013. The requested funds will the Bureau to process existing licensees and to review pending licenses seeking licensure as a manufacturer, distributor, or vendor in accordance with current statute.

**Staff Recommendation:** Approve May Revise Request.

**Items Proposed for Vote - Discussion****7100 EMPLOYMENT DEVELOPMENT DEPARTMENT****Issue 1: Unemployment Insurance Program Administration Augmentation**

The Governor's May Revise requests a one-time increase of \$29.7 million, from the Employment Development Department (EDD) Contingent Fund, to allow the retention of 297 positions in the Unemployment Insurance (UI) Program that otherwise would be lost, due to inadequate federal funding.

**Background:** The U.S. Department of Labor funds the state's costs related to UI Program administration, which includes processing UI claims, answering phone calls and collecting payroll taxes from employers. As discussed in the Subcommittee's March 12, 2013 hearing, EDD officials note that federal funding to administer the UI program has fluctuated dramatically in recent years, and funding levels have not matched the state's funding request in more than a decade. The amount of funding states receive to administer the program is based on a formula tied to unemployment levels and other data, but in practice there are not sufficient funds available to provide states with the funding levels that the formula would dictate. Thus, over the past seven years EDD has received about 20 percent less funding than it should have to administer the UI program. EDD officials state that their projected funding need is \$628.7 million in 2013-14, but projected federal funding will be \$457.6 million – a \$171.1 million gap.

Federal sequestration will further exacerbate this problem. EDD states that, in addition to the annual underfunding issue, sequestration may cut another \$31.2 million from projected federal funding for this program. In all, the department could expect to lose more than 1,100 positions in 2013-14, due to the shortfall in federal funding.

The EDD Contingent Fund is supported by penalty and interest payments from employers who have not been compliant in paying employment taxes. EDD has traditionally only used this fund to support other department programs, and then transferred remaining money to the General Fund. The January budget projected the transfer of \$29.8 million to the General Fund for 2013-14. Instead, the administration proposes in the May Revise, to use \$29.7 million from this fund to support 297 positions that otherwise would be lost due to the shortfall in federal funds.

**Staff Comments:** EDD is the frequent target of complaints from citizens seeking answers to questions about unemployment insurance. Further loss of federal funding could make this problem worse.

As discussed in the March hearing, the department is pursuing information technology projects to increase efficiencies in the administration of the program. Additionally, EDD notes that will undergo a zero-based budget analysis for the 2014-15 budget to attempt to identify other efficiencies.

**Staff Recommendation:** Approve May Revise Finance Letter request.

**VOTE:**

**7350****DEPARTMENT OF INDUSTRIAL RELATIONS****Issue 2: Cal/OSHA Program, Enforcement of Workplace Safety and Health Standards**

**Prior Subcommittee Actions.** On March 7, 2013, the subcommittee examined, on an informational basis, the adequacy of the current Cal/OSHA enforcement and inspection process and program for ensuring workplace health and safety. In addition, and in light of the August 6, 2012 Chevron Richmond refinery fire, the subcommittee focused some of its discussion on the Process Safety Management (PSM) Unit within Cal/OSHA, whose purpose is preventing or minimizing the consequences of catastrophic releases of toxic, flammable, or explosive chemicals.

On March 7, 2013, the subcommittee redirected \$350,000 (special fund), and four positions previously associated with the collection of the high hazard assessment, to the PSM Unit within the Cal/OSHA program (the high hazard assessment was repealed in a separate action on March 7, 2013).

**Background.** Cal/OSHA is responsible for enforcing occupational safety and health standards, investigating occupational injuries, and inspecting and permitting elevators, amusement rides, and passenger tramways. Funding for Cal/OSHA has historically come from the General Fund, several special funds, and federal funds. Since 2009, Cal/OSHA no longer receives GF support (except for \$431,000 in support of a federally-matched injury and illness program). As part of the Budget Act of 2009, GF was replaced with revenue from the Occupational Safety and Health (OSH) Fund, which is an employer assessment on an employer's total workers' compensation insurance premium or on total "indemnity" (workers' compensation losses) for self-insured employers. OSH funding represents roughly 60 percent of the total funding for Cal/OSHA, with the remaining percentage funded by the Targeted Inspection and Consultation Fund and federal OSHA dollars.

Cal/OSHA staffing levels have remained fairly constant since 2009, although they reflect several across-the-board workload (staffing) reductions between 2009 and 2012 and, as required by the Administration, including, but not limited to, the reduction of "salary savings" or "vacant" positions, which could not be filled in any case. The same can be stated about staffing in the Process Safety Management (PSM) Unit within Cal/OSHA. The subcommittee action on March 7 will add four positions to the PSM Unit which, at that time, had seven inspectors and one field manager.

The LAO reported in February 2013 that employer assessments are an appropriate funding mechanism for Cal/OSHA, on a policy, basis because it is appropriate for the costs of regulatory activities to be paid for by the regulated community that creates the societal need for the regulation, and benefits from the regulation (such as being issued a permit to operate a business). For most state programs, it has been the policy of the Legislature to fund regulatory activities from fees.

In January 2013, Cal/OSHA found that Chevron did not follow the recommendations, dating back to 2002, of its own inspectors and metallurgical scientists to replace the corroded pipe that ultimately ruptured and caused the August 2012 fire. Chevron also did not follow its own

emergency shutdown procedures when the leak was identified, and did not protect its employees and employees, of Brand Scaffolding, who were working at the leak site.

In January 2013, Cal/OSHA issued close to \$1 million in fines against Chevron, the biggest penalty in the department's history, and the maximum allowable under current law, for failing to replace the corroded pipe, not implementing its own emergency procedures, and violating leak-repair procedures. Cal/OSHA issued 25 citations against Chevron, 23 of which were classified as "serious" due to the realistic possibility of worker injuries and deaths in the fire. Eleven of these serious violations were also classified as "willful" because Cal/OSHA found Chevron did not take reasonable actions to eliminate refinery conditions that it knew posed hazards to employees, and because it intentionally and knowingly failed to comply with state safety standards.

**Staff Comment.** Based on the testimony on March 7, 2013, as well as reports released since that date by a variety of regulatory and oversight agencies, including the U.S. Chemical Safety Board, legitimate questions have been raised about the adequacy of the state's current PSM Unit inspection process.

The process hinges on industries implementing a comprehensive safety plan that includes a precise determination of what hazards exist and procedures to eliminate or reduce them. Employers must ensure that machinery and equipment are in good condition, that work procedures are safe, that hazards are controlled, and that workers are trained to safely operate the equipment, recognize hazards, and respond appropriately in emergency situations. Then, based on data the PSM unit gathers from its own research and from other agencies, a programmed Program Quality Verification (PQV) inspection is scheduled, typically for one particular unit or process within a refinery and one element of the PSM regulations, for each of the fifteen refineries in California each year. Given resource constraints, these PQV inspections are not "wall-to-wall" comprehensive inspections.

The issue before the subcommittee is not the Chevron Richmond refinery per se, but rather broader questions about the Cal/OSHA program, and the degree to which the existing enforcement and inspection process and program is adequate to ensure workplace health and safety, particularly with regard to the PSM unit. In this vein, an area of subcommittee's focus on March 7, 2013, continues to be especially crucial. Specifically why the Department of Industrial Relations has not utilized its existing statutory authority "to fix and collect reasonable fees for consultation, inspection, adoption of standards, and other duties" related to process safety management standards for refinery and chemical plants (Labor Code 7850 et seq).

The U.S. Chemical Safety Board has noted that a standard process for inspecting refineries would be 1,100 hours, annually. California currently has only enough inspectors to conduct 100 hours of inspections, annually. The average state employee works 1,824 hours per year. Based on the number of recommended refinery inspection hours, nine inspectors would be required to provide adequate inspections for the state's refineries. In addition, office staff and a manager may be needed, as well as additional inspectors to work with the state's 1,680 chemical plants.

Labor Code Section 7870 states that the department "may fix and collect reasonable fees for consultation, inspection, adoption of standards, and other duties" in relation to process safety management at these hazardous sites. The department currently does not collect such a fee.

Based on the U.S. Chemical Safety Board report stemming from the Chevron refinery fire, it appears that the department currently does not have enough personnel to ensure worker and citizen safety within these industries. The subcommittee may wish to consider adopting trailer bill language requiring the department to implement a fee by March 31, 2014, to support these activities. It appears that 15 additional staff may be the minimum amount needed to handle all of the required duties.

**Staff Recommendation:** Adopt placeholder budget trailer bill language requiring the Department of Industrial Relations to utilize its existing statutory authority to implement a fee by March 31, 2014, that will support at least 15 new staff to perform process safety management throughout the state and ensure refinery safety, thus conforming to the Assembly action.

**VOTE:**

<b>7501</b>	<b>DEPARTMENT OF HUMAN RESOURCES</b>
<b>7503</b>	<b>STATE PERSONNEL BOARD</b>

<b>Issue 3: Additional Appointments of Exempt Employees</b>
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**Background.** Recent media reports brought transparency to a state human resources practice whereby managers with a fixed salary assumed a secondary rank-and-file position, within the same department. The subcommittee heard this issue on March 7. CalHR testified that it would complete its initial review of additional appointments of exempt employees, and have initial findings, as well as the outline of a solution, by the May Revision. This issue was held open pending receipt of further information from the Administration.

Since that hearing, the State Controller's Office has provided new data runs, detailing exempt employees with additional appointments, over the past five years as displayed in Figure 1 below.

**Figure 1: Count of Unique Employees with Additional Appointments within the Same Department**

<b>Date</b>	<b>Unique Employee Count</b>
April 30, 2008	1,015
October 31, 2008	950
April 30, 2009	821
October 30, 2009	982
April 30, 2010	1,036
October 29, 2010	2,114
April 29, 2011	964
October 31, 2011	899
April 30, 2012	842
October 31, 2012	561

Source: State Controller's Office

As was the case with the October 31, 2012 data run, that was the focus of the March 7, 2013, hearing, during the reporting period the state departments that were the highest utilizers of additional appointments were: (1) Corrections and Rehabilitation; (2) State Hospitals; (3) Social Services; and (4) Motor Vehicles. Further, Corrections was consistently the highest utilizer, representing roughly 47 percent of all additional appointments. The data also shows a correlation to furloughs, as the peak use of additional appointments coincides with peak usage of furloughs.

The affected departments assert that Section 350 of the Personnel Management Policy and Procedures Manual (PMPPM), dated January 1979, sets forth standards and guidelines surrounding eligibility for an additional appointment. Departments also point to Government Code Sections 19050-19237, as the statutes pertaining to additional appointments.

On January 30, 2013, CalHR issued Policy Memo 2013-007, to prohibit departments from making any *new* additional appointments while it undertook a review of: (1) the relevant laws, rules, and prior procedures that have been applied to additional appointments; and (2) each exempt employee additional appointment.

CalHR testified on March 7, that it would complete its review of additional appointments of exempt employees and have initial findings, as well as the outline of a solution, by the May Revision.

On April 25, 2013, CalHR issued Policy Memo 2013-15 to officially ban “additional appointments” for managers and supervisors. This action was taken in advance of the aforementioned reviews being completed. The memo suggests several other established options to address workload and schedule deadlines, including using non-managers, mandatory overtime, shifting employees between similar job classifications, and limited-duration job and training assignments. Finally, the memo reminds departments that they can pay managers an “arduous pay” differential for working extreme hours (arduous pay ranges from \$300 to \$1,200 per month and is authorized under current statute).

The State Personnel Board (SPB) separately testified, at the March 7 hearing, that it planned to work jointly with CalHR to update and develop one comprehensive human resources manual for state departments.

**Staff Comment.** As discussed on March 7, the state lacks a consistent statewide policy as to the use of additional appointments. Rather, the recent use of additional appointments appears, in many ways, to have been an “underground” human resources policy, as it was based on the state’s Personnel Management Policy and Procedures Manual which dates from 1979, that has not been updated or available since 2000. In the same vein, a “policy memo” which is only effective until it is rescinded and replaced with a new memo, is not a sound structure upon which to base human resources decisions in the long-term.

Current state law does not prohibit additional appointments. An additional appointment does not violate the federal Fair Labor Standards Act (FLSA). However, there are separate tests under the FLSA to ensure that the exempt status of the primary position is not compromised, and to determine whether employees were compensated properly. Additional appointments are also not necessarily out of the norm, as a human resources policy. For instance, at Stony Brook Medicine, the academic medical center affiliated with Stony Brook University, the State University of New York, “extra service/dual appointments” are utilized, but under strict conditions. These conditions create an “arm’s length” transaction, in that the additional position is in a different department or unit from the primary position.

In light of the April 25, 2013, policy memo, the subcommittee may wish to consider interim reporting to ensure that the issue of additional appointments for exempt employees, and the identification of a permanent statutory solution, does not recede from the public eye. In addition, the subcommittee may wish to consider following up on SPB testimony about its plan to work jointly with CalHR to provide a comprehensive human resources manual for state departments.

**Staff Recommendation:** Adopt budget trailer bill language to: (1) require CalHR to report by November 30, 2013, the findings of its review of managers and supervisors additional appointments; and (2) require the Administration to submit to the Legislature, as part of the 2014-15 Governor’s January Budget, a statutory solution to the issue of managers and supervisors additional appointments, and a plan for and SPB to update the state’s human resources manual.

**VOTE:**

**7501****DEPARTMENT OF HUMAN RESOURCES****Issue 4: Implementation of In-Home Supportive Services Employer-Employee Relations Act**

**Governor's Budget Request.** The January Budget, as modified on March 1, 2013, requests \$282,000 GF, \$281,000 federal funds; and, four positions to implement Chapter 45, Statutes of 2012, a budget trailer bill pertaining to the In-Home Supportive Services (IHSS) Employer-Employee Relations Act.

The modified request also includes budget bill provisional language providing a GF "backstop", should the federal funds not materialize as projected, and requires notification to the Joint Legislative Budget Committee should this "backstop" be utilized.

This request was first heard by the subcommittee on March 7, 2013. It was held open due to concerns about timing/delays; and to allow further consultation with Senate Budget Subcommittee No. 3 because this issue is a very small part of the much larger Coordinated Care Initiative, which is in the jurisdiction of Subcommittee No. 3.

**Background.** The Budget Act of 2012 authorized the Coordinated Care Initiative (CCI), whereby persons eligible for both Medicare and Medi-Cal would receive medical, behavioral, long-term supports and services, and home- and community-based services coordinated through a single health plan in eight demonstration counties (Alameda, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, and Santa Clara). Chapter 45 contained the necessary statutory changes to implement the human services provisions related to the integration of services, including IHSS, into the CCI.

In 2012, there were around 380,000 IHSS providers with hourly wages, varying by county, and ranging from \$8.00 to \$12.20 per hour. Prior to July 1, 2012, county public authorities and nonprofit consortia were designated as "employers of record", for collective bargaining purposes, on a statewide basis, while the state administered payroll and benefits. Pursuant to Chapter 45, however, collective bargaining responsibilities in the eight counties participating in the CCI, will shift to an IHSS Authority administered by the state.

The resources in this request are based on an estimate that assumes in June 2014, collective bargaining responsibility will begin to transfer to the Statewide Authority and CalHR will be expected to bargain on behalf of the Statewide Authority. The Administration indicates that the four positions in this request will allow CalHR to begin to prepare a collective bargaining platform on behalf of the Statewide Authority, including examining current contracts, observing bargaining sessions, identifying bargaining complexities, building working relationships, and determining legal and health benefit complexities. These staff will also assess the resources needed to begin full implementation of this program in July 2014. Of the four positions, two are in the Labor Relations Division, one is in the Legal Division, and one is in the Benefits Division.

**Staff Comment.** The scheduled phasing for enrollment in the CCI in the eight pilot counties has been further delayed by five months, from the schedule the Administration presented in January. It is now estimated that the only county moving to the statewide authority in 2013-14 is San Mateo, and not until February 2014 (previous estimate was September 2013).

Staff acknowledges that Chapter 45 presents new workload for CalHR and this workload is not absorbable within existing resources. However, it is clear that the Administration's schedule estimates continue to slip, which impacts workload drivers. As such, it appears the total resources requested in 2013-14 are no longer justified.

**Staff Recommendation:** Approve two positions and \$141,000 GF and \$141,000 federal funds to begin implementation of Chapter 45.

**VOTE:**

<b>Issue 5: Examination and Certification Online Systems Project</b>
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**Governor's Budget Request.** In a Spring Finance Letter, the Governor requests \$468,000 General Fund, and \$353,000 Central Service Cost Recovery Fund, and two positions, for the Examination and Certification Online System (ECOS) project in 2013-14. The ECOS project is intended to upgrade and expand the functionality of the current electronic exam and list certification systems, which are comprised of: Examinations; Certifications; Web Exam; Profile; State Restriction of Appointment and Reemployment; Vacant Position Online Search; and the manual Career Executive Assignment Examination and Certification systems.

**Background.** The seven legacy systems were built 30-plus years ago using then-current technology. Business needs and usage have significantly expanded over time, due to advancements in selection technology, the increase in the size of government and its human resource needs, and the decentralization of the selection process. To address these issues, in 2009, the State Personnel Board (SPB) implemented a modified Commercial-off-the-Shelf (COTS) product from JobAps to improve the administration of civil service examinations, the certification of hiring lists, and the review of appointments.

SPB subsequently determined that the JobAps system lacked major functionality and was not performing adequately. In 2011, the SPB submitted a feasibility study report (FSR) to replace the JobAps system with ECOS, an in-house custom application. The FSR was approved by the Technology Agency and work began on the ECOS project.

In July 2012, and pursuant to the Governor's Reorganization Plan No. 1, selection-related responsibilities were transferred from the SPB to the newly-created California Department of Human Resources (CalHR). Also in July 2012, CalHR began reviewing the original plan and found several issues with the ECOS project schedule, budget, and resources. CalHR reassessed the project and determined that the ECOS project had not been adequately staffed, the budget was underestimated by approximately \$1.8 million, and the schedule was underestimated by 22 months.

In conjunction with the Technology Agency, CalHR submitted a Special Project Report (SPR) in an effort to put the ECOS project back on track. The Technology Agency approved the SPR on April 2, 2013; however, that letter reflected incorrect project cost figures. A revised approval letter was provided on April 26, 2013. Instead of a net \$2.7 million increase, the correct increase in overall project costs was \$5.2 million. The "missing" project cost increases were those attributable to continuing project costs and annual maintenance and operation costs.

The request before the subcommittee is the resources the Administration indicates are necessary to support the ECOS project in 2013-14.

Upon completion in early 2017, the ECOS project will result in a new system that eliminates the current outdated manual processes, reduces the cost and time required for exam administration, creates real-time exam results for hiring departments, and mitigates risk by integrating seven disparate systems.

**Staff Comment.** Staff does not doubt that the current legacy examination and certification systems are outdated and require manual interventions that are inefficient. Staff does not doubt that the original FSR justified a need for a new system. However, given the developments in the past twelve months, it appears that the ECOS project is yet another example of a project that was initially under-scoped and under-resourced and now requires a substantial mid-course correction (111 percent increase in total project costs), to prevent project failure and loss of the state's investment to date. Further, SPB's original plan to cover all project costs from within budgeted resources has been abandoned, as CalHR is now requesting a budget augmentation and staff resources to support the project in 2013-14, and the following three fiscal years.

It is also worth noting that, while responsibility for this project moved from SBP to CalHR, one constant in this narrative is the Technology Agency. The developments with ECOS point to serious questions about the sufficiency of the Technology agency's oversight of technology projects. The Technology Agency is not within the jurisdiction of this subcommittee. However, in considering potential actions with regard to the ECOS request, the subcommittee may wish to share its concerns about Technology Agency oversight of the project with the Senate Budget Subcommittee No. 4.

This project presents a series of difficult questions for the subcommittee. How can the subcommittee be assured that the business plan and fiscal projections are *now* correct? Should the Administration instead be requested to go back to square, rebuild the entire project, and submit a new request in January 2014, as part of the 2014-15 budget? If the original plan was to fund this project entirely from existing resources, should that be the action here? Or, since that was SPB's original plan, should some portion of the 2013-14 request for funding and positions be redirected from SPB's budget? Or, should the Legislature only support the maintenance and operation costs at project completion?

**Staff Recommendation:** Reject the request and direct that the Administration return with a proposal for the ECOS project in January 2014, as part of the 2014-15 Governor's January Budget. Direct staff to communicate the subcommittee's concerns with Technology Agency oversight of the ECOS project with Senate Budget Subcommittee No. 4.

**VOTE:**

**Issue 6: Career Executive Assignment Program**

**Governor's Budget Request.** In a May Revision Finance Letter, the Administration is requesting \$749,000 (427,000 General Fund), to provide additional funding for 8.5 two-year limited-term positions at the Department of California Human Resources, to meet the underlying goals of the Governor's Reorganization Plan No. one (GRP1), which delegated approval authority of the Career Executive Assignment Program; unlawful appointments, and classification and/or certification action requests to the department level.

**Background.** The GRP1 combined a number of human resources-related functions performed by the State Personnel Board with the Department of Personnel Administration, creating the Department of Human Resources (CalHR). Additionally, GRP1 states as a goal "more delegated decision-making to line agencies under a system of unified oversight, transparency and accountability". To address this, CalHR has proposed to delegate several functions to the department level including; the Career Executive Assignment Program, Classification and/or Certification Requests, and the Resolution of Unlawful Appointments.

CalHR has chosen to address this in a phased approach, with delegation provided to a limited number of departments, beginning on July 1, 2013. CalHR will still serve as the primary entity responsible for all Career Executive Assignment Program, Classification and/or Certification Requests, and the Resolution of Unlawful Appointment for line units that have not had the required training. CalHR will require monthly reports from line units that have been delegated control of the actions identified above. The reports will ensure that there is compliance in accordance with CalHR procedures.

**Staff Comment:** CalHR intends to delegate all of the functions associated with Career Executive Assignment Program, Classification and/or Certification Requests and the Resolution of Unlawful Appointments to the department level, within two years. CalHR intends on delegating authority to the Office of Statewide Planning and Development, the State Controller's Office, the Department of Justice, the State Compensation Insurance Fund, and internally during the first year. Staff does not have an issue with this request.

**Staff Recommendation:** Approve May Revision Finance Letter Request.

**VOTE:**

**0820 DEPARTMENT OF JUSTICE****Issue 7 – Controlled Substance Utilization and Review System (CURES)**

**Background.** The Department of Justice maintains the Controlled Substance Utilization and Review System (CURES), an electronic database of prescription drugs issued by doctors. In 1996, the Legislature initiated the development of the CURES system in an attempt to identify solutions addressed while utilizing an antiquated system of triplicate copying.

The implementation of CURES represented a significant improvement over the state's prior utilization of a triplicate copying system, however, it did not address the need for providing healthcare practitioners and pharmacists with access to timely information to proactively diminish and deter the use of controlled substances. To address this issue with CURES the DOJ initiated the Prescription Drug Monitoring Program (PDMP), which allows prescribers and dispensers to access data at the point of care. The PDMP system is utilized by the DOJ to collect and store data on the prescription of controlled substances (Schedule II through Schedule IV). State law mandates that the DOJ assist law enforcement and regulatory agencies with the diversion and resultant abuse of controlled substances.

The California Budget Act of 2011 eliminated all General Fund support of CURES/PDMP, which included funding for system support, staff support and related operating expenses. To perform the minimum critical functions and to avoid shutting down the program, the Department opted to assign five staff to perform temporary dual job assignments on a part-time basis.

**Staff Comment.** This item was originally heard in Senate Budget Subcommittee No. 5 on April 11. During that hearing it was unclear what, if any, funds would be available to support the development of an updated CURES database. Interested parties have since convened to identify an appropriate fund source for the development of a upgraded CURES database and the ongoing costs that will be required during the development phase of the new CURES database.

According to the DOJ, modernization costs will be approximately \$2.09 million for the upgraded CURES database. The modernization would occur over a two-year period and the costs associated with maintaining the current system while the modernization occurs would be \$1.8 million. Total modernization costs would be approximately \$3.9 million.

Senate Budget and Fiscal Review Subcommittee No. 4 intends on taking action to direct the Department of Finance to coordinate with the Department of Consumer Affairs to determine if funds could be made available to support the modernization and sustainment costs associated with the development of the CURES database. Subcommittee No. 4 recommended an increase in expenditure authority of \$3.35 million over fiscal year's 2013-14 and 2014-15 be provided to the licensing and prescribing boards within the Department of Consumer Affairs. Subcommittee No. 5 staff recommends that a similar action, an increase of \$3.35 million in reimbursement authority to the DOJ be included in the budget to address the sustainment and modernization requirements of the CURES database. The \$3.35 million takes into account that some of the boards have provide \$296,000 in funding annually to the department to support CURES. Suggested budget bill language should include a provision

requiring the DOJ to consult, among others, the impacted DCA boards and to address any concerns and, or, specific requirements raised through this consultation process prior to any upgrades being made to the CURES database. Additionally, the language should include a provision increasing DOJ's reimbursement authority to total \$3,941,000 which shall be used for the development of an updated CURES database. The language should also speak when reimbursements shall be made available, which shall be when an interagency agreement has been reached between the Department of Justice and the Department of Consumer Affairs regarding the development and implementation of an upgraded CURES database and approval of a Feasibility Study Report by the Department of Technology.

**Staff Recommendation:** Increase Department of Justice Reimbursement authority by \$3.35 million over fiscal year's 2013-14 and 2014-15 to support the development and sustainment of the CURES database. And, adopt proposed budget bill language.

**VOTE:**

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Curren D. Price, Jr.



Thursday, May 23, 2013  
10:00 a.m.  
Room 113

Consultants: Mark Ibele & Brady Van Engelen

Part A

## OUTCOMES

### DEPARTMENTS TO BE HEARD

*(Page 2 Lists Specific Departments and Issues)*

0820	Department of Justice
7100	Employment Development Department
7350	Department of Industrial Relations
7501	Department of Human Resources
7503	State Personnel Board
7900	Public Employees' Retirement System
7920	State Teachers' Retirement System
9650	Health and Dental Benefits for Annuitants
9800	Augmentation for Employee Compensation
CS 3.60	Contribution to Public Employees' Retirement Benefits
CS 4.20	Contribution to Public Employees' Contingency Reserve Fund

*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.*

**AGENDA – PROPOSED “VOTE ONLY” ITEMS**

*Please see Summary Chart on Page 4  
Issue descriptions begin on Page 5*

<u>Item</u>	<u>Department</u>	<u>Page</u>
<b><i>VARIOUS PUBLIC EMPLOYMENT AND RETIREMENT BUDGET ITEMS: TECHNICAL ADJUSTMENTS</i></b>		
<b>7501</b>	<b>Department of Human Resources .....</b>	<b>5</b>
	Issue 1 – Alternative Retirement Program: Extension of Reimbursement Expenditure Authority-Budget Bill Language .....	5
<b>7900</b>	<b>Public Employees’ Retirement System.....</b>	<b>5</b>
	Issue 2 – Incorporate CalPERS Board Approved Budget into the Budget Act .....	5
<b>7900/CS 4.20</b>	<b>Public Employees’ Retirement System/Contribution to Public Employees’ Contingency Reserve Fund.....</b>	<b>6</b>
	Issue 3 – Dependent Eligibility Verification Audit .....	6
<b>7920</b>	<b>State Teachers’ Retirement System .....</b>	<b>6</b>
	Issue 4 – Revised 2011-12 Creditable Compensation .....	6
<b>9800</b>	<b>Augmentation for Employee Compensation .....</b>	<b>7</b>
	Issue 5 – Updated Health Care Enrollment Figures and CAPS Adjustments.....	7
<b>3.60</b>	<b>Contribution to Public Employees’ Retirement Benefits .....</b>	<b>8</b>
	Issue 6 – California State University Employer Contribution to CalPERS Budget Bill Language.....	8
<b><i>OTHER DEPARTMENTS</i></b>		
<b>7100</b>	<b>Employment Development Department.....</b>	<b>8</b>
	Issue 7 – Unemployment Insurance Loan Interest Payment Amount Update .....	8
	Issue 8 – May Revision Updates on Unemployment Insurance, Disability Insurance, and School Employees Fund Adjustments .....	9
<b>0820</b>	<b>Department of Justice .....</b>	<b>9</b>
	Issue 9 – Remote Caller Bingo .....	9



**Summary Chart of Issues Proposed for Vote Only:**

#	Issue	Amount	Fund Source	Staff Recommendation
<b>Department of Human Resources (7501)</b>				
1	Alternative Retirement Program: Extension of Reimbursement Expenditure Authority Budget Bill Language	BBL	N/A	Approve 3-0
<b>Public Employees' Retirement Fund (7900)</b>				
2	Incorporate CalPERS Board Approved Budget into the Budget Act	Various increases and decreases	Public Employees Retirement Fund	Approve 3-0
<b>Public Employees' Retirement System/Contribution to Public Employees' Contingency Reserve Fund (7900/CS 4.20)</b>				
3	Dependent Eligibility Verification Audit	\$2,005,000	Various Funds	Approve 3-0
<b>State Teachers' Retirement System (7920)</b>				
4	Revised 2011-12 Creditable Compensation	\$2.1 million	GF	Approve 3-0
<b>Augmentation for Employee Compensation (9800)</b>				
5	Updated Health Care Enrollment Figures	\$3,609,000 \$1,467,000	GF Other Funds	Approve 2-1
<b>Contribution to Public Employees' Retirement Benefits (CS 3.60)</b>				
6	California State University Employer Pension Contribution to CalPERS Budget Bill Language	\$49.7 million and BBL	GF	Approve adjusted amount 3-0
<b>Employment Development Department (7100)</b>				
7	Unemployment Insurance Loan Interest Payment Amount Update	Decrease of \$29.744,000	General Fund	Approve 3-0
8	May Revision Updates, Unemployment Insurance, Disability Insurance, and School Employees Fund Adjustments	Various increases and decreases	Other Funds	Approve 3-0
<b>Department of Justice (0820)</b>				
9	Remote Caller Bingo	\$48,000	Other Funds	Approve 3-0

**VOTE:**

<b><i>Items Proposed for Vote Only – Issue Descriptions</i></b>
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<b><i>Issue 1 – Department of Human Resources (7501): Alternative Retirement Program Extension of Reimbursement Expenditure-Authority Budget Bill Language</i></b>
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**Governor’s Budget Request.** In a Spring Finance Letter, the Governor requests budget bill provisional language allowing the Department of Human Resources (CalHR) to extend the expenditure period for reimbursed funds, received from the administration of the Alternative Retirement Program (ARP) in 2013-14, until June 30, 2017.

**Background.** Prior to the enactment of Chapter 296, Statutes of 2012, the ARP was a retirement savings program that certain state employees were automatically enrolled in for their first two years of employment. The ARP provided up to two years of retirement savings, in place of retirement service credit under CalPERS. Chapter 296, the Public Employees’ Pension Reform Act of 2012, effectively eliminated the ARP by specifying that no new employees will enter the ARP on or after January 1, 2013.

However, the ARP will still exist as state employees who enter the ARP up to December 31, 2013, will be “active” and making contributions until their two years are up (no later than December 31, 2014). Those final employees will then be “inactive” until December 31, 2016. The period goes two years past the end of the ARP program because once an employee enters ARP, they are in the program for four years; however, the employee’s department only reimburses CalHR during the first two years while the employee is active; and does not pay for the employee once they reach the inactive status. The funds a department pays in the first two years is sufficient for the four years that employee will be in ARP (hence the reason for needing an extension on the availability of the funds, but not needing additional funds). The Administration added a six-month buffer to allow billing to be received, and be paid, beyond the time when the last employee will leave the ARP program.

**Staff Comment.** Staff has no concerns with this request.

<b><i>Issue 2 – Public Employees’ Retirement System (7900): Incorporate CalPERS Board Approved Budget into the Budget Act</i></b>
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**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests various adjustments (both increases and decreases) to the CalPERS Board of Administration Budget, to reflect the request by the CalPERS Board to incorporate its approved budget into the 2013-14 Budget Act.

**Background.** The annual budget act displays, for informational purposes only, the CalPERS’ Board of Administration budget, as CalPERS’ has continuous appropriation authority. The Governor’s January budget includes the estimated CalPERS’ Board of Administration budget for the upcoming fiscal year. On April 17, 2013, the CalPERS Board adopted a final budget. Adoption of this request will ensure that the final 2013-14 Budget Act will accurately reflect the CalPERS Board approved budget.

**Staff Comment.** Staff has no concerns with this request. It represents a necessary technical adjustment to the January budget.

***Issue 3 – Public Employees’ Retirement System/Contribution to Public Employees’ Contingency Reserve Fund (7900/CS 4.20): Dependent Eligibility Verification Audit***

**Governor’s Budget Request.** In a Spring Finance Letter, the Governor requests a one-time augmentation of \$2.005 million to support CalPERS’ Dependent Eligibility Verification Audit of state employees and annuitants with dependents enrolled in health plans. The request includes \$169,000 to audit members of the California Association of Highway Patrolmen and the California Correctional Peace Officers’ Association, who elected to enroll in their unions’ Benefit Trust plans, instead of plans covered by CalPERS.

In a conforming action, the Spring Finance Letter also requests that Control Section 4.20, the administrative rate paid by employers, be increased from 0.30 percent to 0.33 percent in Fiscal Year 2013-14, to provide increased revenue to the Contingency Reserve Fund, to cover the one-time augmentation.

**Background.** This subcommittee heard the Dependent Eligibility Verification Audit at its March 7 hearing as an informational item. That agenda provides details about the audit parameters and schedule. The Spring Finance letter provides the necessary resources to support the audit. It is estimated that removing ineligible dependents from employees’ plans could result in approximately \$21.5 million in health claims cost avoidance.

**Staff Comment.** Staff has no concerns with this request.

***Issue 4 – California State Teachers’ Retirement System (7920, 6300, 6878 and 6305): Revised 2011-12 Creditable Compensation***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests an increase of \$2.1 million GF, over the Governor’s January budget level, due to an increase in the creditable compensation reported by the California State Teachers’ Retirement System (CalSTRS) for fiscal year 2011-12, which increases the GF retirement contribution for fiscal year 2013-14.

**Background.** This May Revision proposal constitutes a technical correction regarding the amount of GF contribution to CalSTRS, based on a revision of creditable compensation as reported for 2011-12. The true-up is a percentage-driven calculation and is the result of a lag in reporting of actual compensation. The January budget estimated 2013-14 contributions of \$1.358 billion, based on an October 2012 report of prior-year teacher payroll by CalSTRS. The actual amount is based on the April 2013 submission by CalSTRS, which updated the prior-year teacher payroll.

This request represents a necessary technical adjustment to the GF CalSTRS payment for 2013-14. The budgeted payment amount consists of four separate components, as dictated by state law. The revision in the creditable compensation results in a total increase in

funding of \$2.1 million. This increase consists of \$814,000 in the Defined Benefit payment, \$310,000 in the Pre-1990 Defined Benefit Level payment, and \$1,009,000 for Supplemental Benefit Maintenance Account contribution.

**Staff Comment.** Staff has no concerns with this request. It represents a necessary technical adjustment to the January budget.

***Issue 5 – Augmentation for Employee Compensation (9800): Updated Health Care Enrollment Figures***

**Governor's Budget Request.** In a May Revision Finance letter, the Governor requests an increase of \$3.509 million GF (\$1.467 million other funds); over the Governor's January Budget, level to reflect updated health care enrollment figures.

**Background.** This statewide budget item allows for adjustments in departmental budgets to account for changes in employee compensation, including salaries and health and retirement benefits, based on a determination regarding the required funding levels.

Additionally, the Subcommittee may consider a "like pay-like work" salary adjustment for 14 supervisory scientist classifications. Beginning in 2006, the supervisory division of the California Association of Professional Scientists has argued their members were performing similar work as certain engineering supervisors and should be paid similar salaries. The Department of Personnel Administration (DPA) held a hearing on the issue and on April 28, 2008 recommended salary increases for the supervisory scientist classifications.

Despite this ruling, the classifications have never received an increase. This salary adjustment has never been included in a Governor's January budget proposal. If the adjustment were made for Fiscal Year 2012-13, it would add \$12.1 million in costs, with only \$2.3 million coming from the General Fund.

**Staff Comment.** Staff has no concerns with this request. It represents necessary technical adjustments to the January budget.

With regard to the supervisory scientist classifications, litigation involving CAPS and the state over this issue led to a state Court of Appeals decision in May 2011. The court found that the Department of Finance has no obligation to fund DPA-approved budget changes, but that Government Code section 13337 states that the information should be provided to the Legislature to allow it to make additional appropriations to fund proposed salary changes.

To address the DPA ruling that is now more than five years old, staff recommends creating a new Budget Bill Control Section to allow the salary changes.

**Staff Recommendation.** Approve May Revision request and an additional \$100,000 and approve a new Budget Bill Control Section to appropriate the funds necessary to adjust salaries for the 14 supervisory scientist classifications.

***Issue 6 – Contribution to Public Employees’ Retirement Benefits (CS 3.60): California State University Employer Pension Contribution to CalPERS Budget Bill Language***

**Governor’s Budget Request.** The January budget provided a GF increase to fund the annual increase in costs for the California State University’s (CSU) required employer pension contribution to CalPERS. In future years, and under proposed budget bill provisional and trailer bill language, CSU will continue to receive annual GF adjustments based on the 2012-13 payroll level; however, if CSU chooses to increase payroll expenditures above that level, CSU would be responsible for the associated pension costs.

**Background.** Senate Budget Subcommittee No. 1 heard the Governor’s proposal on March 14, 2013, and took action to approve the proposal in concept, withholding determination of the “base payroll”, year pending receipt of further information from the Administration. Subcommittee No. 1 will revisit this issue post the May Revision.

**Staff Comment.** Staff recommends approval of \$49.7 million increase as a ‘placeholder’ amount pending receipt of the final notification of the required amount. Given that rates have not been determined as yet, the funding ‘placeholder’ will allow for the adoption of the final amount once rates have been determined.

***Issue 7 – Employment Development Department (7100): Unemployment Insurance Loan Interest Payment Amount Update***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests a decrease of \$29.744 million, in the amount of the General Fund interest payment due to the federal government, for borrowing that has occurred to provide unemployment insurance (UI) benefits.

**Background.** The January budget proposed utilizing \$291.2 million GF to make the third interest payment, due to the federal government, for the quarterly loans that the EDD has been obtaining from the federal government since January 2009, to cover the UI Fund deficit (estimated at \$10.2 billion at the end of 2013). The January budget estimated a federal interest rate of 2.9430 percent, resulting in the payment amount of \$291.2 million. The federal Department of Labor has since announced that the 2013 interest rate is 2.5765 percent. Consistent with prior years, the department has updated the estimated interest payment amount in the spring based on the new interest rate and the May 2013 Unemployment Insurance Fund Forecast which estimates UI revenue and payments.

**Staff Comment.** Staff has no concerns with this request as it represents a necessary technical adjustment to the January budget. The subcommittee approved the GF payment for the interest payment due to the federal government at its March 7, 2013, hearing.

***Issue 8 – Employment Development Department (7100): May Revision Updates, Unemployment Insurance, Disability Insurance, and School Employees Fund Adjustments***

**Governor’s Budget Request.** In a May Revision Finance letter, the Governor requests to adjust funding for the new estimates of claims and payments for the Unemployment Insurance (UI) Program, the Disability Insurance (DI) Program, and the School Employees Fund, as follows:

- UI Program and Benefit Adjustments. The May Revision Finance Letter includes a request to decreased UI benefits authority by \$351.1 million in the Current Year (2012-13), and that the UI benefits authority be decreased by \$72.0 million for the Budget Year.
- DI Program. The May Revision includes a request for a reduction of 22.9 temporary help personnel years (PY) and a decrease of \$2.3 million for administrative support funding for the current year. Additionally, this request includes an increase of \$181.2 million in DI benefits authority for 2012-13. For 2013-14, the May Revision Finance Letter includes a request for a reduction of 42.5 temporary positions and a \$3.8 million decrease in administrative support funding. Included in this request for the budget year, is a request for an increase of \$153.1 million in DI benefits authority.
- School Employees Fund (SEF). The May Revision includes a request to decrease payments to the School Employees Fund by \$4.0 million. The reduction is due to an improving economy and a reduced contribution paid into the program by public schools and community college districts. Additionally, this May Revision request includes a request to reduce Current Year benefit authority by \$33.418 million.

**Staff Comment.** Staff has no concerns with this request. It represents necessary technical adjustments to the January budget.

***Issue 9 – Department of Justice (0820): Remote Caller Bingo***

**Governor’s Budget Request.** The Governor’s May Revise includes a request for \$48,000 from the California Bingo Fund in order to complete backlogged workload from the Gambling Control Commission, and associated licensing and field enforcement oversight of remote caller bingo charitable organizations, manufacturers, distributors, and vendors as mandated by SB 1369 (Chapter 748, Statutes of 2008). This request also includes trailer bill that would increase annual licensing fees.

**Background.** The Gambling Control Commission assumed responsibility of procedures related to the licensing of vendors wishing to conduct remote caller bingo related activities. Those responsibilities have subsequently been transferred to the Department of Justice’s Gambling Bureau of Gambling Control (Bureau).

The workload required of the bureau is as follows: three initial license applications, sixteen renewal applications and forty-five individual renewal license applications. The Bureau

estimates that the current workload of processing these applications could be completed on an overtime basis by utilizing existing staff.

**Staff Comment:** In 2011 the Gambling Control Commission (Commission) ceased processing all workload associated with the Remote Caller Bingo program due to fiscal constraints. However, the decision to cease the program was met with opposition by vendors who had already been licensed or had the desire to be licensed. Legal action was taken against the Commission to continue all activities associated with remote caller bingo under the statutory requirements of SB 1369. In May of 2012 the parties entered into a stipulation and order, thereby staying the program's cessation. A court ruled in favor of the plaintiffs and ordered the Commission to continue to regulate the remote caller bingo program and to renew any licenses.

In accordance the Governor's GRP No. 2 the Bureau will assume the background investigation related workload on July 1, 2013. The requested funds will the Bureau to process existing licensees and to review pending licenses seeking licensure as a manufacturer, distributor, or vendor in accordance with current statute.

**Staff Recommendation:** Approve May Revise Request.

**Items Proposed for Vote - Discussion****7100 EMPLOYMENT DEVELOPMENT DEPARTMENT****Issue 1: Unemployment Insurance Program Administration Augmentation**

The Governor's May Revise requests a one-time increase of \$29.7 million, from the Employment Development Department (EDD) Contingent Fund, to allow the retention of 297 positions in the Unemployment Insurance (UI) Program that otherwise would be lost, due to inadequate federal funding.

**Background:** The U.S. Department of Labor funds the state's costs related to UI Program administration, which includes processing UI claims, answering phone calls and collecting payroll taxes from employers. As discussed in the Subcommittee's March 12, 2013 hearing, EDD officials note that federal funding to administer the UI program has fluctuated dramatically in recent years, and funding levels have not matched the state's funding request in more than a decade. The amount of funding states receive to administer the program is based on a formula tied to unemployment levels and other data, but in practice there are not sufficient funds available to provide states with the funding levels that the formula would dictate. Thus, over the past seven years EDD has received about 20 percent less funding than it should have to administer the UI program. EDD officials state that their projected funding need is \$628.7 million in 2013-14, but projected federal funding will be \$457.6 million – a \$171.1 million gap.

Federal sequestration will further exacerbate this problem. EDD states that, in addition to the annual underfunding issue, sequestration may cut another \$31.2 million from projected federal funding for this program. In all, the department could expect to lose more than 1,100 positions in 2013-14, due to the shortfall in federal funding.

The EDD Contingent Fund is supported by penalty and interest payments from employers who have not been compliant in paying employment taxes. EDD has traditionally only used this fund to support other department programs, and then transferred remaining money to the General Fund. The January budget projected the transfer of \$29.8 million to the General Fund for 2013-14. Instead, the administration proposes in the May Revise, to use \$29.7 million from this fund to support 297 positions that otherwise would be lost due to the shortfall in federal funds.

**Staff Comments:** EDD is the frequent target of complaints from citizens seeking answers to questions about unemployment insurance. Further loss of federal funding could make this problem worse.

As discussed in the March hearing, the department is pursuing information technology projects to increase efficiencies in the administration of the program. Additionally, EDD notes that will undergo a zero-based budget analysis for the 2014-15 budget to attempt to identify other efficiencies.

**Staff Recommendation:** Approve May Revise Finance Letter request.

**VOTE:** 2-1

**7350****DEPARTMENT OF INDUSTRIAL RELATIONS****Issue 2: Cal/OSHA Program, Enforcement of Workplace Safety and Health Standards**

**Prior Subcommittee Actions.** On March 7, 2013, the subcommittee examined, on an informational basis, the adequacy of the current Cal/OSHA enforcement and inspection process and program for ensuring workplace health and safety. In addition, and in light of the August 6, 2012 Chevron Richmond refinery fire, the subcommittee focused some of its discussion on the Process Safety Management (PSM) Unit within Cal/OSHA, whose purpose is preventing or minimizing the consequences of catastrophic releases of toxic, flammable, or explosive chemicals.

On March 7, 2013, the subcommittee redirected \$350,000 (special fund), and four positions previously associated with the collection of the high hazard assessment, to the PSM Unit within the Cal/OSHA program (the high hazard assessment was repealed in a separate action on March 7, 2013).

**Background.** Cal/OSHA is responsible for enforcing occupational safety and health standards, investigating occupational injuries, and inspecting and permitting elevators, amusement rides, and passenger tramways. Funding for Cal/OSHA has historically come from the General Fund, several special funds, and federal funds. Since 2009, Cal/OSHA no longer receives GF support (except for \$431,000 in support of a federally-matched injury and illness program). As part of the Budget Act of 2009, GF was replaced with revenue from the Occupational Safety and Health (OSH) Fund, which is an employer assessment on an employer's total workers' compensation insurance premium or on total "indemnity" (workers' compensation losses) for self-insured employers. OSH funding represents roughly 60 percent of the total funding for Cal/OSHA, with the remaining percentage funded by the Targeted Inspection and Consultation Fund and federal OSHA dollars.

Cal/OSHA staffing levels have remained fairly constant since 2009, although they reflect several across-the-board workload (staffing) reductions between 2009 and 2012 and, as required by the Administration, including, but not limited to, the reduction of "salary savings" or "vacant" positions, which could not be filled in any case. The same can be stated about staffing in the Process Safety Management (PSM) Unit within Cal/OSHA. The subcommittee action on March 7 will add four positions to the PSM Unit which, at that time, had seven inspectors and one field manager.

The LAO reported in February 2013 that employer assessments are an appropriate funding mechanism for Cal/OSHA, on a policy, basis because it is appropriate for the costs of regulatory activities to be paid for by the regulated community that creates the societal need for the regulation, and benefits from the regulation (such as being issued a permit to operate a business). For most state programs, it has been the policy of the Legislature to fund regulatory activities from fees.

In January 2013, Cal/OSHA found that Chevron did not follow the recommendations, dating back to 2002, of its own inspectors and metallurgical scientists to replace the corroded pipe that ultimately ruptured and caused the August 2012 fire. Chevron also did not follow its own

emergency shutdown procedures when the leak was identified, and did not protect its employees and employees, of Brand Scaffolding, who were working at the leak site.

In January 2013, Cal/OSHA issued close to \$1 million in fines against Chevron, the biggest penalty in the department's history, and the maximum allowable under current law, for failing to replace the corroded pipe, not implementing its own emergency procedures, and violating leak-repair procedures. Cal/OSHA issued 25 citations against Chevron, 23 of which were classified as "serious" due to the realistic possibility of worker injuries and deaths in the fire. Eleven of these serious violations were also classified as "willful" because Cal/OSHA found Chevron did not take reasonable actions to eliminate refinery conditions that it knew posed hazards to employees, and because it intentionally and knowingly failed to comply with state safety standards.

**Staff Comment.** Based on the testimony on March 7, 2013, as well as reports released since that date by a variety of regulatory and oversight agencies, including the U.S. Chemical Safety Board, legitimate questions have been raised about the adequacy of the state's current PSM Unit inspection process.

The process hinges on industries implementing a comprehensive safety plan that includes a precise determination of what hazards exist and procedures to eliminate or reduce them. Employers must ensure that machinery and equipment are in good condition, that work procedures are safe, that hazards are controlled, and that workers are trained to safely operate the equipment, recognize hazards, and respond appropriately in emergency situations. Then, based on data the PSM unit gathers from its own research and from other agencies, a programmed Program Quality Verification (PQV) inspection is scheduled, typically for one particular unit or process within a refinery and one element of the PSM regulations, for each of the fifteen refineries in California each year. Given resource constraints, these PQV inspections are not "wall-to-wall" comprehensive inspections.

The issue before the subcommittee is not the Chevron Richmond refinery per se, but rather broader questions about the Cal/OSHA program, and the degree to which the existing enforcement and inspection process and program is adequate to ensure workplace health and safety, particularly with regard to the PSM unit. In this vein, an area of subcommittee's focus on March 7, 2013, continues to be especially crucial. Specifically why the Department of Industrial Relations has not utilized its existing statutory authority "to fix and collect reasonable fees for consultation, inspection, adoption of standards, and other duties" related to process safety management standards for refinery and chemical plants (Labor Code 7850 et seq).

The U.S. Chemical Safety Board has noted that a standard process for inspecting refineries would be 1,100 hours, annually. California currently has only enough inspectors to conduct 100 hours of inspections, annually. The average state employee works 1,824 hours per year. Based on the number of recommended refinery inspection hours, nine inspectors would be required to provide adequate inspections for the state's refineries. In addition, office staff and a manager may be needed, as well as additional inspectors to work with the state's 1,680 chemical plants.

Labor Code Section 7870 states that the department "may fix and collect reasonable fees for consultation, inspection, adoption of standards, and other duties" in relation to process safety management at these hazardous sites. The department currently does not collect such a fee.

Based on the U.S. Chemical Safety Board report stemming from the Chevron refinery fire, it appears that the department currently does not have enough personnel to ensure worker and citizen safety within these industries. The subcommittee may wish to consider adopting trailer bill language requiring the department to implement a fee by March 31, 2014, to support these activities. It appears that 15 additional staff may be the minimum amount needed to handle all of the required duties.

**Staff Recommendation:** Adopt placeholder budget trailer bill language requiring the Department of Industrial Relations to utilize its existing statutory authority to implement a fee by March 31, 2014, that will support at least 15 new staff to perform process safety management throughout the state and ensure refinery safety, thus conforming to the Assembly action.

**VOTE:** 2-1

<b>7501</b>	<b>DEPARTMENT OF HUMAN RESOURCES</b>
<b>7503</b>	<b>STATE PERSONNEL BOARD</b>

<b>Issue 3: Additional Appointments of Exempt Employees</b>
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**Background.** Recent media reports brought transparency to a state human resources practice whereby managers with a fixed salary assumed a secondary rank-and-file position, within the same department. The subcommittee heard this issue on March 7. CalHR testified that it would complete its initial review of additional appointments of exempt employees, and have initial findings, as well as the outline of a solution, by the May Revision. This issue was held open pending receipt of further information from the Administration.

Since that hearing, the State Controller's Office has provided new data runs, detailing exempt employees with additional appointments, over the past five years as displayed in Figure 1 below.

**Figure 1: Count of Unique Employees with Additional Appointments within the Same Department**

<b>Date</b>	<b>Unique Employee Count</b>
April 30, 2008	1,015
October 31, 2008	950
April 30, 2009	821
October 30, 2009	982
April 30, 2010	1,036
October 29, 2010	2,114
April 29, 2011	964
October 31, 2011	899
April 30, 2012	842
October 31, 2012	561

Source: State Controller's Office

As was the case with the October 31, 2012 data run, that was the focus of the March 7, 2013, hearing, during the reporting period the state departments that were the highest utilizers of additional appointments were: (1) Corrections and Rehabilitation; (2) State Hospitals; (3) Social Services; and (4) Motor Vehicles. Further, Corrections was consistently the highest utilizer, representing roughly 47 percent of all additional appointments. The data also shows a correlation to furloughs, as the peak use of additional appointments coincides with peak usage of furloughs.

The affected departments assert that Section 350 of the Personnel Management Policy and Procedures Manual (PMPPM), dated January 1979, sets forth standards and guidelines surrounding eligibility for an additional appointment. Departments also point to Government Code Sections 19050-19237, as the statutes pertaining to additional appointments.

On January 30, 2013, CalHR issued Policy Memo 2013-007, to prohibit departments from making any *new* additional appointments while it undertook a review of: (1) the relevant laws, rules, and prior procedures that have been applied to additional appointments; and (2) each exempt employee additional appointment.

CalHR testified on March 7, that it would complete its review of additional appointments of exempt employees and have initial findings, as well as the outline of a solution, by the May Revision.

On April 25, 2013, CalHR issued Policy Memo 2013-15 to officially ban “additional appointments” for managers and supervisors. This action was taken in advance of the aforementioned reviews being completed. The memo suggests several other established options to address workload and schedule deadlines, including using non-managers, mandatory overtime, shifting employees between similar job classifications, and limited-duration job and training assignments. Finally, the memo reminds departments that they can pay managers an “arduous pay” differential for working extreme hours (arduous pay ranges from \$300 to \$1,200 per month and is authorized under current statute).

The State Personnel Board (SPB) separately testified, at the March 7 hearing, that it planned to work jointly with CalHR to update and develop one comprehensive human resources manual for state departments.

**Staff Comment.** As discussed on March 7, the state lacks a consistent statewide policy as to the use of additional appointments. Rather, the recent use of additional appointments appears, in many ways, to have been an “underground” human resources policy, as it was based on the state’s Personnel Management Policy and Procedures Manual which dates from 1979, that has not been updated or available since 2000. In the same vein, a “policy memo” which is only effective until it is rescinded and replaced with a new memo, is not a sound structure upon which to base human resources decisions in the long-term.

Current state law does not prohibit additional appointments. An additional appointment does not violate the federal Fair Labor Standards Act (FLSA). However, there are separate tests under the FLSA to ensure that the exempt status of the primary position is not compromised, and to determine whether employees were compensated properly. Additional appointments are also not necessarily out of the norm, as a human resources policy. For instance, at Stony Brook Medicine, the academic medical center affiliated with Stony Brook University, the State University of New York, “extra service/dual appointments” are utilized, but under strict conditions. These conditions create an “arm’s length” transaction, in that the additional position is in a different department or unit from the primary position.

In light of the April 25, 2013, policy memo, the subcommittee may wish to consider interim reporting to ensure that the issue of additional appointments for exempt employees, and the identification of a permanent statutory solution, does not recede from the public eye. In addition, the subcommittee may wish to consider following up on SPB testimony about its plan to work jointly with CalHR to provide a comprehensive human resources manual for state departments.

**Staff Recommendation:** Adopt budget trailer bill language to: (1) require CalHR to report by November 30, 2013, the findings of its review of managers and supervisors additional appointments; and (2) require the Administration to submit to the Legislature, as part of the 2014-15 Governor’s January Budget, a statutory solution to the issue of managers and supervisors additional appointments, and a plan for and SPB to update the state’s human resources manual.

**VOTE: 3-0**

**7501****DEPARTMENT OF HUMAN RESOURCES****Issue 4: Implementation of In-Home Supportive Services Employer-Employee Relations Act**

**Governor's Budget Request.** The January Budget, as modified on March 1, 2013, requests \$282,000 GF, \$281,000 federal funds; and, four positions to implement Chapter 45, Statutes of 2012, a budget trailer bill pertaining to the In-Home Supportive Services (IHSS) Employer-Employee Relations Act.

The modified request also includes budget bill provisional language providing a GF "backstop", should the federal funds not materialize as projected, and requires notification to the Joint Legislative Budget Committee should this "backstop" be utilized.

This request was first heard by the subcommittee on March 7, 2013. It was held open due to concerns about timing/delays; and to allow further consultation with Senate Budget Subcommittee No. 3 because this issue is a very small part of the much larger Coordinated Care Initiative, which is in the jurisdiction of Subcommittee No. 3.

**Background.** The Budget Act of 2012 authorized the Coordinated Care Initiative (CCI), whereby persons eligible for both Medicare and Medi-Cal would receive medical, behavioral, long-term supports and services, and home- and community-based services coordinated through a single health plan in eight demonstration counties (Alameda, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, and Santa Clara). Chapter 45 contained the necessary statutory changes to implement the human services provisions related to the integration of services, including IHSS, into the CCI.

In 2012, there were around 380,000 IHSS providers with hourly wages, varying by county, and ranging from \$8.00 to \$12.20 per hour. Prior to July 1, 2012, county public authorities and nonprofit consortia were designated as "employers of record", for collective bargaining purposes, on a statewide basis, while the state administered payroll and benefits. Pursuant to Chapter 45, however, collective bargaining responsibilities in the eight counties participating in the CCI, will shift to an IHSS Authority administered by the state.

The resources in this request are based on an estimate that assumes in June 2014, collective bargaining responsibility will begin to transfer to the Statewide Authority and CalHR will be expected to bargain on behalf of the Statewide Authority. The Administration indicates that the four positions in this request will allow CalHR to begin to prepare a collective bargaining platform on behalf of the Statewide Authority, including examining current contracts, observing bargaining sessions, identifying bargaining complexities, building working relationships, and determining legal and health benefit complexities. These staff will also assess the resources needed to begin full implementation of this program in July 2014. Of the four positions, two are in the Labor Relations Division, one is in the Legal Division, and one is in the Benefits Division.

**Staff Comment.** The scheduled phasing for enrollment in the CCI in the eight pilot counties has been further delayed by five months, from the schedule the Administration presented in

January. It is now estimated that the only county moving to the statewide authority in 2013-14 is San Mateo, and not until February 2014 (previous estimate was September 2013).

Staff acknowledges that Chapter 45 presents new workload for CalHR and this workload is not absorbable within existing resources. However, it is clear that the Administration's schedule estimates continue to slip, which impacts workload drivers. As such, it appears the total resources requested in 2013-14 are no longer justified.

**Staff Recommendation:** ~~Approve two positions and \$141,000 GF and \$141,000 federal funds to begin implementation of Chapter 45.~~ **Adopted Governor's proposal**

**VOTE: 2-1**

<b>Issue 5: Examination and Certification Online Systems Project</b>
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**Governor's Budget Request.** In a Spring Finance Letter, the Governor requests \$468,000 General Fund, and \$353,000 Central Service Cost Recovery Fund, and two positions, for the Examination and Certification Online System (ECOS) project in 2013-14. The ECOS project is intended to upgrade and expand the functionality of the current electronic exam and list certification systems, which are comprised of: Examinations; Certifications; Web Exam; Profile; State Restriction of Appointment and Reemployment; Vacant Position Online Search; and the manual Career Executive Assignment Examination and Certification systems.

**Background.** The seven legacy systems were built 30-plus years ago using then-current technology. Business needs and usage have significantly expanded over time, due to advancements in selection technology, the increase in the size of government and its human resource needs, and the decentralization of the selection process. To address these issues, in 2009, the State Personnel Board (SPB) implemented a modified Commercial-off-the-Shelf (COTS) product from JobAps to improve the administration of civil service examinations, the certification of hiring lists, and the review of appointments.

SPB subsequently determined that the JobAps system lacked major functionality and was not performing adequately. In 2011, the SPB submitted a feasibility study report (FSR) to replace the JobAps system with ECOS, an in-house custom application. The FSR was approved by the Technology Agency and work began on the ECOS project.

In July 2012, and pursuant to the Governor's Reorganization Plan No. 1, selection-related responsibilities were transferred from the SPB to the newly-created California Department of Human Resources (CalHR). Also in July 2012, CalHR began reviewing the original plan and found several issues with the ECOS project schedule, budget, and resources. CalHR reassessed the project and determined that the ECOS project had not been adequately staffed, the budget was underestimated by approximately \$1.8 million, and the schedule was underestimated by 22 months.

In conjunction with the Technology Agency, CalHR submitted a Special Project Report (SPR) in an effort to put the ECOS project back on track. The Technology Agency approved the SPR on April 2, 2013; however, that letter reflected incorrect project cost figures. A revised approval letter was provided on April 26, 2013. Instead of a net \$2.7 million increase, the correct increase in overall project costs was \$5.2 million. The "missing" project cost

increases were those attributable to continuing project costs and annual maintenance and operation costs.

The request before the subcommittee is the resources the Administration indicates are necessary to support the ECOS project in 2013-14.

Upon completion in early 2017, the ECOS project will result in a new system that eliminates the current outdated manual processes, reduces the cost and time required for exam administration, creates real-time exam results for hiring departments, and mitigates risk by integrating seven disparate systems.

**Staff Comment.** Staff does not doubt that the current legacy examination and certification systems are outdated and require manual interventions that are inefficient. Staff does not doubt that the original FSR justified a need for a new system. However, given the developments in the past twelve months, it appears that the ECOS project is yet another example of a project that was initially under-scoped and under-resourced and now requires a substantial mid-course correction (111 percent increase in total project costs), to prevent project failure and loss of the state's investment to date. Further, SPB's original plan to cover all project costs from within budgeted resources has been abandoned, as CalHR is now requesting a budget augmentation and staff resources to support the project in 2013-14, and the following three fiscal years.

It is also worth noting that, while responsibility for this project moved from SBP to CalHR, one constant in this narrative is the Technology Agency. The developments with ECOS point to serious questions about the sufficiency of the Technology agency's oversight of technology projects. The Technology Agency is not within the jurisdiction of this subcommittee. However, in considering potential actions with regard to the ECOS request, the subcommittee may wish to share its concerns about Technology Agency oversight of the project with the Senate Budget Subcommittee No. 4.

This project presents a series of difficult questions for the subcommittee. How can the subcommittee be assured that the business plan and fiscal projections are *now* correct? Should the Administration instead be requested to go back to square, rebuild the entire project, and submit a new request in January 2014, as part of the 2014-15 budget? If the original plan was to fund this project entirely from existing resources, should that be the action here? Or, since that was SPB's original plan, should some portion of the 2013-14 request for funding and positions be redirected from SPB's budget? Or, should the Legislature only support the maintenance and operation costs at project completion?

**Staff Recommendation:** Reject the request and direct that the Administration return with a proposal for the ECOS project in January 2014, as part of the 2014-15 Governor's January Budget. Direct staff to communicate the subcommittee's concerns with Technology Agency oversight of the ECOS project with Senate Budget Subcommittee No. 4.

**VOTE: 3-0**

**Issue 6: Career Executive Assignment Program**

**Governor's Budget Request.** In a May Revision Finance Letter, the Administration is requesting \$749,000 (427,000 General Fund), to provide additional funding for 8.5 two-year limited-term positions at the Department of California Human Resources, to meet the underlying goals of the Governor's Reorganization Plan No. one (GRP1), which delegated approval authority of the Career Executive Assignment Program; unlawful appointments, and classification and/or certification action requests to the department level.

**Background.** The GRP1 combined a number of human resources-related functions performed by the State Personnel Board with the Department of Personnel Administration, creating the Department of Human Resources (CalHR). Additionally, GRP1 states as a goal "more delegated decision-making to line agencies under a system of unified oversight, transparency and accountability". To address this, CalHR has proposed to delegate several functions to the department level including; the Career Executive Assignment Program, Classification and/or Certification Requests, and the Resolution of Unlawful Appointments.

CalHR has chosen to address this in a phased approach, with delegation provided to a limited number of departments, beginning on July 1, 2013. CalHR will still serve as the primary entity responsible for all Career Executive Assignment Program, Classification and/or Certification Requests, and the Resolution of Unlawful Appointment for line units that have not had the required training. CalHR will require monthly reports from line units that have been delegated control of the actions identified above. The reports will ensure that there is compliance in accordance with CalHR procedures.

**Staff Comment:** CalHR intends to delegate all of the functions associated with Career Executive Assignment Program, Classification and/or Certification Requests and the Resolution of Unlawful Appointments to the department level, within two years. CalHR intends on delegating authority to the Office of Statewide Planning and Development, the State Controller's Office, the Department of Justice, the State Compensation Insurance Fund, and internally during the first year. Staff does not have an issue with this request.

**Staff Recommendation:** Approve May Revision Finance Letter Request.

**VOTE: 2-1**

**0820 DEPARTMENT OF JUSTICE****Issue 7 – Controlled Substance Utilization and Review System (CURES)**

**Background.** The Department of Justice maintains the Controlled Substance Utilization and Review System (CURES), an electronic database of prescription drugs issued by doctors. In 1996, the Legislature initiated the development of the CURES system in an attempt to identify solutions addressed while utilizing an antiquated system of triplicate copying.

The implementation of CURES represented a significant improvement over the state's prior utilization of a triplicate copying system, however, it did not address the need for providing healthcare practitioners and pharmacists with access to timely information to proactively diminish and deter the use of controlled substances. To address this issue with CURES the DOJ initiated the Prescription Drug Monitoring Program (PDMP), which allows prescribers and dispensers to access data at the point of care. The PDMP system is utilized by the DOJ to collect and store data on the prescription of controlled substances (Schedule II through Schedule IV). State law mandates that the DOJ assist law enforcement and regulatory agencies with the diversion and resultant abuse of controlled substances.

The California Budget Act of 2011 eliminated all General Fund support of CURES/PDMP, which included funding for system support, staff support and related operating expenses. To perform the minimum critical functions and to avoid shutting down the program, the Department opted to assign five staff to perform temporary dual job assignments on a part-time basis.

**Staff Comment.** This item was originally heard in Senate Budget Subcommittee No. 5 on April 11. During that hearing it was unclear what, if any, funds would be available to support the development of an updated CURES database. Interested parties have since convened to identify an appropriate fund source for the development of a upgraded CURES database and the ongoing costs that will be required during the development phase of the new CURES database.

According to the DOJ, modernization costs will be approximately \$2.09 million for the upgraded CURES database. The modernization would occur over a two-year period and the costs associated with maintaining the current system while the modernization occurs would be \$1.8 million. Total modernization costs would be approximately \$3.9 million.

Senate Budget and Fiscal Review Subcommittee No. 4 intends on taking action to direct the Department of Finance to coordinate with the Department of Consumer Affairs to determine if funds could be made available to support the modernization and sustainment costs associated with the development of the CURES database. Subcommittee No. 4 recommended an increase in expenditure authority of \$3.35 million over fiscal year's 2013-14 and 2014-15 be provided to the licensing and prescribing boards within the Department of Consumer Affairs. Subcommittee No. 5 staff recommends that a similar action, an increase of \$3.35 million in reimbursement authority to the DOJ be included in the budget to address the sustainment and modernization requirements of the CURES database. The \$3.35 million takes into account that some of the boards have provide \$296,000 in funding annually to the department to support CURES. Suggested budget bill language should include a provision

requiring the DOJ to consult, among others, the impacted DCA boards and to address any concerns and, or, specific requirements raised through this consultation process prior to any upgrades being made to the CURES database. Additionally, the language should include a provision increasing DOJ's reimbursement authority to total \$3,941,000 which shall be used for the development of an updated CURES database. The language should also speak when reimbursements shall be made available, which shall be when an interagency agreement has been reached between the Department of Justice and the Department of Consumer Affairs regarding the development and implementation of an upgraded CURES database and approval of a Feasibility Study Report by the Department of Technology.

**Staff Recommendation:** Increase Department of Justice Reimbursement authority by \$3.35 million over fiscal year's 2013-14 and 2014-15 to support the development and sustainment of the CURES database. And, adopt proposed budget bill language.

**VOTE: 2-1**

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Curren D. Price, Jr.



Thursday, May 23, 2013  
10:00 am  
Room 113  
Part B  
Consultants: Joe Stephenshaw

**Item Number and Title**

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## Vote Only

### Gambling Control Commission (0855)

#### Issue 1 – Remote Caller Bingo

**Governor’s Proposal.** The May Revision proposes \$2,000 to support workload associated with the licensing of Remote Caller Bingo vendors, and trailer bill language to extend the repayment date of two loans from the Gambling Control Fund that were used by the Gambling Control Commission to establish the Remote Caller Bingo Program.

**Background.** SB 1369 authorized remote caller bingo as a game that allows specific nonprofit organizations to use audio or video technology to remotely link designated in-state facilities to cosponsor live bingo games, if authorized pursuant to local ordinance and approved by the commission. The commission is required to regulate remote caller bingo, including, but not limited to, licensure, operation and development of regulations.

**Recommendation.** Approve as budgeted.

### Judicial Branch (0250)

#### Issue 1 – Trial Court Trust Fund – Technical Adjustment

**Governor’s Proposal.** An April Finance Letter proposes a decrease of \$28 million in Trial Court Trust Fund Authority to correct a technical error related to the Automated Traffic Enforcement proposal from fiscal year 2010-11.

**Background.** The Automated Traffic Enforcement proposal was rejected, however, the expenditure authority, to support the increased workload associated with the proposal, was not reduced to reflect this action. This adjustment reduces the expenditure authority in the Trial Court Trust Fund, accordingly.

**Recommendation.** Approve as proposed.

**Issue 2 – Immediate and Critical Needs Account Transfer**

**Governor’s Proposal.** The Governor’s May Revision proposes an amendment to the Immediate and Critical Needs Account transfer item to ensure the transfer does not adversely affect ongoing construction projects.

**Background.** The Governor’s budget included a \$200 million transfer to the General Fund, from the Immediate and Critical Needs Account (one of the courts two primary construction funds) to offset a \$200 million augmentation to the Trial Court Trust Fund. The May Revise amends this transfer to specify that it take place “upon the order of the Director of Finance”. This amendment is proposed to ensure that the transfer is not made in a manner that affects ongoing construction projects.

**Recommendation.** Approve as proposed.

**Issue 3 – Control Section 15.45**

**Governor’s Proposal.** The Governor’s May Revision proposes that Control Section 15.45 be added in order to offset General Fund Payments to the Trial Court Trust Fund with funds received from county offices of education.

**Background.** The proposed language, below, is consistent with language that has been used in the past for offsets to trial court expenditures.

“The Controller shall offset General Fund payments to the Trial Court Trust Fund from Item 0250-111-0001 of Section 2.00 with any funds received from county offices of, education for reimbursement of trial court costs, pursuant to Section 2578 of the Education Code. These offsets shall be recorded as a reduction of total expenditures and shall not be a reduction to any department or program.”

**Recommendation.** Approve as proposed.

**Issue 4 – New Long Beach Courthouse**

**Governor’s Proposal.** The Governor’s Budget proposes \$34.8 million (\$54.2 million in 2014-15) from the Immediate and Critical Needs Account (ICNA) for the initial annual service fee for the new Long Beach court building.

**Background.** The 2007-08 Budget Act directed the Administrative Office of the Courts (AOC), to gather information regarding the possible use of a public-private partnership (P3) for the construction of a new facility, to replace the existing courthouse in Long Beach. In December 2010, the AOC entered into a P3 contract that required a private developer to finance, design, and build a new Long Beach courthouse, as well as to

operate and maintain the facility over a 35-year period. At the end of this period, the judicial branch will own the facility. In exchange, the contract requires the AOC to make annual service payments, totaling \$2.3 billion over the period. Occupancy of the new Long Beach courthouse will begin in September 2013.

The type of P3 used for this project is when a single contract is entered into with a private partner (often a consortium of several companies) for the design, construction, finance, operation, and maintenance of an infrastructure facility. In order for a private partner to be willing to finance these costs, the contract must specify a mechanism for repaying the partner. In many cases, this involves a revenue source created by the project (such as a toll or user fee on the infrastructure facility), with the private partner taking on the risk that the projected revenues will materialize at the level anticipated. Alternatively, the state can commit to making annual payments to the partner from an identified funding source. In this case, the Governor is proposing that the annual payments for the new Long Beach courthouse be made from ICNA.

The Judicial Branch has two primary court construction funds, the State Court Facilities Construction Fund, which receives approximately \$130 million annually from fees and penalty assessments to support trial court construction projects, and ICNA, which receives approximately \$320 million annually from various civil and criminal fines and fees originally intended to support 41 trial court construction projects that were deemed to be immediate and critical by the Judicial Council.

The Long Beach courthouse project was not originally on the list of projects the judicial branch planned to be funded from ICNA. Instead, the branch had assumed that the project would be funded from the General Fund. Therefore, the plan to use ICNA funds for these service payments, combined with other reductions to ICNA's fund balances, resulted in a Judicial Council decision to indefinitely delay four court construction projects (Fresno County, Southeast Los Angeles, Nevada City, and Sacramento).

**Staff Comments.** Given the substantial commitment of resources required to support this project (\$2.3 billion over 35 years) and the continuing pressures on the GF, ICNA seems to be a reasonable funding source for this project. However, the Legislature should examine not only this project's impact on ICNA, but also other budget actions that have diverted resources from the fund. These actions have included significant transfers to the GF to offset trial court funding reductions (including an ongoing \$50 million annual transfer to the Trial Court Trust Fund) and a \$90 million loan to the GF that was originally scheduled to be repaid in the budget year (the Governor's budget does not include this repayment). In order to effectively move forward with a court construction plan utilizing ICNA resources, the fund must be stabilized to a degree that provides certainty that scheduled projects can proceed.

Staff notes that the LAO released a report in November of 2012, *Maximizing State Benefit from Public Private-Partnerships*, in which they analyzed recent state P3 projects including the new Long Beach courthouse. The LAO found that the P3 practices, used by the state entities carrying out the projects they reviewed are not

necessarily aligned with the P3 best practices identified in research. For example, the departments did not use clear P3 processes and they appear to have selected projects not well-suited for a P3 procurement. In addition, the LAO found that the analyses done to compare project costs under different procurement options were based on several assumptions that are subject to significant uncertainty and interpretation, and tended to favor the selection of a P3 approach.

Based on the LAO's review and findings, they identified several opportunities for the state to further maximize its benefits when deciding to procure a state infrastructure project as a P3. Specifically, they recommend that the Legislature:

- Specify P3 project selection criteria in state law in order to provide for greater consistency across departments in terms of how P3s are selected.
- Require a comparative analysis of a range of procurement options (including design–bid–build, design–build, and P3) for all potential P3 infrastructure projects, in order to better determine which procurement option would most effectively benefit the state, as well as allow the state to better balance the potential benefits of increased private sector involvement, with the potential risks unique to each project.
- Require the existing Public Infrastructure Advisory Commission (PIAC) to approve state P3 projects, in order to improve the consistency of the state's P3 approval process.
- Require PIAC to 1) have a broad mix of expertise related to P3 and state finance and procurement, 2) develop additional best practices for the state's use of P3s, and (3) evaluate other state departments to determine if they would benefit by having P3 authority.

**Recommendation.** 1) Approve the proposal to fund the service payment for the new Long Beach courthouse from ICNA.

2) Adopt trailer bill language to a) require the AOC Judicial Council to report to the Legislature on aspects of the Long Beach project in order to assess the value of this project delivery method, and b) require the development and adoption of best practices for P3 projects, as recommended by the LAO in their November 2012 report.

## **Issue 5 – Trial Court Efficiency Proposals and Fee Revenue Increase**

**Governor's Proposal.** The Governor proposes trailer bill language for a range of statutory changes to reduce trial court workload through administrative efficiencies and increase user fees to support ongoing workload at the trial courts.

An April Finance Letter proposes an increase of \$10.3 million to the Trial Court Trust Fund to reflect anticipated revenues associated with three of these proposals: the exemplification of record (\$164,660), copy and comparison (\$5.9 million), and mailing services fees (\$200,000), and also the \$30 fee for court reporting services lasting under one hour as authorized by the 2012 Budget Act (\$4.0 million).

**Background.** In May 2012, the Judicial Branch identified 17 proposals for trial court efficiencies in a report to the Legislature. The Governor is proposing to implement 11 of the 17 options. Of the 11 proposed changes, five changes would reduce trial court workload and operating costs, and six would increase user fees to support ongoing workload. These changes would provide the courts with approximately \$30 million in ongoing savings or revenues to help address prior-year budget reductions. The following is an outline of the 11 proposals, as presented by the LAO:

1. ***Court-Ordered Debt Collection.*** Courts (or sometimes counties on behalf of courts) may choose to utilize the state's Tax Intercept Program, operated by the Franchise Tax Board (FTB) with participation by the State Controller's Office (SCO), to intercept tax refunds, lottery winnings, and unclaimed property from individuals who are delinquent in paying fines, fees, assessments, surcharges, or restitution ordered by the court. Current law allows FTB and SCO to require the court to obtain and provide the social security number of a debtor prior to running the intercept. Under the proposed change, courts will no longer be required to provide such social security numbers to FTB. Instead, FTB and SCO (who issues payments from the state) would be required to use their existing legal authority to obtain social security numbers from the Department of Motor Vehicles. This change will reduce court costs associated with attempting to obtain social security numbers from debtors.
2. ***Destruction of Marijuana Records.*** Courts are currently required to destroy all records related to an individual's arrest, charge, and conviction for the possession or transportation of marijuana if there is no subsequent arrest within two years. Under the proposed change, courts would no longer be required to destroy marijuana records related to an infraction violation for the possession of up to 28.5 grams of marijuana, other than concentrated cannabis. This proposed change would reduce staff time and costs associated with the destruction process.
3. ***Preliminary Hearing Transcripts.*** Courts are currently required to purchase preliminary hearing transcripts from certified court reporters and provide them to attorneys in all felony cases. In all other cases, the courts purchase transcripts upon the request of parties. Under the proposed change, courts would only be required to provide preliminary hearing transcripts to attorneys in homicide cases. Transcripts would continue to be provided upon request for all other case types. This change reduces costs as the court will no longer be required to purchase copies of all non-homicide felony cases from the court's certified court reporter, but will only need to purchase them when specifically requested.
4. ***Court-Appointed Dependency Counsel.*** Current law states that parents will not be required to reimburse the court for court-appointed counsel services in dependency cases if (1) such payments would negatively impact the parent's ability to support their child after the family has been reunified or (2) repayment would interfere with an ongoing family reunification process. Designated court staff currently has the authority to waive payment in the first scenario, but are required to file a petition for a court hearing to determine whether payment can

be waived in the second scenario. Under the proposed change, staff would be permitted to waive payments under this second scenario, thereby eliminating the need for some court hearings.

5. **Exemplification of a Record.** Exemplification involves a triple certification attesting to the authenticity of a copy of a record by the clerk and the presiding judicial officer of the court for use as evidence by a court or other entity outside of California. The fee for this certification is proposed to increase from \$20 to \$50. The cost of a single certification is \$25. The increased fee is estimated to generate \$165,000 in additional revenue.
6. **Copies or Comparisons of Files.** The fee for copies of court records is proposed to increase from \$0.50 to \$1 per page, which is estimated to generate an additional \$5.9 million in revenue. Additionally, fees to compare copies of records with the original on file would increase from \$1 to \$2 per page.
7. **Record Searches.** Current law requires court users to pay a \$15 fee for any records request that requires more than ten minutes of court time to complete. Typically, courts interpret this to mean that the fee can only be applied when the search for any single record takes more than ten minutes to complete, regardless of the total number of requests made by the requester. Under the Governor's proposal, courts would charge a \$10 administrative fee for each name or file search request. A fee exemption is provided for an individual requesting one search for case records in which he or she is a party.
8. **Small Claims Mailings.** The fee charged for mailing a plaintiff's claim to each defendant in a small claims action would increase from \$10 to \$15 to cover the cost of postal rate increases that have occurred over the past few years.
9. **Deferred Entry of Judgment.** Courts would be permitted to charge an administrative fee—up to \$500 for a felony and \$300 for a misdemeanor—to cover the court's actual costs of processing a defendant's request for a deferred entry of judgment. This occurs when the court delays entering a judgment on a non-violent drug charge pending the defendant's successful completion of a court-ordered treatment (or diversion) program.
10. **Vehicle Code Administrative Assessment.** Courts would be required to impose a \$10 administrative assessment for every conviction of a Vehicle Code violation, not just for subsequent violations as required under current law. This new assessment is estimated to generate \$2.2 million in annual revenue.
11. **Trial by Written Declaration.** Currently, defendants charged with a Vehicle Code infraction may choose to contest the charges in writing—a trial by written declaration. Originally implemented to allow individuals living far from the court to contest the charge, courts have discovered that more and more individuals living close to the court have been using this service. If the local violator is unsatisfied with the decision rendered in the trial by declaration process, they may then personally contest the charges in court as if the trial by written declaration never took place. In recognition of the unintended increased workload, this proposal would eliminate the right to a trial in front of a judge after a defendant has chosen to proceed with a trial by written declaration.

**Staff Comments.** Staff notes that there have been concerns raised with some of these trial court efficiency proposals. In particular, there is concern that providing preliminary hearing transcripts in felony cases, other than homicide cases, only upon request, will create a significant burden for defense counsel. Additionally, court user fees have been a primary solution in addressing reductions to trial court funding, shifting the burden from the General Fund to users. However, with the need to operationalize trial court funding reductions as outlined in the first issue, the Legislature should strongly consider these proposals.

**Recommendation.** Approve the following proposals:

1. Court-Ordered Debt Collection
2. Court-Appointed Dependency Counsel
3. Copies or Comparisons of Files
4. Exemplification of a Record
5. Small Claims Mailing
6. Trial by Written Declaration
7. Approve the April Finance Letter to recognize increased fee revenue.

Approve the following proposals with modification:

1. Preliminary Hearing Transcripts – Modify to allow a local court, by rule, to require counsel to make a request for preliminary hearing transcripts.
2. Records Search – Exempt the press from new fee.

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

### **Issue 1 – Health Care Reorganization**

**Governor's Proposal.** The May Revision proposes trailer bill language intended to authorize the establishment of a third undersecretary, to oversee CDCR's adult inmate health care services programs. The proposal also includes two new director positions to report to the undersecretary; one to oversee the Division of Health Care Operations and the other to oversee the Division of Health Care Policy and Administration.

**Background.** The proposed positions will not be filled until the Administration has confirmed a transition timeline with the Receiver's Office and the federal court overseeing the *Plata v. Brown* litigation. When necessary, funding to support the proposed positions will be redirected from within CDCR's budget.

**Recommendation.** Approve as proposed.

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

### **Issue 1 – EXECUTIVE COMMITTEE LANGUAGE**

**Governor’s Proposal.** The May Revision proposes trailer bill language to provide that members of the board are not financially interested in any contract made by the board based upon the receipt of compensation for holding public office or public employment. This would ensure the continued use of the historically effective Executive Steering Committee (ESC) process for developing recommendations to the Board.

**Background.** Government Code 1090 did not exempt the BSCC Board members for serving on the ESC, or any subcommittee delegated responsibility from the board to develop the criteria for Requests for Proposals (RFP). [For example, a sheriff serving on the BSCC could be accused of influencing the outcome of the RFP, thereby giving him/her (department) a competitive advantage if their county submitted a proposal to receive an award, or a sheriff's employee (subordinate officer) could serve as an ESC member or on a subcommittee and they could influence the outcome to benefit the sheriff.] The BSCC has relied on a recusal process, in accordance with the law, to prohibit any board member who might have a financial interest from taking action to recommend funding for their proposal (i.e., if the board member's city or county submitted an application for award, he/she would not be able to participate in the board's discussion or to vote to approve an award from city or county).

The TBL will exempt board members, who receive compensation for holding public office or employment, and allow them to continue to serve as ESC members or on any delegated committee.

**Recommendation.** Approve as proposed

### **Issue 2 – Baseline Budget Adjustment**

**Governor’s Budget.** The Governor’s Budget proposes 9 positions, funded from existing resources, for research activities, the administration of the local jail construction financing program, authorized by Chapter 42, Statutes of 2012 (SB 1022), and other administrative functions necessary for the board to operate as an independent entity. These positions consist of 5 research positions (1 Research Specialist V, 1 Research Specialist III, 2 Research Program Specialist I’s, and 1 Research Analyst), 3 Associate Governmental Program Analysts, and 1 Executive Assistant.

**Background.** This BCP reflects BSCC’s identification of workload priorities. Each division, as well as the management team, assessed its operations and identified whether staffing levels and classifications were adequate and appropriate. This

proposal requests positions that were identified as needed to fill gaps. The 9 positions will be funded by the redirection of existing resources as follows:

- Temporary help will be reduced to \$148,000, from \$351,000, and budgeted overtime will be reduced from \$40,000 to \$0, for a net savings of \$243,000.
- \$321,000, of \$531,000 in funds, budgeted to match federal fund expenditures for administration of various juvenile justice grants (Title II, Title V, and Juvenile Justice Accountability Block Grant); will be redirected due to a decline in awards.
- Approximately \$306,000 will be redirected from grant administration programs that would instead be eligible for federal grant program funding.

According to the Administration, the two proposed administrative positions would provide support to the board that was previously provided by CDCR, prior to BSCC becoming a separate state entity. According to the board, the new research unit would be tasked with revising BSCC's correctional surveys, managing the collection of data, as well as developing and carrying out a research agenda. The BSCC also plans to utilize these researchers to help develop a web-based reporting system for counties to submit correctional data, as well as an online dashboard to make the data more readily available to the public.

SB 1022 provides up to \$500 million in state lease-revenue bond financing for construction, expansion or renovation of adult local criminal justice facilities in California. Consistent with the stated legislative intent, applicant counties are expected to judiciously consider programming needs to manage the offender population, and the range of alternatives to incarceration that may affect bed space needs, while employing the least restrictive options.

The legislation specifies funding consideration shall be given to counties that are seeking to replace existing compacted, outdated, or unsafe housing capacity or are seeking to renovate existing, or build new, facilities that provide adequate space for the provision of treatment and rehabilitation services, including mental health treatment.

**Staff Comment.** This proposal represents BSCC's efforts to prioritize existing resources in light of their new responsibilities.

**Recommendation.** Approve this request with the adoption of the following budget bill language to 1) require the BSCC to report on activities related to evidence-based practices and 2) require that one of the research positions be designated for juvenile justice issues.

- The Board of State and Community Corrections shall develop recommendations for how it can build its clearinghouse and technical assistance capacity for collecting and providing user-friendly information to assist state and local corrections with selecting, implementing, and evaluating evidence-based or promising programs, services, and treatment practices for managing criminal offenders in the community. The board shall provide a written report to the

appropriate fiscal and policy committees of the Legislature of its recommendations, and a description of how the board developed its recommendations, on or before May 1, 2014.

- The positions included in this item for research activities shall include 1 juvenile justice research and program specialist to assist BSCC, including its Juvenile Justice Standing Committee, in the development of standardized juvenile justice system performance and quality assurance measures, and in planning for necessary upgrades of state and local data systems to support those measures, with the goal of advancing juvenile justice best-practices that will promote public safety while assuring positive outcomes for justice-involved youth.

## Items to be Heard

### Judicial Branch (0250)

Article VI of the California Constitution creates the Supreme Court of California and the Courts of Appeal to exercise the judicial power of the state at the appellate level. Article VI also creates the Judicial Council of California to administer the state's judicial system. Chapter 869, Statutes of 1997, created the California Habeas Corpus Resource Center to represent any person financially unable to employ appellate counsel in capital cases.

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

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

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

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

Currently, the state maintains 58 trial court systems, each having jurisdiction over a single county. These courts have trial jurisdiction over all criminal cases (including felonies, misdemeanors, and traffic matters). They also have jurisdiction over all civil cases (including family law, probate, juvenile, and general civil matters).

The mission of the Judicial Branch is to resolve disputes arising under the law and to interpret and apply the law consistently, impartially, and independently to protect the rights and liberties guaranteed by the Constitutions of California and the United States, in a fair, accessible, effective, and efficient manner.

### Major Trial Court Realignment Legislation

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

## Issue 1 – Judicial Branch Contract Law Audits

**Governor’s Proposal.** The Governor’s budget proposal includes trailer bill language authorizing the AOC to contract with the Controller, Department of Finance (DOF), or State Auditor to perform mandated contracting audits.

**Background.** A trailer bill associated with the 2011 Budget Act included contracting requirements for the Judicial Branch. Most notably, the Judicial Branch is now required to follow essentially the same requirements that apply to state agencies, and the Judicial Council and trial courts were required to adopt contracting manuals that mirror the Public Contract Code, and are similar to other related state policies. It also requires the AOC to report, twice annually, to the Legislature and State Auditor regarding procurement and contracting practices. Lastly, the State Auditor was mandated with establishing an audit program and the courts were required to contract with the State Auditor for the auditors required under this program.

**Staff Comments.** Staff notes that concerns have been raised by the AOC that the new contracting code audits have been too costly. Therefore, the proposed trailer bill language was developed to give the AOC greater flexibility in choosing the least costly auditing agency among the Controller, DOF, or the State Auditor. However, the State Auditor has reported that, based on experience from the audits done to date, they believe that they can reduce the future costs of the court contracting audits. One of their suggestions is to perform future trial court audits utilizing a risk-based approach

Cost aside, it is important to note that the Legislature selected the State Auditor's office to perform these duties based on a determination that they were the most appropriate entity for the task.

**Recommendation.** Reject the proposed trailer bill. Adopt, the following solutions to address the cost of the State Auditor's court contracting audits:

1. Appropriate \$325,000 to the Trial Court Trust Fund.
2. Adopt budget bill language that specifies that this funding is to be allocated, by the Judicial Council, to trial courts that are audited by the State Auditor pursuant to the court's contracting provisions, and that the funds are to be paid the State Auditor for the costs of these audits.
3. Modify statute to make the court's contracting audit program a more selective, risk-based audit program.

## **Issue 2 – Trial Courts Cash Management**

**Governor's Proposal.** The Governor has proposed trailer bill language to address trial court cash management concerns.

**Background.** Legislation associated with the realignment of trial courts, from the counties to the state, allowed the Judicial Council to authorize trial courts to establish reserves to hold any unspent funds from prior years. There were no restrictions placed on the amount of reserves each court could maintain or how they could be used. Trial courts had \$531 million in reserves at the end of 2011-12.

These reserves consist of funding designated by the court as either restricted or unrestricted. Restricted reserves include 1) funds set aside to fulfill contractual obligations or statutory requirements and 2) funds usable only for specific purposes. Examples of restricted reserves include funds set aside to cover short-term facility lease costs, service contracts, license agreements, and children's waiting rooms costs. Unrestricted reserves, on the other hand, are funds that are available for any purpose. Unrestricted funds are generally used to avoid cash shortfalls caused by normal revenue or expenditure fluctuations, to make one-time investments in technology or equipment, and to cover unanticipated costs.

As part of the 2012-13 budget package, the Legislature approved legislation to change the above reserve policy that allows trial courts to retain unlimited reserves. Specifically, beginning in 2014-15, each trial court will only be allowed to retain reserves of up to 1 percent of its prior-year operating budget. The judicial branch estimates that, in total, trial courts will be able to retain up to \$22 million in 2014-15. Additionally, legislation was approved to establish a statewide trial court reserve, managed by the Judicial Council, beginning in 2012-13. This statewide reserve consists of 2 percent of the total funds appropriated for trial court operations in a given year, \$27.8 million in 2012-13. Trial courts can petition the Judicial Council for an allocation from the statewide reserve

to address unforeseen emergencies, unanticipated expenses for existing programs, or unavoidable funding shortfalls. Any unexpended funds in the statewide reserve would be distributed to the trial courts on a prorated basis at the end of each fiscal year.

The Governor has proposed trailer bill language to help trial courts operationalize the new reserve policy and mitigate cash flow concerns by:

- Specifying that court reporting fees collected for proceedings lasting less than an hour be distributed to the court in which it was collected.
- Clarifying that each trial court's allocation be offset by the amount of reserves in excess of the amount allowable (1 percent).
- Allowing the AOC to transfer funds to the Trial Court Trust Funds, from other court funds (State Court Facilities Construction Fund, Immediate and Critical Needs Account, Judicial Branch Workers' Comp Fund), if the cash balance is insufficient to support trial court operations. The total amount of the outstanding loan cannot exceed \$150,000,000.
- Exempts certain funds from being included in the calculation of the 1 percent balance in unexpended funds that trial courts can carry-over from one fiscal year to the next.

**Staff Comments.** Reducing the amount of unexpended funds that trial courts are able to carry-over from year-to-year was a fundamental shift in the manner in which trial courts have been budgeted since the realignment of responsibility the state. Concerns have been raised by courts that a 1 percent reserve is insufficient to meet operational cash flow needs. In addition, there is concern that it could lead to an unintended practice of courts ensuring that they spend down as much funding as possible before the year-end, in order to avoid offsets in the following year's allocation. These concerns notwithstanding, the administration's language does address issues that have been identified with the new reserve policy.

In order to further address this issues the LAO has recommended the following:

- That the Legislature impose a three-year sunset for the proposed cash management language. They report that there remains significant uncertainty regarding the degree to which the primary components of the proposal, 1) loans from court special funds and 2) exempting statutorily-restricted funds from counting towards a court's 1 percent reserves cap, will work as intended, particularly given uncertainties about what changes to financial and operational practices trial courts will make to implement the 1 percent reserves policy.
- That the Legislature specify how any funds remaining at the end of a fiscal year, in excess of a court's 1 percent reserve cap; can be expended. Current law and the proposed language are silent on whether, for example, those funds are to be redistributed among the 58 trial courts or retained in the Trial Court Trust Fund for other purposes.
- That, in addition to the proposal to exempt statutorily-restricted funds, the Legislature also exempt three other categories of funds. Specifically, they find

that failure to exempt the following funds could make it unnecessarily difficult for courts to manage their cash once the reserves limit is in place in 2014-15: 1) funds restricted by existing contracts, 2) funds required to be kept by a court's payroll processor at all times, and 3) any funds loaned from judicial branch special funds to a trial court for cash flow purposes.

In addition, the LAO notes that the Administration's proposed language does not address a concern that they raised previously. Specifically, it does not provide a process for the authorization, funding, and oversight of projects traditionally funded from reserves, such as technology. They recommend that the Legislature require the Department of Finance, in consultation with the judicial branch, to develop a plan that can be considered in next year's budget hearings.

**Recommendation.** Approve trailer bill language to increase the amount of funds that a trial court can carryover, from one fiscal year to the next, to 12 percent. In addition, adopt the Administration's proposed exclusions from the calculation of the 12 percent carryover.

<b>Issue 3 – Judicial Branch – Capital Outlay Projects</b>
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**Governor's Proposal.** A May 1 Finance Letter proposes 1) \$522.3 million (\$511.4 in Lease Revenue Bond Authority (LRB), and \$10.9 from the Immediate and Critical Needs Account (ICNA) for the construction phase of three court construction projects, 2) \$15.4 million from the ICNA for the working drawings phase of five projects, 3) the reappropriation of \$240.2 million in LRB authority for the construction phase of one project, and 4) reimbursement authority of \$3.6 million for the preliminary plans phase of one project.

**Background.** The May 1 letter is requesting funding for the continuation phases for the following 9 projects:

	<b>Courthouse Project</b>	<b>Phase</b>	<b>Fund Source</b>	<b>Amount</b>
1	San Joaquin – New Stockton Courthouse	C	LRB  State Court Facilities Construction Fund (SCFCF)	\$240,183,000  \$3,083,000
2	San Diego – New San Diego Central Courthouse	C	ICNA  LRB	\$511,374,000  \$4,623,000

3	San Joaquin – Renovate and Expand Juvenile Justice Center	C	ICNA	\$3,205,000
4	Merced – New Los Banos Courthouse	W	ICNA	\$1,974,000
5	Tehama – New Red Bluff Courthouse	W	ICNA	\$3,982,000
6	Imperial – New El Centro Courthouse	W	ICNA	\$3,344,000
7	Riverside – New Indio Juvenile and Family Courthouse	W	ICNA	\$3,484,000
8	Glenn – Renovation and Addition to Willows Historic Courthouse	W	ICNA	\$2,600,000
9	Siskiyou – New Yreka Courthouse	P	Reimbursement	\$3,578,000

**Staff Comments.** These projects are consistent with the court's construction plans, as approved by the Judicial Council.

**Recommendation.** Approve as proposed.

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

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

The mission of the CDCR is to enhance public safety through safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities.

The CDCR is organized into the following programs:

- Corrections and Rehabilitation Administration
- Juvenile: Operations and Offender Programs, Academic and Vocational Education, Health Care Services
- Adult Corrections and Rehabilitation Operations: Security, Inmate Support, Contracted Facilities, Institution Administration
- Parole Operations: Adult Supervision, Adult Community-Based Programs, Administration
- Board of Parole Hearings: Adult Hearings, Administration
- Adult: Education, Vocation, and Offender Programs, Education, Substance Abuse Programs, Inmate Activities, Administration
- Adult Health Care Services

## Issue 1 – Expand Fire Camp Capacity

**Governor’s Proposal.** The Governor’s May Revision proposes \$15.4 million General Fund, and 140 positions, to retain the maximum number of fire camps and inmate crews.

**Background.** CDCR’s *Blueprint* contained inmate population projections that predicted a fire camp average daily population (ADP) of 2,500, as of July 1, 2013. This is a decrease of 1,300 ADP from the current year. Based on the *Blueprint*’s population projections for inmate fire camps, the Governor’s Budget included staffing adjustments that reduce custody staffing by \$15.4 million and 140 positions in the budget year. However, based on results of the CDCR’s revised Inmate Classification Score System (ICSS), and increased felony admissions from the Spring 2012 projections, the CDCR now projects a fire camp ADP of 3,700 for 2013-14, and ongoing. This proposal retains the custody staffing scheduled to be reduced in 2013-14.

Should the department move forward with the Governor’s budget funding level for inmate fire camps in July 2013, the current population of 3,876 will have to be reduced to 2,500. Due to the camp inmate population not declining, 1,376 inmates would have to return to prison beds. In an effort to comply with the United States (U.S.) Supreme Court, this could adversely impact prisons overcrowding percentages. The U.S. Supreme Court ruling in 2011 ordered the Department to reduce prison crowding to 137.5 percent of the prison system’s design bed capacity by June 2013 (the date has since been moved to December 2013). If the custody positions are not restored, the camp inmates that would return to prison would fill Level I and Level II beds that could best be utilized by other Level I and Level II inmates that are not camp eligible.

The inmate fire crews provide a very direct and tangible benefit to the state. They currently provide emergency incident response, conservation work, and community service assistance. Without these crews, reliance on more expensive local, federal, and contract fire services increases. In addition, the interdependence of CAL FIRE and partner state agencies creates impacts to all parties when any one agency faces budget or restructuring changes.

Failure to mitigate the inmate firefighter population reductions will result in the loss of 75 crews by July 1, 2013. This represents over 38 percent of current crew strength (191 crews). One major emergency incident can require the use of 75 crews. During peak fire activity it is not uncommon to have two or three major fires at the same time. These reductions will severely impact the ability of CAL FIRE to suppress major fires, and result in an increased reliance on local, federal, and contract fire crews. Depending on local and national incidents, these crews may not be available, irrespective of cost.

The projected loss of 75 crews would reduce the conservation camp program to its lowest level of strength since 1971-1979. In view of the continual growth in population California has experienced since that time period, particularly in the wild land-urban interface, this decreased level of emergency response capability is a serious cause for

concern. Of the 20 largest, most damaging fires in California history, 11 have occurred since 2002.

In 2011-12, camp inmate hand crews (12 to 17 inmates per crew) worked a total of 31,514 non-emergency crew hours, at a rate of \$200 per day, plus administration fees. Inmate hand crews worked 1,063,648 emergency crew hours statewide. The majority of these emergency assignments were for fire or flood duty. An inmate hand crew costs \$3,457 per day for a fire assignment. A non-inmate crew, if available, costs \$13,373 per day, a difference of \$9,916. Other hand crews cost as much as \$22,866 per day. Consequently, reduction of these inmate crews would cost significantly more. CDCR has been able to regularly maintain the minimum crew size of 12 inmates and the maximum crew size of 17 inmates, based on population. Camps are rated for 4 to 7 fire crews per camp design/population.

**Recommendation.** Approve as proposed.

## **Issue 2 – Parole Court Revocation and Compliance Workload**

**Governor’s Proposal.** The Governor’s May Revision proposes \$8.3 million General Fund, and 60.0 positions on a one-year limited-term basis, to address court revocation and compliance workload to address *Valdivia* compliance.

**Background.** The 2011 Public Safety Realignment shifted responsibility for the revocation and warrant processes from the Board of Parole Hearings (BPH) to the county court system. Effective July 1, 2013, BPH will cease to perform all functions related to the parole revocation process, and the Division of Adult Parole Operations (DAPO) will collaborate with each of the individual 58 county jurisdictions to adjudicate the parole revocations of the parolee population under DAPO’s jurisdiction.

In January of 2005, the United States District Court, Eastern District of California, issued a Stipulated Order for Permanent Injunction created by *Valdivia v. Brown*, which required the DAPO to implement a revocation process to adjudicate the technical parole violation and law violations committed by parolees under their supervision. In response to the *Valdivia* injunction, the DAPO/BPH implemented a revocation process and the BPH established and operated Decentralized Revocation Units (DRUs). The DRUs, up until June 30, 2013, will serve as a hub for all processes and procedures relating to revocation. Currently, the BPH has approximately 158.6 positions dedicated to the revocation process.

To comply with the mandates of *Valdivia*, the DAPO’s staff of 81.0 Parole Agent I’s advise parolees of their due process rights by providing the Notice of Rights/Notice of Charges documentation within three days of the parolee’s being placed in county level custody. These agents are responsible for locating and serving parolees at approximately 200 county jails and facilities within the 58 California counties. Multiple

attempts to provide the Notice of Rights/Notice of Charges may be necessary, due to the counties transporting parolees to and from jails or court.

On January 13, 2012, plaintiffs' counsel representing class members in the *Armstrong v. Brown* litigation renewed the filing of a motion claiming that CDCR had an obligation to ensure parolees, in their care, are afforded necessary ADA accommodations when they are housed in a county jail facility as a result of a violation of the conditions of their parole. The resulting court order required the CDCR to develop a plan (the Armstrong County Jail Plan) to ensure timely and appropriate accommodations for parolees incarcerated in county jails.

In order to comply with the requirements of the court order and the Armstrong County Jail Plan, the DAPO has been utilizing the existing 81.0 Parole Agent I's funded under *Valdivia v. Brown*, while simultaneously serving the Notice of Rights/Notice of Charges, to complete the additional tasks below:

- Within three business days of the arrival of a parolee at a county jail facility, the CDCR must locate and interview the parolee to determine the need for reasonable ADA accommodations.
- Class members housed in county jails must have access to CDCR grievance forms; DAPO agents provide each class member with these forms and assist in their completion if the parolee has a disability or need that warrants the agent's assistance.

In 2013-14, the *Blueprint* brought *Valdivia* positions down from 120 to 60, with the assumption that the remaining positions could accommodate court revocation workload and remaining *Valdivia* workload. With the transfer of the parole revocation process to the courts, and other process changes, such as the addition of authority for flash incarceration, it was anticipated that a significant portion of the *Valdivia* workload would no longer be required. However, at the time of the *Blueprint*, it was not known specifically what the court revocation process would entail or what the outcome of pending actions for the *Armstrong* lawsuit would be.

The CDCR reports that the courts have asked, as a part of the court revocation process, for DAPO to have designated court liaison agents that would work directly with the courts, as opposed to having numerous, changing parole agents of record, deal with the courts from case to case.

The department reports that they will be in significant fiscal and legal jeopardy if the funding is not allocated for these positions. The CDCR maintains that they will fail to meet county/court expectations in the midst of this transitional process; there will be a public safety detriment if DAPO is unable to adequately pursue parolees who need to be returned to custody; there will be a possible over detention, early release, and failure to discharge appropriately; there will be an inability to fully comply with *Armstrong* County Jail Plan, which will lead to contempt of court; and there may be more extensive litigation and fiscal liability to the CDCR.

**Staff Comments.** Staff notes that the Legislative Analyst's Office (LAO) recommends rejection of this proposal. The LAO reports that the administration has been unable to provide sufficient documentation to justify the positions on a workload basis. In particular, the department has not provided the data necessary to support its claim that parole revocations will be higher than previously anticipated, or how the number of revocations drives the need for 60 additional positions.

**Recommendation.** Approve as proposed.

#### **Issue 4 – Population Adjustment**

**Governor's Proposal.** The May Revision includes an increase of \$11.5 million GF in 2012-13, and \$6.7 million GF in 2013-14, to support various costs directly related to adult inmate and parole population changes.

**Background.** The revised average daily population projections for adult inmates are 132,621 in 2012-13 (an increase of 404 inmates above the Governor's budget projection) and 128,885 in 2013-14 (an increase of 280 inmates above the Governor's budget projection). The revised average daily parolee population projection is 62,498 in 2012-13 (an increase of 60 parolees above the Governor's budget projection), and 46,358 in the budget year (a decrease of 1,262 parolees below the Governor's budget projection). The mental health population is projected to be 31,889 in the current year and 31,753 in the budget year, an increase of 6.6 percent in 2012-13 and 7.9 percent in 2013-14, over the projections included in the Governor's budget, but only a 1.3 percent increase in the mental health population since the beginning of 2012-13.

The biggest driver of the population funding increase is the projected increase in the mental health population. Due to court ordered mental health staffing ratios, the May Revision mental health population projections result in increases of \$9.7 million in 2012-13 and \$11.7 million in 2014-15.

The population adjustment also includes an increase in the statewide inmate feeding budgeted rate of \$0.04. This increase will bring the budgeted rate to \$3.14 per inmate, per day, for food and supplies to account for a 4 percent increase to Prison Industry Authority (PIA) food prices over the 2011-12 rates.

**Recommendation.** Approve as proposed.

## Issue 5 – Juvenile Population Adjustment

**Governor's Proposal.** The May Revision proposes to adjust the CDCR's budget based on updated juvenile ward population trends. This proposal includes a decrease of \$425,000 General Fund in 2012-13, and a decrease of \$2.8 million General Fund in 2013-14.

**Background.** Specifically, it is requested that Item 5225-001-0001 be decreased by \$1.4 million and 78.1 positions, reimbursements be decreased by \$416,000, and Item 5225-011-0001 be decreased by \$1 million Proposition 98 General Fund and 12.6 positions to reflect revised juvenile population projections. Adjusted for recent juvenile population trends, the May Revision reflects an estimated average daily population of 679 wards in 2013-14, which is 234 less than projected in the Governor's budget. This adjustment also addresses the following Division of Juvenile Justice (DJJ) budget changes necessary for DJJ to adequately serve a reduced juvenile population:

- Establishes a ward-driven Operating Expenses and Equipment budget adjustment.
- Augments DJJ's salaries and wages budget to reflect actual custody salaries for filled positions, consistent with the adjustments made to the Division of Adult Institutions (DAI) in 2011-12, and Division of Parole Operations in 2012-13
- Augments DJJ's budget for the actual cost of mental health treatment provided by the Department of State Hospitals
- Shift \$1.1 million in workers compensation funding from the Division of Adult Institutions' budget to the Division of Juvenile Justice's budget. This change is necessary to align expenditure authority with the proper program.

**Recommendation.** Approve as proposed. In addition, adopt budget bill language to require the DJJ report back to Joint Legislative Budget Committee on potential cost reductions as their population declines.

## Issue 6 – Public Safety Trailer Bill Language

**Governor's Proposal.** The Administration has proposed trailer bill language related to state and local public safety issues.

The proposals for the subcommittee's consideration are:

**Notification of Reception Center or Parole Office Closure** – Require CDCR to provide written notification at least 90 days prior to the opening, closure, or change of location of a reception center or parole office.

**Misclassified Post-Release Community Supervision or Parole Placement** – Provide a 60-day period during which an offender can be transferred from the jurisdiction of parole to probation or from probation to parole. After this period, the offender would remain under the supervision of the jurisdiction to which the offender was released for the remainder of his/her supervision term, regardless of the original offense.

**Health Care Information for Offenders Released from Prison to Post Release Community Supervision** - Provides for a standard set of health care information to be provided by the CDCR to counties for all inmates placed on post-release community supervision, regardless of whether the inmate consents to the release of health care information. This will require an exemption from federal HIPAA regulations, which would be requested after legislation is enacted.

**Parole Revocation Hearings** – Current law provides that parole revocation hearings happen in the jurisdiction of where a parolee resides. The proposed language revises current law to state that a parole revocation hearing could also occur in the jurisdiction where the parole violation occurred, as recommended by the Board of Parole Hearings/Administrative Office of the Courts transition working group.

**Mandatory Supervision Following Early Release of Split Sentence** – Clarifies existing law to specify that the supervision portion of a split sentence begins when the person is released from jail. This avoids a gap in supervision in those instances when inmates are released early due to jail capacity issues.

**Controller Disbursement of Local Subventions: Monthly vs. Quarterly** – Pursuant to current law, the Controller disburses subventions from the Law Enforcement Services Subaccount (JJCPA/COPS, Booking Fees, Juvenile Probation, et al) and the Juvenile Justice Subaccount (YOBG and JRF) on a quarterly basis. These funds should be disbursed monthly, consistent with the intent of realignment in maximizing local control and flexibility.

**Ongoing Law Enforcement Services Growth Allocation** – The realignment superstructure bill trailer bill did not specify how growth funding is allocated to the various subaccounts after 2012-13. This proposal would continue the current distribution split on an ongoing basis.

**Conservation Camp Credits for Locals** – Local governments lack the statutory authority to provide credits for programs similar to those conducted by the state. Inmates in state prisons can earn six weeks per year for completing educational programs. Also at the state level, inmates earn two for one credits for time served in fire camps. Local agencies propose establishing statutory authority to provide credits for

education programs and participation in conservation camps, which contain crews that do outdoor preservation projects, such as cleaning up parks and open spaces.

**Staff Comment.** These proposals are consistent with the intent of public safety realignment and support the effort to provide locals with tools that enhance their ability to successfully carryout their new responsibilities.

**Recommendation.** Approve as proposed.

### **Issue 7 – Community Corrections Performance Incentive Act (SB 678)**

**Governor's Proposal.** The May Revision proposes \$72.1 million (for a total of \$106.9 million), and trailer bill language, to support county probation departments that are successful in reducing felony probation failure rates.

The trailer bill language proposes to:

- 1) require the AOC to collect additional data on the felony probation population relating to the number of Penal Code Section 1170(h) convictions;
- 2) revise the probation failure rate calculation so that it includes revocations resulting in county jail incarceration;
- 3) add a third tier of performance incentive payments for counties that demonstrate improved felony probation outcomes, but that still have combined probation failure rates above the 2006 through 2008 baseline statewide average; and,
- 4) remove the statutory authority to fund the Administrative Office of the Courts' (AOC) workload associated with SB 678 and realignment (a separate appropriation was proposed in the Governor's Budget); and
- 5) extends the \$200,000 minimum payment to counties performing better than the statewide average.

**Background.** The California Community Corrections Performance Incentive Act of 2009 (SB 678) established a system of performance-based funding that shares state General Fund savings with county probation departments when they demonstrate success in reducing the number of adult felony probationers going to state prison because of committing new crimes or violating the terms of probation. SB678 was designed to help decrease California's prison admissions by reducing criminal behavior, and thus relieve prison overcrowding and save public funds.

Based on a jurisdiction's success, measured by the reduction of felony probationers who are sent to prison, the state shares a portion of its savings achieved with those

jurisdictions that are successful in reducing the number of felony probationers committed to state prison. At the end of every calendar year, the California Department of Finance (Finance) is required to determine the statewide and county specific felony probation failure rates. Using a baseline felony probation failure rate for calendar years 2006 through 2008, Finance calculates the amount of savings to be provided to each county probation department.

Based on improvements in probation failure rates reflected in the increase in grant funding provided to counties, the SB 678 grant program was very successful. The county funding level grew from \$89.2 million in 2011-12 to \$138.9 million in 2012-13, due to improved performance in the prevention of probation failures. Over these two years, it is estimated that SB 678 prevented over 15,000 prison admissions.

### **Governor's Budget Proposal**

Based on data from the first two quarters of calendar year 2012, Finance estimated SB 678 payments to counties to total \$35 million, according to the calculation methodology laid out in current law. Following this methodology, the amount of funding available under SB 678 was reduced significantly due to the implementation of 2011 public safety realignment and standardized staffing within California's prisons.

As a result of realignment, a large portion of adult felony probationers who are revoked or commit new crimes, now serve their sentences in county jails instead of prison (50.1 percent). The amount of state savings to be shared with county probation departments was reduced because these offenders are no longer eligible for state prison. In order to estimate this impact with available data, the ADP avoidance attributable to revocations served in county jail was not included in the calculation used to determine the performance incentive payment for the county. This required an adjustment to the 2006 through 2008 established baseline rate in order to isolate the impact of the prison eligible offenders by estimating that 49.9 percent of the offenders would have had prison eligible crimes.

Additionally, CDCR implemented standardized staffing on July 1, 2012, which provides for a cost-effective, safe, and efficient prison system. Standardized staffing allows for the inmate density to range from 100 to 160 percent of design capacity, without the need to adjust the number of correctional officers. As a result, the new marginal rate used to calculate SB 678 state cost savings has decreased from almost \$30,000 to approximately \$10,000 per inmate, annually.

### **May Revision Proposal**

The May Revision proposes a \$72.1 million augmentation to the SB 678 funding allocation formula, bringing the total funding for county probation departments to \$106.9 million for fiscal year 2013-14. The revised formula: 1) now includes felony probation failures resulting in jail incarceration, in addition to those resulting in prison incarceration, to determine a county's overall probation failure rate; 2) makes an adjustment to the 2012 marginal rate for CDCR inmates; 3) adds a third tier for

performance incentive payments; and 4) adds counties with failure rates below the statewide average to the counties entitled to receive a minimum of \$200,000.

Overall county performance, and the determination of which counties are eligible for High Performance and Tier payments, is based on a comparison between the historical baseline probation failure rate and: 1) the rate of felony probationers who fail and are sent to prison for new crimes or revocations; and 2) the rate of felony probationers who fail and are sent to jail for new crimes or revocations. The baseline probation failure rate was based on data from 2006 through 2008, when all felony probationers had convictions for prison eligible crimes. However, we do not have data on the commitment offense for each of these felony probationers. Consequently, there is no data on the number of felony probationers that committed crimes that have since been realigned and are now eligible for incarceration in jail. Without this data, there is no accurate way to measure a county's performance in preventing prison incarcerations against the established baseline rate for 2012. As a result, in order to maintain a fair measure of felony probation performance for 2012, Finance proposes to include felony probation failures resulting in prison *and* jail incarceration to measure a county's overall performance.

Secondly, the marginal rate has been adjusted to account for the implementation of standardized staffing on July 1, 2012. As discussed above, standardized staffing resulted in a reduction in the marginal rate for each prisoner prevented from coming to prison. Standardized staffing reduced the marginal cost from close to \$30,000 per inmate to approximately \$10,000 per inmate annually. As a result, the revised marginal rate used for SB 678 is \$20,000 per inmate, since standardized staffing was in place for only half of calendar year 2012.

New to the SB 678 formula this year, is the establishment of a third tier for performance incentive payments. The third tier of performance will provide an incentive payment equal to the estimated number of probationers successfully prevented from being sent to prison or jail, multiplied by 30 percent of the cost the state would have incurred for that inmate (\$20,000 for 2012). This third tier will be applied to any county that demonstrated an improvement in its felony probation failure rate, but that still has a felony probation rate that is above the 2006 through 2008 baseline statewide failure rate of 7.88 percent.

The funding made available by the establishment of the third tier was used to provide counties with probation failure rates below the 2012 statewide average, with a minimum payment of \$200,000. Current law provides that any county eligible for a tier payment award shall receive a minimum of \$200,000. This proposal would add counties with a probation failure rate below the statewide average, but that did not show improvement compared to its baseline rate, with the same minimum payment. This change, in combination with the establishment of the third tier payments, provides for a more equitable distribution of SB 678 funding.

**Staff Comments.** SB 678 was established to incentivize best practices at the local level by sharing state savings with probation departments for improving public safety outcomes. While realignment and standardized staffing have impacted the structure of the program, given the success of the program, the fundamental of incentivizing best practices should be maintained going forward. As such, in addition to the Administration's proposal, it has been suggested that SB 678's authorizing statute should be amended to capture a broader range of the population that is now managed by probation departments and measure the outcomes of this expanded population for possible inclusion in the program's funding formula. Lastly, given the proven success of the program, the committee should consider removing the program's sunset date.

**Recommendation.** Adopt the Administration's May Revise proposal. Add trailer bill language to broaden the scope of the probation population that could be considered in the programs funding formula to include post release community supervision and mandatory supervision caseloads and remove the 2015 sunset date.

## **Issue 8 – Reappropriation and Scheduling of Rehabilitation Program Funds**

**Background.** Due to recent concerns regarding unspent funds or shifting of rehabilitation funds within CDCR's budget to cover other expenses, the 2012 Budget Act included a separate item of appropriation for CDCR rehabilitative programs. By creating this separate item, the Legislature intended to increase accountability of funds that are budgeted for rehabilitative programs and ensure that the funds are spent as intended.

It has come to the subcommittee's attention that, in the current year, there will be a year-end balance of funds in CDCR's rehabilitation programs item. To ensure that this funding is utilized to enhance inmate rehabilitative programs, it is recommended that the sub-committee reappropriate the balance of funds in Item 5225-008-0001, Budget Act of 2012, for the following purposes:

- Maintenance and upgrades of certain CDCR classroom and rehabilitative programming spaces (\$5.4 million). Budget bill language to require the use of inmate ward labor where possible.
- A pilot project for a re-entry program for locals to receive inmates 60 days prior to release in order to provide services prior to reentry into the community. The pilot would be authorized to take place in four counties (San Francisco, Los Angeles, Marin, and San Diego) and the counties would be required to report on program outcomes (\$5 million).
- A pilot project to provide a fiscal incentive for participation in CDCR vocational programs (\$4.4 million).

- An allocation to the Prison Industry Authority (PIA) to support the Career Technical Education program. Budget bill language would require the PIA to report on its budget and expenditures during the fiscal year (\$3.1 million).
- One-time funding to support parolee reentry courts (\$2.3 million).

In addition, while the 2012 Budget Act created Item 008 within CDCR's budget to separate funding for the Division of Rehabilitative Programs from the Division of Adult Institutions, approximately \$7.8 million remains in Item 001 for Program 48-Adult Education, Vocation and Offender Programs-Adult Administration. The sub-committee should consider eliminating Program 48 in Item 001 and moving activities and funds to other programs and items, as specified, which is consistent with the Legislature's action to separate funding for the Division of Rehabilitative Programs beginning in 2012-13.

While we do not currently have the specific funding or positions associated with the Community Resource Managers or Inmate Leisure Time Activity Groups, the CDCR and Finance should be directed to work together to determine how the resources are to be divided consistent with the recommended action of the subcommittees. To the extent other programs are funded in Program 48 within Item 001, the subcommittees direct staff, CDCR, and Finance to work together to identify the appropriate scheduling for those programs consistent with the intent to eliminate Program 48 within Item 001. Finance should report the final scheduling amounts to subcommittee staff. Below are the approximate resources that would be rescheduled.

**Approximately \$3.6 million in expenditures for Community Resource Managers** - 1 position per institution dedicated to bringing programs into prisons. Recommend moving the positions and funding to Program 48 within Item 008, beginning in 2013-14.

**Approximately \$4.2 million for Inmate Leisure Time Activity Groups-** Provides staff (self-help sponsors) to oversee inmates participating in programs conducted by community providers/volunteers (i.e., Alcoholics Anonymous, Narcotics Anonymous, Anger Management, and Problem Resolution).

- Self-help sponsors are custody staff or correctional counselors that monitor inmate participation, escort volunteers to group locations, and initiate custody response when necessary. Sponsors are paid hourly since this is not full-time/scheduled workload.
- These staff perform a custody-related function and custody staff are funded only in Item 001. Custody (Officers, Sergeants, and Lieutenants) staff are funded in Program 25 (Adult Institution General Security) and Correctional Counselors are funded in Program 27 (Adult Institution Inmate Support). Recommend moving the funding associated with overseeing inmate participation from Program 48 to Program 27 within Item 001.

**Recommendation.** Approve the reappropriation of CDCR rehabilitative programs funding to support the items listed above and approve the elimination of program 48 from CDCR's main item and the rescheduling of funds included in the item and creating

a separate budget program for the Sex Offender Management Board. The Department of Finance shall report the final scheduling to committee staff and the Legislative Analyst's Office for review prior to making the final adjustment.

## **Issue 9 – Parolee Mental Health and Medi-Cal Expansion**

### **Background.**

#### **The federal Affordable Care Act**

Historically, the state has spent tens of millions of dollars annually from the General Fund for the CDCR to provide mental health treatment services to mentally ill parolees. With the implementation of the federal Affordable Care Act, federal Medicaid reimbursements could be attained for some of the costs of these existing services. Moreover, the amount of federal reimbursements could increase significantly under the federal Patient Protection and Affordable Care Act (ACA) if the Legislature chooses to expand Medi-Cal to provide health coverage to most low-income individuals, as authorized by ACA.

The federal Affordable Care Act could expand Medi-Cal coverage, including mental health, to approximately one million uninsured eligible Californians, which is anticipated to include individuals recently released from local jails and state prison.

The Division of Adult Operations (DAPO) utilizes contracted social workers to provide Transitional Case Management Program (TCMP) for inmates transitioning back to the community. TCMP services are provided for eligible inmates and parolees under the jurisdiction of the CDCR. The TCMP program works at enrolling inmates who are 120 days from release for state and federal benefits. Under the current program the TCMP reaches approximately 15% of the population prior to their release.

#### **Integrated Services for Mentally Ill Parolees (ISMIP)**

To date, several research studies have demonstrated that affordable housing coupled with support services, also known as supportive housing, leads to a reduction in recidivism among vulnerable offenders who suffer from mental illness (SMI) and who are homeless.

To address the needs of parolees who suffer from SMI, AB 900 (Solorio), Chapter 7, Statutes of 2007, required the CDCR to provide services in day treatment or crisis care centers to at least 300 parolees who suffer from serious mental illness and who are at-risk for homelessness. Using AB 900 funding, the CDCR Division of Adult Parole Operations (DAPO) developed the Integrated Services for Mentally Ill Parolees (ISMIP) program, which is based on the adult system of care model to provide wraparound services that are flexible and tailored to each individual's rehabilitative needs.

DAPO's ISMIP Program is a comprehensive model that provides varied levels of care, supportive/transitional housing, and an array of mental health rehabilitative services to assist with the development of independent living in the least restrictive environment possible. Parole Agents and parole outpatient clinic (POC) staff refer parolees to contracted ISMIP providers for day treatment and crisis care services. Each parolee-client has a designated mental health personal services coordinator (or case manager) who, as a part of a multidisciplinary treatment team, is responsible for providing or assuring coordinating needed services including:

- Housing
- Crisis Care - 24 / 7 / 365 (including in-patient services)
- Mental Health Treatment
- Substance Abuse Treatment
- Life Skills
- Vocational training
- Education
- Benefit Entitlements
- Transitional Plans for County Services
- Medication Management
- Transportation

Data provided by CDCR and the providers in the ISMIP program showed that of the 1,502 individuals in the program, the recidivism rate was only 24 percent, compared to a 71 percent recidivism rate for other parolees with severe mental health disorders.

**Recommendation.** 1) Reverse the Blueprint reduction to the TCMP program (\$0.487 million) and add 55 social workers to the TCMP program to pre-enroll all offenders leaving state prison on Medi-Cal. This will expand health care and mental health care services to both parolees and offenders on post-release community supervision. The cost of the expansion would be offset by the reduction of prescription costs by CDCR because 100 percent of the costs would be covered by Medi-Cal. CDCR's cost for providing prescription drugs to parolees has fluctuated from \$30 million to \$10 million annually.

**2013-14 Costs**

Additional 55 TCMP workers:	\$4.400 million (assumes \$80k per)
Reverse Blueprint Reduction:	\$0.487 million

2) Increase the ISMIP program from 300 parolees to 1,000 parolees who suffer from serious mental illness and who are at-risk for homelessness.

**2013-14 Costs**

Increase ISMIP:	\$6.917 million
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## Issue 10 – AB 900 General Fund

**Background.** Chapter 7, Statutes of 2007 (AB 900, Solorio), among other changes, authorized \$6.5 billion for prison construction and improvement initiatives intended to relieve overcrowding in state prisons. Of this amount, \$6.2 billion was lease–revenue bond authority for the construction of additional prison beds—including new “infill” facilities built at existing prisons—and health care improvement projects. The balance was a \$300 million appropriation from the General Fund to renovate, improve, or expand sewage, water, and other types of infrastructure capacity at existing prison facilities. In subsequent years, the allowable uses of the General Fund appropriation were expanded in statute to include, for example, the design or construction of prison dental and medication distribution improvements.

Subsequent legislation also exempted projects funded by the General Fund appropriation from the state’s traditional capital outlay approval process that requires the Legislature to approve funding for capital projects as part of its annual budget deliberations. Instead, CDCR was only required to provide the Joint Legislative Budget Committee (JLBC) with a notification when the department intended to use the General Fund appropriation for a project. The CDCR had to provide this notification at least 30 days prior to submitting the project’s scope to the State Public Works Board (SPWB) for initial approval. If JLBC did not raise concerns with the project, it was deemed approved by the Legislature. Similarly, CDCR was required to provide preliminary plans to JLBC 45 days in advance of submitting them to SPWB. These two processes were put in place to expedite the approval process for these types of projects, given the state’s overcrowded prisons and the potential for sewage, water, and other infrastructure systems to become more overloaded with the construction of the new infill facilities originally included in the AB 900 construction plan. Budget trailer legislation that was part of the 2012–13 budget package further expedited this approval process. Generally, current law now only requires CDCR to notify the JLBC simultaneously with (rather than in advance of) the department’s submission of one of these projects to SPWB for approval. In addition, current law does not require CDCR to wait to find out whether JLBC has any concerns with the project before moving forward with a project funded by the AB 900 General Fund appropriation.

In response to CDCR’s plans to operationalize changes driven by realignment, the Legislature adopted a proposal to eliminate \$4.1 billion of the lease–revenue bond authority remaining for AB 900 projects as part of a trailer bill associated with the 2012 Budget Act. The General Fund appropriation amount, however, was not modified.

Currently, about \$110 million of the original \$300 million General Fund appropriation in AB 900 remains unspent. The Governor’s budget proposes to spend about \$10 million of this amount in 2013–14, but has not identified what specific projects the funds will be spent on.

**LAO Analysis.** The finds that there remains little justification for the expedited approval process for CDCR infrastructure and other projects that can be funded from the continuation of the AB 900 General Fund appropriation. The primary reasons for providing the expedited process—significant prison overcrowding, the need to accommodate additional infill construction, and the need to fund dental and medication distribution improvements—no longer exist. In addition, the current review process for these projects effectively eliminates the Legislature’s ability to conduct oversight of them. Finally, restricting the use of the General Fund appropriation to CDCR limits the Legislature’s budgetary flexibility.

Exempting projects funded by the AB 900 General Fund appropriation from the state’s traditional capital project approval process largely removes the Legislature’s ability to conduct oversight of the projects. In a normal capital outlay approval process, the Legislature reviews and approves a project at multiple stages, which allows the Legislature to conduct oversight of a project and even terminate it if there are problems or if the project no longer meets legislative priorities. Under current law, however, the Legislature does not have such oversight opportunities for projects funded from the AB 900 appropriation. Also, by restricting the use of the appropriation to CDCR, current law further limits the ability of the Legislature to use these funds for other, potentially more critical priorities that may exist on a statewide basis.

**LAO Recommendation.** In view of the above, we recommend that the Legislature adopt trailer bill legislation to revert the remaining \$110 million from the AB 900 General Fund appropriation to the state General Fund. This will effectively result in having CDCR’s infrastructure projects being subject to the state’s traditional capital outlay approval process. This will increase legislative oversight of CDCR’s infrastructure improvement projects and allow the Legislature to determine the use of the funds currently in the AB 900 General Fund appropriation based on its own priorities.

**Staff Comment.** The Administration reports that The LAO write-up also asserts that the AB 900 appropriations were originally made to authorize projects necessary to address significant prison overcrowding. This overcrowding was the primary driver of this need. However, in assessing whether or not the need behind these authorizations still exists it is important to consider more than just the recent population reductions. A significant factor in this infrastructure need is the inadequacy of the existing prison infrastructure systems as compared to current code requirements and operational demands, as well as the premature deterioration of many of these infrastructure systems as a result of the demands from years of overcrowding. Simply removing a portion of the population from these prisons doesn’t address the condition of the existing infrastructure systems. The decreased demand provides some relief, but many of the needs do not change proportionately with the population of the institutions. Given the current dynamics of federal court oversight of the prison system population and the capacity needs within the prison system it is essential that the existing prison system capacity be maintained.

This Conceptual AB 900 General Fund plan is aimed at making infrastructure improvements that are important to maintaining the existing prison capacity.

**Recommendation.** Remove the authority for the remaining \$100 million in AB General Fund after 2013-14.

# SUBCOMMITTEE NO. 5

# Agenda

Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Curren D. Price, Jr.



Thursday, May 23, 2013  
10:00 am  
Room 113  
Part B  
Consultants: Joe Stephenshaw

## OUTCOMES

**Item Number and Title**

**Page**

### Vote Only

- 0855 Gambling Control Commission
  - (1) Remote Caller Bingo **Staff Reco Approved 3-0** .....
  
- 0250 Judicial Branch
  - (1) Trial Court Trust Fund – Technical Adjustment **Staff Reco Approved 3-0**
  - (2) Immediate and Critical Needs Account Transfer **Staff Reco Approved 3-0**  
.....
  - (3) Control Section 15.45 **Staff Reco Approved 3-0** .....
  - (4) New Long Beach Courthouse **Staff Reco Approved 2-1 (Anderson No)**..
  - (5) Trial Court Efficiency Proposals and Fee Revenue Increase **Staff Reco Approved 2-1 (Anderson No)** .....
  
- 5225 California Department of Corrections and Rehabilitation
  - (1) Health Care Reorganization **Staff Reco Approved 3-0** .....
  
- 5227 Board of State and Community Corrections
  - (1) Executive Committee Language **Staff Reco Approved 3-0**.....
  - (2) Baseline Budget Adjustment **Staff Reco Approved 3-0** .....

### To be Heard

- 0250 Judicial Branch
  - (1) Issue 1 – Judicial Branch Contract Law Audits **Staff Reco Approved 2-1 (Anderson No)** .....

- (2) Trial Courts Cash Management **Staff Recos Approved 3-0 Plus \$100 million GF to the Trial Court Trust Fund**.....
- (3) Judicial Branch – Capital Outlay Projects **Staff Recos Approved 3-0**.....

5225 California Department of Corrections and Rehabilitation

- (1) Expand Fire Camp Capacity **Staff Recos Approved 3-0**.....
- (2) Parole Compliance Workload **Staff Recos Approved 3-0**.....
- (3) Population Adjustment **Staff Recos Approved 3-0** .....
- (4) Juvenile Population Adjustment **Staff Recos Approved 3-0** .....
- (5) Public Safety Trailer Bill Language **Staff Recos Approved 3-0, except for Camp Credits, which was 2-1 (Anderson No)**.....
- (6) Community Corrections Performance Incentive Act **May Revise Approved 3-0, Additional Language 2-1 (Anderson No)**.....
- (7) Reappropriation and Scheduling of Rehabilitation Program Funds **Staff Recos Approved 3-0, with report back to the committee regarding use of Inmate Welfare Fund** .....
- (8) Parolee Mental Health and Medi-Cal Expansion **Staff Recos Approved 2-1 (Anderson No)**.....
- (9) AB 900 General Fund **Staff Recos Approved 2-1 (Anderson No)**.....

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## Vote Only

### Gambling Control Commission (0855)

#### Issue 1 – Remote Caller Bingo

**Governor’s Proposal.** The May Revision proposes \$2,000 to support workload associated with the licensing of Remote Caller Bingo vendors, and trailer bill language to extend the repayment date of two loans from the Gambling Control Fund that were used by the Gambling Control Commission to establish the Remote Caller Bingo Program.

**Recommendation.** Approve as budgeted.

### Judicial Branch (0250)

#### Issue 1 – Trial Court Trust Fund – Technical Adjustment

**Governor’s Proposal.** An April Finance Letter proposes a decrease of \$28 million in Trial Court Trust Fund Authority to correct a technical error related to the Automated Traffic Enforcement proposal from fiscal year 2010-11.

**Recommendation.** Approve as proposed.

#### Issue 2 – Immediate and Critical Needs Account Transfer

**Governor’s Proposal.** The Governor’s May Revision proposes an amendment to the Immediate and Critical Needs Account transfer item to ensure the transfer does not adversely affect ongoing construction projects.

**Recommendation.** Approve as proposed.

### **Issue 3 – Control Section 15.45**

**Governor’s Proposal.** The Governor’s May Revision proposes that Control Section 15.45 be added in order to offset General Fund Payments to the Trial Court Trust Fund with funds received from county offices of education.

**Recommendation.** Approve as proposed.

### **Issue 4 – New Long Beach Courthouse**

**Governor’s Proposal.** The Governor’s Budget proposes \$34.8 million (\$54.2 million in 2014-15) from the Immediate and Critical Needs Account (ICNA) for the initial annual service fee for the new Long Beach court building.

**Recommendation.** 1) Approve the proposal to fund the service payment for the new Long Beach courthouse from ICNA.

2) Adopt trailer bill language to a) require the AOC Judicial Council to report to the Legislature on aspects of the Long Beach project in order to assess the value of this project delivery method, and b) require the development and adoption of best practices for P3 projects, as recommended by the LAO in their November 2012 report.

### **Issue 5 – Trial Court Efficiency Proposals and Fee Revenue Increase**

**Governor’s Proposal.** The Governor proposes trailer bill language for a range of statutory changes to reduce trial court workload through administrative efficiencies and increase user fees to support ongoing workload at the trial courts.

An April Finance Letter proposes an increase of \$10.3 million to the Trial Court Trust Fund to reflect anticipated revenues associated with three of these proposals: the exemplification of record (\$164,660), copy and comparison (\$5.9 million) ,and mailing services fees (\$200,000), and also the \$30 fee for court reporting services lasting under one hour as authorized by the 2012 Budget Act (\$4.0 million).

**Recommendation.** Approve the following proposals:

1. Court-Ordered Debt Collection
2. Court-Appointed Dependency Counsel
3. Copies or Comparisons of Files
4. Exemplification of a Record
5. Small Claims Mailing
6. Trial by Written Declaration
7. Approve the April Finance Letter to recognize increased fee revenue.

Approve the following proposals with modification:

1. Preliminary Hearing Transcripts – Modify to allow a local court, by rule, to require counsel to make a request for preliminary hearing transcripts.
2. Records Search – Exempt the press from new fee.

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

### **Issue 1 – Health Care Reorganization**

**Governor's Proposal.** The May Revision proposes trailer bill language intended to authorize the establishment of a third undersecretary, to oversee CDCR's adult inmate health care services programs. The proposal also includes two new director positions to report to the undersecretary; one to oversee the Division of Health Care Operations and the other to oversee the Division of Health Care Policy and Administration.

**Recommendation.** Approve as proposed.

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

### **Issue 1 – EXECUTIVE COMMITTEE LANGUAGE**

**Governor's Proposal.** The May Revision proposes trailer bill language to provide that members of the board are not financially interested in any contract made by the board based upon the receipt of compensation for holding public office or public employment. This would ensure the continued use of the historically effective Executive Steering Committee (ESC) process for developing recommendations to the Board.

The TBL will exempt board members, who receive compensation for holding public office or employment, and allow them to continue to serve as ESC members or on any delegated committee.

**Recommendation.** Approve as proposed

### **Issue 2 – Baseline Budget Adjustment**

**Governor's Budget.** The Governor's Budget proposes 9 positions, funded from existing resources, for research activities, the administration of the local jail construction financing program, authorized by Chapter 42, Statutes of 2012 (SB 1022), and other

administrative functions necessary for the board to operate as an independent entity. These positions consist of 5 research positions (1 Research Specialist V, 1 Research Specialist III, 2 Research Program Specialist I's, and 1 Research Analyst), 3 Associate Governmental Program Analysts, and 1 Executive Assistant.

**Recommendation.** Approve this request with the adoption of the following budget bill language to 1) require the BSCC to report on activities related to evidence-based practices and 2) require that one of the research positions be designated for juvenile justice issues.

- The Board of State and Community Corrections shall develop recommendations for how it can build its clearinghouse and technical assistance capacity for collecting and providing user-friendly information to assist state and local corrections with selecting, implementing, and evaluating evidence-based or promising programs, services, and treatment practices for managing criminal offenders in the community. The board shall provide a written report to the appropriate fiscal and policy committees of the Legislature of its recommendations, and a description of how the board developed its recommendations, on or before May 1, 2014.
- The positions included in this item for research activities shall include 1 juvenile justice research and program specialist to assist BSCC, including its Juvenile Justice Standing Committee, in the development of standardized juvenile justice system performance and quality assurance measures, and in planning for necessary upgrades of state and local data systems to support those measures, with the goal of advancing juvenile justice best-practices that will promote public safety while assuring positive outcomes for justice-involved youth.

## Items to be Heard

### Judicial Branch (0250)

#### Issue 1 – Judicial Branch Contract Law Audits

**Governor’s Proposal.** The Governor’s budget proposal includes trailer bill language authorizing the AOC to contract with the Controller, Department of Finance (DOF), or State Auditor to perform mandated contracting audits.

**Recommendation.** Reject the proposed trailer bill. Adopt, the following solutions to address the cost of the State Auditor’s court contracting audits:

1. Appropriate \$325,000 to the Trial Court Trust Fund.
2. Adopt budget bill language that specifies that this funding is to be allocated, by the Judicial Council, to trial courts that are audited by the State Auditor pursuant to the court’s contracting provisions, and that the funds are to be paid the State Auditor for the costs of these audits.
3. Modify statute to make the court’s contracting audit program a more selective, risk-based audit program.

#### Issue 2 – Trial Courts Cash Management

**Governor’s Proposal.** The Governor has proposed trailer bill language to address trial court cash management concerns.

**Recommendation.** Approve trailer bill language to increase the amount of funds that a trial court can carryover, from one fiscal year to the next, to 12 percent. In addition, adopt the Administration’s proposed exclusions from the calculation of the 12 percent carryover. **The sub-committee also added \$100 million GF to support trial courts.**

#### Issue 3 – Judicial Branch – Capital Outlay Projects

**Governor’s Proposal.** A May 1 Finance Letter proposes 1) \$522.3 million (\$511.4 in Lease Revenue Bond Authority (LRB), and \$10.9 from the Immediate and Critical Needs Account (ICNA) for the construction phase of three court construction projects, 2) \$15.4 million from the ICNA for the working drawings phase of five projects, 3) the reappropriation of \$240.2 million in LRB authority for the construction phase of one

project, and 4) reimbursement authority of \$3.6 million for the preliminary plans phase of one project.

**Recommendation.** Approve as proposed.

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

### **Issue 1 – Expand Fire Camp Capacity**

**Governor’s Proposal.** The Governor’s May Revision proposes \$15.4 million General Fund, and 140 positions, to retain the maximum number of fire camps and inmate crews.

**Recommendation.** Approve as proposed.

### **Issue 2 – Parole Court Revocation and Compliance Workload**

**Governor’s Proposal.** The Governor’s May Revision proposes \$8.3 million General Fund, and 60.0 positions on a one-year limited-term basis, to address court revocation and compliance workload to address *Valdivia* compliance.

**Recommendation.** Approve as proposed.

### **Issue 4 – Population Adjustment**

**Governor’s Proposal.** The May Revision includes an increase of \$11.5 million GF in 2012-13, and \$6.7 million GF in 2013-14, to support various costs directly related to adult inmate and parole population changes.

**Recommendation.** Approve as proposed.

## **Issue 5 – Juvenile Population Adjustment**

**Governor's Proposal.** The May Revision proposes to adjust the CDCR's budget based on updated juvenile ward population trends. This proposal includes a decrease of \$425,000 General Fund in 2012-13, and a decrease of \$2.8 million General Fund in 2013-14.

**Recommendation.** Approve as proposed. In addition, adopt budget bill language to require the DJJ report back to Joint Legislative Budget Committee on potential cost reductions as their population declines.

## **Issue 6 – Public Safety Trailer Bill Language**

**Governor's Proposal.** The Administration has proposed trailer bill language related to state and local public safety issues.

The proposals for the subcommittee's consideration are:

**Notification of Reception Center or Parole Office Closure –** Require CDCR to provide written notification at least 90 days prior to the opening, closure, or change of location of a reception center or parole office.

**Misclassified Post-Release Community Supervision or Parole Placement –** Provide a 60-day period during which an offender can be transferred from the jurisdiction of parole to probation or from probation to parole. After this period, the offender would remain under the supervision of the jurisdiction to which the offender was released for the remainder of his/her supervision term, regardless of the original offense.

**Health Care Information for Offenders Released from Prison to Post Release Community Supervision -** Provides for a standard set of health care information to be provided by the CDCR to counties for all inmates placed on post-release community supervision, regardless of whether the inmate consents to the release of health care information. This will require an exemption from federal HIPAA regulations, which would be requested after legislation is enacted.

**Parole Revocation Hearings –** Current law provides that parole revocation hearings happen in the jurisdiction of where a parolee resides. The proposed language revises current law to state that a parole revocation hearing could also occur in the jurisdiction where the parole violation occurred, as recommended by the Board of Parole Hearings/Administrative Office of the Courts transition working group.

**Mandatory Supervision Following Early Release of Split Sentence –** Clarifies existing law to specify that the supervision portion of a split sentence begins when the

person is released from jail. This avoids a gap in supervision in those instances when inmates are released early due to jail capacity issues.

**Controller Disbursement of Local Subventions: Monthly vs. Quarterly** – Pursuant to current law, the Controller disburses subventions from the Law Enforcement Services Subaccount (JJCPA/COPS, Booking Fees, Juvenile Probation, et al) and the Juvenile Justice Subaccount (YOBG and JRF) on a quarterly basis. These funds should be disbursed monthly, consistent with the intent of realignment in maximizing local control and flexibility.

**Ongoing Law Enforcement Services Growth Allocation** – The realignment superstructure bill trailer bill did not specify how growth funding is allocated to the various subaccounts after 2012-13. This proposal would continue the current distribution split on an ongoing basis.

**Conservation Camp Credits for Locals** – Local governments lack the statutory authority to provide credits for programs similar to those conducted by the state. Inmates in state prisons can earn six weeks per year for completing educational programs. Also at the state level, inmates earn two for one credits for time served in fire camps. Local agencies propose establishing statutory authority to provide credits for education programs and participation in conservation camps, which contain crews that do outdoor preservation projects, such as cleaning up parks and open spaces.

**Recommendation.** Approve as proposed.

## **Issue 7 – Community Corrections Performance Incentive Act (SB 678)**

**Governor's Proposal.** The May Revision proposes \$72.1 million (for a total of \$106.9 million), and trailer bill language, to support county probation departments that are successful in reducing felony probation failure rates.

The trailer bill language proposes to:

- 1) require the AOC to collect additional data on the felony probation population relating to the number of Penal Code Section 1170(h) convictions;
- 2) revise the probation failure rate calculation so that it includes revocations resulting in county jail incarceration;
- 3) add a third tier of performance incentive payments for counties that demonstrate improved felony probation outcomes, but that still have combined probation failure rates above the 2006 through 2008 baseline statewide average; and,

4) remove the statutory authority to fund the Administrative Office of the Courts' (AOC) workload associated with SB 678 and realignment (a separate appropriation was proposed in the Governor's Budget); and

5) extends the \$200,000 minimum payment to counties performing better than the statewide average.

**Recommendation.** Adopt the Administration's May Revise proposal. Add trailer bill language to broaden the scope of the probation population that could be considered in the programs funding formula to include post release community supervision and mandatory supervision caseloads and remove the 2015 sunset date.

## **Issue 8 – Reappropriation and Scheduling of Rehabilitation Program Funds**

**Background.** Due to recent concerns regarding unspent funds or shifting of rehabilitation funds within CDCR's budget to cover other expenses, the 2012 Budget Act included a separate item of appropriation for CDCR rehabilitative programs. By creating this separate item, the Legislature intended to increase accountability of funds that are budgeted for rehabilitative programs and ensure that the funds are spent as intended.

It has come to the subcommittee's attention that, in the current year, there will be a year-end balance of funds in CDCR's rehabilitation programs item. To ensure that this funding is utilized to enhance inmate rehabilitative programs, it is recommended that the sub-committee reappropriate the balance of funds in Item 5225-008-0001, Budget Act of 2012, for the following purposes:

- Maintenance and upgrades of certain CDCR classroom and rehabilitative programming spaces (\$5.4 million). Budget bill language to require the use of inmate ward labor where possible.
- A pilot project for a re-entry program for locals to receive inmates 60 days prior to release in order to provide services prior to reentry into the community. The pilot would be authorized to take place in four counties (San Francisco, Los Angeles, Marin, and San Diego) and the counties would be required to report on program outcomes (\$5 million).
- A pilot project to provide a fiscal incentive for participation in CDCR vocational programs (\$4.4 million).
- An allocation to the Prison Industry Authority (PIA) to support the Career Technical Education program. Budget bill language would require the PIA to report on its budget and expenditures during the fiscal year (\$3.1 million).
- One-time funding to support parolee reentry courts (\$2.3 million).

In addition, while the 2012 Budget Act created Item 008 within CDCR's budget to separate funding for the Division of Rehabilitative Programs from the Division of Adult Institutions, approximately \$7.8 million remains in Item 001 for Program 48-Adult Education, Vocation and Offender Programs-Adult Administration. The sub-committee should consider eliminating Program 48 in Item 001 and moving activities and funds to other programs and items, as specified, which is consistent with the Legislature's action to separate funding for the Division of Rehabilitative Programs beginning in 2012-13.

While we do not currently have the specific funding or positions associated with the Community Resource Managers or Inmate Leisure Time Activity Groups, the CDCR and Finance should be directed to work together to determine how the resources are to be divided consistent with the recommended action of the subcommittees. To the extent other programs are funded in Program 48 within Item 001, the subcommittees direct staff, CDCR, and Finance to work together to identify the appropriate scheduling for those programs consistent with the intent to eliminate Program 48 within Item 001. Finance should report the final scheduling amounts to subcommittee staff. Below are the approximate resources that would be rescheduled.

**Approximately \$3.6 million in expenditures for Community Resource Managers - 1** position per institution dedicated to bringing programs into prisons. Recommend moving the positions and funding to Program 48 within Item 008, beginning in 2013-14.

**Approximately \$4.2 million for Inmate Leisure Time Activity Groups-** Provides staff (self-help sponsors) to oversee inmates participating in programs conducted by community providers/volunteers (i.e., Alcoholics Anonymous, Narcotics Anonymous, Anger Management, and Problem Resolution).

- Self-help sponsors are custody staff or correctional counselors that monitor inmate participation, escort volunteers to group locations, and initiate custody response when necessary. Sponsors are paid hourly since this is not full-time/scheduled workload.
- These staff perform a custody-related function and custody staff are funded only in Item 001. Custody (Officers, Sergeants, and Lieutenants) staff are funded in Program 25 (Adult Institution General Security) and Correctional Counselors are funded in Program 27 (Adult Institution Inmate Support). Recommend moving the funding associated with overseeing inmate participation from Program 48 to Program 27 within Item 001.

**Recommendation.** Approve the reappropriation of CDCR rehabilitative programs funding to support the items listed above and approve the elimination of program 48 from CDCR's main item and the rescheduling of funds included in the item and creating a separate budget program for the Sex Offender Management Board. The Department of Finance shall report the final scheduling to committee staff and the Legislative Analyst's Office for review prior to making the final adjustment. **In addition the chair asked the department to subcommittee regarding the use of the Inmate Welfare**

**Fund for the Arts in Corrections program and the ability to create partnerships with community colleges.**

## **Issue 9 – Parolee Mental Health and Medi-Cal Expansion**

### **Background.**

#### **The federal Affordable Care Act**

Historically, the state has spent tens of millions of dollars annually from the General Fund for the CDCR to provide mental health treatment services to mentally ill parolees. With the implementation of the federal Affordable Care Act, federal Medicaid reimbursements could be attained for some of the costs of these existing services. Moreover, the amount of federal reimbursements could increase significantly under the federal Patient Protection and Affordable Care Act (ACA) if the Legislature chooses to expand Medi-Cal to provide health coverage to most low-income individuals, as authorized by ACA.

The federal Affordable Care Act could expand Medi-Cal coverage, including mental health, to approximately one million uninsured eligible Californians, which is anticipated to include individuals recently released from local jails and state prison.

The Division of Adult Operations (DAPO) utilizes contracted social workers to provide Transitional Case Management Program (TCMP) for inmates transitioning back to the community. TCMP services are provided for eligible inmates and parolees under the jurisdiction of the CDCR. The TCMP program works at enrolling inmates who are 120 days from release for state and federal benefits. Under the current program the TCMP reaches approximately 15% of the population prior to their release.

#### **Integrated Services for Mentally Ill Parolees (ISMIP)**

To date, several research studies have demonstrated that affordable housing coupled with support services, also known as supportive housing, leads to a reduction in recidivism among vulnerable offenders who suffer from mental illness (SMI) and who are homeless.

To address the needs of parolees who suffer from SMI, AB 900 (Solorio), Chapter 7, Statutes of 2007, required the CDCR to provide services in day treatment or crisis care centers to at least 300 parolees who suffer from serious mental illness and who are at-risk for homelessness. Using AB 900 funding, the CDCR Division of Adult Parole Operations (DAPO) developed the Integrated Services for Mentally Ill Parolees (ISMIP) program, which is based on the adult system of care model to provide wraparound services that are flexible and tailored to each individual's rehabilitative needs.

DAPO's ISMIP Program is a comprehensive model that provides varied levels of care, supportive/transitional housing, and an array of mental health rehabilitative services to

assist with the development of independent living in the least restrictive environment possible. Parole Agents and parole outpatient clinic (POC) staff refer parolees to contracted ISMIP providers for day treatment and crisis care services. Each parolee-client has a designated mental health personal services coordinator (or case manager) who, as a part of a multidisciplinary treatment team, is responsible for providing or assuring coordinating needed services including:

- Housing
- Crisis Care - 24 / 7 / 365 (including in-patient services)
- Mental Health Treatment
- Substance Abuse Treatment
- Life Skills
- Vocational training
- Education
- Benefit Entitlements
- Transitional Plans for County Services
- Medication Management
- Transportation

Data provided by CDCR and the providers in the ISMIP program showed that of the 1,502 individuals in the program, the recidivism rate was only 24 percent, compared to a 71 percent recidivism rate for other parolees with severe mental health disorders.

**Recommendation.** 1) Reverse the Blueprint reduction to the TCMP program (\$0.487 million) and add 55 social workers to the TCMP program to pre-enroll all offenders leaving state prison on Medi-Cal. This will expand health care and mental health care services to both parolees and offenders on post-release community supervision. The cost of the expansion would be offset by the reduction of prescription costs by CDCR because 100 percent of the costs would be covered by Medi-Cal. CDCR's cost for providing prescription drugs to parolees has fluctuated from \$30 million to \$10 million annually.

**2013-14 Costs**

Additional 55 TCMP workers:	\$4.400 million (assumes \$80k per)
Reverse Blueprint Reduction:	\$0.487 million

2) Increase the ISMIP program from 300 parolees to 1,000 parolees who suffer from serious mental illness and who are at-risk for homelessness.

**2013-14 Costs**

Increase ISMIP:	\$6.917 million
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## Issue 10 – AB 900 General Fund

**Background.** Chapter 7, Statutes of 2007 (AB 900, Solorio), among other changes, authorized \$6.5 billion for prison construction and improvement initiatives intended to relieve overcrowding in state prisons. Of this amount, \$6.2 billion was lease–revenue bond authority for the construction of additional prison beds—including new “infill” facilities built at existing prisons—and health care improvement projects. The balance was a \$300 million appropriation from the General Fund to renovate, improve, or expand sewage, water, and other types of infrastructure capacity at existing prison facilities. In subsequent years, the allowable uses of the General Fund appropriation were expanded in statute to include, for example, the design or construction of prison dental and medication distribution improvements.

In response to CDCR’s plans to operationalize changes driven by realignment, the Legislature adopted a proposal to eliminate \$4.1 billion of the lease–revenue bond authority remaining for AB 900 projects as part of a trailer bill associated with the 2012 Budget Act. The General Fund appropriation amount, however, was not modified.

Currently, about \$110 million of the original \$300 million General Fund appropriation in AB 900 remains unspent. The Governor’s budget proposes to spend about \$10 million of this amount in 2013–14, but has not identified what specific projects the funds will be spent on.

**Recommendation.** Remove the authority for the remaining \$100 million in AB General Fund after 2013-14.