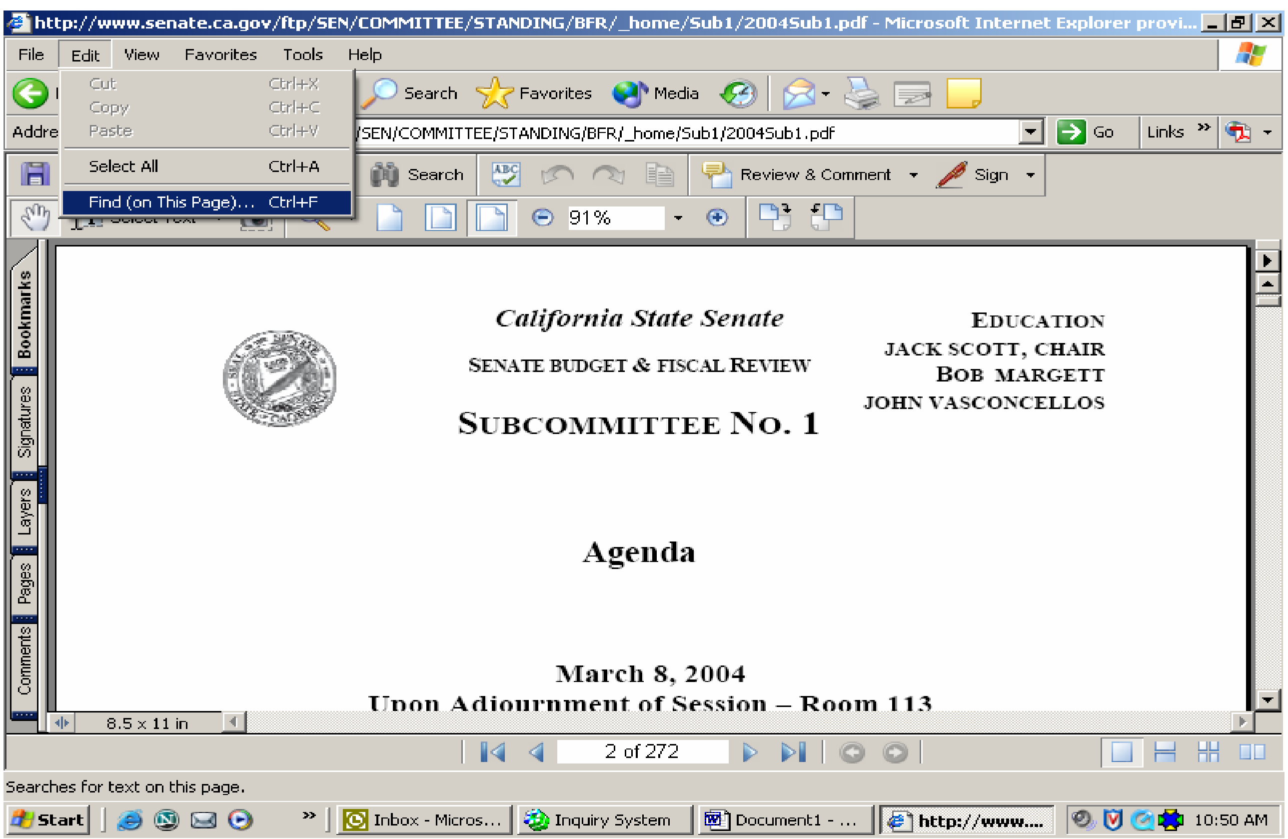
Senate Budget and Fiscal Review

Subcommittee No. 2 2010 Agendas

Complete year 2010 Subcommittee No. 2 agendas in PDF format. They are archived in Adobe to make them more accessible by subject. Please use "Edit" then "find" from the Menu to access information. Use "Bookmarks" from side menu To access agendas by date.



Senate Budget and Fiscal Review—Denise Moreno Ducheny, Chair

SUBCOMMITTEE NO. 2 Agenda

S. Joseph Simitian, Chair
Alan Lowenthal
Dave Cogdill

Hearing Outcomes

(see Subcommittee actions under individual issues)

Thursday March 4, 2010
9:30 am or upon adjournment of session
Rose Ann Vuich Hearing Room (2040)

Consultant: Bryan Ehlers

Resources—Environmental Protection—Energy—Transportation

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 916-324-9335. Requests should be made one week in advance whenever possible.

Bond Overview

Resources Bond Funds Background. Since 1996, $22 billion in resources-related bonds have been approved. Between 1996 and 2006, voters approved seven resources bonds totaling $20.6 billion (Propositions 204, 12, 13, 40, 50, 84, and 1E), as well as $1.2 billion for air quality purposes in the Proposition 1B transportation bond, and $200 million for local parks in the Proposition 1C housing bond.

2010-11 Governor's Budget. The 2010-11 Governor's Budget includes approximately $750 million in bond fund appropriations for the resources area (Natural Resources Agency: $460 billion; California Environmental Protection Agency: $290 million). The majority of resources bonds are for the Department of Water Resources, with a request of $458.6 million in new authority, primarily for various flood control projects, while the Department of Parks and Recreation is requesting to receive $81.8 million, split fairly evenly between capital outlay and state operations.

Staff Comments. In order to provide a statewide context for various requests discussed later in the agenda, the Legislative Analyst's Office (LAO) will present some background regarding bonds in the resources area. The following are themes central to the ongoing bond discussions of this committee:

- The state's ability (or inability) to raise adequate cash in the bond market has created uncertainty for bond-funded programs and their constituents.
- The Legislature should give careful consideration as to whether, or how, the uncertainty of future bond sales affects decisions to appropriate or reappropriate bond funds.
- Different bonds place different restrictions on the entities that spend the bond proceeds. For example, the proceeds from Build America Bonds (which were sold last April) can only be used for "capital" projects, as opposed to working capital projects (e.g., ongoing operations, repair, or maintenance). In the resources area, working capital projects include water quality monitoring, invasive species removal, fuels reduction, watershed management planning, etc.
- To the extent that the availability of bond proceeds is constrained, departments may have to adjust their multi-year bond spending plans, and this includes allocation of administrative costs. (The concern being that, absent adjustments, departments could exhaust the amounts allowable for administration before programmatic funds run out.)

3340 California Conservation Corps

The California Conservation Corps (CCC) assists federal, state, and local agencies, and nonprofit entities in conserving and improving California's natural resources while providing employment, training, and educational opportunities for young men and women. The Corps provides on-the-job training and educational opportunities to California residents aged 18 through 23, with projects related to environmental conservation, fire protection, and emergency services. Some activities traditionally associated with the Corps are tree planting, stream clearance, and trail building. The Corps also develops and provides funding for 12 community conservation corps.

Governor's Budget. The Governor's Budget includes $70.7 million for CCC training and work (state operations and local assistance), including approximately $38 million General Fund (GF). This is about a 26 percent decrease over the current year level of support primarily due to a roughly $25 million decrease in bond funding from the Safe Drinking Water, Water Quality, Flood Control, River and Coastal Protection, and Parks Bond of 2006 (Proposition 84 or Prop 84).

Summary of Expenditures *(dollars in thousands)*	**2009-10**	**2010-11**	**$ Change**	**% Change**
Type of Expenditure				
Training and Work Program	$ 95,541	$ 70,701	-$24,840	-25.9
Capital Outlay	10,498*	26,839*	16,341*	55.7*
Administration	7,902	7,787	-115	-1.4
less distributed administration	-$7,902	-$7,787	115	1.4
Total	$ 106,039*	$ 97,540*	-$8,499*	-8.0*
Funding Source				
General Fund	$ 33,571	$ 37,979	$4,408	13.1
Collins-Dugan California Conservation Corps Reimbursement Account	28,052	31,534	3,482	12.4
Other Special Funds	18,905	26,898	7,984	42.2
Bond Funds	25,511	1,128	-24,383	-95.6.2
Total	$ 106,039	$ 97,540	-$8,509	-8.0

*Note: These amounts reflect the carryover of $26.6 million in Delta Project expenditures that were originally planned for the 2009-10 fiscal year, but were carried into 2010-11.

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-4: Fresno Local Conservation Corps – Proposition 12 (Prop 12) for Fresno Local Conservation Corps (Budget Bill Language – BBL). The Governor requests $659,000 (Prop 12) to support Fresno County Economic Opportunities Commission/Fresno Local Conservation Corps (FCEOC/FLCC) capital outlay and resources conservation projects in compliance with grant program guidelines. Additionally, the Governor requests BBL to extend the authorized use period for the requested funds from three years (one year to encumber and two to liquidate) to five years (three years to encumber and two years to liquidate).

Background. Prop 12 (of 2000) provided $12.5 million to local conservation corps (local corps) to complete capital outlay and resource conservation projects. Each local corps received a share of the funding proportionate to its size, including the FCEOC/FLCC, which received $659,000 and entered into an agreement with the CCC in 2005 to use those funds for development and construction of a recreation center. However, during active grant administration, FCEOC/FLCC informed the CCC that it intended to sell the recreation center to the City of Fresno for public use and, because the funds would no longer be used for the intended statutory purpose (to benefit the FCEOC/FLCC), the funds were returned on April 1, 2009.

Staff Comments. This request represents the final $659,000 of Prop 12 funds allocated to the CCC and the local corps, and, consistent with past practice, the Governor proposes to again make these funds available to the FCEOC/FLCC. The request includes BBL to provide an extended period of use in order to ensure the FCEOC/FLCC has ample time to develop a project and reach a grant agreement with the CCC (prior to encumberance). According to CCC staff, the late 2008 bond freeze and the state's subsequent cashflow problems have caused most local corps to revamp their plans and funding assumptions. Thus, the FCEOC/FLCC has not counted on receiving bond dollars and does not have a project simply lying in wait. Additionally, to the extent that the state's authorized bond expenditures exceed the availability of bond cash, even if this request is approved it might still be in the FCEOC/FLCC's best interest to act cautiously before committing resources to project development out of concern that the cash to execute the project might not be available in a timely fashion and precious time and resources will have been wasted. Therefore, the Committee may wish to strongly consider approving the requested BBL.

2. BCP-5: Augment Collins-Dugan Account (CD) for American Recovery and Reinvestment Act (ARRA)-Funded Projects. The Governor requests a one-time $441,000 augmentation to fund requests from sponsoring agencies for project work to be completed in fiscal year (FY) 2010-11. ARRA dollars received by the project sponsors will reimburse the CD for these expenditures.

Staff Comments. This request would support the following four projects:

- A 2010 Summer Youth Program to fulfill a request by the San Luis Obispo County Community College District for Cuesta College;
- Project work, including restoration and improvement of watershed and stream habitat throughout coastal California as requested by the National Oceanic Atmospheric Administration Fisheries Habitat Conservation Program;
- Project work, including hazardous fuel reduction, replacement of water drainage features and restoration of trails within the Trinity National Forest as requested by the United State Forest Service; and
- Home weatherization project work in coastal California as requested by the Santa Cruz County Workforce Investment Board.

3. BCP-7: Placer Center Americans with Disability Act (ADA) Restroom. The Governor requests $90,000 CD to construct an ADA-compliant unisex restroom in the Classroom/Energy Lab Building at the Placer residential facility in Auburn, Placer County.

Staff Comments. According to the CCC, the available restroom facilities constitute a violation of Title 8 Health and Safety codes, and are noncompliant with the ADA. Staff notes that the CCC has identified other of its facilities that also lack ADA-compliant restrooms, but due to funding constraints has prioritized this facility and the Greenwood Center Corpsmember Development/Recreation Building (see BCP-8) for upgrade in the 2010-11 FY in an effort to improve the adequacy of its restrooms and reduce the state's liability.

4. BCP-8: Greenwood Center Americans with Disability Act (ADA) Restroom. The Governor requests $80,000 CD to construct an ADA-compliant unisex restroom in the Greenwood Center Corpsmember Development/Recreation Building at the Greenwood residential facility in El Dorado County.

Staff Comments. According to the CCC, the available restroom facilities constitute a violation of Title 8 Health and Safety codes, and are noncompliant with the ADA. Staff notes that the CCC has identified other of its facilities that also lack ADA-compliant restrooms, but due to funding constraints has prioritized this facility and the Placer residential facility Classroom/Energy Lab Building (see BCP-7) for upgrade in the 2010-11 FY in an effort to improve the adequacy of its restrooms and reduce the state's liability.

Staff Recommendation: APPROVE the requests (1-4) listed above.

Action: Approved Staff Recommendation on a 3-0 vote.

DISCUSSION ITEMS

1. BCP-1: CCC Prop 84 Funding (BBL). The Governor requests the following adjustments to CCC Prop 84 funding:

- Reappropriate approximately $3 million (the unencumbered balance of Item 3340-001-6051 of the Budget Act of 2008).
- Revert $3 million over-appropriated in Item 3340-001-6051 of the Budget Act of 2009.
- Reappropriate the unencumbered balance of Item 3340-001-6051 of the Budget Act of 2009.
- Approve BBL extending the encumberance period for the above reappropriations from one year to three years (i.e., make them available until June 30, 2013).

Background. Prop 84 provided $45 million to the CCC to be divided as follows:

- $25 million to improve public safety and improve/restore watersheds, with half ($12.5 million) to go to the CCC, and the other half ($12.5 million) as grants to local conservation corps (local corps).
- $20 million as grants to local corps for acquisition and development of facilities to support local corps programs and for local resource conservation activities.

The funds addressed in this Budget Change Proposal (BCP) are those allocated to the CCC ($12.5 million).

Staff Comments. This request seeks to address two key problems: (1) The $12.5 million in Prop 84 funds identified for the CCC was inadvertently over-appropriated; and (2) the CCC has received almost none of the proceeds from recent bond sales, and, as a result, prior year and current year Prop 84 funding authority has gone largely unused.

(1) *Over-appropriation* – The $12.5 million in Prop 84 funds identified for the CCC was inadvertently over-appropriated. In addition to $3 million provided to the CCC in FY 2008-09, the Legislature last year approved both a $4 million request by the Governor (via a BCP) and a $7 million augmentation, for a total appropriation of $14 million (against the $12.5 million provided in the original bond act). The $3 million to be reverted represents: (1) the difference between the $14 million total appropriation to-date and the $12.5 million original bond authorization; (2) a little over $1 million in statewide and CCC bond administration costs; and (3) around $400,000 that would be appropriated at a later date.

(2) *Currently No Cash Behind Prop 84 Authority* – Due to the late 2008 bond freeze and the state's ongoing cashflow problems, the availability of bond proceeds has been tightly constrained statewide. Of the $3 million in Prop 84 expenditure authority provided in FY 2008-09, the CCC received only $7,000 in actual cash. Similarly, the CCC has encumbered $227,245 of its 2009-10 Prop 84 appropriation, and expended $30,924.

Although staff has no specific concerns with the merits of this request, the Committee may wish to hold this, and all other bond requests, open pending the Treasurer's spring bond sale (anticipated to occur sometime in March).

Additionally, the Committee may wish to consider whether the funds contained in this request could be used to support Department of Forestry and Fire Protection (DFFP) fuels reduction efforts (see DFFP BCP-10, below).

Staff Recommendation: HOLD OPEN

Action: Held open pending results of spring bond sales and more information on state's bond cashflow picture.

2. BCP-3: Local Corps Prop 84 Project Funds (BBL). The Governor requests reappropriation of the balance of FY 2009-10 Prop 84 funding for the local corps. Additionally, the Governor requests BBL to extend the period of use for these funds to five years (three years to encumber and two to liquidate).

Background. As noted above, Prop 84 provided $32.5 million to the local crops—$12.5 million to improve public safety and improve/restore watersheds; and $20 million for acquisition and development of facilities to support local corps programs, and for local resource conservation activities.

Staff Comments. The Budget Act of 2009 appropriated $6.7 million (Prop 84) and reappropriated the unexpended balance of the $23 million (Prop 84) appropriation from the Budget Act of 2008. Together, these two appropriations (totaling $29.7 million) reflect all Prop 84 funds available to the local corps after accounting for statewide and CCC administrative costs. The CCC indicates that of the total $29.7 million available to the local crops, $7.7 million has been encumbered and another $4.8 million has been expended (for a total of approximately $12.5 million "committed").
.
Staff notes that this request is for reappopriation of the $6.7 million first appropriated in the current year; however, CCC staff indicate it was the department's intent to also request reappropriation for the unexpended balance of the $23 million that was first appropriated in FY 2008-09. A Spring Finance Letter to address this oversight is anticipated to be forthcoming, but in the meantime, language to reappropriate all of these amounts is currently contained in SBx8 30 (Oropeza), as amended March 1, 2010.

Consistent with the recommendation in the previous item, staff recommends this item be held open.

Staff Recommendation: HOLD OPEN

Action: Held open pending results of spring bond sales and more information on state's bond cashflow picture. The Chair additionally noted that the requested reappopriation language was contained in the version of SBx8 30 approved by the Senate on 3/4/10.

3. BCP-2: Collins-Dugan Augmentation for Work Project Operation Expenses and Equipment (OE&E) (BBL). The Governor requests a $2.2 million augmentation to the Collins-Dugan Reimbursement Account (CD) in order to fund operating expenses and equipment expenditures required for completion of conservation work projects as requested by sponsor agencies. These expenditures include direct supplies, materials, and equipment such as plant materials, building materials, tools, food supplies, and travel costs for extended overnight stays close to project locations.

Background. The CCC is reimbursed for specific project costs by sponsor agencies through the CD. Prior to FY 2004-05, the CD was continuously appropriated and the CCC could take on additional projects without worrying about the adequacy of its CD authority. However, the CCC is now limited by the amount specified in the annual Budget Act and must seek a budget revision (as authorized pursuant to the Budget Act) in order to augment its CD appropriation. The current baseline for project OE&E is $1.2 million.

Staff Comments. The CCC indicates that when the CD transitioned from a continuous to an annual appropriation, the baseline budget established at the time did not adequately account for work project OE&E. As a result, the CCC has regularly submitted multiple budget revisions to the Department of Finance (DOF), including 21 in FY 2008-09 totaling $2.8 million, and 29 thus far in FY 2009-10 totaling $1.2 million. Staff notes that since FY 2004-05, the CCC has required more than double (and at times triple) its baseline project OE&E appropriation. Based on these data, the $2.2 million requested augmentation would bring the baseline more in line with historic trends and greatly reduce the staff time required by both the CCC and the DOF to process budget revisions.

Staff Recommendation: APPROVE the request.

Action: Approved the request on a 3-0 vote.

4. BCP-6: Fleet Replacement. The Governor requests a one-time $2.9 million augmentation to CD in 2010-11 and $1.4 million in 2011-12 to fund replacement of 54 crew carrying vehicles (CCVs) and 20 vans.

Background. By December 31, 2011, the CCC must reach 100-percent compliance with a California Air Resources Board (ARB) Final Regulation Order, Title 13, California Code of Regulations, Sections 2022 and 2022.1, requiring new controls for diesel particulate matter for certain utility on-road heavy-duty diesel fueled vehicles, including the 56 CCVs in the CCC fleet. The CCVs are the primary mode of transportation to move CCC crews and their tools, gear, and equipment to and from projects and emergencies. (Health and safety regulations prevent the use of passenger vans for transport of certain tools, gear, and equipment and thus, in the absence of CCVs, the CCC would need both vans and pick-up trucks to get crews and their equipment to project sites.)

Additionally, the Governor's Executive Order S-14-09 (EO) requires all state departments to reduce their vehicle fleet by 15 percent by April 1, 2010. As such, the CCC plans to eliminate 17 CCVs and 23 vans as part of its 67-vehicle reduction.

Staff Comments. According to the CCC, 100 percent of its CCV fleet is between 22- and 25-years old, and thus modification of the CCVs, at a cost of $22,500 per vehicle, in order to meet ARB regulations would not be cost effective—the modifications would make the vehicles compliant but would not extend their useful life. Consequently, the proposed replacement of the CCVs (at $3.6 million over two years) would appear to be the most cost-effective way to reach compliance and provide the CCC with the ongoing use of its project workhorses.

As for the requested vans, the CCC van fleet currently consists of 100 vans, 13 percent of which are 20 years or older and 62 percent of which are at least 10 years old. According to information provided by the CCC, the Governor's EO will result in a 23 percent reduction to the van fleet (leaving the CCC with 77 vans). CCC staff indicate that in order to mitigate the frequent loss of service due to the maintenance needs of its aging fleet, the department has maintained more vans than might otherwise be necessary. Absent the requested new vans, the Governor's EO would erode this "insurance policy," and increase the likelihood that the CCC would not have ample transportation to carry out its mission.

The request for 20 new vans is then a way to help ensure that the new, "leaner" CCC van fleet is indeed "meaner" (newer) and sufficiently reliable to meet the Corps' ongoing needs. Staff notes, however, that the Administration has not demonstrated that the EO-imposed fleet reduction (presumably a cost savings) combined with the proposed partial-fleet replacement (a cost increase) results in a net savings compared to the status quo (i.e., no fleet reduction—the CCC continues to pay for maintenance of older vehicles). The best anecdotal information the CCC has been available to provide is that the current four-year average for vehicle maintenance is running around $700,000 annually, and Department of General Services inspectors refuse to perform work on 11 vans in particularly poor condition (although the CCC notes that this appears to be a limited occurrence specific to certain Northern California locations). The Committee may wish to hold this item open until the Administration provides additional clarification on this point, and, ideally, conducts an analysis to demonstrate that the up-front cost of the proposed new vans combined with the maintenance costs avoided by eliminating older vans are less than the status quo, and that the proposed fleet size will still allow the CCC to carry out its mission.

Staff Recommendation: HOLD OPEN

Action: Held Open pending additional analysis from the Administration demonstrating the purchase of new vehicles will result in an actual cost savings to the state. The CCC committed to providing this information.

[Staff would additionally like clarification on whether the CCC has submitted and received approval of an exemption request from the prohibition on vehicle purchases imposed by EO S-14-09? Previously, CCC indicated that an exemption was not necessary if the vehicles were to be purchased with stimulus funds; however, there has been no indication that stimulus funds are to be used. In the absence of an approved exemption, it is unclear why the Legislature would approve expenditure authority, so what is the timeline for seeking and receiving an exemption?]

3540 Department of Forestry and Fire Protection

The California Department of Forestry and Fire Protection (DFFP), under the policy direction of the Board of Forestry, provides fire protection services directly or through contracts for timberlands, rangelands, and brushlands owned privately or by state or local agencies. In addition, DFFP: (1) regulates timber harvesting on forestland owned privately or by the state and (2) provides a variety of resource management services for owners of forestlands, rangelands, and brushlands.

Governor's Budget. Excluding capital outlay, where the amount of carryover makes year-to-year comparisons less meaningful, the Governor's Budget includes $1.091 billion for support of the DFFP in 2010-11. This is a 2.5 percent decrease over current year expenditures. The significant decrease in GF is due to the proposed backfill of $200 million GF with revenues from the Emergency Response Initiative property insurance surcharge.

Summary of Expenditures *(dollars in thousands)*	**2009-10**	**2010-11**	**$ Change**	**% Change**
Type of Expenditure				
Office of the State Fire Marshal	$ 21,492	$ 21,450	$ -42	-0.1
Fire Protection	1,040,470	1,010,375	-30,095	-2.9
Resource Management	55,872	58,293	-2,421	-4.3
Board of Forestry	449	449	0	0.0
Administration	67,052	66,017	-1,035	-1.5
less distributed administration	-66,412	-65,500	912	1.4
Total	$ 1,118,923	$ 1,078,159	-$40,764	-3.6
Capital Outlay (CO)	30,363*	804,550*	774,187*	2500.5*
Funding Source (excluding CO)				
General Fund	$ 783,575	$ 554,098	-$229,477	-29.3
Special Funds	16,349	215,637	199,288	1219.0
Bond Funds	11,022	1,480	-9,542	-86.6
Federal Trust Fund	22,476	23,245	769	3.4
Forest Resources Improvement Fund	840	7,942	-7,102	-845.5
Timber Tax Fund	34	33	-1	-2.9
Reimbursements	284,627	288,649	-2,478	-1.4
Totals	$ 1,118,923	$ 1,091,084	-$92,839	-7.8

*Note: These amounts reflect the carryover of $770.9m in construction expenditures previously approved for FY 2009-10.

ITEM PROPOSED FOR VOTE-ONLY

BCP-16: Extend Liquidation Period for Unexpended Bond Funds. The Governor requests BBL to extend until June 30, 2011, the liquidation period for various bond funds (Proposition 12, Proposition 40, Proposition 50, and Proposition 84) appropriated in FY 2007-08.

Staff Comments. According to the DFFP, these funds (approximately $8.5 million) were encumbered under grants or contracts with expiration dates of no later than April 15, 2010; however, due to the bond freeze of late 2008 and the related uncertainties, it is taking grantees longer to complete their projects. Without the requested extension, some or all grantees might be unable to complete their projects.

Staff Recommendation: APPROVE the above request.

Action: Approved the request on a 3-0 vote.

DISCUSSION ITEMS

1. BCP-7: State Fire Training. The Governor requests $315,000 special fund and four positions (two temporary help; and two permanent) in the Office of the State Fire Marshal (OSFM) to: (1) develop a Feasibility Study Report (FSR) for a student records database; and (2) to address increased demand for fire service training.

Background. The OSFM is the lead agency for fire service training and, through its State Fire Training (SFT) Division, administers California's professional training standards, including certification, course delivery, and instructor credentialing for the fire service statewide. Various fees for service support the SFT, with the bulk of revenues coming from course delivery and certification review.

Staff Comments. The DFFP indicates that due to adoption of a strategic plan, Blueprint 2020, the SFT has experienced an increased level of participation from stakeholders and advisory groups, including a 51 percent increase in the number of courses delivered over the past three years. The OSFM has managed this increased workload by redirecting two full-time employees; however, in order to more accurately reflect the costs of the SFT program and to ensure that the redirected personnel can return to their normal duties, the DFFP has requested two new positions.

While the fund is able to support the requested resources, staff notes that the DFFP has failed to adequately demonstrate that the two positions currently being redirected to fire service training cannot continue acting in their current capacity. Given the Committee's prejudice against approving new positions during the current fiscal crisis, staff recommends denying the two permanent positions requested unless the DFFP can show that the redirection seriously undermines the department's mission (e.g., poses a threat to health and safety, or generates costs to the state).

As for the resources requested in support of FSR development (the two temp-help positions), the DFFP indicates that a new database would significantly increase efficiency, speed up turn-around time for certification and course processing, and reduce the 35 percent of staff time currently spent responding to course and certification historical records requests—with a new database connected to the web, such requests could be handled electronically without involving staff. Additionally, the DFFP indicates a new database would provide greater security than the current student training and certification records filing system which relies on students' Social Security Numbers.

Recommendation: APPROVE the two temp-help positions and associated funding for development of an FSR. DENY the two permanent positions and associated funding.

Action: Approved the two temp-help positions and associated funding on a 3-0 vote. Held open the two permanent positions and offered the DFFP the opportunity to provide additional information regarding the adverse impact of continuing the current redirections.

2. BCP-8: Code Development – Green Building Standards. The Governor requests one position and $169,000 special fund to develop building standards, with emphasis on development, adoption, publication, updating, and educational efforts associated with green building standards and efforts to reduce home loss due to wildland fires.

Background. The OSFM promulgates regulations and building standards relating to fire and panic safety in specific occupancies throughout California.

Every three years (during its triennial cycle), the California Building Standards Commission (BSC) reviews the newest model building codes published by various independent code-developing bodies. When published, these model codes are sent to the BSC and to various state agencies that propose or adopt building standards, including the OFSM, the Division of the State Architect (within the Department of Gneral Services—DGS), and the Department of Housing and Community Development (HCD). These agencies and the public draft proposed changes to the model codes and, through a deliberative process, the BSC eventually approves changes to the California Code of Regulations (CCR), Title 24, also known as the California Building Standards Code. On January 12, 2010, the BSC adopted the new California Green Building Standards Code (Part 11 of Title 24).

Chapter 719, Statutes of 2008 (SB 1473), created the Building Standards Administration Special Revolving Fund (BSASRF) for expenditures related to carrying out building standards, with emphasis placed on the development, adoption, publication, updating, and educational efforts associated with green building standards. The BSASRF is supported by fees collected from any applicant for a building permit, assessed at the rate of four dollars ($4) per one hundred thousand dollars ($100,000) in valuation. These fees are anticipated to generate approximately $1.2 million in revenues to the BSASRF in FY 2010-2011.

Staff Comments. The OSFM currently has two positions dedicated to building standards review and adoption. According to OSFM staff, their participation in the recent green building standards code adoption was limited to maintaining the minimum fire and life safety regulations contained in the California Building and Fire Code. They note that new building technologies, materials and methods of construction are being developed that will affect firefighter safety and building occupant safety, with unknown environmental impacts. Further, they indicate that current OSFM resources do not permit staff time to address this new method of building in relationship to fire and panic safety.

In addition to green building, the DFFP indicates the requested position is intended to enable development of new wildfire protection building standards, which would make structures less susceptible to fires, and would potentially prevent the spread of wildland fires from home to home in wildland urban interface areas. Staff notes that, although unrelated to green building, nothing in current law prohibits the use of BSASRF monies for this purpose.

Additionally, staff notes concern that the justification for this BCP is based primarily on workload associated with green building standards that were just adopted in January 2010. Thus, substantial work on the next triennial adoption will not ramp up again for at least another year to two years. In the meantime, there is great need for outreach and education on the latest adoption. As support for these efforts was a primary intent behind the creation of the BSASRF (and a main reason why it was sponsored by the building industry), the justification for this request is weakened by the fact that the BCP does not provide a clear picture as to how the OSFM would participate in outreach efforts.

On its merits alone, staff would recommend denying this BCP outright. However, given that there is potentially an important role for the OSFM to play in ensuring green building standards adequately address fire and panic requirements, staff recommends this item be held open for the timebeing to allow: (1) the Administration to provide a comprehensive expenditure and work plan for the state entities receiving BSASRF monies; and (2) the OSFM to re-evaluate and better articulate how its use of these funds would support a coordinated effort to support green building in California; and (3) Senate Budget Subcommittee No. 4 to hear related items in the DGS and the HCD budgets.

Recommendation: HOLD OPEN pending receipt of the requested information from the Administration and further discussions of related expenditures in the DGS and HCD budgets in Senate Budget Subcommittee No. 4.

Action: Held open, and requested additional information per the staff recommendation. DFFP should coordinate with DGS, HCD, and the California Building Standards Commission on addressing the committee's concerns regarding a comprehensive plan for green building standards. In particular, the plan should address how each entity will use AB 1473 funds to contribute to education and outreach in support of the recent code adoption.

3. BCP-9: Civil Cost-Recovery Program. The Governor requests conversion of 14 limited-term positions to permanent status and carryover of the associated operating budget ($2.1 million GF) in order to continue implementation of the Statewide Fire Suppression Cost-Recovery Program (Program).

Background. The Program was established as a pilot in FY 2008-09 in order to pursue civil actions to recover fire suppression costs from parties responsible for negligently causing fires. In its first year, the Program recovered $12.3 million, approximately five times its cost. For the current fiscal year, recoveries on complex cases to date total approximately $14.6 million. These recoveries are revenue to the GF.

Staff Comments. According to DFFP, over the prior and current fiscal year the Program has achieved an overall cost recovery rate of approximately 55 percent (i.e, the state has recovered $55 on every $100 it spent to fight a fire). Although more than 85 percent of the resolved cases resulted in a recovery of over 80 percent, the lower overall rate (of 55 percent) reflects the fact that the responsibility party did not have the means or assets to cover the costs of a few high-cost fires.

Based on the fact that there are $184 million in costs for pending complex-cases that have already been initiated, the DFFP anticipates that the requested resources would lead to recoveries of approximately $100 million over the next eight years—these cases often take many years to resolve—resulting in approximately $12.5 million in additional annual revenue to the GF. Due to this significant anticipated return on investment, the Committee may wish to strongly consider approving these GF resources.

Staff Recommendation: APPROVE the request.

Action: Senator Cogdill's motion to approve the requested positions on a 2-year limited-term basis failed on a 1-1 vote (Lowenthal abstaining). Senator Lowenthal's motion to approve the request was approved on a 2-1 vote (Cogdill voting no).

4. BCP-10: Watershed Fuels Management Program. The Governor requests $40 million in Proposition 1E (Prop 1E) funds over seven years, including $5.5 million in FY 2010-11, in order to continue a fuels management program currently funded by Proposition 40 (Prop 40).

Background. Prop 40, the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, provided $300 million for the purposes of clean beaches, watershed protection, and water quality projects. For the past six years, the DFFP has annually received between $7 million and $8 million of these funds in support of the Sierra Nevada Fuels Management Program (SNFMP), which protects at-risk watersheds in 15 Sierra Nevada counties by undertaking projects to reduce the incidence of large damaging wildfires in watershed areas. The SNFMP is one of several DFFP programs which conduct fuels management projects. Others include: (1) the Vegetation Management Program, which is a GF-supported cost-sharing program that focuses on the use of prescribed fire and mechanical means to address wildland fire hazards in State Responsibility Areas; and (2) the Federal Fuels Management Program, which is funded through the United State Forest Service and has goals similar to the SNFMP, including creation and maintenance of community fuel breaks.

Prop 1E, the Disaster Preparedness and Flood Protection Bond Act of 2006, provided approximately $4.1 billion to rebuild and repair California's most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failures, flash floods, and mudslides and to protect California's drinking water supply system by rebuilding delta levees that are vulnerable to earthquakes and storms. Of these funds, $300 million was identified (in Public Resources Code Section 5096.827) for stormwater flood management projects subject to specified requirements, including provision of benefits to groundwater recharge, water quality, ecosystem restoration, and protection of life and property.

Staff Comments. Notwithstanding the requested reappropriation of 2008-09 funding (see BCP-13) and any unencumbered balance from the current-year appropriation, Prop 40 funds for fuels management have been exhausted. Thus, the DFFP is looking to Prop 1E to provide an alternative funding source in order to carry on the watershed fuels management program. Pursuant to the requirement of Prop 1E, the DFFP intends to modify the existing SNFMP in order to serve the entire state and to focus more directly on watershed benefits. Additionally, Prop 1E requires a 50-percent non-state match which the DFFP intends to obtain from grantees as well as through the FFMP. (Thus, the Prop 1E fund would serve as the state's required 10-percent match on FFMP funding, and FFMP funds would be used to partially satisfy the Prop 1E matching requirement.)

Staff notes concern that, although fuel management is critical as a first-line defense against wildland fires ("an ounce of prevention is worth a pound of cure"), the requested use of Prop 1E votes may not be consistent with the voter's intent when they passed the bond act. Therefore, the Committee may wish to consider alternative fund sources to meet this need. For example, the Prop 84 funds provided to the CCC (see CCC BCP-1) could potentially be used to have corps members conduct fuel management activities.

Additionally, it is unclear given the need to redesign the existing program how projects would be prioritized under the new approach. For example, how would projects be distributed geographically, and how would public versus private lands be treated? The Committee may wish to hold this item open and request LAO, DOF, and Committee staff to explore alternative means for achieving the state's fuel reduction and fire prevention goals.

Staff Recommendation: HOLD OPEN

Action: Held open. The Chair requested LAO, DOF, DFFP, and staff to further discuss the use of Prop 1E funds for the proposed purpose and explore other options.

5. BCP-13: Reappropriation of FY 2008-09 Prop 40 Bond Funds. The Governor requests reappropriation of approximately $7.7 million in Prop 40 funding ($1.8 million for urban forestry; and $5.9 million for fuels management) that was originally appropriated in FY 2008-09.

Background. As noted previously, due to the late 2008 bond freeze and the state's ongoing cashflow problems, the availability of bond proceeds has been tightly constrained statewide. As a result, DFFP was not permitted to expend any 2008-09 grant funds.

Staff Comments. Staff notes no specific concerns, but consistent with previous bond-funded requests the Committee may wish to reserve judgment on this proposal until later in the spring when more information will be available on the state's fiscal and cashflow outlook.

Staff Recommendation: HOLD OPEN

Action: Held open pending results of spring bond sales and more information on state's bond cashflow picture.

6. BCP-15: Forest Care Fuel Reduction Program – ARRA Funds. The Governor requests $1.4 million in federal fund authority (including $524,000 in FY 2010-11 and 3.5 positions) in order to partner with the San Bernardino National Forest Association (SBNFA) and conduct outreach to private landowners of less than 20 acres in San Bernardino National Forest and help them access financial incentives aimed at promoting hazardous fuels reduction and healthy forests.

Background. The SBNFA is a private nonprofit that has received $3.8 million in ARRA funding through the United States Forest Service for the Forest Care Program.

The Forest Care Program is a federal cost share program for small, primarily residential, forest landowners used to educate and assist them in reducing hazardous fuels and create a healthier forest on their property. The program has been in operation since 2005 and has been limited to private property in and around the San Bernardino National Forest as a stipulation of the funding source.

Staff Comments. According to DFFP staff, these ARRA funds are anticipated to be expended over four years (instead of more rapidly) based on a number of factors, including: (1) the need to work in concert and at pace with SBNFA; (2) the finite capacity of existing contractors in the area; (3) the ability to train and equip foresters; and (4) the ability to garner participation in the program by landowners. Staff notes that, the DFFP received $318,000 in current-year fund authority via the Section 28 process, and the department has administratively established 1.8 positions to begin work. To the extent that the requested use of these ARRA funds is the sole purpose for which they were approved, staff has no concerns with the merits of the proposal.

However, staff notes that $250 million in ARRA funds were made available nationwide under the Wildland Fire Management Program, and of the $175 million in potential projects submitted by DFFP, this and a $1.8 million award for an integrated pest management program were the only funds the state received. The Committee may wish to ask:

- Which states received the bulk of the Wildland Fire Management Program funding since California appears to have received a little more than 1.5 percent of it?
- What types of projects received funding?
- Why was California uncompetitive?

Recommendation: APPROVE the request.

Action: Approved the request on a 3-0 vote.

7. Capital Outlay BCPs (COBCPs-1; 2; and 3): Fire Station Rehabilitations and Replacement. The Governor requests the following capital outlay projects:

- Replace Baker Fire Station – $10.4 million (Lease Revenue Bond) – Baker Fire Station, located in Northwestern Tehama County, was built in 1948 and includes five buildings, all in various states of disrepair. The current site is on a 50-year lease from a private landowner and was renewed in 1994. The landowner is unwilling to sell to the state, but has been willing to provide favorable lease renewals. According to the DFFP, the rural development in the area does not justify reclassification of the properties from State Responsibility Area to Local Responsibility Area.
- Relocate Pine Mountain Fire Station – $10 million (Lease Revenue Bond) – The DFFP selected a new location (near California Hot Springs) for its southeastern Tulare County fire suppression efforts after the Tulare County Board of Supervisors terminated the Cooperative Fire Protection Agreement with the DFFP in mid-2007. The new site, located near the community of Pine Flat was acquired (using funds appropriated in FY 2007-08 and augmented in December 2009), and the Administration is now requesting construction funds. The state owns this site.
- Replace Rincon Fire Station – $13.2 million (Lease Revenue Bond) – Rincon Fire Station, located near Valley Center in San Diego County, was built in 1962 of unreinforced block with cement slab floor and does not meet seismic standards, current code requirements, and is not ADA compliant. Additionally, according to the DFFP, the facility is not large enough to accommodate existing staff and equipment. The state owns this site.

Staff Comments. Although staff notes no concerns with the justification for the three fire station projects discussed above, Committee members should be aware that, combined, the above requests would result in increased average annual lease-revenue bond costs of approximately $2.8 million GF for a 25-year term beginning in about five years from now (due to the fact that total debt service for the $34 million in FY 2010-11 projects will be approximately $69.2 million—or double the original cost). As such, the Committee may wish to await April revenue numbers before determining whether or not to approve these additional GF expenditures.

Staff Recommendation: HOLD OPEN

Action: Held open per the staff recommendation.

3600 Department of Fish and Game

The Department of Fish and Game (DFG) administers programs and enforces laws pertaining to the fish, wildlife, and natural resources of the state. The Fish and Game Commission sets policies to guide the department in its activities and regulates fishing and hunting. The DFG currently manages about 850,000 acres including ecological reserves, wildlife management areas, hatcheries, and public access areas throughout the state.

Governor's Budget. The Governor's Budget includes $385 million for support of the DFG, a reduction of $25 million, or 6 percent, over current year expenditures. This reduction is primarily due to reduction in GF support.

Summary of Expenditures *(dollars in thousands)*	**2009-10**	**2010-11**	**$ Change**	**% Change**
Type of Expenditure				
Biodiversity Conservation Program	$178,097	$141,542	$ -$36,555	-20.5
Hunting, Fishing, and Public Use	70,588	72,907	2,319	3.3
Management of Department Lands	55,812	57,358	1,546	2.8
Enforcement	66,341	69,385	3,044	4.6
Communications, Education, and Outreach	4,396	4,643	247	5.6
Spill Prevention and Response	34,044	37,798	3,754	11.0
Fish and Game Commission	1,155	1,400	245	21.2
Administration	43,672	44,711	1,039	2.4
less distributed administration	-43,672	-44,711	-1,039	2.4
Total	$410,433	$385,033	-$25,400	-6.2
Capital Outlay	$2,049	$2,600	$551	26.9
Funding Source				
General Fund	$37,366	$68,912	$31,546	84.4
Special Funds	180,761	167,967	-12,794	-7.1
Bond Funds	78,513	14,175	-64,338	-81.9
SubTotal	296,640	251,054	-45,586	-15.4
Federal Trust Fund	49,598	53,319	3,721	7.5
Reimbursements	56,639	56,886	247	0.4
Salton Sea Restoration Fund	-15,210	2,786	17,996	-118.3
Harbors and Watercraft Revolving Fund	2,282	2,619	337	14.8
Special Deposit Fund	1,468	1,606	138	9.4
Hatchery and Inland Fisheries Fund	19,016	16,763	-2,253	-11.8
Total	$410,433	$385,033	-$25,400	-6.2

STAFF NOTE: Several of the following requests contain requests for new positions and associated one-time costs with which staff has raised concern. For example, one BCP contains 120 modular workstations priced at $6,000 apiece. Others request approximately $5,000 per position for a new computer, printer, and software, and an additional $2,400 annually for information technology refresh. At first blush, these costs appear excessive; however, DFG staff are working with the DGS to verify and justify these costs. Unfortunately, at the time of this writing, more information is not yet available. Staff therefore recommends that the Committee discuss these proposals on their merits (where discussion is warranted), but hold them over until such time as staff concerns have been resolved.

ITEM PROPOSED FOR VOTE-ONLY

1. BCP-18: Klamath River Fish Tagging and Monitoring. The Governor requests $1.9 million (reimbursement authority), one permanent position, and six Temporary Help positions to implement Iron Gate Hatchery (IGH) responsibilities under the Klamath Hydroelectric Settlement Agreement (Agreement).

Background. The DGF operates IGH to mitigate for lost salmon and steelhead habitat and production as a result of Pacific Power and Lights Corporation's (PacifiCorp) construction of Iron Gate Dam for hydropower production in the early 1960s. Under a Supreme Court decision, PacifiCorp has been responsible for 80 percent of personal services and operations costs at IGH with the DFG responsible for the remaining 20 percent. However, under a recent settlement agreement, PacifiCorp has now assumed: (1) 100 percent of IGH costs as well as an increased marking and tag recovery program for hatchery fish; (2) development and implementation of a Hatchery Genetics Management Plan; (3) a potential Environmental Impact Report; (4) costs for the DFG's fish stocking program; and (5) a potential North Coast Regional Water Quality Control Board Basin Plan Amendment.

Staff Comments. Notwithstanding the Committee's general prejudice against establishing new permanent positions at this time, staff raises no concerns with providing the DFG the authority to carry out the settlement agreement.

2. BCP-19: Coastal Wetland Management. The Governor requests $275,000 (reimbursement authority) and 2.5 positions (including one 2-year limited-term) to implement two coastal wetland programs: (1) Managing property recently restored at Bolsa Chica Lowlands and operating Upper Newport Bay pursuant to mitigation and partnership agreements (1.5 permanent positions); and (2) actively participating and planning permitting processes of wetlands restoration projects in the South Coast Region from their inception through construction (one limited-term position).

Background on Bolsa Chica and Upper Newport Bay Ecological Reserves. The state, acting through the State Lands Commission (SLC) which received funds from the

Ports of Los Angeles and Long Beach as mitigation credits for port expansion, is obligated to manage the site in perpetuity based on agreements with the ports; however, the SLC is not a land management agency. The SLC originally approached both the DFG and the United States Fish and Wildlife Service (USFWS) about managing the reserves, but the USFWS declined. The DFG originally obtained staffing for this purpose in 2006, and anticipates funding (originally totaling $17 million) to complete permit compliance, maintenance dredging, and on-site management and monitoring will be available for at least ten years.

Background on Coastal Wetland Restoration Planning. The state, acting through the State Coastal Conservancy (SCC), is obligated to pursue coastal wetlands restoration and enhancement; however, SCC staff are located in the San Francisco Bay Area and have limited expertise in managing coastal wetland projects. Currently, there are nine coastal wetlands owned and/or managed by the DFG in southern California, and another 4-5 identified under ownership and management of others that are in some phase of wetland restoration—some have been completed, some are in the planning phase, and others are being planned in future years.

Staff Comments. Notwithstanding the Committee's general prejudice against establishing new permanent positions, the positions requested for the Bolsa Chica and Newport Bay Ecological Reserves appear justified, and is consistent with the intent of requiring the ports to pay for active mitigation in exchange for the right to expand. Similarly, the request for a limited-term position to ensure timely and adequate planning of wetland restoration projects appears warranted given the number of proposed transportation and energy projects that could potentially adversely affect these areas (and require restoration and mitigation). Therefore, staff raises no concerns with approving this request.

3. BCP-2: Portable Radios for Law Enforcement Personnel. The Governor requests $300,000 special fund (including $270,000 FGPF-ND) one-time to purchase 75 Motorola XTS-2500 P-25 portable radios.

Background. The DFG maintains a high band VHF radio communications system in order to allow communication with personnel in the field, including 385 law enforcement officers (game wardens). In 2008, the DFG replaced all portable radios in the Law Enforcement Division (with the same model requested in this BCP).

Staff Comments. According to the DFG, at the time of the last radio purchase funds were insufficient to give radios to the Fish and Game Law Enforcement Academy or establish a pool of backups to ensure continued service should any be damaged in the field or need to be repaired. The 75 radios requested would provide 50 radios to the academy (so that cadets can train on the same radio that they take into the field), and 25 spares.

4. BCP-14: Augment Management of Duck and Wild Pig Funding. The Governor requests expenditure increases of $155,000 and $515,000 to Fish and Game Preservation Fund (FGPF) accounts dedicated to protecting, preserving, and enhancing duck and pig habitat, respectively.

Background. Adult hunters are required to purchase a Duck Stamp to hunt waterfowl, and the revenues from these stamp fees are used to benefit duck habitat. Similarly, wild pig hunters are required to purchase a pig tag, the revenues from which support wild pig management.

Staff Comments. Staff notes that the requested augmentations would result in the expenditures in each of the affected funds to exceed estimated annual revenues; however, both accounts enjoy a reserve sufficient to provide ample time for the department to either seek a fee increase or submit a negative BCP to reduce expenditure levels. Given that the monies contained in these accounts were paid by the beneficiaries of these requests, staff has no concerns with approving this request.

5. BCP-26: AB 825 – Enforcement of Crab Trap Restrictions. The Governor requests $100,000 (Non-Dedicated FGPF, henceforth FGPF-ND) to fund game warden overtime sufficient to cover 300 additional hours of shore-side inspections of commercial crab vessel landings, and 200 additional hours of large boat patrols, in order to ensure a fair start to the Dungeness crab season and prevent early “incidental” take of Dungeness crab with rock crab traps.

Background. Chapter 478, Statues of 2009 (AB 825; Blakeslee), permits the incidental take of rock crab with a Dungeness crab trap, and the incidental take of Dungeness crab with a rock crab trap south of Monterey County. The bill deleted the prohibition against possession of rock crab and Dungeness crab aboard the same boat.

Dungeness crab season from Mendocino County north runs from December 1 through July 15, and from November 15 through June 30 south of Mendocino County. Rock crab season runs year round.

Staff Comments. According to the DFG, the requested overtime is necessary to ensure fishermen with a southern rock crab trap permit below Monterey County do not set their traps out before the Dungeness crab season pre-soak period opens and then claim the Dungeness crab as “incidental take.” This would violate existing “fair-start” provisions of the Multi-State Management Agreement.

Staff notes that the requested resources are consistent with the Legislature’s AB 825 fiscal estimate.

Capital Outlay

6. COBCP-3: Project Planning. The Governor requests $60,000 (FGPF-ND) for studies and budget cost estimates for selected capital outlay projects.

7. COBCP-4: Los Banos Wildlife Area – Domestic Water Supply. The Governor requests $315,000 (FGPF-ND) to replace an existing waterline.

8. COBCP-5: Napa Sonoma Marsh Wildlife Area – Camp 2/Sonoma Creek Levee Enhancement. The Governor requests $117,000 (Proposition 99, Public Resources Account—PRA) to improve an existing earthen levee and increase seasonal wetland acreage.

9. COBCP-8: Yolo Bypass Wildlife Area – North Tule Ranch Pump Station. The Governor requests $115,000 (Proposition 99, PRA) to install a new pump to provide water to recently restored wetland.

10. COBCP-9: Honey Lake Wildlife Area – Tanner Weir Improvement Project (Phase II). The Governor requests $386,000 (Proposition 99, PRA) to improve water conveyance at Honey Lake Wildlife Area.

11. COBCP-10: Grizzly Island Wildlife Area – South Solano Cut Water Control. The Governor requests $38,000 (Proposition 99, PRA) to upgrade five water control structures along the South Solano Cut water supply canal at the Grizzly Island Wildlife Area.

12. COBCP-11: Mendota Wildlife Area – Water Conveyance Enhancement at Pump 2. The Governor requests $74,000 (Proposition 99, PRA) to update 21 water control structures at the Mendota Wildlife Area.

Staff Comments. Staff has no concerns with the above capital outlay requests (5-11).

Staff Recommendation: APPROVE requests (3-12). HOLD OPEN items 1 and 2 pending additional clarification on one-time costs.

Action: Approved the staff recommendation on 3-0 vote (Items 1 and 2 were held open pending additional clarification on one-time costs).

DISCUSSION ITEMS

1. BCP-11: Delta Environmental Review. The Governor requests six positions and $807,000 (Prop 84, with Prop 84 and Prop 1E as reimbursements from the Department of Water Resources—DWR) to support the increase in both Delta Levee Program workload (three positions) and the number of Permitting and Restoration Program projects in the Sacramento-San Joaquin River Delta (three positions).

Background on the Delta Levee Program. Through the Delta Levee Program, the DFG performs assessments of existing habitats, determines potential impacts of levee work, suggests alternatives to avoid or reduce impacts to fish and wildlife resources, develops mitigation plans, assists with the preparation of local plans for 76 reclamation districts, and provides advice early in the planning process on larger restoration projects. The DFG also validates that levee maintenance and construction expenditures by the DWR and reclamation districts in the Sacramento-San Joaquin Delta (Delta) result in no net loss of habitat. Reclamation districts cannot be reimbursed without this determination.

The Delta Levee Program provided $50.5 million in local assistance to reclamation districts in FY 2007-08 and 2008-09, and with the passage of Props 84 and 1E, starting in FY 2009-10, the DWR will provide $176 million to these districts.

The DFG has an Interagency Agreement (IA) with the DWR, which provides funding for the Delta Levee Program. The IA includes eight positions on a three-year renewable cycle. Five of those positions are currently established within the DFG, while the remaining three are contained in this request.

Background on the Permitting and Restoration Program. The Permitting and Restoration Program ensures that threatened and endangered fish and wildlife resources in the Delta are conserved, restored, and recovered. Timely issuance of California Endangered Species Act (CESA) permits, water rights reviews, and CALFED Ecosystem Restoration Program (ERP) implementation of restoration and recovery actions are integral to statewide water supply delivery and reliability. Permitting and Restoration Program projects relate to statewide water planning and design; the protection of rivers, lakes, and streams; flood control; and other actions involving water supply operations, water quality, recreational facilities, and transportation infrastructure.

Staff Comments. Discussion of this proposal may best be held within the context of a future budget hearing on water issues (e.g., the fall 2009 "Water Deal"). Additionally, as the proposed positions are bond funded, Committee members may wish to await the outcome of spring 2010 bonds sales before taking action. In the meantime, the Committee members may wish to ask the DFG what will happen if bond proceeds are not available to fund these positions.

Staff Recommendation: HOLD OPEN

Action: Held open pending results of spring bond sales and acknowledged that this issue will be part of water discussions at a future hearing.

2. BCP-27: SBx7 1 – Delta In-Stream Flow Criteria. The Governor requests five positions (including 2.2 temporary help) and $1 million (Prop 84) to implement the Delta in-stream flow criteria requirements of Chapter 5, Statutes of 2009 (SBx7 1; Simitian).

Background: SBx7 1, part of a package of water-related legislation adopted in the 2009 Seventh Extraordinary Session, requires (among many things) the DFG or the DWR to develop recommendations for in-stream flow criteria of the Delta within 12 months after the date of enactment of the bill (which was November 12, 2009). This assessment is part of a series of "early actions" required under SBx7 1 that will contribute to the State Water Resources Control Board developing final Delta flow criteria.

Staff Comments. According to the DFG, the Prop 84 resources requested would allow the department to: (1) complete in-stream flow studies on priority streams in the Delta to determine how much water is needed to establish suitable habitat types and water quality; (2) continue to work with appropriate agencies to minimize negative effects on fisheries, wildlife, or habitat by the operation of managed lakes, reservoirs, and diversions; and (3) take significant steps to implement a new In-Stream Flow Program (as required by both SBx7 1 and Public Resources Code Sections 10000 – 10005). The DFG indicates that existing resources are insufficient to carry out these responsibilities; however, staff resources are being redirected to meet the 12-month deadline.

As with the last item on the agenda, discussion of this proposal may best be held within the context of a future budget hearing on water issues. Additionally, as the proposed positions are bond funded, Committee members may wish to await the outcome of spring 2010 bonds sales before taking action.

Recommendation: HOLD OPEN

Action: Held open pending results of spring bond sales and acknowledged that this issue will be part of water discussions at a future hearing.

3. BCP-12: San Joaquin River Restoration. The Governor requests ongoing authority for 10 existing positions and $8.8 million in one-time funding from Prop 84 (via reimbursements from the Natural Resources Agency) in order to support year four of San Joaquin River restoration efforts. This request consists of $3.7 million in new funding and $5.1 million in unspent funds from FY 2008-09 that will be reappropriated by the Natural Resources Agency.

Background. The San Joaquin River historically produced major sport and commercial fisheries (including the largest spring run of Chinook salmon in California), as well as important ecological, water supply, and water quality values.

A 2005 Federal Court preliminary holding in *NRDC v. Rogers* held that the United States Bureau of Reclamation and its contractors, in their operation of Friant Dam since 1945, had not complied with state law, which requires dam owners to release sufficient water to keep downstream fish in good condition. A settlement, which incorporated a separate Federal-State Memorandum of Understanding (MOU), agreed to by Governor Schwarzenegger and signed by the Secretary for Resources, was accepted by the Federal Court in May 2006. The MOU commits the DFG and the DWR to participate in the San Joaquin Restoration Program (SJRRP) created under the settlement. Funding for the implementation of the settlement was anticipated to come from the following sources:

State

- About $200 million in bond funds from Props 84 and 1E

Federal

- Up to $300 million of additional Federal appropriations requiring a non-federal cost-share of an equivalent amount
- Central Valley Project Improvement Act (CVPIA) – Up to $2 million annually of other Friant Divison water users CVPIA Restoration Fund payments
- Friant Surcharge Collections – Friant contractors' environmental fee expected to average about $5.6 million per year
- Friant Capital Repayment – Friant division water users' capital component of their water rates redirected into the San Joaquin River Restoration Fund

Staff Comments. Consistent with other bond-funded requests, staff recommends this item be held over until a future hearing after the state tests the bond market this spring. However, in the meantime, Committee members may wish to request more information from the Administration on efforts to obtain federal support for the SJRRP. Staff notes that the state provided annual appropriations of $1.2 million, $6.3 million, and $10.5 million in FYs 2007-08, 2008-09, and 2009-10, while, as of the SJRRP 2008 Annual Report, the federal government had provided only $7.2 million via the CVPIA. More current information was unavailable at the time of this writing; however, Committee members may wish to ask the Administration to provide more up-to-date figures as well as estimates of future federal contributions.

Staff Recommendation: HOLD OPEN

Action: Held open pending results of spring bond sales and more information on the state's bond cashflow outlook.

BCP-16: Wildlife Corridor Mapping. The Governor requests one 2-year limited-term position and $340,000 (Prop 84 funds provided via reimbursement from the Wildlife Conservation Board—WCB) in order to produce a spatial data system identifying wildlife corridors and habitat linkages that is consistent with the intent of Chapter 333, Statutes of 2008 (AB 2785).

Background. AB 2785 requires the DFG to determine which areas of the state are most essential as wildlife corridors and habitat linkages, develop and maintain a data system identifying those linkages, and deliver data sets and associated analytical products to interested government entities, stakeholders, and the public.

Staff Comments. Using partial redirection of one staff person, the DFG indicates the effort to implement AB 2785, in partnership with Caltrans is underway. Using $250,000 in Caltrans funding, the DFG recently completed a statewide habitat connectivity and wildlife movement corridor analysis that relied on the best available data to create a gross, statewide scale to prioritize linkages based on biological value. However, feedback from the constituents who participated in the development of the corridor analysis tool indicated that it would have limited value and use to them in creating fine-scale linkage conservation plans or linkage designs. Based on this response, the WCB agreed to provide the funding for this proposal to develop a regional fine-scale corridor analysis approach in order to provide truly useful data to government entities, stakeholders, and the public, and fulfill the intent of AB 2785.

Staff notes no concern with this proposal, but due to its reliance on bond funding, Committee members may wish to defer action on this item until after a spring bond sale has occurred.

Staff Recommendation: HOLD OPEN

Action: Held open pending results of spring bond sales and more information on the state's bond cashflow outlook.

4. BCP-1: Replace Major Stockton Facility. The Governor requests $1.6 million in FY 2010-11 and $525,000 ongoing to move employees from 130 staff out of the current, overcrowded facility and into one that meets fire, life, and safety requirements. Moving costs, new workstations, and other one-time costs would be covered by $550,000 (FGPF-ND) and $550,000 in federal funds. The anticipated increase in ongoing costs for facilities operations ($525,000) would be covered by federal funds ($263,000) and reimbursements from the Department of Water Resources ($262,000).

Background. The DFG leases two DGS-owned buildings and fifty-three private sector buildings, including the current home to the Central Valley Bay-Delta Branch, located in Stockton since 1991. Currently 130 staff occupy the facility, which does not meet Title 24, ADA, or seismic requirements. The current lease is short-term pending a decision on whether or not to complete the repairs needed to bring the facility into compliance.

Staff Comments. Although the existing facility could be brought into compliance at considerable expense, according to the DFG this would not be cost-effective because the existing footprint is too small to meet current staffing levels (which have grown approximately 85 percent since the DFG first took occupancy). DFG staff indicate that additional capacity of approximately 4,000 square feet is necessary to accommodate existing personnel, but this amount of space cannot be obtained at the existing location. Additionally, the DFG notes that a nearby raceway has become a nuisance, creating noise, increasing foot traffic, trash, and property damage (and even prostitution).

Staff notes concern that one-time costs contained in the BCP are too high. For example the DFG proposes $857,000 for 166 workstations (120 of which would cost $6,000 each, whereas others cost only $3,500). Additionally, the Committee may wish the DFG to clarify the extent to which current staffing levels are anticipated to remain constant in the future in order to be sure that this facilities decision is being made on a stable staffing estimate. Unless the DFG can adequately defend these costs, staff recommends holding this item open to allow the department to provide additional justification.

Staff Recommendation: HOLD OPEN

Action: Held open. The Chair requested the department to work to address staff concerns.

5. BCP-3: Game Warden Increase. The Governor requests $2 million (FGPF-ND), and seven Game Warden positions to focus on marine issues.

Background. DFG wardens are State Peace Officers and Federal Deputies for both the United States Fish and Wildlife Service and National Marine Fisheries Services. In addition to traditional law enforcement activities, they enforce fish, wildlife, and habitat protection laws on DFG-managed lands, including criminal and civil statutes.

The DFG received 15 new wardens in FY 2009-10, to bring the total authorized to 385. Currently, about 90 percent of those positions are filled, with 21 vacant, and 17 encumbered (anticipated to be filled by a current cadet). By comparison, the warden vacancy rate was running at about 20 percent in 2008.

Staff Comments. According to the DFG, the request for seven wardens is based on the level of funding available, as opposed to the need for adequate staffing, which is significantly higher. The DFG indicates that 385 wardens are currently responsible for patrolling 159,00 square miles, more than 1,100 miles of coastline (200 miles out to sea), 30,000 miles of rivers and streams, 4,800 lakes and reservoirs, and 80 major rivers. Meanwhile, statutory protection duties have increased, including: (1) the Marine Life Protection Act (MLPA); (2) new limits on lead ammunition in the condor range; (3) a suction dredge moratorium; and (4) the DFG Invasive Program aimed at preventing the spread of the Quagga mussel.

The DFG indicates that the requested warden positions would be assigned to marine duties out of recognition of the fact that the state may soon recognize an estimated 120 Marine Protection Areas (MPAs) pursuant to the MLPA and only 47 wardens currently patrol over 1,000 miles of coastline.

Staff Recommendation: HOLD OPEN, pending resolution of one-time cost concerns.

Action: Held open. The Chair requested the department to work to address staff concerns.

6. BCP-5: Law Enforcement Safety Gear (Tasers). The Governor requests $378,000 (FGPF-ND), to provide 350 tasers to game wardens.

Background. Tasers use a neuromuscular incapacitation system (an electrical current rated at 1,200 volts) that affects both the sensory and motor nervous systems, preventing a suspect from resisting arrest.

The DFG purchased 25 tasers in FY 2008-09 in order to develop a pilot program. Currently 12 officers are trained to carry the tasers while 13 more are scheduled to receive training in March 2010.

Staff Comments. The DFG believes the acquisition and implementation of tasers would reduce the use of force by wardens and increase the safety of both wardens and subjects. The DFG sites data collected by the taser industry from across the country in which police departments report dramatic decreases in officer injuries subsequent to adoption of tasers. Staff notes that the DFG does not collect data on hands on encounters, but reports 64 documented assaults on DFG officers from 2005 to 2008.

The DFG indicates that the 350 tasers requested would be sufficient to equip each warden and supervisor. Staff notes that the California Highway Patrol recently purchased enough tasers to equip each on-duty officer (but not management personnel) at a cost of about $790 per unit. The Committee may with the department as to why the BCP assumes a cost of $1,000 per taser.

Staff Recommendation: HOLD OPEN.

Action: Held open. The Chair requested the department to work to address staff concerns about taser costs (vis-à-vis CHP costs), and additionally requested the department to work with personal and committee staff to address potential policy concerns with tasers.

7. BCP-9: Automated License Data System (ALDS) Reappropriation (BBL). The Governor requests reappropriation of unused budget authority (approximately $4.5 million in total) from FY 2008-09 and 2009-10 to align the Automated License Data System project budget to the current project schedule. These funds are also requested to be made available for expenditure through FY 2013-14.

Background. The ALDS is intended to replace the DFG's current paper-based licensing system with an automated licensing system that will significantly increase program efficiency. The project was approved in FY 2007-08 based on a seven-year development plan, but was delayed in August-October 2008 due to contractor-caused slow delivery of an acceptable product. Following a review by the Office of the State Chief Information Officer (OCIO) that included project and organizational changes, the project resumed under a new schedule that includes a 39-month delay in statewide deployment of core functionality (the Point of Sale component due out in January 2011), and a 53-month delay in deployment of non-core functionality.

Staff Comments. The DFG indicates that the bulk of the project costs originally anticipated in FY 2007-08 through 2009-10 are being deferred by three years due to the fact that the vendor is funding the design, development, and implementation costs of the system, and will begin to accrue and receive payments once the ALDS is accepted by the department. According to the DFG, the core elements of the project—the business needs, justification, projects goals, and objectives—are stable and the scope has not changed. The most recent Special Project Report, dated February 2009, indicates that the project and organizational changes adopted subsequent to the OCIO's review could result in the project coming in under the originally budgeted cost.

The members of the Committee may wish to request a brief project update; however, staff has no concerns with this technical request to realign project funding.

Staff Recommendation: APPROVE the request.

Action: Approved the request on a 3-0 vote..

8. BCP-15: Diesel Retrofit Program. The Governor requests $1 million (FGPF-ND) (and $580,000 in FY 2011-12) to retrofit 23 on-road and 58 off-road diesel vehicles and equipment to reduce emissions in compliance with regulations adopted by the ARB.

Background. As noted earlier (see CCC, BCP-6), ARB Final Regulation Order, Title 13, California Code of Regulations, Sections 2022 and 2022.1, institutes new controls for diesel particulate matter for certain diesel fueled vehicles and equipment, and requires 100-percent compliance by December 31, 2011.

Last year the Legislature approved trailer bill language (TBL) to allow these DFG costs ($900,000), and similar expenditures for the DFFP ($2.8 million) and the Department of Parks and Recreation ($1.5 million) to be funded on a one-time basis from the Alternative and Renewable Fuel and Vehicle Technology Fund (ARFVTF).

For FY 2010-11, only the DFFP is proposing to pay for these expenses ($2 million) from the ARFVTF.

Staff Comments. Staff notes that the proposed expenditures can be supported by the existing fund balance; however, the Governor's Budget proposes FY 2010-11 expenditures that exceed the annual revenues to the fund. Additionally, to the extent that FGFP-ND can be used to offset various GF expenses, the Committee may wish to consider funding these activities from a different source, for example, the ARFVTF. The Governor's Budget projects an end of FY 2010-11 balance of $6.6 million in the ARFVTF, which, while small relative to annual expenditures of $112.7 million, is sufficient to cover these costs.

Staff Recommendation: APPROVE the requested funding amount for FY 2010-11, but from the ARFVTF. ADOPT placeholder TBL as necessary to ensure the expenditure is allowable. Defer decision on 2011-12 expenditures and fund source until next year.

Action: Approved the staff recommendation on a 2-1 vote (Cogdill voting no). Staff will work with LAO and DOF to determine the necessity of TBL for implementation and will circulate draft language at a later date as needed.

9. BCP-17: Regulatory Review and Permitting. The Governor requests three positions and $580,000 (reimbursement authority) to expand the South Coast and Central Regions' capacity to address large-scale and long-term projects requiring regulatory review and permitting.

Background. The mission of the DFG's Habitat Conservation Planning Branch (Branch) is to provide for the conservation, protection, restoration, and management of fish, wildlife, and native plants and to preserve and restore the ecosystems (including ecological processes) on which they depend for use and enjoyment by the public. In this capacity, the Branch conducts environmental review of projects, provides planning and consultation, CEQA review, issuance of Streambed Alteration Agreements, and Incidental Take Permits.

Staff Comments. The DFG states that it lacks the capacity to respond to large-scale and long-term projects requiring extensive environmental review and proposes to execute contracts with the Orange County Transportation Authority (OCTA), Sempra Energy/Southern California Gas Company (Sempra), and Tejon Ranch in order to fund new positions that will help provide streamlined and efficient permitting for the contract partners. The DFG indicates that such agreements are already in place for Caltrans and Newhall Land Development LLC (who each fund two positions).

Staff notes that this request is driven in part by the lack of GF available to otherwise fund these positions. However, staff raises concerns that, while efficient and timely permitting of projects may be a worthy goal of government, the direct funding of environmental review by private interests creates strong potential for conflict of interest. Long experience has demonstrated that the profit motive of a project sponsor and the legal responsibility of a regulatory agency are often at odds with one another, and, as a result, making the one fiscally beholden to the other creates inherent potential for regulatory capture. Therefore, staff recommends that Committee members carefully examine this proposal and request the department to respond to the following questions:

- How are contracts of this nature structured, and what, if any, obligation does the state take on in agreeing to the contract?
- What safeguards are in place to protect against the concerns raised by staff (including regulatory capture)?

Finally, if the Committee members ultimately opt to approve this proposal, staff recommends authorizing limited-term positions of no more than 3 years, consistent with the short-term nature of the proposed contracts.

Staff Recommendation: HOLD OPEN, pending resolution of one-time cost concerns.

Action: Held open. The Chair requested the department to work to address staff concerns.

10. BCP-20: Due Diligence Review for Land and Endowment Holders. The Governor requests $387,000 (reimbursement authority) and 1.5 two-year limited-term positions to review the qualifications of nonprofit organizations applying to hold mitigation lands, and conduct ongoing oversight of these organizations in their management and stewardship capacities.

Background. Chapter 577, Statutes of 2006 (AB 2746; Blakeslee), expressly permits a state or local public agency to authorize a nonprofit organization to hold fee title, or a conservation easement over lands the agency must protect to mitigate adverse impacts to natural resources. AB 2746 also imposed new statutory obligations on the DFG to establish standards of eligibility to review the qualifications of nonprofit organizations proposing to manage and steward natural land or resources.

Staff Comments. The DFG indicates that since AB 2746 took effect, January 1, 2007, the department has been receiving applications from nonprofits seeking qualification and approval as mitigation land managers. In fact, the workload has significantly outstripped estimates (that the costs would be minor and absorbable) provided when the bill was approved by the Legislature, and the department has needed to redirect approximately 2.5 staff to address the workload.

The DFG is seeking the requested limited-term positions and contracted services of financial due diligence experts in order to offset the impact to existing programs (in particular, the California Endangered Species Act policy area from which one of the positions has been borrowed), and to ensure that financial review criteria are adequate and that mitigation land management is entrusted only to organizations that are fiscally sound.

This request appears to be consistent with the intent of the Legislature in adopting AB 2746 (if not the original fiscal analysis), and would be paid for through reimbursement agreements with applicants. However, staff notes that seeking an outside financial due diligence expert may be an unnecessary and costly option as opposed to seeking similar advice elsewhere in state service. Financial due diligence is a normal part of business for a variety of state entities, and it seems at least reasonably likely that their service could be obtained by the DFG at less cost than a private contractor. DFG staff indicate that attempts have been made to pursue this option, but have been rebuffed due to the relatively small size/magnitude of the entities and dollars in question. Staff recommends the Committee ask the department to clarify which state entities it has approached and the responses it has received, and if it appears not all options have been exhausted, to pursue others before the Committee opts for an outside contractor.

Staff Recommendation: HOLD OPEN, pending resolution of one-time cost concerns.

Action: Held open. The department indicated its intention to revise this BCP.

11. BCP-25: AB 1423 – Shared Habitat Alliance for Recreational Enhancement (SHARE) Program. The Governor requests $59,000 (FGPF-ND) and 0.5 positions to implement the SHARE program pursuant to Chapter 394, Statutes of 2009 (AB 1423; Berryhill).

Background. AB 1423 amended and recast the SHARE program originally created pursuant to Chapter 758, Statutes of 2003 (AB 396; Harman). The program provides access for hunting opportunities on private lands and authorizes the DFG to pay landowners in exchange for access to their land. AB 1423 authorizes the DFG to fund the program through user fees, but is permissive of using various state or non-state funds.

A SHARE pilot program has been implemented with non-state funds by supporters of this legislation over the past three years. Over a thousand participants/potential participants have applied to use the program and, according to the DFG, the response from landowners has been very favorable.

Staff Comments. The magnitude of this request is consistent with fiscal estimates provided at the time of AB 1423's passage; however, given the department's ability to fund this program from user fees, and particularly in light of the apparent willingness of the users to pay such fees (as demonstrated by support of the pilot program), staff sees no reason why the state should fund this program. Absent a justification for the need for "bridge" funding (which was not contained in the BCP, where the request was for ongoing support), and a commitment to institute a fee in the immediate future, staff recommends the Committee deny this request.

Staff Recommendation: DENY the request.

Action: Approved the request on a 3-0 vote in response to the department's pledge to submit a letter to the committee stating its commitment to implement a fee in support of this program at the earliest feasible opportunity (presumably in the next year or two). Additionally, in response to Senator Cogdill's suggestion, the department will treat the approved funds as a loan, and repay them as feasible (though the department could not give 100-percent commitment due to the fiscal uncertainty surrounding a fee that has not yet been adopted).

12. COBCPs-6, 7, 12, 13, 14, 15, 16, and 17: AB 7-Related Fish Hatchery Requests. The Governor requests the following resources in association with Chapter 689, Statutes of 2006 (AB 7; Cogdill):

- COBCP-6: Kern River Hatchery, Back-Up Well Water System – $150,000 (Hatchery and Inland Fisheries Fund – HIFF)
- COBCP-7: Darrah Springs Hatchery, Analysis of Water Discharge for Settling Ponds -- $150,000 (HIFF)
- COBCP-12: Mojave River Hatchery Low Head Oxygen System Building – $225,000 (HIFF)
- COBCP-13: Kern River Fish Hatchery Bird Enclosure – $100,000 (HIFF)
- COBCP-14: American River Hatchery New Settling Pond – $408,000 (HIFF)
- COBCP-15: Crystal Lake Hatchery Feed Bin Replacement – $350,000 (HIFF)
- COBCP-16: Crystal Lake Fish Hatchery Expand Outside Shed – $72,000 (HIFF)
- COBCP-17: Black Rock Hatchery Convault Fuel Tank – $40,000 (HIFF)

Background. AB 7 created the HIFF and required that one-third of fish license revenue, monies that historically went to the FGPF, instead be deposited in the HIFF for various purposes, including the attainment of state fish hatchery production goals relating to the release of trout. Based on $49.3 million in 2004 fish licensing fee revenues, the bill was estimated to reduce annual revenues to the FGPF by approximately $16.4 million. In FY 2009-10 and 2010-11, the DFG estimates this amount will be $18.7 million.

Last year, the Governor proposed and the Legislature approved $3.1 million in similar AB 7 expenditures.

Staff Comments. The requests listed above, totaling approximately $1.5 million, are all explicitly or implicitly related to the AB 7 mandate to increase fish hatchery production (in most cases by hundreds of thousands of pounds per year). Several of the construction proposals (for example, settling ponds) are necessary to offset or avoid the environmental damage (primarily in terms of water quality) that would otherwise occur as a result of the increased fish production and the concomitant increased application of chemicals and antibiotics that is necessary to keep fish raised in such close confinement from becoming ill or dying. As noted in the BCPs, at the increased rates of production required under AB 7, fish will become increasingly stressed, more chemicals and antibiotics are necessary, and without the measures being proposed the chemical run-off from these hatcheries would violate Regional Water Quality Control Board standards for acceptable levels of chemical discharge.

Notwithstanding the Legislature's intent in approving AB 7, one result of the bill's enactment has been to reduce the DFG's fiscal flexibility—by providing fewer funds to the "all-purpose" FGPF. Among other things, the FGPF can be used in tough times to supplant certain GF expenditures, and it helps to pay for game wardens, which, as identified earlier in this agenda, are in short supply. Staff notes that currently the HIFF provides no funding for game wardens despite the fact that AB 7 authorized HIFF expenditures for "enforcement activities" related to hatchery fish, and the Heritage and Wild Trout Program in particular. The Committee may, therefore, wish to explore the use of this fund to support additional wardens.

Furthermore, in view of the pressure on the DFG's limited GF, the Committee may wish to further explore whether the methods employed in AB 7 for re-creating historic fish stocks of a few select species make sense to the extent that AB 7-related expenditures may tend to squeeze out other, higher priorities amid the ongoing fiscal crisis. Notwithstanding AB 7, the $18.7 million that will go to the HIFF this year and next could otherwise go to many purposes (game wardens being only one among many). Given that recent lawsuits have already curtailed certain DFG stocking activities and that 2.75 pounds of released trout per licensee per year may not be environmentally wise given ever-increasing populations and the finite carrying capacity of our water bodies, spending $1.5 million mostly to mitigate the ill effects of Concentrated Animal Feeding Operation-style fish hatcheries may not be the best investment of these resources. Therefore, staff recommends holding these items open pending further discussion.

Staff Recommendation: HOLD OPEN

Action: Approved the request on a 3-0 vote.

3790 Department of Parks and Recreation

The Department of Parks and Recreation (Parks) acquires, develops, and manages the natural, cultural, and recreational resources in the state park system and the off-highway vehicle trail system. In addition, the department administers state and federal grants to local entities that help provide parks and open-space areas throughout the state.

The state park system consists of 278 units, including 31 units administered by local and regional agencies. The system contains approximately 1.4 million acres, which includes 3,800 miles of trails, 300 miles of coastline, 800 miles of lake and river frontage, and about 14,800 campsites. Over 80 million visitors travel to state parks each year.

Governor's Budget. The Governor's Budget includes $579 million for Parks. This is a decrease of nearly 41 percent from current year due primarily to a decrease in bond fund expenditures.

Summary of Expenditures *(dollars in thousands)*	**2009-10**	**2010-11**	**$ Change**	**% Change**
Type of Expenditure				
Support of the Department of Parks and Recreation	$439,632	$430,632	-$9,000	-2.0
Local Assistance Grants	405,516	46,610	-358,906	-88.5
Total	$845,148	$477,242	-$367,906	-43.5
Capital Outlay	$134,371	$101,898	-$32,573	-24.2
Funding Source				
General Fund	$123,098	$0*	-$123,098	-100.0
Special Funds	279,603	379,932	100,329	35.9
Bond Funds	372,678	48,032	-324,646	-87.1
Subtotal	775,379	427,964	-347,415	-44.8
Federal Trust Fund	21,353	13,166	-8,187	-38.3
Reimbursements	47,250	34,654	-12,596	-26.7
Harbors and Watercraft Revolving Fund	1,166	1,458	292	25.0
Total	$845,148	$477,242	-$367,906	-43.5

*The Governor proposes to delete all Parks GF and backfill with oil lease revenues from Tranquillon Ridge.

ITEM PROPOSED FOR VOTE-ONLY

1. BCP-7: Increased Program Delivery for Proposition 40 Railroad Technology Museum Grant Program. The Governor requests $105,000 (Proposition 40) for program delivery to administer the Railroad Technology Museum Grant Program.

Background. Proposition 40, the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, provided $225 million to Parks for the acquisition and development of the State Park System. Chapter 698, Statutes of 2008, appropriated $6.6 million of those funds to Parks to be administered as a grant to the Railroad Technology Museum Foundation (Foundation) for the purposes of a boiler shop core, shell, site rehabilitation, and development.

Staff Comments. Parks indicates that the Foundation is not in a position to oversee its own grant, and so this BCP requests 3.5 percent of the allotted funds to pay for the department to carry out grant administration activities for the Foundation.

2. BCP-LA2: FY 2010-11 Local Assistance Program – Reversion Language (BBL). The Governor requests BBL to revert the unencumbered balances in previous Local Assistance Program Federal Trust Fund appropriations that were made "Without Regard to Fiscal Year" (WORFY).

Background. The WORFY appropriations in question were made in the Budget Acts of 1990, 1991, 1992, and 1993.

Staff Comments. Staff has no concerns with this request, which is technical in nature and will simply allow the State Controller's Office to remove the appropriations from their systems.

Capital Outlay

3. COBCP-A-4: Statewide Federal Trust Fund Program. The Governor requests $5 million (Federal Funds) to provide funds to be used to acquire important additions to or improve facilities with the State Park System.

4. COBCP-S-2: Statewide Reimbursed Capital Outlay Projects. The Governor requests $3 million (reimbursement authority) to establish within the budget a capital outlay schedule for the expenditure of, and a separate schedule for receipt of, reimbursement funds from various other departments and entities per the terms of the grant program and agreements.

5. COBCP-D-920: Leo Carillo State Park—Steelhead Trout Barrier Removal. The Governor requests $2.2 million (reimbursement authority) to carry out the construction phase of a project that will provide two free span bridges to replace two existing in-stream crossings located on Arroyo Sequit Creek within Leo Carrillo State Park. The project will be funded by a grant from the Santa Monica Bay Restoration Commission.

6. COBCP-D-001: Candlestick Point State Recreation Area Yosemite Slough—Public Use Improvements. The Governor requests $3.1 million (reimbursement authority) to construct public access, parking, picnic, restroom, trail, and landscaping and interpretive improvements to support public day use adjacent to a separately funded wetland restoration project at Yosemite Slough in Candlestick Point State Recreation Area on San Francisco Bay.

7. COBCP-OHV-5: Oceano Dune SVRA/Pismo State Beach Visitor Center and Equipment Storage. The Governor requests $5.6 million (OHV Trust Fund) to construct two new buildings—a Visitor Center and an Equipment Storage Facility.

8. COBCP-OHV-3: Statewide Opportunity Purchase Pre-Budget Schematics. The Governor requests $2 million (OHV Trust Fund) to: (1) conduct property appraisals prior to departmental requests for acquisition appropriations; (2) purchase various real property parcels; and/or prepare budget cost estimates and schematics for future development projects.

9. COBCP-OHV-2: Heber Dune SVRA Initial Development. The Governor requests $361,000 (OHV Trust Fund) to develop working drawings for a project that will provide initial development of Heber Dunes SVRA to include new administrative, maintenance, and recreational facilities. Construction costs are currently estimated at $5.3 million, and are scheduled to funded out of the OHV Trust Fund in FY 2011-12.

10. COBCP-OHV-7: Carnegie SVRA—Road Reconstruction. The Governor requests $467,000 (OHV Trust Fund) to carry out the planning and working drawings phases of a project to reconstruct and rehabilitate approximately 80 miles of unpaved roads at Carnegie SVRA in order to meet current emergency access, Clean Water, and public use standards.

11. COBCP-OHV-8: Hollister Hills SVRA—Infrastructure and Rehabilitation. The Governor requests $153,000 (OHV Trust Fund) to carry out the planning phase of a project that will provide improvements to basic infrastructure and visitor facilities, including three badly worn campgrounds, at Hollister Hill SVRA.

12. COBCP-OHV-9: Southern California Opportunity Purchase. The Governor requests $32 million (OHV Trust Fund) to acquire portions of land identified as Onyx Ranch, a 64,000-plus acre ranch southeast of Sequoia National Forest, near Lake Isabella in Kern County. This opportunity purchase is intended to preserve OHV access to the land as nearby parcels have recently been purchased for development by the Renewable Resources Group.

13. Various OHV Minor Capital Outlay Projects. The Governor requests $2.4 million (OHV Trust Fund) for various OHV capital outlay projects.

Staff Comments. Staff has no significant concerns with the above capital requests (4-14).

Staff Recommendation: APPROVE the requests (1-13) above.

Action: Senator Cogdill requested a separate vote on Items 3 and 6, which were approved on a 2-1 vote (Cogdill voting no). All other vote-only items were approved on a 3-0 vote.

DISCUSSION ITEMS

1. BCP-1: Empire Mine State Historic Park (SHP) Ongoing Remediation Measures. The Governor requests $4.1 million GF to fund ongoing evaluation, analysis, and implementation of remedial alternatives at Empire Mine SHP.

Background. Empire Mine SHP is the site of one of the oldest, largest, deepest, longest, and richest gold mines in California. Closed in 1956, the mining operations left the land contaminated with various dangerous chemicals, including arsenic, cyanide, mercury, thallium, manganese, and iron. In order to create a park, the state purchased the mine property from Newmont Mining Corporation in 1974 and assumed all rights and responsibility to the title and interest and responsibility for the free flowing of water from the Magenta Drain tunnel running beneath. The park consists of 856 acres containing many of the mine's buildings and the entrance to 367 miles of abandoned and flooded mine shafts.

As the owner of the Empire Mine lands, Parks was sued for alleged violations of the Federal Clean Water Act. The lawsuit was settled on January 13, 2006, through a consent decree in federal court. The consent degree requires Parks to immediately implement corrective measures to mitigate the impacts from toxic soils and contaminated surface water discharges to the local watershed. The project is also under order by the Department of Toxic Substances Control (DTSC) and the Central Valley Regional Water Quality Board.

Beginning in FY 2005-06, the state began providing funding to determine the presence of contaminants at the mine, and each year since has funded corrective measures. For the current fiscal year, Parks was provided $5.7 million and six positions to continue remediation efforts.

Staff Comments. The proposed request for funding, the fifth year in a multi-year plan, would respond to the orders mentioned above, including a March 2009 amendment (#2) to the Cleanup and Abatement Order issued by DTSC and the California Regional Water Quality Control Board (Water Board). Activities would include ongoing treatment of the groundwater discharge from the Magenta Drain Portal.

Per the BCP submitted in the Governor's Budget, Parks' current plan is to temporarily employ passive treatment of discharges at the portal in order to reduce/remove metals to concentrations below the effluent limits, and, meanwhile, attempt to obtain a variance to amend the Basin Plan to increase the allowable concentration of manganese in the groundwater discharge from the drain. Because manganese primarily affects aesthetic water qualities (e.g., taste and odor), Parks is hopeful that the Water Board will find that it is in the best interest of the people of California to grant a variance. However, Parks indicates that the process may take up to five years, and in the end, if the Water Board refuses the variance, then the state will have to pursue a more costly alternative of installing a full-scale treatment plant.

While the state is in arbitration with Newmont to determine responsibility for the contamination, the process is currently at a standstill. In the meantime, due to health and safety concerns for the citizenry, as well as the legal liability of the state, staff sees no other option but to approve this GF expenditure.

Recommendation: APPROVE the request.

Action: Approved the request on a 3-0 vote.

2. BCP-8: Orange Coast District Special Events Program. The Governor requests $232,000 (reimbursement authority) and three positions to augment the Special Event Program in the Orange Coast District.

Background. Special Event permits allow short-term use of Parks lands or facilities for sporting events, historical pageants, fiestas, musical concerts, weddings, receptions, banquets, or similar types of activities. They have become increasingly popular in the Orange Coast District (OCD), which includes Crystal Cove State Park; and Corona Del Mar, Bolsa Chica, Huntington, Doheny, San Clemente, and San Onofre State Beaches.

Staff Comments. Although the OCD Special Events Program was historically staffed on an ad hoc basis, the number of events has increased, forcing redirections. Fees generated by the OCD Special Events Program have increased steadily as well over the past several years, and have become an integral part of the District budget. For example, in FY 2008-09 fee receipts exceed $1.3 million, or nearly 10 percent of the district's $13.3 million budget.

In order to further reduce its reliance on uncertain GF allocations during the state's ongoing fiscal crisis and to ensure ongoing support for programs with proven public support, the OCD proposes to hire three Office Technicians to help coordinate its Special Events Program and increase the number of special events held at district parks.

While the OCD is to be commended for taking the initiative to develop and maximize available revenue streams in these tough times, staff notes concern about whether, and to what extent, the proposed increase in special events will place a strain on the natural resources within these parks and/or limit the enjoyment of park resources by other visitors. Committee members may wish to have Parks address these concerns.

Additionally, staff notes that the OCD currently intends to keep all fee revenues within the district (although it does not preclude the possibility that future excess revenues could be deposited into the State Parks and Recreation Fund (SPRF) for the benefit of the entire State Parks System). Not all Parks districts enjoy the relative affluence of Orange County, and so, while weighing the need not to create a disincentive to the entrepreneurialism on display in the OCD, the Committee members may wish to discuss whether some redistribution of revenues in the future would make for good Parks policy.

Recommendation: HOLD OPEN

Action: Held open. The Chair expressed potential concerns with the inequity of opportunities for increased revenues of this kind elsewhere in the parks system, and requested the department to discuss further with committee and personal staff its proposal not to redistribute at least a portion of increased revenues at this time.

3. BCP-LA1: FY 2010-11 Local Assistance Program (BBL). The Governor requests $46.6 million from federal and various special funds for grants to various agencies as follows:

- Habitat Conservation Fund – $4.6 million, including $3.1 million for recreational grants and $1.5 million for local projects
- Off-Highway Vehicle (OHV) Trust Fund – $26 million for OHV grants
- OHV Trust Fund – $1.1 million for OHV restoration grants
- Recreational Trails Fund – $8.2 million in Federal Highway Administration funding for OHV grants and recreational grants (non-motorized trails)
- Federal Trust Fund – $6.7 million for the Land and Water Conservation Fund Program, including $5 million to do statewide planning, and acquisition and development of outdoor recreation areas and facilities; and $1.7 million for historic preservation grants

The Governor additionally requests that all of the above funding be made available for expenditure through FY 2012-13.

Staff Comments. Staff has no significant concerns with this request.

Staff Recommendation: APPROVE the request.

Action: Approved the request on a 3-0 vote.

4. BCP-10: Increased Proposition 99 (PRA) Authority. The Governor requests $2.8 million (Proposition 99, PRA) to supplant on a one-time basis $2.8 million in SPRF support for the Resources Management Program.

Background. Proposition 99 created the Cigarette and Tobacco Products Surtax Fund, which contains a Public Resources Account.

Staff Comments. According to Parks, from FY 2008-09 through 2009-10, revenues to the PRA were down, and thus the Parks PRA appropriation was reduced by $2.7 million from prior levels. However, due to increased revenues, the DOF ordered Parks to increase PRA expenditures and take a proportionate reduction in SPRF expenditures.

While staff notes no concerns with this proposal, the Committee may wish to hold this item open pending final disposition of the proposed backfill of GF Parks support with Tranquillon Ridge oil lease revenues. In the event the oil lease is not approved and/or the accompanying GF reduction and backfill are not adopted, the $2.8 million from the PRA could likely be used to offset GF expenditures.

Staff Recommendation: HOLD OPEN

Action: Held open.

[DOF testified to the effect that this proposal has no relationship with the Tranquillon Ridge proposal to backfill GF support for Parks with oil lease revenue. Staff would just like to clarify whether DOF finds the staff analysis in error (i.e., that the proposed PRA funds could be used in the place of GF to support various Parks activities if oil lease revenues do not materialize.]

Prop 84 Proposals

The Committee may wish to discuss the following Prop 84-funded items, particularly the extent to which these funds are being applied to the department's $1 billion-plus maintenance and rehabilitation backlog; however, staff recommends, consistent with previous bond fund proposals, that the Committee hold these items open until after the spring bond sale.

5. BCP-2: Prop 84 – California Museum Collection Center (Museum) Infrastructure and Tenant Improvements (BBL). The Governor requests $14.2 million (Prop 84) to provide tenant improvements and the necessary infrastructure to effectively and efficiently preserve and protect the state's cultural artifacts. Additionally, the Governor requests BBL to make these funds available only upon approval of new facilities for the Museum (whether through a lease or acquisition).

Background. Parks maintains a museum collection that includes more than 1.5 million objects and two million archaeological artifacts, approximately 50 percent of which are located in nine 30-year old storage facilities currently located in West Sacramento.

Staff Comments. Parks maintains that the current storage facilities lack adequate security measures, climate control, and space. The department indicates that the state's historical collection is deteriorating, indeed has already incurred irreversible loss, and cites examples such as recent roof leaks in four buildings that damaged artifacts and collection records, as well as an electrical panel fire caused by aluminum wiring. Additionally, the facilities can no longer accept cultural artifacts from State Park System Units due to lack of space.

According to Parks, the collection can be better safeguarded, and, in fact, savings can be achieved, by moving the collection and centralizing it at one location. While the department has begun to work with the DGS to identify the best alternative location, this request was submitted to obtain bond funding for the tenant improvements necessary to provide an industry-standard preservation environment (e.g., climate control).

Staff notes that the proposed use of Prop 84 funds appears to be consistent with the bond act and that the need for improved facilities is well documented. However, some questions remain about the timing of and savings to be achieved by the proposed relocation. Consistent with previous recommendations to hold over bond-funded items until after a spring bond sale, this item should also be held open.

Recommendation: HOLD OPEN

Action: Held open pending results of spring bond sales and more information on state's bond cashflow picture.

6. BCP-3: Prop 84 – Cultural Stewardship Program (BBL). The Governor requests $1.3 million (Prop 84) to fund projects that preserve and restore critical cultural resources in the State Park System. Additionally the Governor requests BBL to make these funds available for encumberance or expenditure until June 30, 2012.

Background. Parks maintains many of California's irreplaceable and highly significant cultural resources, and Prop 84 provided funding specifically intended to help mitigate against the constant deterioration of these resources (many of which date to the 18^{th} and 19^{th} centuries).

The Legislature approved Prop 84 funds for this program, in each of the past two years, as the department cites a $263 million backlog of cultural projects. This request represents the third year in a six-year spending plan, totaling $8 million.

Staff Comments. The proposed expenditures are consistent with Prop 84 requirements.

Recommendation: HOLD OPEN.

Action: Held open pending results of spring bond sales and more information on state's bond cashflow picture.

7. BCP-4: Prop 84 – Natural Heritage Stewardship Program (BBL). The Governor requests $1.8 million (Prop 84) to fund projects that preserve and restore critical natural resources in the State Park System. Additionally, the Governor requests BBL to make these funds available for encumberance or expenditure until June 30, 2012.

Background. The Natural Heritage Stewardship Program seeks to protect State Park System natural resource values, and has been funded continuously by voter-approved bonds since 1984. Prop 84 provided funding specifically intended to further these efforts to mitigate erosion, control exotic species encroachment, restore endangered species habitat, reduce wildfire fuels, and address vandalism (to name just a few).

The Legislature approved Prop 84 funds for this program, in each of the past two years, as the department cites a $200 million backlog of natural projects. This request represents the third year in a five-year spending plan, totaling $8.6 million.

Staff Comments. The proposed expenditures are consistent with Prop 84 requirements.

Recommendation: HOLD OPEN.

Action: Held open pending results of spring bond sales and more information on state's bond cashflow picture.

8. BCP-5: Prop 84 – Interpretive Exhibit Program (BBL). The Governor requests $1.6 million (Prop 84) to fund projects that communicate the unique natural, historic, and recreation resources of the State Park System. Additionally, the Governor requests BBL to make these funds available for encumberance or expenditure until June 30, 2012.

Background. The Interpretive Exhibit Program seeks to enhance the park visitor's experience by helping a visitor understand the unique natural, historic, and recreational resource of the State Park System. In the past, the department was unable to fulfill this mission due to lack of funding; however, Prop 84 provided funding specifically intended to further these efforts.

The Legislature approved Prop 84 funds for this program, in each of the past two years, as the department cites a $150 million backlog of interpretive projects. This request represents the third year in a six-year spending plan, totaling $10 million.

Staff Comments. The proposed expenditures are consistent with Prop 84 requirements.

Recommendation: HOLD OPEN.

Action: Held open pending results of spring bond sales and more information on state's bond cashflow picture.

9. BCP-6: Prop 84 – Large Natural Resources Restoration Program (BBL). The Governor requests $1.4 million (Prop 84) to fund natural resource restoration projects in the State Park System. Additionally, the Governor requests BBL to make these funds available for encumberance or expenditure until June 30, 2012.

Background. The Large Natural Resources Restoration Program seeks to protect California's significant natural resources by providing for their restoration, long-term health, and preservation. Projects are generally large-scale, requiring 2-3 years to complete, and may include those that cannot otherwise be effectively accomplished under other department programs, such as the Natural Stewardship Program.

For FY 2010-11, Parks plans to fund the following large natural resources restoration projects using Prop 84 funds:

- Prairie Creek Redwoods State Park – Dune Restoration
- Henry W. Coe State Park – Watershed Restoration
- State Park System-Wide – Erosion Control and Stabilization

The Legislature approved Prop 84 funds for this program, in each of the past two years, and this request represents the third year in a five-year spending plan totaling $10 million.

Staff Comments. The proposed expenditures are consistent with Prop 84 requirements.

Recommendation: HOLD OPEN.

Action: Held open pending results of spring bond sales and more information on state's bond cashflow picture.

Prop 84 Capital Outlay Proposals

10. COBCP-S-1: Statewide Budget Development. The Governor requests $300,000 (Prop 84) to: (1) fund initial investigation and studies for future projects to provide a better definition of project scope; and (2) pay for costs to prepare budget cost estimates, schematic drawings, and other information for projects.

11. COBCP-D-880: Marshall Gold Discovery State Historic Park Improvements. The Governor requests $3.4 million (Prop 84) to conduct the construction phase of this project to enhance the visitor's educational and interpretive experience. Among other things, the project will replace the existing historic sawmill replica with a new heavy timber structure and make improvements to museum buildings. Plans and working drawings were funded in FY 2008-09 and 2009-10, respectively.

12. COBCP-D-856: Angel Island State Park—Immigration Station Hospital Rehabilitation. The Governor requests $424,000 (Prop 84) to rehabilitate the Immigration Station Hospital at Angel Island State Park.

13. COBCP-D-857: Fort Ord Dunes State Park—New Campground and Beach Access. The Governor requests $2 million (Prop 84) to conduct the working drawing phase of a project to develop initial permanent public facilities, including camping and day use beach access, at the Fort Ord Dunes State Park in Monterey County. Construction phase costs, projected for inclusion in the 2011-12 budget, are currently estimated at $19 million and would be paid for out of Prop 84 funds.

14. COBCP-D-705: El Capitan State Beach—Construct New Lifeguard Headquarters. The Governor requests $612,000 (Prop 84) to demolish the existing lifeguard headquarters in the campground loop and construct a new one near the existing concession building in the day use beach area.

15. COBCP-D-862: Silverwood Lake State Recreation Area—Nature Center Exhibits. The Governor requests $827,000 (Prop 84) to provide new interpretive, educational, and informational exhibits for the recently constructed Nature/Visitor Center building and surrounding site at Silverwood Lake State Recreation Area.

16. COBCP-A-1: Statewide State Park System Opportunity Inholding Acquisitions. The Governor requests $1.5 million (Prop 84) to provide funds to be used statewide to acquire variously sized parcels that are either adjacent to or substantially enclosed within adjoining State Park property; or are parcels that are surrounded at least 50 percent by State Park property and where Parks' ownership would improve operations of the existing state park unit.

17. Various Minor Capital Outlay Projects. The Governor requests Prop 84 funding for various statewide minor capital outlay projects, including $2.5 million for statewide park system projects, $430,000 for the recreational trails program, and $586,000 for the volunteer enhancement program.

Recommendation: Consistent with previous bond fund requests: HOLD OPEN capital outlay items (15-22).

Action: Held open pending results of spring bond sales and more information on state's bond cashflow picture.

Concession Contracts

Pursuant to Public Resources Code 5080.2, the Legislature must approve Department of Parks and Recreation concession contracts. For the 2010-11 fiscal year, there is one concession agreement that requires legislative approval:

> Oceano Dunes State Vehicular Recreation Area (SVRA) Off-Highway Vehicle 9OHV) Rentals

Supplemental Report Language. If approved, Supplemental Report Language (SRL) describing the contract will be included as part of the 2010-11 Budget package. Below is a proposed draft of that language:

Item 3790-001-0001 --- Department of Parks and Recreation:

> Concession Contracts. Pursuant to Public Resources Code Section 5080.20, the following concession proposals are approved as described below:
>
> ***Oceano Dune State Vehicular Recreation Area (SVRA) – OHV Rental Concession***. The department may bid five new concession contracts for the rental of Off-Highway Vehicles (OHVs) at Oceano Dunes SVRA.
>
> The proposed provisions of each new concession contract includes a term of up to 10 years; may require a total initial investment of $100,000 to provide approximately 100 OHVs and rider safety rental equipment. Annual rent to the State will be the greater of a guaranteed flat rate or a percentage of annual gross receipts. Proposers will be required to bid a minimum annual rental of $20,000 or up to ten percent of monthly gross receipts, whichever is greater.
>
> It is anticipated that the new concession contract will be implemented during the summer of 2010.

Staff Comments. Staff notes no significant concerns with this proposal

Staff Recommendation: APPROVE the SRL.

Action: Approved the concession contract by adopting SRL on a 3-0 vote.

SUBCOMMITTEE NO. 2 Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal

Hearing Outcomes
(see outcomes under each agenda issue)

Day: Thursday, March 11, 2010
Time: 9:30 am or upon adjournment of session
Room: Rose Ann Vuich Hearing Room (2040)

Consultant: Brian Annis

Transportation

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 916-324-9335. Requests should be made one week in advance whenever possible.

2670 Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun

Department Overview: The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board) licenses and regulates maritime pilots who guide vessels entering or leaving those bays. The pilots, themselves, are not employees of the Board. However, the Board does pay stipends to pilot trainees.

Budget Overview: The January Governor's Budget proposed expenditures of $2.2 million (no General Fund) and 4.2 positions – a year-over-year decrease of $876,000 and an increase of 0.2 positions. The Board is wholly funded through fees on shippers. The year-over-year budget change is primarily explained by the expiration of one-time funding related to legal defense of the November 2007 Cosco Busan allision with the San Francisco Oakland Bay Bridge, and expiration of one-time funding related to pilot training.

	2009-10		2010-11	
	Funding ($1,000s)	Positions	Funding ($1,000s)	Positions
Ongoing baseline funding	$1,830	2.5	$1,997	2.5
Limited-term funding related to the Cosco Busan incident	$680	0.5	$0	0
Limited-term funding for Pilot Training	$438	0	$0	0
2009-10 new permanent position	$160	1.0	$160	1.0
2010-11 Budget Request			$75	1.0
TOTAL	$3,108	4.0	$2,232	4.5

Issues proposed for Discussion / Vote:

1. **Efforts to Improve the Performance of the Board (Oversight Item):** The Cosco Busan incident brought new attention to the Board. Legislation passed in 2008 (SB 1627, Wiggins) established a new position at the Board of Assistant Director (increasing staffing from 2.5 positions to 3.5 positions), placed the formerly independent Board under the umbrella of the Business, Transportation and Housing Agency, and required a performance and financial audit of the Board by the Bureau of State Audits (BSA). The BSA released its audit in November 2009, and the full report is available at the following link: http://www.bsa.ca.gov/pdfs/reports/2009-043.pdf.

   Audit Findings: The BSA audit included the following findings:

   - The board did not consistently adhere to state law when licensing pilots. In one case, it licensed a pilot 28 days before he received a required physical examination; he piloted vessels 18 times during this period.
   - The board renewed some pilots' licenses even though the pilots had received physical examinations from physicians the board had not appointed and, in one case, renewed a license for a pilot who had not had a physical examination that year.
   - Of the 24 investigations we reviewed, 17 went beyond the 90-day statutory deadline for completion.
   - The board did not investigate reports of suspected safety standard violations of pilot boarding equipment, as required by law.
   - The board failed to ensure that all pilots completed required training within specified time frames.
   - The board paid for business-class airfare for pilots attending training in France, which may constitute a misuse of public funds.

   The Auditor also provides a long list of recommendations to establish new procedures and recordkeeping to address the audit findings.

   Board Response to Audit: The Board generally accepted the findings and recommendations of the audit. A February 2010 BSA report titled *Implementation of State Auditor's Recommendations* found the Board has implemented some recommendations, others were partially implemented, and others were pending. That report is available at http://www.bsa.ca.gov/pdfs/reports/2010-406.pdf.

   Staff Comment: The Board should briefly indicate if any of the adverse findings have reoccurred since the November audit and outline their progress in implementing the Auditor's recommendations.

   Staff Recommendation: No action recommended, this is an informational issue.

   Action: No action – informational issue.

2. **New Office Assistant Position (Budget Change Proposal #1):** The Administration requests $75,000 (Board of Pilot Commissioners' Special Fund) and 1.0 new permanent position to address filing and other clerical workload. As indicated above, the Board received a new position last year of Assistant Director, which augments the baseline staff of the Executive Director, Administrative Assistant (which was recently administratively upgraded to Staff Services Analyst), and a part-time retired annuitant.

Staff Comment: The budget request does not include any quantitative workload justification for the new position. The BSA audit does not make any staffing recommendations, but there is brief mention of the issue in the agency response letter and BSA follow-up. Secretary Bonner's letter notes that the Board now has access to knowledgeable state executives not previously available to it (at BT&H Agency), and that the administrative support is now provided by the California Highway Patrol which has up-to-date software and systems and sophisticated personnel to provide that support. The BSA responds that: *We believe it is unclear whether additional staff would have addressed the board's ability to comply with legal and regulatory requirements, given that we found there were not adequate controls and processes already in place*. Given the BSA comment on staffing, and the permanent staffing augmentation in last year's budget, the justification for additional staff is weak.

Staff Recommendation: Reject the request.

Action: Rejected request on a 3-0 vote.

2600 California Transportation Commission

Department Overview: The California Transportation Commission (CTC) is responsible for the programming and allocating of funds for the construction of highway, passenger rail, and transit improvements throughout California. The CTC also advises and assists the Secretary of the Business, Transportation and Housing Agency and the Legislature in formulating and evaluating State policies and plans for California's transportation programs.

Budget Overview: The January Governor's Budget proposes expenditures of $3.9 million and 20.0 positions for the administration of the CTC (no General Fund) – an increase of $569,000 and no change in positions. Additionally, the budget includes $28.9 million in Clean Air and Transportation Improvement Bond Act funds (Proposition 116 of 1990) that are budgeted in the CTC and allocated to local governments. The Administration submitted one Budget Change Proposal, which is described below.

Issues proposed for Discussion / Vote:

1. **Design Build / Public Private Partnership Review (BCP #1):** The Administration requests a one-time increase of $200,000 (State Highway Account) to contract out with a financial consultant to assist in the review of proposed projects under the design build contract method and the public private partnership (P3) program. This request is related to SB X2 4 (Statutes of 2009, Cogdill), which mandates that the CTC establish criteria and review projects for inclusion in these programs.

   Staff Comment: In 2008, the Legislature approved two-year funding of $100,000 per year for 2008-09 and 2009-10 for consultants to review High Occupancy Toll (HOT) projects associated with AB 1467 (Statutes of 2006, Nunez). Reviews in that program cost about $50,000 per project; however, the scope of review was less broad because it only included the feasibility of toll revenues being sufficient to fund the cost of the project – not the contract terms of a P3. This year's BCP would include both the sufficiency of toll revenues (as applicable) and the terms of a P3 contract. Due to greater breadth of review, the cost is estimated to be closer to $80,000 per project. So the budget funding would provide for two to three project reviews. Given the fiscal risk of these projects to the State, investing in a complete analysis of the proposed projects should be a prudent investment.

   Staff Recommendation: Approve this request.

   Action: No action – held issue open.

2640 State Transit Assistance

Department Overview: The State Transit Assistance (STA) budget item provides funding to the State Controller for allocation to local transit agencies for mass transportation programs. Revenue traditionally comes from the sales tax on diesel fuel and a portion of the sales tax on gasoline (including a Proposition 42 component), and is available for either operations or capital investment. With the passage of the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Prop 1B), bond funds are also available for this program. However, bond funds may only be used for capital investment.

Budget Overview: The Governor's Budget proposes funding of $350 million for State Transit Assistance – all from Proposition 1B funds. No State funding was proposed for transit operations. In the 8th Extraordinary Session, the Legislature approved AB X8 9 that appropriated $400 million for transit operations to cover the remainder of 2009-10 and 2010-11. As this agenda was finalized, the Governor had not acted on AB X8 9.

Issues proposed for Discussion / Vote:

1. **Proposition 1B funding for Transit Capital (Governor's Budget):** The Administration requests an appropriation of $350 million for local transit capital. Prop 1B includes a total of $3.6 billion for this purpose and $1.3 billion has been appropriated to date. A complete summary of all Prop 1B programs is included in the Caltrans section of this agenda on page 11.

   Staff Comment: The Administration should update the Subcommittee on this bond program and indicate why an appropriation level of $350 million is suggested for 2010-11. Staff notes the proportion of funding appropriated for this Prop 1B program is less than for other Prop 1B programs.

   Staff Recommendation: Hold issue open for additional review.

Action: No action – held issue open.

2660 Department of Transportation

Department Overview: The Department of Transportation (Caltrans) constructs, operates, and maintains a comprehensive state system of 15,200 miles of highways and freeways and provides intercity passenger rail services under contract with Amtrak. The Department also has responsibilities for airport safety, land use, and noise standards. Caltrans' budget is divided into six primary programs: Aeronautics, Highway Transportation, Mass Transportation, Transportation Planning, Administration, and the Equipment Service Center.

Budget Overview: The January Governor's Budget proposed total expenditures of $13.9 billion ($83 million General Fund) and 21,513 positions, an increase of about $100 million and a decrease of 44 positions over the revised current-year budget. For comparison purposes, Administration is not distributed by program in 2010-11 as it is in the Governor's Budget.

Activity: (in millions):

Activity	**2009-10**	**2010-11**
Aeronautics	$4	$8
Highway: Capital Outlay Support	1,598	1,738
Highway: Capital Outlay Projects	6,820	6,180
Highway: Local Assistance	2,891	2,192
Highway: Program Development	82	75
Highway: Legal	113	126
Highway: Operations	187	201
Highway: Maintenance	1,233	1,303
Mass Transportation	223	587
Transportation Planning	151	164
Administration	457	1,293
Equipment Program (distributed costs)	(227)	(251)
TOTAL	**$13,759**	**$13,867**

Major Funding Sources (in millions)**:**

Fund Source or Account	**2009-10**	**2010-11**
Federal Funds	$5,172	$4,797
State Highway Account (SHA)	3,085	3,597
Proposition 1B Bond Funds	2,560	2,937
Reimbursements	1,614	1,477
General Fund (Proposition 42 – Caltrans share)	531	0
Federal Revenue Bonds (GARVEEs)	498	496
Public Transportation Account	165	413
Other funds	134	150
TOTAL	**$13,759**	**$13,867**

Issues proposed for Vote Only:
(see actions on the summary table on page 9)

1. **Fuel Cost Increase (BCP #1):** The Administration requests a permanent increase of $5.7 million (State Highway Account) to the department's fuel budget, which assumes fuel prices will average $3.06 per gallon, instead of the baseline level of $2.64 per gallon. This would bring Caltrans' total fuel budget up to $41.7 million – the department consumes about 13.6 million gallons of fuel per year.

   Staff Recommendation: Approve this request, but direct staff to bring this issue back after the May Revision if the outlook for fuel prices changes significantly between now and then.

2. **Enterprise Resource Planning Financial (E-FIS) Staff Reduction (BCP #3):** The Administration requests a permanent decrease of $255,000 (State Highway Account) and a decrease of three positions. This reduction recognizes a workload decrease that will result from the new E-FIS information technology (IT) project. E-FIS is a new accounting system for Caltrans that will replace almost 70 legacy IT systems. E-FIS is expected to be in operation beginning in early 2010-11. Caltrans committed to eliminating the three positions when the project was initiated because the Feasibility Study Report suggested a work decrease with the system.

   Staff Recommendation: Approve this request.

3. **Technical Corrections (BCP #4):** The Administration requests technical corrections due to mistakes in implementing the Legislature's direction to stop the practice of "cross allocation" or moving funding across Caltrans programs outside the Section 26.00 process. Some of the shifts were miscalculated at the time and this BCP would adjust the funding by program to correct this. It is a net-zero shift overall.

   Staff Recommendation: Approve this request.

4. **Construction Management System (CMS) IT Project (BCP #10):** The Administration requests an amendment to the multi-year funding plan for the CMS project to recognize the department's participation with the Department of General Services in an accelerated procurement pilot project. This project was previously approved by the Legislature, but the Administration hopes the accelerated procurement will save $800,000 and 2.4 positions. The total project cost is revised to $17.2 million. The system will allow Caltrans to track and manage construction projects and provide more timely information on the status of projects.

   Staff Recommendation: Approve this request.

5. **Roadway Design Software (RDS) IT Project (BCP #11):** The Administration requests an amendment to the multi-year funding plan for the RDS, which will replace the department's out-dated design software. This project was previously approved by the Legislature, but procurement issues have delayed the project. The total cost is $10.1 million (State Highway Account).

   Staff Recommendation: Approve this request.

6. **Diesel Retrofit and other Mitigation (BCP #6):** The Administration requests $57.3 million (State Highway Account) to replace or retrofit 435 vehicles and pieces of equipment. This includes both on-road and off-road vehicles. Caltrans indicates this budget augmentation is necessary to comply with State Air Resources Board (ARB) and South Coast Air Quality Management District (SCAQMD) regulations. This request represents the second year of a five year air quality retrofit that will cost a total of about $260 million. This issue was discussed extensively in this Subcommittee last year when a total of $48 million was approved for 2009-10.

   Staff Recommendation: Approve this request.

7. **New Positions for Revised Federal Environmental Requirements (BCP #12):** The Administration requests $720,000 in shifted federal funds and 6.0 new positions for the Local Assistance Program to implement new or revised federal environmental requirements resulting from changes in the Safe, Accountable, Flexible, Efficient Transportation Equity Act – a Legacy for Users (SAFETEA-LU). The LAO notes that this program has been expanded by about 25 percent to meet SAFETEA-LU requirements since 2005-06 and that a new federal transportation act should be adopted in the next year or two. The LAO recommends approval of the budget request and suggests adoption of Supplemental Report Language (SRL) to require Caltrans to rebench staffing once a new federal act is passed. Furloughs are also ending June 30, 2010, which will help address work that may have lagged in this fiscal year. Given that staffing has already been increased 25 percent for SAFETEA-LU, and a new act is expected soon, staff recommends rejection of the new funding and positions.

   Staff Recommendation: Reject this request, adopt LAO report language.

8. **Reimbursement Model for Project Initiation Documents (BCP #17):** The Administration requests to shift 96.5 positions and $12.5 million from State funding (State Highway Account) to local reimbursement for department workload associated with Project Initiation Documents (PIDs), or initial planning documents, for locally-funded projects. The LAO withholds recommendation pending submission of an April Finance Letter addressing the staffing needs for the entire Planning Program. Staff notes that budget bill language in the 2009 Budget Act requires Caltrans to provide a report to the Legislature by March 1, 2010, with options to share costs, lower costs, streamline procedures, and reduce delays

associated with PIDs. That report was due March 1, so the subcommittee would have the benefit of that information as it held its March and April Subcommittee hearings; however, the report had not been provided as this agenda was finalized. Given the report has not been provided, and a revised staffing request is expected in April, the Subcommittee may want to reject this request and reopen consideration, as warranted, once the report has been received and an updated budget request has been submitted.

Staff Recommendation: Reject this request.

9. **Passenger Rail Equipment Rebuild and Overhaul (Planning Estimate Adjustment #1):** The Administration requests a onetime increase of $6.9 million (Public Transportation Account) to baseline funding of $5.8 million (for a total of $12.7 million) for the 2010-11 maintenance of railcars that are part of the Intercity Rail Program. Funding for this program is essentially zero-based every year to match that year's maintenance schedule. Funding of $12.7 million is similar to average annual funding for the past five years.

   Staff Recommendation: Approve this request.

Summary of Vote Only Issues: (2-1 votes reflect, Senator Cogdill voting no)

Issue #	Issue Description	Actions	Vote
1	Fuel Cost Increase	Approve – revisit in May as warranted by fuel prices.	3-0
2	Enterprise Resource Planning Financial (E-FIS) Staff Reduction	Approve	3-0
3	Technical Corrections	Approve	3-0
4	Construction Management System (CMS) IT Project	Approve	3-0
5	Roadway Design Software (RDS) IT Project	Approve	3-0
6	Diesel Retrofit and other Mitigation	Approve	2-1
7	New Positions for Revised Federal Environmental Requirements	Approved half the requested funding and positions, adopt LAO Supplemental Report Language	2-1
8	Reimbursement Model for Project Initiation Documents	Reject, revisit in April or May if Administration provides report and revised request	3-0
9	Passenger Rail Equipment Rebuild an Overhaul	Approve	3-0

Issues proposed for Discussion and Vote:

1. **Update on Federal Stimulus Funds (oversight issue).** On January 20, 2010, the Transportation and Housing Committee held a hearing to discuss federal stimulus funds for transportation. The following has occurred since that hearing:

   - The federal government awarded California $130 million in "TIGER" discretionary ARRA grants. This was about 9 percent of total TIGER grants. The funding was for four projects: (1) $46 million for Doyle Drive Replacement in San Francisco; (2) $20 million for Otay Mesa 805/905 Interchange; (3) $34 million for Alameda Corridor East – Colton Crossing; and (4) $30 million for the California Green Trade Corridor Marine Highway
   - Caltrans and local project sponsors were successful in fully obligating all ARRA funds by the March 1, 2010 deadline, so no ARRA funds will be redistributed to other states.
   - Congressional action on a second round of federal stimulus for transportation, or "Stim 2," is still pending, as it was on January 20. Instead the federal government is still working on legislation to extend the Safe, Accountable, Flexible, Efficient Transportation Equity Act – a Legacy for Users (SAFETEA-LU) for another year.

   Staff Comment: The Administration should brief the Subcommittee on federal funding issues, including the latest information on contract awards for ARRA funds and what the Administration is doing for a possible STIM 2. The Administration should indicate what projects are ready to go if STIM 2 funds become available. The Administration should provide the Subcommittee a timeline for awards of ARRA funds so as to maximize spring and summer construction jobs.

   Staff Recommendation: No vote – information issue.

   Action: No action – informational issue.

2. **Proposition 1B Summary:** The Governor requests to revert $1.9 billion from prior Prop 1B appropriations and appropriate a total of $4.0 billion for 2010-11. So the net new appropriation would be $2.1 billion. Prior budget actions have appropriated a total of $13.5 billion, or 68 percent, of total Proposition 1B funds – the requested budget would bring the total to $15.5 billion, or 78 percent. The table below, based on Caltran's numbers, summarizes past action on Prop 1B and the Governor's proposal (dollars in millions):

Proposition 1B Category	**Total 1B Amount**	**Total Approp'd thru 09-10**	**Reversion Requested**	**2010-11 Requested Amount**	**Budget Entity**
Transportation Categories appropriated within the Caltrans Budget:					
Corridor Mobility Improvement Account (CMIA)	$4,500	$3,642	$387	$1,148	Caltrans
State Transportation Improvement Program (STIP)	$2,000	$1,953	$479	$525	Caltrans
State Highway Operations and Preservation Program (SHOPP)	$500	$440	$237	$178	Caltrans
State Route 99 Improvements	$1,000	$550	$61	$311	Caltrans
Local Bridge Seismic Retrofit	$125	$66	$0	$23	Caltrans
Intercity Rail	$400	$383	$156	$72	Caltrans
Grade Separations	$250	$247	$214	$76	Caltrans
Traffic-Light Synchronization	$250	$245	**	$80	Caltrans
Trade Infrastructure	$2,000	$904	$231	$674	Caltrans
State/Local Partnership	$1,000	$400	$40	$201	Caltrans
Transportation Categories appropriated in other Departments:					
Local Streets & Roads	$2,000	$1,987	none	$0	Shared Revenues
Transit	$3,600	$1,300	$114	$350	State Transit Assistance
Air Quality and Transportation Security Categories appropriated in other Departments:					
School Bus Retrofit	$200	$196	none	$0	Air Res. Board
Trade Infrastructure Air Quality	$1,000	$750	Reapprop-riation	$230	Air Res. Board
Port Security*	$100	$99	Reapprop-riation	$0	Emerg Mgt Agency
Transit Security*	$1,000	$303	none	$103	Emerg Mgt Agency
TOTAL	**$19,925**	**$13,464**	**$1,920**	**$3,970**	

* These Prop 1B Appropriations are heard in Subcommittee #4.

** Combined with the SHOPP item.

Prop 1B Budget Request. As indicated on the prior page, the Administration requests a $1.9 billion reversion, or deletion, of previous Prop 1B appropriations. These funds represent those that have not been allocated to a project and some of these funds are only available for allocation through June 30, 2010. The Administration indicates that about $600 million in projects are ready for allocation, but are delayed due to the limited ability of the State to sell bonds. Therefore the remainder of $1.3 billion would be delayed from the Administration's prior expenditure plans for other reasons. The Administration also requests to extend 75 limited-term positions approved for Prop 1B workload in prior budgets. These positions are fully funded with Prop 1B funds.

LAO Recommendation: The Analysis indicates the requested appropriation may exceed the number of projects ready-to-go in 2010-11, and recommends Caltrans reconcile the funding request to project lists.

Staff Comment: The Administration should outline their reasoning behind the $1.9 billion reversion, and indicate how much of the reversion is due to delays in bond sales and how much is due to other factors. The Administration does not suggest a reversion or reappropriation for local street and road funding; however, staff understand some locals have been similarly challenged to meet obligation deadlines due to payment deferrals and other factors.

Staff Recommendation: Keep open for additional analysis of the 2010-11 Prop 1B expenditures and staff needs.

Action: No action – held issue open.

3. **Innovative Finance Part I - GARVEE Bonds (BCP #2)**. The Administration proposes an appropriation of $680 million to fund the full multi-year debt repayment (generally over about 12 years) for Grant Anticipation Revenue Vehicles (GARVEE) bonds that Caltrans would like to issue in 2010-11. GARVEE bonds are revenue bonds backed by future federal transportation funding. The use of GARVEE bonds accelerates projects that would otherwise be delayed because of insufficient transportation funds – saving construction-inflation costs, and delivering the projects faster to travelers. The January Governor's Budget proposed to use GARVEE financing to advance three State Highway Operations and Protection Program (SHOPP) projects: (1) a portion of the Doyle Drive replacement project in San Francisco; (2) the Los Angeles Route 10/605 Interchange; and (3) the Los Angeles Route 710 Roadway Rehabilitation. However, Caltrans indicates the projects are subject to substitution due to changing financial conditions. The Administration expects a 4.15 percent interest rate for GARVEE debt and a 5 percent construction inflation rate.

Background on past use of GARVEEs: Existing statute allows the California Transportation Commission to authorize GARVEE projects up to a level where GARVEE debt service reaches 15 percent of annual federal funding. The budget assumes GARVEE debt service of $138 million in 2010, which is less than five percent of baseline federal funding. GARVEEs have been appropriated in three prior state budgets as indicated in the summary table below (in millions).

GARVEE Year	Amount Appropriated	Project amount	Interest amount	Unused GARVEE (Project amount)
2004-05	$783	$660	$123	$0
2008-09	$181	$141	$40	$43
2009-10	$675	$497	$178	$497
2010-11 proposed	$680	$495	$185	$496
Total, new and existing	$2,319	$1,750	$525	$1,036

As the table indicates, there is unused GARVEE project money of $540 million from the 2008-09 and 2009-10 budgets. Of the amount for 2009-10, $221 million was for one component of the Doyle Drive project, which the Administration is now funding with federal stimulus funds.

Staff Comment: This issue is related to the following public private partnership (or availability payment) issue, and the funding mechanisms are substitutes for each other, so they should be considered together. Additionally, it is unclear why the Administration needs new GARVEE authority when $540 million in past authority is unused.

Staff Recommendation: Keep open for further review.

Action: No action – held issue open.

4. **Innovative Finance Part II – Public Private Partnership / Availability Payments (BCP #13)**. The Administration proposes an appropriation of $3.45 billion to fund multi-year "availability payments" (over about 30 years) for one designated highway project (a portion of Doyle Drive – about $1.4 billion of the total) and other non-designated highway projects (about $2.1 billion). "Availability payments" are a type of public private partnership (P3) where the private partner initially funds the project and then the state compensates the private partner with payments over many years – here, future federal funds are proposed with about $115 million directed annually to this purpose over 30 years (for Doyle Drive, there would be a $150 million payment upon completion of construction plus about $38 million annually after that). The draft Doyle Drive lease agreement (available at: http://www.catc.ca.gov/programs/DB-P3/P3/doyledrive.htm) would provide the developer the right to impose tolls and user fees. If the developer exercises this right, it would have to be consistent with a November 26, 2008, MOU, which allows only "cordon tolling," that would be a system of tolling on all vehicles entering San Francisco, but it is unclear if the MOU could be further revised.

   Background on P3s: California has used P3s for past highway investments with mixed results – Route 91 linking Orange and Riverside counties and Route 125 in San Diego County are examples. Senate Bill X2 4 (Chapter 2, Statutes of 2009, Cogdill), revised the P3 process, by removing the statutory limit on the number of P3s and removing the Legislature from the approval process. The structure of this proposed P3 differs from prior P3s by using "availability payments."

   LAO Comments: Overall, the LAO finds the Governor's proposal is "problematic" and recommends rejecting the proposal. However, the LAO also notes the Administration is reassessing its proposal and may submit an amended request in the spring. The full LAO March 2 report is available at: http://www.lao.ca.gov. The LAO makes the following findings and recommendations:

   - SB X2 4 specifically requires that P3 project agreements include financing from toll or user fee revenues – the proposed agreement does not appear to be allowed under current law.
   - The Doyle Drive proposal would fund the developers for project operations and maintenance out of federal funds – these costs are not eligible for federal funding.
   - $2.1 billion of the request is undesignated and budget bill language allows the Department of Finance open-ended authority to augment the $3.45 billion. This provides little or no opportunity for legislative review and oversight.
   - This proposal, as specified for Doyle Drive, may not reduce State costs. The Administration assumes the developer could reduce construction costs relative to the standard process, but the basis for this assumption is not identified.

   Staff Comments:

   - As indicated in the prior issue, the Administration also has GARVEE bonds available for the Doyle Drive. Since Doyle Drive has existing financing and it is a high-priority project, it is unclear why the project should incur the risk of delays while a P3 contract is negotiated and possibly litigated.

- Since either financing approach is available, the costs and risks to the State of GARVEEs versus this P3 approach should be compared side-by-side. However, the consultants' report does not include the option of GARVEE financing.
- The consultants assume an 8.5 discount rate to calculate net present value (NPV) – for example, the NPV of a $100 payment due in 10 years is only $40. Since this P3 makes payments over 30 years, the NPV is easily lower for this approach than for traditional pay-go financing. Any borrowing with an interest rate below 8.5 percent would seem prudent with this approach. The rate at which the future is discounted should be a determination made by the contracting party (here the State and private partner). The consultants can advise but should not determine the rate the State uses.
- The consultants assume retained risk reserves of $125 million in NPV for the traditional financing version versus $47 million in NPV for this P3. This suggests that the State would achieve a $78 million saving from shifting risk to the Contractor in the P3. The risk premium is also subjective for the parties to determine.
- A 30-year general obligation bond for $500 million would typically cost about $1.0 billion to pay off over thirty years. The 30-year cost of this P3 is estimated at $1.4 billion.
- The uncertainty with respect to future tolling is troubling – if the State feels Doyle Drive is a good candidate for tolling, they should propose this, instead of leaving it to the discretion of the developer.
- Finally, as indicated in the earlier issue, the federal government recently awarded the project $46 million in a discretionary "TIGER" grant. This funding occurred after the Governor's budget was released.

Suggested questions / discussion:

(a) The Administration and LAO should speak to the relative merits of: (1) pay-go financing; (2) GARVEE financing; and (3) P3 financing as proposed by the Governor.

(b) Caltrans and the Department of Finance should respond to each of the LAO findings on the prior page.

(c) The Administration should indicate whether Doyle Drive is a good candidate for tolling, and if so, why they are not proposing a traditional P3 financing at the outset with tolls to finance the project.

(d) If the developer were to exercise discretion and impose tolls, what share would the state expect to receive and would there be any limits on the amount of tolls?

(e) The Administration should explain why they are requesting $2.1 billion in advance of any planned projects and why budget bill language is requested to remove any expenditure cap on P3.

(f) The Administration should indicate if they will be submitting a revised request in the spring.

Staff Recommendation: Hold open for further review.

Action: No action – held issue open.

5. **Zero-Based Workload Part I: Capitol Outlay Support (LAO Issue)**. The Analyst reviewed the Capitol Outlay Support (COS) program at Caltrans and indicates the cumulative evidence suggests that the program is overstaffed and lacks strong management. COS is a $2 billion program within Caltrans with about 12,000 personnel year equivalents of staffing and contract resources (about 90 percent state staff and 10 percent contract staff). The COS program provides the support needed to deliver highway capital projects, including completing environmental reviews, designing and engineering projects, acquiring rights of way, and managing and overseeing construction.

LAO Findings: The LAO report (which is available at www.lao.ca.gov) makes the following findings:
- The workload that is assumed in the department's annual COS budget request has not been justified.
- Although comparisons are difficult, Caltrans appears to be incurring significantly higher costs for COS activities than similar agencies.
- Comparisons of one Caltrans region to another suggest that COS staffing in at least some regions is excessive. There appears to be little relationship between the number of positions in a region and the size of its capital program.
- The imposition of furloughs on Caltrans COS staff appears to have had no identifiable impact on its productivity, further suggesting that the department is over staffed for these activities.
- A review of a sample of Caltrans projects showed that COS costs regularly exceeded the norm, often by a considerable margin.
- Caltrans lacks systems and processes to manage and control COS costs.

LAO Recommendations: The LAO report makes the following recommendations:
- Adopt statutory language to require Caltrans to provide additional COS workload information beginning with the 2011-12 budget.
- Caltrans should adopt cost controls for COS and report at the hearing the steps the department is taking to control costs.
- The Bureau of State Audits (BSA) should audit Caltrans staff charging of work hours to projects to determine if these records are accurately kept.
- Reduce COS by 1,500 position equivalents (state positions and contract resources). This LAO recommendation is subject to change if the Administration is able to provide workload justification for additional staff resources.

Staff Comments: The LAO review raises serious concerns about the Department's ability to estimate staffing needs and manage resources. Caltrans was not able to reconcile their 2009-10 staffing request to workload data, nor could they provide the LAO with a full explanation of how workload is modeled to produce the staffing estimates. In the absence of any department methodology, the LAO used several proxy measures to estimate total workload and found baseline staff resources should be reduced from about 12,000 to about 10,500, which would reduce costs by approximately $200 million.

Staff Recommendation:

- Hold issue open.
- For the 2010-11 budget, request that the Administration works cooperatively and openly with the LAO and Legislative Staff as it develops its May Revision COS budget for 2010-11. An ongoing challenge with the May Revision workload adjustment is that it does not allow sufficient time for Legislative review as each house only has a week or two to act after the May Revision. The Administration should share their COS estimates in early April to allow a full review.
- For the 2011-12 budget, direct staff to work with the LAO and Administration this spring to develop statutory language that would specify necessary project detail to accompany the 2011-12 COS budget request so the request can be transparent and justified. Future COS requests should be based on solid data and defensible estimates – not unexplainable Caltrans estimates or LAO proxy estimates.

Action: No action – held issue open. Limited public testimony was heard, but the issue was not otherwise discussed. The issue will be heard at future hearing.

6. Zero-Based Workload Part II: Civil Rights, Legal, and Information Technology (2009 Budget Act report). The 2009 Budget Act included language requiring Caltrans to *provide the Legislature information explaining and justifying the workload for the department's legal, information technology, administrative, and civil rights activities for all the department's program*. The report was provided for all the areas except administrative. The Department is proposing to change the administrative budget to "distributive administration" which will result in additional detail as centralized administration will be distributed to the individual program areas in proportion to work performed for each.

Detail from Report: Caltrans outlines staffing and workload for the three programs in the report. The approach the department took was to allocate existing staff to specific task or activity, based on the activities that people currently perform. So current staffing exactly matches current workload. However, this is not truly a "zero-based" staffing analysis that would define workload first and then rebuild the staffing need from zero. The report includes the baseline budget staffing and funding for each program as follows (in millions):

Area	Personnel Years	Personnel Service Budget	Operating Expense Budget	Total Funding
Civil Rights	58.5	$4.3	$1.9	$6.3
Information Technology	630	$47.2	$2.3 (employee related) $33.3 (IT infrastructure)	$82.7
Legal	293.6	$31.3	$5.9 (employee related) $83.0 (tort and consultant)	$88.9

Staff Comment: This exercise indicates the challenge of zero-based budgeting. Ideally, departments should periodically review workload as it will change in individual area due to, in these cases, such things as number of lawsuits, number of servers and newness software for users, and number of contracts to review annually for Disadvantaged Business Enterprise (DBE) program compliance. Such periodic workload analysis might suggest the need for either a staffing augmentation or a staffing reduction.

Staff Recommendation:

- Hold open
- Ask Caltrans to report back at a future hearing with updated information that would tie all the workload in each area to a relevant workload driver such as number of staff per lawsuit, number of civil rights staff per contract, etc.
- Direct LAO and Staff to continue to review the reports and bring back recommendation for staffing adjustments if warranted.

Action: Issue not heard, no action – will be heard at future hearing.

7. **Budget Savings from Executive Orders Part I: Operating Expenses and Equipment**. The Governor has issued Executive Orders (EOs) to direct departments to generate budget savings from reduced operating expenses and equipment (OE&E) expenditures. However, those savings for 2009-10 and 2010-11 are generally not built into department budgets. Caltrans OE&E for the adopted 2009-10 budget was about $2.1 billion.

   Executive Order S-09-09 issued June 8, 2009, required departments to submit a plan to reduce new contracts, extended contracts, or purchases from statewide master contracts in 2009-10 by at least 15 percent. Caltran's adopted plan applied the 15 percent amount to the non-exempted amount of $47 million to generate savings of $7.1 million.

   Executive Order S-14-09 issued July 17, 2009, prohibited departments from purchasing vehicles for non-emergency use, required a 15 percent reduction to fleets, and reduces vehicle home storage permits by 20 percent. Caltran's adopted plan reduces the light duty fleet by 426 vehicles and reduces home-storage permits by 330. Caltrans does not anticipate any ongoing savings from this EO. The revenue from selling California's fleet vehicles will be discussed with the Department of General Services as part of the March 11, 2010, Subcommittee #4 hearing.

   Other Caltrans Savings: Despite the relatively modest savings associated with these EOs, Caltrans indicates it has been aggressive in reducing travel, training, information technology purchases, and other such costs that have reduced OE&E costs by a full 10 percent. About $220 million was saved in this manner in 2008-09 and is reflected in the January Governor's budget as savings in the past year. Many of these savings measures are still in place and Caltrans anticipates significant savings in both 2009-10 and 2010-11. However, no savings is currently reflected in the Caltrans budget for 2009-10 and 2010-11.

   Staff Comment: Staff has been working with the department to determine the nature of the 2009-10 savings to understand how much of this can be continued, but the department has been unable to provide many specifics. If some reasonable level of savings can be estimated and scored, the budget would be more accurate and transparent and addition funding would then be available for new maintenance or State Highway Operations and Protection Program (SHOPP) expenditures.

   Staff Recommendation: Adopt a placeholder action that would score savings of $100 million in 2009-10 and $100 million in 2010-11. Direct staff to continue to work with Caltrans to determine a reasonable amount of savings – derived from existing Caltrans action – that can be scored. Direct staff to work with the Administration on a highway maintenance and/or SHOPP augmentation with the savings, which would improve California's infrastructure and create new construction jobs.

Action: Issue not heard, no action – will be heard at future hearing.

8. **Budget Savings from Executive Orders Part II: Workforce Cap**. The Governor issued Executive Order S-01-10 on January 8, 2010, requiring all State agencies and departments to submit a plan to achieve an additional five percent in salary savings. The Legislature recognized these savings in the 8th Extraordinary Session actions and scored the General Fund salary savings of $450 million in AB X8 2. Since related OE&E savings will accompany personnel service savings, AB X8 2 included additional saving of $130 million General Fund. The EO requires departments to submit their workforce cap plans to the Department of Finance and the Department of Personnel Administration by February 1, 2010. The EO requires departments to begin implementing their plans by March 1, 2010.

   Staff Comment: Staff has requested the Caltrans workforce cap plan, but as this agenda was finalized, no plan has been provided. While the General Fund savings has been scored from the EO already, the implementation of the plan is still an oversight concern of the Legislature. It is also difficult to justify Caltran's budget requests for new or extended positions without knowing if the workforce cap plan will affect staffing in those areas. The Administration should outline their workforce cap plan and indicate when a written version will be made available for review.

   Staff Recommendation: Hold open for further review.

Action: Issue not heard, no action – will be heard at future hearing.

9. **Load Rating of State Bridges (BCP #16). The Administration requests to absorb** new workload for load rating of State bridges by: (1) redirecting 9 positions that provide engineering support for toll bridge traffic operations in the San Francisco Bay Area; and (2) shifting $1.3 million from the litter pickup budget. The load rating determines the weight or load of vehicles that a bridge can safely carry. The 9 new bridge positions would complete a new load rating assessment of 6,800 State bridges over a ten-year period to comply with new federal requirements. The BCP indicates that engineering support for toll bridges and litter removal activities are both very important to the Department, but that the bridge load rating activities are a higher priority.

Detail on Request: New load ratings are not required for all State bridges – for example, excluded are those designed to current standards (designed since 1976), and bridges that do not carry vehicular traffic. For the 6,800 bridges in question, the existing load ratings were developed with older computer modeling that did not include all bridge design data and the base load rating cannot be verified or updated with the existing system. The requested positions would review bridge records, perform a new load rating with new software, and write a summary report for each bridge.

Past Legislative Hearings: On January 12, 2009, the Subcommittee held a joint hearing with the Senate Transportation and Housing Committee, and Senate Select Committee on Bay Area Transportation, and the Assembly Transportation Committee, on the topic of *2009 San Francisco-Oakland Bay Bridge Closures and Related Bridge Safety Issues*. Today's hearing is a good opportunity to hear an update from Caltrans.

LAO Recommendation: The Analyst recommends the Administration look at alternatives that would allow the work to be completed more expeditiously (instead of over 10 years). For instance, Caltrans could contract out some of the work, or assign more State staff to the task in order to complete the work sooner.

Staff Comment: Caltrans should explain why the 9 positions performing engineering support for toll bridges are no longer needed, and why this funding request is from redirected litter clean-up instead of a net funding augmentation. Caltrans should explain why 10 years is an acceptable length of time to perform these safety load ratings – instead of a quicker implementation as suggested by the LAO.

Staff Recommendation: Keep issue open for further analysis of alternatives that would result in a more rapid completion of new safety assessments of state bridges.

Action: Issue not heard, no action – will be heard at future hearing.

10. Americans with Disabilities Act (ADA) Lawsuit (BCP #16). The Administration requests one-time funding of $8.5 million (State Highway Account) to pay attorneys' fees in the ADA lawsuit that was settled in December 2009. The request indicates that the exact amount of the payment is still undetermined, but the settlement agreement sets it between $3.5 million and $8.5 million. Final court approval of the settlement agreement is expected in April or May of this year.

Detail on ADA expenditures: While the budget request only deals with the one-time attorneys' fees, it should be noted the settlement includes agreement from the Administration to spend $1.1 billion over 30 years to make sidewalks and other pedestrian facilities ADA-compliant. The settlement defines minimum expenditures per year as follows:

- Baseline funding is about $10 million per year.
- Funding would increase to $25 million per year beginning in 2010-11.
- Funding would increase to $35 million per year beginning in 2015-16.
- Funding would increase to $40 million per year beginning in 2025-26.
- Funding would increase to $45 million per year beginning in 2035-36.

This funding would be accomplished within the State Highway Operations and Protection Program (SHOPP) funding and Maintenance funding as applicable.

Staff Comment: Since the funding for increased ADA investments is part of the SHOPP item, no action is necessary. The BCP request to the Legislature only relates to attorneys' fees. It should be noted that the 2009-10 budget includes new funding of $20 million to fund tort obligations – this was requested by the Governor in an April Finance Letter and approved by the Legislature. Caltrans should attempt first to absorb the cost of attorney fees within its current-year legal funding level. If the Subcommittee keeps this item open, the Department should report in May on its ability to absorb this one-time cost within the legal allocation.

LAO Recommendation: The Analyst recommends holding the legal-fees item open until May, by which time the court is expected to decide the specific amount of attorney's fees that Caltrans will owe.

Staff Recommendation: Hold open the legal fees issue so the Subcommittee can consider the request with more complete information in May.

Action: Issue not heard, no action – will be heard at future hearing.

11. Cap on Tort Payments (BCP #18). The Administration requests trailer bill language to place a $250,000 per individual, and a $500,000 per occurrence, cap on the amount of the non-economic damages that can be awarded against the State in a tort action. Additionally, the Administration requests language to limit the State's liability for economic damages to "several only and not joint." This means that if there are several parties at fault, including Caltrans, the department would only be responsible for its proportional or comparative fault and not have to compensate beyond that level (in the situation where other guilty parties had insufficient economic resources to fund their share of the payment). The Governor's proposed budget does not assume any savings from this proposal; however, Caltrans estimates they might see annual savings of approximately $28 million based on past litigation.

Detail on Caltrans' Total Liabilities: The historic tort budget funding and actual expenditures (in millions) are outlined in the following table.

	Budget Funding	Actual Expenditures	Shortfall
2000-01	$41.4	$65.1	$23.7
2001-02	41.4	62.4	21.0
2002-03	41.4	37.5	-3.9
2003-04	41.4	32.7	-8.7
2004-05	41.4	50.3	8.9
2005-06	41.4	66.7	25.3
2006-07	53.6	51.5	-2.1
2007-08	53.6	72.9	19.3
2008-09	53.6	68.8	15.2
2009-10*	73.6	73.6	0
2010-11*	73.6	73.6	0

* Estimate

Staff Comment: The language suggested by the Administration does not appear specific to Caltrans, therefore these provisions would seem to apply statewide. The affect on other State departments, their policy objectives, and their budgets is unclear. While there are Caltrans budget benefits from this request, there are policy implications that are not fully detailed in the Administration's request. This issue may benefit, and time should allow, for this issue to be heard and discussed in policy committees, such as the Judicial Committee, where the full range of issues to consider would be brought to light.

LAO Recommendation: The Analyst recommends that the Legislature evaluate the proposal on a policy basis rather than as apart of the budget process.

Staff Recommendation: Reject this request and suggest proponents pursue the policy process so the implications of this proposal can be more fully understood.

Action: Issue not heard, no action – will be heard at future hearing.

12. Advertising on Changeable Message Signs (January Governor's Budget). The Administration requests budget trailer bill language to allow advertising on highway Changeable Message Signs (CMSs). No Budget Change Proposal was provided to explain or justify this request. No revenue is scored in the Governor's budget for this proposal, and no revenue estimate has been provided by the Administration.

Information from the Administration trailer bill language: According to the Administration trailer bill language, "the department would obtain private sponsors and advertisers who would provide additional transportation funding in return for the right to place advertisements on the updated emergency message signs in a manner that does not detract from the signs' public-service announcement function." The language indicates the proposal would require either a waiver from the Federal Highway Administration or a change in federal law. The language indicates the private sponsor and Caltrans would share advertising revenue, but the language does not specify what the state share would be. The language specifies Caltrans would not be required to adopt regulations, but would rather post guidelines on its website.

Staff Comment: The Administration should update the Subcommittee on this proposal and indicate if it has a revenue estimate, or if there has been any response from the federal government with regards to a waiver. There are traveler information and safety concerns with this proposal. Some CMSs are used to display travel times from one destination to another (which is not necessarily a safety issue, but is valuable information to travelers) – would this content be replaced with advertising? The signs would also poise concerns related to distracted driving and highway beautification. This issue may benefit, and time should allow, for this issue to be heard and discussed in policy committees, such as the Transportation and Housing Committee, where the full range of issues to consider would be brought to light.

Staff Recommendation: Reject this request and suggest proponents pursue the policy process so the implications of this proposal can be more fully understood.

Action: Issue not heard, no action – will be heard at future hearing.

SUBCOMMITTEE NO. 2 Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal

Hearing Outcomes

(see Subcommittee actions under individual issues)

Thursday, March 18, 2010
9:30 am or upon adjournment of session
Rose Ann Vuich Hearing Room (2040)

Consultant: Bryan Ehlers (with Caroll Mortensen and Rachel Machi Wagoner)

Joint Oversight (with Senate Committee on Environmental Quality)

Resources—Environmental Protection—Energy—Transportation

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 916-324-9335. Requests should be made one week in advance whenever possible.

<u>Oversight on Green Chemistry:</u>
<u>Implementation of AB 1879 (Feuer, 2008) and SB 509 (Simitian, 2008)</u>

Assembly Bill 1879 (Feuer) Chapter 559, Statutes of 2008 and
Senate Bill 509 (Simitian) Chapter 560, Statutes of 2008

In 2008, Assembly Bill 1879 (Feuer) and Senate Bill 509 (Simitian) were signed by the Governor to implement together two key pieces of a green chemistry initiative for California.

AB 1879 (Feuer) requires the Department of Toxic Substances Control (DTSC) to adopt regulations to: 1) establish a process to identify and prioritize chemicals or chemical ingredients in products that may be considered a "chemical of concern;" 2) establish a process for evaluating chemicals of concern in products, and their potential alternatives in order to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern, as specified; and 3) establish a process that includes an evaluation of the availability of potential alternatives and potential hazards posed by alternatives, as well as an evaluation of critical exposure pathways. The bill requires that the regulations include life cycle assessment tools that take into consideration numerous factors as specified and provides for the establishment of a Green Ribbon Science Panel, with expertise that includes fifteen disciplines (e.g., chemistry, environmental law, nanotechnology, maternal and child health) to advise on the development and implementation of the regulations and the Toxic Information Clearinghouse.

SB 509 (Simitian) requires DTSC to establish a Toxics Information Clearinghouse for the collection, maintenance, and distribution of specific chemical hazard traits and environmental and toxicological end-point data. The bill also requires the Office of Environmental Health Hazard Assessment to evaluate and specify the hazard traits and environmental and toxicological end-points and any other relevant data that are to be included in the clearinghouse.

DTSC recently released a framework to illustrate the concept of the regulations that DTSC is currently working to develop. According to DTSC, the projected release date of the proposed regulations is late spring early summer and the department projects completing and adopting the final regulations by the end of 2010.

BACKGROUND

It was the intent of the Legislature in passing AB 1879 and SB 509 to replace the chemical-by-chemical legislative agenda that the California Legislature has had to increasingly confront over the last decade and build a transparent process by which evaluation of chemicals and chemical policy can take place in California. The increasing demands for an effective chemical policy in California are largely due to the failure of federal and state statutes and programs to provide effect analyses and protections to potential health and environmental chemical exposures. DTSC needs to demonstrate that it can rapidly and effectively deploy a program capable of expeditiously acting on known federal programs, which are too often characterized by numerous procedural steps and exhaustive analyses, but with few substantive protections.

POLICY ISSUES

California's Green Chemistry programs have the potential to be the nation's leader in chemical policy reform. In order to ensure that green chemistry is a robust and effective initiative for California, it is crucial that the regulations and website adopted and implemented pursuant to AB 1879 and SB 509 be accomplished correctly and reflect the intent of the enacting legislation.

- <u>No Budget Change Proposal (BCP).</u> With the development of the regulations and website and anticipated implementation, it was expected that DTSC would submit a BCP

for Budget Year 2010-2011 that reflects the changes in workload and anticipated needs for implementation. However, the Administration did not submit a BCP. According to DTSC, the department has been able to effectively redirect existing resources to fulfill the needs of green chemistry.
How has that impacted the existing workload of the department and how are those prior responsibilities being covered? Additionally, how does DTSC envision generating the needed funds for implementation of the green chemistry programs? Will that be reflected in the regulations?

- Timeline for Implementation. DTSC has previously stated that it is the intention of the Administration to complete and adopt final regulations for implementation of the green chemistry bills by the end of 2010 and projects release of proposed regulations by the beginning of the summer of 2010.

  What is the specific timeline for the development of the regulations and the website? Is there adequate opportunity for public comment and review of the proposed programs built into that timeline?

- The framework and AB 1879 and SB 509. DTSC has been working over the last year to develop both the green chemistry regulations and the Toxic Information Clearinghouse.

  Does what has been developed to date truly reflect the intent of the enacting legislation and the letter of the law? Are there issues missing?

SUMMARY

DTSC will be completing the development phase of both the regulations and the Toxic Information Clearinghouse over the next eight months. It is crucial that the Legislature ensure that what is constructed in this short timeline meets the intent of AB 1879 and SB 509 and enacts an effective and robust green chemistry program for California.

Action: No action required; however, the Chair requested the DTSC, to provide a Green Chemistry budget plan before the close of Subcommittee deliberations. [Staff notes: Notwithstanding the Administration's contention that regulations need to be completed before a long-term funding plan can be developed, the DTSC is far enough along in its process that a rough estimate (or perhaps a range of estimates) of program costs is not an inappropriate request. If the DTSC needs to make certain assumptions or present several regulatory scenarios, that would likely be acceptable to the Committee in order to provide at least a rough picture of potential future costs.]

California Integrated Waste Management Board and Division of Recycling Reorganization: Oversight Status Update

Senate Bill 63 (Strickland) Chapter 21, Statutes of 2009.

In June 2009, as part of the budget package, the Governor signed SB 63 (Strickland) Chapter 21, Statutes of 2009, that abolishes the Integrated Waste Management Board (IWMB) and consolidates its programs with the Division of Recycling (Bottle Bill Program) into a new Department of Resources Recycling and Recovery (DRRR) within the Natural Resources Agency (NRA). SB 63 also shifts the functions and civil service staff of the CIWMB to the new DRRR; moves the Education and the Environment Initiative from the CIWMB to the California Environmental Protection Agency; transfers recycling activities and civil service staff working on those recycling activities from the Department of Conservation (DOC) to a division within the new DRRR; and allows the Governor to appoint the director of the DRRR subject to Senate confirmation.

The elimination of an open public process inherent with a board structure and reorganization of the State's two solid waste management and recycling entities is a significant policy and budgetary undertaking.

There are several budget change proposals (BCPs) related to the reorganization. However, they in most part do not address or answer fundamental policy questions about the form and function of the new DRRR. This hearing provides an opportunity for a status update from DRRR regarding the status of reorganization in both a policy as well as a budget sense. The LAO will also offer some brief policy considerations.

BACKGROUND

<u>The former Integrated Waste Management Board</u>.

The former IWMB was housed within the California Environmental Protection Agency (CalEPA) with sister regulatory agencies including the Air Resources Board, State Water Resources Control Board, Department of Toxic Substances Control, and Department of Pesticide Regulation as well as the Office of Environmental Health Hazard Assessment.

The IWMB was responsible for implementing the Integrated Waste Management Act of 1989 including enforcement of the Act. The IWMB's core functions included:

- Enforcing the mandate on local jurisdictions to achieve and maintain a 50 percent diversion of their solid waste going to landfills.

- Permitting and overseeing, in partnership with local enforcement agencies, solid waste facilities, including landfills that manage solid waste, and providing for the safe disposal of the waste that cannot be diverted.

- Developing markets, in partnership with generators, businesses, service providers and end-users, for waste materials.

- Pursuant to additional legislative requirements added to the original Act over the last twenty years, implementing programs relating to a multitude of waste streams, not all directly related to solid waste including, but not limited to waste tires, used oil, electronic waste, household hazardous waste, universal waste, and pharmaceutical waste.

<u>The former Division of Recycling (DOR)</u>.

The former DOR was part of the Department of Conservation (DOC) within the NRA. The NRA sets policies and coordinates the environmental preservation and restoration activities of its 26 departments, boards, commissions, and conservancies. DOC has oversight over a variety of resource conservation programs including Geology and Mines, Land Resource Protection, and Oil, Gas & Geothermal Resources.

DOR administered the California Beverage Container Recycling and Litter Reduction Act (Bottle Bill Program) to achieve an 80 percent recycling rate for glass, aluminum, and plastic beverage containers sold in California through a deposit and redemption system.

<u>June 10, 2009 Environmental Quality Committee's recommended alternative</u>.

To increase efficiencies, save resources, and improve protection of public health and the environmental protection, an alternative proposal recommended by the Environmental Quality Committee following its June 10, 2009, hearing would abolish the structures of the IWMB, DTSC, and DOC and move the related functions of Radiological Health Branch from DPH into a new smaller, more accountable board structure under CalEPA. The recommended committee alternative would:

- Establish a new 5-member, full time board, the Pollution Prevention and Recycling Board (PPRB), with policy development, oversight, and appellate functions.

- Establish qualification standards for board members to reflect the new responsibilities and to ensure expertise in the expanded policy areas.

- Consolidate common functions (permitting, pollution prevention, recycling, and remediation) into new divisions under the new board.

- Decrease the board members' pay by the commensurate amount as rank and file state employees in this budget crisis.

- Eliminate the advisor positions associated with the IWMB members.

- Eliminate duplicative high level executive positions and related staff.

- Require the new board to establish a new organization and management structure to realize savings from consolidation, including a reduction of 50 percent in the number of executive and upper level management positions.

- Eliminate duplicative activities in such support areas as, administrative and technical support, public affairs, and legislation.

- Consolidate the numerous field offices held by all involved entities.

Changes under the Committee's recommendation would have greatly increased the efficiency of waste management, increase pollution prevention by consolidating like programs and setting similar, protective, enforceable standards. It would allow all stakeholders, especially the general public, access to the policy development and decision making processes to set those standards. It would allow important programs such as facility permitting, local government waste diversion, green chemistry, pollution prevention, and enforcement to benefit from the sharing of expertise, experience, and resources for improved public health and environmental protection.

POLICY ISSUES

While consolidating recycling/solid waste-related programs has merit, the SB 63 approach contains many flaws that could produce undesirable outcomes that may well set the state back in terms of environmental protection and resource conservation, including:

- Lack of general fund savings. SB 63, dealing with special fund programs, does not have any realized general fund budgetary savings – and thereby offers no relief to the state's current budget challenge.

- Loss of public participation. DOC had no mandated public participation processes that are inherent in the former IWMB board structure. Even with frequent workshops and meetings, the lack of mandated decision making in a board process, lacks public access and accountability.

- Lack of efficiency. The public, as well as stakeholders affected by SB 63, will be forced to deal with cross-agency challenges. This will require these interests to keep track and learn the processes and procedures of entities within two separate oversight agencies (Cal EPA and NRA) (e.g., DTSC for electronic waste, used oil, household hazardous waste; SWRCB for landfill oversight).

- Loss of cross-media coordination. The IWMB was involved in numerous cross-media efforts with programs overseen by Cal EPA including such programs as California / Mexico Border; Environmental Enforcement; Environmental

Education; as well as data and electronic media coordination. It is unclear as to the fate of these efforts that were supported in part by IWMB funds and staff.

SUMMARY

Implementation of the reorganization of the IWMB and DOR into the new DRRR is proceeding. However, as it is critical to ensure public health and safety and environmental protection, it is necessary that the policies and programs that are now housed at DRRR are implemented to the fullest extent intended by the Legislature. It is also timely to begin to observe and track challenges as well as efficiencies gained with this reorganization to enable the Legislature to take the next steps necessary to further reorganize and align environmental oversight and enforcement programs for maximum protection and efficiency.

Action: No action required; however, the Chair requested the DRRR to keep the Committee informed (via staff) of any future plans to realign or reorganize (i.e., streamline) department activities.

Department Proposed for Discussion

3900 Air Resources Board

The Air Resources Board (ARB), along with 35 local air pollution control and air quality management districts, protects the state's air quality. The local air districts regulate stationary sources of pollution and prepare local implementation plans to achieve compliance with federal and state standards. The ARB is responsible primarily for the regulation of mobile sources of pollution and for the review of local district programs and plans. The ARB also establishes air quality standards for certain pollutants, administers air pollution research studies, and identifies and controls toxic air pollutants.

Governor's Budget. The Governor's Budget includes $601.9 million (no GF) for support of the ARB in FY 2010-11. This is a 30 percent decrease over current year expenditures due primarily to a reduction in Proposition 1B (Transportation Bond) expenditures.

DISCUSSION ITEMS

1. Administration's Recent Renewable Portfolio Standard (RPS) Activity Circumvents Legislative Authority.

Background. The LAO recently released its analysis of the 2010-11 Governor's Budget for the Resources and Environmental Protection areas. Below is the bulk of the LAO's write-up with some staff edits for brevity:

> **Current RPS Law**
>
> ***RPS Standard Now Set at 20 Percent.*** Current law, as amended in 2006, requires each privately owned electric utility to increase its share of electricity generated from eligible renewable energy resources by at least 1 percent each year so that, by the end of 2010, 20 percent of its electricity comes from renewable sources.
>
> ***Enforcing the RPS.*** Current law requires the California Public Utilities Commission (CPUC) to enforce compliance by the private utilities (commonly referred to as investor–owned utilities, or IOUs) with the 20 percent RPS. The CPUC is prohibited from ordering an IOU to procure more than 20 percent of its retail sales of electricity from eligible renewable energy resources.
>
> ***Vetoed 2009 RPS Legislation.*** During the 2009 legislative session, the Legislature passed, and the Governor subsequently vetoed, a package of RPS–related bills. These bills—which included SB 14 (Simitian), AB 21 (Krekorian), and AB 64 (Krekorian)—together would have increased the RPS target for IOUs to 33 percent by 2020 and also made publicly owned utilities subject to the same RPS targets as these other electricity providers. In his veto messages, the

Governor cited his policy concerns about the Legislature's approach to meeting a 33 percent RPS, a target which he nonetheless supported.

Administration's Recent RPS Activity Circumvents Legislative Authority

As discussed below, our review finds that over the last few years, the administration has been involved in a number of activities that, in effect, circumvent the Legislature's policy direction as reflected in current RPS law.

Governor's Two Executive Orders. In November 2008, the Governor issued an executive order calling for *all* providers of retail electricity (thereby including publicly owned utilities) to obtain 33 percent of their electricity from renewable sources by 2020. State government agencies were directed to "take all appropriate actions" to implement this target. In September 2009, after vetoing legislation that would have placed a 33 percent RPS target in statute, the Governor issued another executive order directing ARB to develop a regulation "consistent with" a 33 percent renewable energy target. The executive order indicated that the administration believed that it had the legal authority to establish such regulations under the Global Warming Solutions Act of 2006 (commonly referred to as "AB 32"). The ARB currently is working to develop this regulation.

Executive Orders Cannot Replace or Circumvent Lawmaking. In a recent written opinion, the Legislative Counsel advised us that, as a general proposition, the Governor may not issue an executive order that has the effect of enacting, enlarging, or limiting legislation. In the context of the Governor's September 2009 executive order, we are advised that the ARB may not adopt a renewable energy–related regulation that contravenes, changes, or replaces the statutory requirements of the current RPS law. According to Legislative Counsel, AB 32 does not authorize the ARB to adopt such a regulation. Since current RPS law is very prescriptive in its requirements, this prohibition would severely constrain the ARB in developing its regulation pursuant to the executive order. For example, we are advised by Legislative Counsel that the ARB could not develop a regulation that contravenes the current–law prohibition upon requiring an IOU to procure more than 20 percent of its electricity from renewable sources. Given this legal opinion, in our view it would clearly be inappropriate for the administration to circumvent the existing RPS law by attempting to implement a new renewable energy standard on its own authority.

Planning Activities. Despite these legal constraints, the administration has been involved in various planning activities that assume an RPS target that is different than the one established in current law. For example:

- The ARB's plan to implement AB 32 (commonly referred to as the AB 32 Scoping Plan) includes a 33 percent RPS as one of its primary measures to achieve the state's greenhouse gas emission reduction goals.

- Multiple Integrated Energy Policy Reports prepared by the California Energy Commission have evaluated the state's ability to achieve a 33 percent RPS.

- The Renewable Energy Transmission Initiative planning group (an administration initiative involving multiple state energy and environmental agencies, public and private utilities, and environmental interests, among others) has conducted its planning work and analysis based on the assumption of the imposition of a 33 percent RPS target.

- The CPUC is moving forward with efforts to implement a 33 percent RPS with respect to the private utilities it regulates, through its Long–Term Procurement Plan process.

Budget Issues

Administration's Spending Related to a 33 Percent RPS. Although the Legislature has not approved a budget request related explicitly to the evaluation or implementation of a 33 percent RPS, the administration has spent significant resources for these purposes and has plans to continue this spending. The figure below summarizes these ongoing and proposed expenditures, which would total $4 million in 2010–11 under the Governor's budget proposal.

Administration's 33 Percent RPS–Related Spending

(In Thousands)

	2009–10	2010–11
Air Resources Board		
Base budget	$1,900	$750
Proposed budget request	—	—
California Public Utilities Commission		
Base budget	$553	$423
Proposed budget request	—a	2,800
Totals	**$2,453**	**$3,973**

a Budget request for $322,000 was denied by the Legislature.

The ARB estimates that it will spend $1.9 million (from the Air Pollution Control Fund) in the current year and $750,000 in the budget year to develop RPS–related regulations pursuant to the Governor's executive order and the AB 32 Scoping Plan. No specific funding requests for this purpose have been submitted to the Legislature for the budget year. For CPUC, the *2009–10 Governor's Budget* proposed a $322,000 increase for the commission to begin the process of implementing a 33 percent RPS. The Legislature denied this budget request, finding that the proposal was premature, pending enactment of the enabling legislation to establish the 33 percent RPS. However, the CPUC has continued to conduct planning and analysis for a 33 percent RPS, and estimates that it will spend $553,000 (from the Public Utilities Reimbursement Account) in the current year for this purpose ($423,000 for staff costs and $130,000 for consulting fees).

The CPUC plans to spend $423,000 for staffing costs for these same purposes in the budget year from its existing budget resources. In addition, the Governor's budget includes requests totaling $2.8 million (from the Public Utilities Commission Utilities Reimbursement Account [PUCURA]) for CPUC to implement a 33 percent RPS in 2010–11. These requests include $1.8 million for seven personnel–years in staffing to implement a 33 percent RPS, and $1 million annually (for each of the next five years) to contract for RPS program evaluation and technical assistance.

Administration's Spending Plans Are Problematic. The administration's spending plans discussed above are problematic for a couple of reasons. First and foremost, the expenditures by CPUC and ARB to develop RPS–related regulations are premature given the current statute authorizing a 20 percent RPS. This regulatory activity should not occur until or unless the Legislature enacts a 33 percent standard, and only then should be implemented in a fashion consistent with any policy parameters for a revised RPS that have been established by the Legislature.

The ARB's expenditures to develop a higher RPS are particularly problematic. This is because the ARB is delving into a subject matter—renewable energy procurement—that is both outside its area of statutory responsibility and outside its area of technical expertise. The ARB is spending significant funding to work with CPUC to come up to speed on the subject matter of renewable energy procurement. In our view, this is an inefficient use of state resources. These ARB activities also constitute an inappropriate duplication of effort, given that CPUC plans to move ahead at the same time to implement a 33 percent RPS that would apply to the entities that it regulates.

Analyst's Recommendations. Given that the administration's spending plans are both premature and an inefficient and duplicative use of resources, we recommend that the Legislature take the following actions to remedy this situation. Specifically, we recommend that the Legislature:

- Deny CPUC's budget request for an additional $2.8 million (from PUCURA) for RPS–related activity in the budget year.
- Reduce CPUC's PUCURA appropriation (Item 8660–001–0462) by an additional $423,000—the amount the commission anticipates spending from its base budget to implement a 33 percent RPS in the budget year.
- Reduce ARB's Air Pollution Control Fund appropriation (Item 3900–001–0115) by $750,000—the amount the board anticipates spending from its

base budget to develop a renewable energy standard regulation in the budget year.

- At budget hearings, specifically direct CPUC and ARB to immediately cease spending funds for the purpose of developing a new renewable energy standard or similar requirement absent the enactment of legislation that authorizes such activities.

Staff Comments. A fuller discussion of the RPS and AB 32 implementation in this committee is scheduled for April 29, when the CPUC will also be on the agenda. However, given the reasoned analysis above, backed by the opinion of Legislative Counsel, the Committee may wish to act now on the LAO's recommendation vis-à-vis the ARB's budget. This would provide the Administration with ample indication of the Legislature's position on the RPS issue and would give the ARB, the CPUC, and Administration officials over a month to begin working with the Legislature on a workable (legal) resolution to the RPS debate, before the Committee takes any final action on the ARB and CPUC budgets.

Staff Recommendation: ADOPT the LAO recommendation on the ARB budget and reduce Item 3900-001-0115 by $750,000. Additionally, DIRECT the ARB and the CPUC (in absentia) to cease spending funds for the purpose of developing a renewable energy standard or similar requirement absent the enactment of legislation that authorizes such activities.

VOTE:

Action: Approved Staff Recommendation on a 3-0 vote. Additionally, Senator Cogdill requested, and the ARB committed to providing by March 26, responses to the following questions:

1. How much has the ARB spend over the last three fiscal years on AB 32 activities, including staff, contracting, and other expenditures?

2. How much has been spent on the Low Carbon Fuel Standard, Western Climate Initiative, and Renewable Energy Standard?

3. I understand that the ARB has declined a request to hold a workshop explaining what its AB 32 program costs will be for 2010-11 and referred interested parties to these legislative hearings. Do you plan on explaining to the public at any point what the basis for the 2010-11 AB 32 fees will be?

4. Have you updated your emissions forecast to account for the economic downturn which would be 'helping' the state achieve the 1990 emissions level target without additional requirements?

[NOTE: Senator Cogdill departed the hearing following this vote.]

BCP-1: Support Additional Rulemaking Requirements (Implement AB 1085).

Background. Chapter 384, Statutes of 2009 (AB 1085, Mendoza) requires the ARB to make available to the public—prior to the start of a regulatory 45-day public comment period—any technical, theoretical, or empirical study, report, or similar document related to, but not limited to, air emissions, public health impacts, and economic impacts used in developing any proposed regulation.

2010-11 Governor's Budget. The Governor requests four positions and $559,000 (special funds) to support the ARB's new AB 1085 rulemaking responsibilities.

Staff Comments. Based on legislative fiscal analyses, implementation of AB 1085 was expected to cost less than $100,000. However, the ARB indicates that because AB 1085 requires substantially more information than has historically been included in the Initial Statement of Reasons that ordinarily accompanies a package of proposed regulations, additional staff resources are required. Under this proposal, the ARB would add one position for each of the areas identified in the bill (air emissions, public health impacts, and economic assessments), as well as a fourth position for general program support.

While staff acknowledges that AB 1085 requires a higher level of public disclosure regarding the analytical bases for ARB rulemaking, it is not clear whether four positions are truly justified. Simply posting links to source materials on the ARB website in order to provide the public with a rulemaking "bibliography" would appear to be a fairly low-cost, time non-intensive activity. However, the ARB reads the AB 1085 intent language as setting a much higher bar. That language is as follows:

> *It is the intent of the Legislature in enacting this act to ensure that the public is provided sufficient information* ***so that interested parties may easily and without undue effort reproduce and verify all aspects of state board staff analysis****, related to, but not limited to, air emissions, public health impacts, and economic impacts, performed during the development of a regulation* [emphasis added].

Based on the intent stated above, the ARB believes it will be held (through litigation if necessary) to a much higher standard than a mere online bibliography. As ARB staff note, approximately a dozen or more lawsuits are already pending against the ARB, and with 20-40 rulemakings a year, the ARB is concerned that many more will follow if it fails to interpret and act upon AB 1085 in its broadest sense.

Staff notes that, notwithstanding the variability of interpretations surrounding AB 1085, the issue of ARB staffing, particularly as it relates to rulemaking, is about time. That is, given more rigorous public disclosure requirements, the ARB can meet its new obligations with existing staff, it will just take more time. Thus, additional staffing really only becomes necessary if the Legislature deems AB 1085 to have significantly increased the ARB's workload and wishes to ensure that ARB can affect new regulations in a timely manner. Given that some of the ARB's most sensitive work, implementing GHG emission reductions pursuant to AB 32, is already tightly governed by statutory timelines, the Committee may wish to carefully consider its desire for timely action by the ARB in weighing whether or not to provide additional staff resources.

Staff Recommendation: HOLD OPEN.

Action: Held open. The Chair noted concern that the estimate provided to Appropriations staff was significantly lower than the amount requested in this BCP. The ARB committed to providing a letter to explain the discrepancy and the need for the higher level of resources. [Staff requests a copy of the DOF bill analysis.]

BCP-2: GF Elimination.

Background. The Governor vetoed $2 million GF (previously allocated to air pollution research) from the FY 2008-09 ARB budget adopted by the Legislature. This left $189,000 GF and about $5.3 million other funds in the research budget. For FY 2010-11, the Governor proposes to eliminate the remainder of the GF in the research budget (the ARB's only remaining GF).

2010-11 Governor's Budget. The Governor requests a $193,000 GF reduction to the ARB budget.

Staff Comments. According to the ARB, the proposed reduction amounts to a 3.6 percent reduction to its research budget. Due to this and past cuts, the ARB hopes to utilize the University of California (UC) more heavily for its contracting, since UC overhead is only 10 percent compared to the typical 50 percent of the ARB's other contractors. The ARB indicates that this reduction will result in no cessation of research work under contract.

Although research is fundamental to the sound science on which we want our laws and regulations to be based, given the acuity of the current fiscal crisis, staff recommends approval of this request.

Staff Recommendation: APPROVE the request.

Action: Approved Staff Recommendation on a 2-0 vote. (Cogdill not present.)

Following this vote, Senator Lowenthal offered comments and concerns regarding State Implementation Plan (SIP) inventory revisions. Specifically, he requested that the ARB, LAO, and Committee staff work with his staff and the pro Tem's staff (as necessary) to develop supplemental reporting language (for adoption at a later hearing) that ensures the Legislature is kept apprised of the ARB's activities to revise the emissions inventory to ensure protection of public health and progress toward attainment of state and federal air standards.

Department Proposed for Vote-Only

3930 Department of Pesticide Regulation

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

Governor's Budget. The Governor's Budget includes $79.1 million (no GF) for support of the DPR, an increase of approximately $10 million, or 14.4 percent, over current year expenditures. This increase is almost entirely in special funds.

1. BCP-1: Transfer Structural Pest Control Board (SPCB) from the Department of Consumer Affairs (DCA) to DPR (Implement ABx4 20) (TBL). Consistent with the reorganization enacted by Chapter 18, Statutes of 2009, Fourth Extraordinary Session (ABx4 20, Strickland), the Governor proposes transfer of 34 positions and $4.6 million (special funds) from the DCA to the DPR. Additionally, the Governor proposes TBL to clarify/ensure that the SPCB retains various enforcement options, such as issuing citations and fines which are authorized for boards and bureaus under the jurisdiction of the DCA, but are not explicitly authorized under the DPR.

Staff Comments. Save for the TBL, this request is technical and conforming to ABx4 20, and staff has no significant concerns. However, staff notes that the TBL contained in the BCP is draft language and so, while acceptable in principle, should be adopted only as "placeholder" should the Committee approve this request.

Staff Recommendation: APPROVE the request.

Action: Approved Staff Recommendation on a 2-0 vote. (Cogdill not present.)

Departments Proposed for Discussion

3690 Department of Toxic Substances Control

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

Governor's Budget. The Governor's Budget includes $197.7 million (including $22 million GF) for support of the DTSC, an increase of $11.3 million, or 6 percent, over current year expenditures. This increase is primarily in special funds (and there is no increase proposed in GF).

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-1: Enforcement of Polluter Pays and Fiscal Integrity. The Governor requests conversion from limited-term to permanent one position and $103,000 (special funds), to continue working down an ongoing backlog of outstanding accounts receivable, and maintain increased delinquent account collections for the DTSC's site cleanup program.

Staff Comments. The position in question was provided on a two-year limited-term basis beginning in FY 2008-09 to address what was then an approximately $50 million backlog of accounts receivable that were 365 days or older. Subsequent to addition of the position, efforts by the new staff person confirmed that accounts receivable actually totaled $55 million. While efforts of the position, over the past year and a half, have reduced accounts receivables to $40.7 (including collections of $7.2 million), a backlog still exists. In addition to continuing to work down the backlog, the DTSC proposes to use the requested position to carry out various ongoing work activities to improve its collections program and boost revenue. Staff has no concerns with this request given that the anticipated revenues more than make up for the costs.

2. BCP-4: Imperial County Certified Unified Program Agency (CUPA) Overtime and Equipment. The Governor requests $360,000 (State Certified Unified Program Agency Account), including $197,000 ongoing, to fully fund the DTSC's role as the Imperial County CUPA. The requested expenditures would be supported from fees assessed on businesses within the county.

Staff Comments. The CalEPA must designate a CUPA for any local jurisdiction that does not have one. The DTSC became the CUPA for Imperial County in 2005; however, the expenditure authority provided at the time has proven insufficient for the department to adequately meet the demand for its services. Staff has no concerns with this request to right-size the CUPA's budget.

3. BCP-5: Strengthen the Used Oil Recycling Program (Implement SB 546). The Governor requests one position and $128,000 (reimbursement authority) to ensure that out-of-state recyclers of California used oil meet the same testing, reporting, and permitting standards as in-state recyclers.

Staff Comments. Chapter 353, Statutes of 2009 (SB 546, Lowenthal) enhanced the Used Oil Recycling Program by leveling the playing field for recycled and re-refined oil by, among other things, requiring out-of-state used oil recycling facilities to meet California's testing, reporting, and permitting standards. Staff has no concerns with this request which would provide the staff resources necessary to ensure that out-of-state California recyclers meet the same high environmental standards as in-state recyclers and, thereby, do not gain a competitive advantage over California businesses.

4. BCP-6: Prohibit Lead Wheel Weights (Implement SB 757) (TBL). The Governor requests one position and $135,000 (Toxic Substances Control Account—TSCA) to enforce a ban on lead wheel weights. Additionally, the Governor requests TBL to clarify that fines and penalties levied under the program (as well as the Lead-Containing Jewelry and Toxics in Packaging programs) would be deposited into the TSCA.

Staff Comments. Chapter 614, Statutes of 2009 (SB 757, Pavley) prohibits the manufacture, sale, or installation in California of wheels weights that contain more than 0.1 percent lead, and requires the DTSC to enforce this prohibition. Staff has no concerns with this request, which would help protect public and environmental health by reducing lead levels, and which reflects a conservative, targeted approach to compliance.

Staff Recommendation (for Vote-Only Items 1-4): APPROVE Items 1-4.

Action: Approved Staff Recommendation on a 2-0 vote. (Cogdill not present.)

DISCUSSION ITEM

1. Capital Outlay BCP-1: Stringfellow New Pre-Treatment Plant.

Background. The Stingfellow Hazardous Waste Site (Site) is a federal superfund site near the community of Glen Avon in Riverside County. Until 1972, the Site received approximately 34 million gallons of highly acidic metal and organic waste, which has seeped into the groundwater. Federal and state courts have declared the State of California to be 100 percent responsible for remediation of the Site and for any damages resulting from any future releases from the Site. The DTSC is working to remediate the Site under the direction of the United States Environmental Protection Agency, and the Governor is seeking continued funding to plan and construct a new pre-treatment plant at the Site.

A new pre-treatment plan is necessary because an underground plume of contaminated water is migrating from the Site and threatens to contaminate the groundwater basin. The proposed plant would be used to pre-treat groundwater before it is discharged into the industrial sewer, which is essential to meet effluent quality standards and land disposal restrictions. The current pretreatment plant was constructed in 1985 as an interim treatment facility, with an intended life of five years.

Governor's Budget. The Governor requests $1.6 million GF for the working drawings phase of the Stringfellow pre-treatment plant. The DTSC anticipates requesting approximately $66.5 million in FY 2011-12 for the construction (FY 2011-12 through FY 2012-13) of the new pre-treatment plant.

Staff Comments. The state is obliged out of concern for public health and safety and in order to meet the requirements of the courts to remediate the Site. Therefore, despite the fact that this is a GF proposal (no other viable fund source currently exists), staff has no concerns with the proposal. However, the Committee may wish for the DTSC to provide an update on the project.

Staff Recommendation: APPROVE the request.

Action: DENIED the request without prejudice on a 2-0 vote. (Cogdill not present.)

The Administration indicated that the requested funds are no longer needed in FY 2010-11, due to delays in preliminary-plan phase of the project. The Committee's denial of the request therefore eliminates the need for a subsequent spring Finance Letter.

[NOTE: Following a vote on State Water Resources Control Board vote-only items (see pages 29-30), Senator Lowenthal departed the hearing. The Chair indicated that, though lacking a quorum, the Committee would hear the remaining items with the intent of bringing those that were ready back as "vote-only" at the next hearing (April 8).]

SB 63-Implementation Budget Proposals

The Governor's Budget contains multiple budget change proposals (BCPs) designed to align the 2010-11 budget with the California Integrated Waste Management Board (Waste Board) reorganization enacted by Chapter 21, Statutes of 2009 (SB 63; Strickland). The specific BCPs are listed below and affect the following departments: Department of Resources Recycling and Recovery (DRRR).

Background. SB 63 eliminated the Waste Board and transferred its responsibilities and duties, along with the Department of Conservation's (DOC) Division of Recycling, to the DRRR, which was created by the bill in the Natural Resources Agency. Additionally, SB 63 transferred the Office of Environmental Education (OEE), including the Education and the Environment Initiative Program, from the Waste Board to the Secretary for Environmental Protection (CalEPA).

2010-11 Governor's Budget. The 2010-11 Governor's Budget includes the following BCPs intended to implement SB 63:

1. Waste Board/DRRR – BCP-1: Eliminate the Waste Board. Deletes all Waste Board funding ($212.1 million) and positions (482.9). This includes 18 Board member and supporting staff positions, and $1.5 million for their salaries and wages. (All other positions and expenditures show up as additions/transfers to the DRRR and CalEPA—see below.)

2. DOC – BCP-9: Separate the Division of Recycling from the DOC. Deletes Division of Recycling funding ($1.2 billion) and positions (282.9) from the DOC budget. (These positions and expenditures show up as additions/transfers to the DRRR and CalEPA—see below.)

3. DRRR – BCP-2: Create the DRRR. Provides $1.4 billion and 765.8 positions to the new DRRR, including $1.2 billion and 282.9 positions from the DOC Division of Recycling (see DOC BCP-9 above) and $212.1 million and 482.9 positions from the Waste Board (see Waste Board/DRRR BCP-1 above).

4. DRRR – BCP-6: Transfer the OEE from the DRRR to CalEPA.
CalEPA – BCP-2: Transfer the OEE from the DRRR to CalEPA. These two BCPs transfer to the CalEPA 6.5 PYs (out of the current 13 PYs) assigned to the OEE—one BCP deletes the resources from the DRRR budget and the other adds them to the CalEPA budget. *(See also DRRR BCP-3, where the remaining 6.5 PYs from the OEE are shifted to activities supported by the Waste Tire Management Fund.)*

Staff Comments. From a technical standpoint, all of the proposals above are consistent with SB 63, except for the transfer of only half of the OEE positions to CalEPA (which is part of the Administration's proposal to prevent a negative balance in the Integrated Waste Management Account—IWMA—see below). Because of this interplay between items, the Committee may wish to reserve action on these SB 63 proposals until after discussion of the IWMA beginning on the next page.

Staff Recommendation: HOLD OPEN until after discussion of IWMA Reduction proposals. If the staff recommendation on the IWMA Reduction proposals is adopted, then APPROVE Items 1-3 and HOLD OPEN Item 4.

Action: Held open. [Items 1-3 will be placed on the vote-only calendar on April 8.]

Integrated Waste Management Account (IWMA) Reductions

The Governor's Budget contains multiple budget change proposals designed to maintain the solvency of the IWMA. The specific BCPs are listed below.

Background. Due to increasing diversion of waste in general and a significant decline in construction waste in the aftermath of the current recession, the IWMA has seen an estimated 30 percent reduction in revenues since FY 2005-06. Meanwhile, average annual expenditures have exceeded revenues by nearly $9 million. While the fund maintains a projected $14.4 million reserve for FY 2009-10 (thanks in part to the repayment in the current year of a $4.8 million loan to the GF), based on historic levels of expenditure, a structural deficit exists in the fund for the foreseeable future. Barring a sudden increase in revenues—from the tipping fees paid by owners and operators of landfills—or a reduction in expenditures, the fund will likely become insolvent in FY 2010-11 or 2011-12.

2010-11 Governor's Budget. The Governor proposes an approximately 30 percent expenditure reduction for each entity receiving IWMA funding. This across-the-board, proportionate reduction crosses six separate BCPs detailed below:

BCP	Expenditure Reduction
1. **DRRR – BCP-4: IWMA Reduction Due to Declining Revenues and Loan from E-Waste Fund (Budget Bill Language—BBL)**. Deletes 16 positions from the waste management and reduction program and $5.8 million (including $1.3 million associated with the positions and $4.5 million in OE&E—including $3 million in contracts). Additionally, requests a $1.5 million loan from the Electronic Waste Recycling and Recovery Account (E-Waste Fund). The Governor proposes BBL to authorize the IWMA to borrow from any special fund controlled by the DRRR for cash flow purposes.	$5,750,000
2. **DRRR – BCP-3: Shift Funding for Ten Positions from the IWMA to the Waste Tire Management Fund (Tire Fund)**. Shifts 10 positions, including 6.5 previously associated with the Office of Environmental Education (OEE)—see prior discussion on page 20—from IWMA funding to the Tire Fund. The request would result in no net increase in Tire Fund expenditures, as the proposal includes a shift of $821,000 from Tire Fund local assistance—Reduction of Waste Tire Enforcement Grants (TEA)—to state operations.	$821,000
3. **DRRR – BCP-5: Shift AB 32 Funding for Six Positions from the IWMA to the Air Pollution Control Fund**. Replaces $501,000 in current IWMA funding for six DRRR positions carrying out climate	$501,000

change activities associated with AB 32 with an equal amount from the Air Pollution Control Fund. These expenditures would be supported by a new AB 32 Cost of Implementation Fee expected to be implemented in September or October of 2010.	
4. CalEPA – BCP-1: Waste Board Funding Reduction per SB 63. Reduces by $954,000 various expenditures from special funds administered by the former Waste Board and now under the control of DRRR, including: (1) $287,000 in salaries and wages associated with positions abolished in fiscal year (FY) 2009-10; and (2) $667,000 in operating expenses and equipment (OE&E) that currently support major policy and program leadership by the Secretary for Environmental Protection. Of these amounts, $771,000 is from the IWMA. The Administration has not clearly articulated what will happen to the policy and program leadership previously supported by these funds.	$771,000
5. State Water Resources Control Board (State Water Board) – BCP-3: Shift Land Disposal Program Funding for 13 Positions from the IWMA to the Waste Discharge Permit Fund (WDPF). Shifts $2 million in State Water Board expenditures from the IWMA to the WDPF. The State Water Board has authority to raise fees annually to conform to the revenue levels assumed in the Budget Act.	$2,027,000
6. Office of Environmental Health Hazard Assessment (OEHHA) – BCP-1: Reduce IWMA Funding for Environmentally Preferred Products Testing. Deletes $108,000 and 0.5 position associated with testing emissions from environmentally preferred products. The Administration indicates this position is currently vacant.	$108,000

Staff Comments. The California Integrated Waste Management Act, Chapter 1095, Statutes of 1989 (AB 939; Sher), established a new approach to managing California's waste stream, including mandated goals for diversion (e.g., recycling) of each city's and county's waste bound for landfills. In order to implement this legislation, the Waste Board was provided authority to collect "tipping" fees based on the tonnage of waste deposited at a landfill. Thus, from its inception, the program has been supported by a revenue stream that would, fee levels held constant, diminish over time if the program was successful.

As noted above, the success of the program at diverting waste away from landfills, combined with a significant decline in construction waste has resulted in a structural deficit in the fund for several years running. In view of the fact that annual revenues have declined by approximately 30 percent since FY 2005-06, the Governor has proposed the roughly 30-percent across-the-board spending reductions outlined above, as well as a modest loan to the fund. According to the Administration, these reductions have been targeted so as to avoid any significant adverse impact to public health and safety.

While the Governor's package of proposals would generally appear to address the short-term solvency of the fund, staff raises the question for the Committee's consideration as to whether the Governor's "across-the-board" approach ensures increasingly scarce IWMA funds are being allocated to their highest and best use. As has been frequently pointed out by the LAO and others over the past several years, an across-the-board approach to reductions, while equitable from a process standpoint, ignores or assumes away the relative value of various funding options. That is, it assumes all programs are of equal priority. In reviewing these requests, the Committee members should ask themselves the question: Do we value all of the affected activities equally?

On this note, staff offers the following, more targeted, comments regarding the above proposals.

1. **DRRR – BCP-4: IWMA Reduction Due to Declining Revenues and Loan from E-Waste Fund (Budget Bill Language—BBL)**.

Staff Comment. Some program reduction is almost certainly necessary to bring the fund into balance and the positions in question were abolished as part of a current-year vacant position reduction drill. Based on the information provided by the DRRR, staff has no significant concerns with the proposed reductions or loan. If the Committee opts to approve this request, then staff recommends adopting the BBL as placeholder in order to allow more time to review and, if necessary, revise the proposed language.

2. **DRRR – BCP-3: Shift Funding for Ten Positions from the IWMA to the Waste Tire Management Fund (Tire Fund)**.

Staff Comment. Of the positions in question, 3.5 are from the waste management and reduction program (similar to BCP-4 above), while the remaining 6.5 were previously associated with the Environmental Education Initiative under the OEE. Staff has no significant concerns with the shifting of positions to the Tire Fund or the shifting of Tire Fund dollars from local assistance to state operations (since the grant dollars in question were, for several years running, not being spent by the locals); however, to the extent that the Administration is still assessing how the proposed reduction in OEE staffing can address Environmental Education Initiative workload, the Committee may wish to hold this item open.

3. **DRRR – BCP-5: Shift AB 32 Funding for Six Positions from the IWMA to the Air Pollution Control Fund**.

Staff Comment. To the extent that the climate change activities of the six positions in question are part of an ARB-approved plan to implement AB 32, staff has no concerns with this proposal; however, the Committee may wish to hold this item open pending future discussion of the ARB's plan and the proposed fee to support it.

4. **CalEPA – BCP-1: Waste Board Funding Reduction per SB 63**.

Staff Comment. As noted above, the Administration has not clearly articulated what will happen to the policy and program leadership previously supported by these funds—i.e., whether they will be deleted or whether their costs will be redistributed within the CalEPA (and, if so, how). Therefore, the Committee may wish to hold this item open until the Administration has provided a workable plan or has demonstrated that the activities and associated personnel are no longer necessary.

5. State Water Resources Control Board (State Water Board) – BCP-3: Shift Land Disposal Program Funding for 13 Positions from the IWMA to the Waste Discharge Permit Fund (WDPF).

Staff Comment. Under current law, the waste discharge permit fee may be waived for landfill operators who pay tipping fees (which have historically supported the State Water Boards regulatory responsibilities via the IWMA). However, with the decline in tipping fee revenues, the IWMA has insufficient funds to support the State Water Board's base regulatory program. As a result, the Governor proposes to shift program support to the WDPF and to require landfills that pay the tipping fee to also pay the waste discharge permit fee (i.e., discontinue the practice of waiving the waste discharge permit fee). Given the fact that State Water Board responsibilities do not change significantly based on whether or not a landfill is still receiving waste and collecting tipping fees (it needs to be monitored either way), there is a legitimate policy rationale for the Governor's proposal. Additionally, this approach is permissible under existing law. However, staff notes that requiring landfills to pay for State Water Board oversight through two different fees (a portion of the tipping fee, and now through the waste discharge permit fee) may not be the most efficient approach to funding these activities. Therefore, the Administration and/or the Legislature may wish to take a closer look at this issue going forward and with an eye toward creating a single State Water Board-only fee (if the State Water Board's share of the tipping fee continues to prove inadequate).

6. Office of Environmental Health Hazard Assessment (OEHHA) – BCP-1: Reduce IWMA Funding for Environmentally Preferred Products Testing.

Staff Comment. According to OEHHA staff, the office was required to eliminate 0.5 of a Public Health Medical Officer (PHMO) position as part of a vacant position elimination drill conducted this past fall. Subsequently, the OEHHA was told that it needed to reduce its IWMA appropriation in order to fulfill its share of the Governor's proposed 30-percent across-the-board reduction solution. Therefore, the OEHHA proposed to eliminate the remaining 0.5 PHMO position. OEHHA staff indicate that elimination of the position, which provides public health oversight of OEHHA's toxicological work in the air program, would result in delayed responses to DRRR requests to review the toxicity and the public health impacts of chemical emissions of concern, or to the emissions of specific chemicals present in recycled materials or products made from recycled materials. Due to this direct nexus with public health and safety, staff recommends the Committee deny this BCP.

Staff Recommendation: APPROVE Item 1 (with placeholder BBL) and Item 5. HOLD OPEN Items 2, 3, and 4. DENY Item 6.

Action: Held open. [Items 1, 5, and 6 will be placed on the vote-only calendar on April 8 (with the same staff recommendations). Item 3 will be held open pending discussion of AB 32 implementation on April 29. Item 4 will be held open pending clarification from the Administration on how the policy and program leadership activities will be funded going forward. Item will be held open pending additional information, requested by the Chair, clarifying the consequences to the EEI of the proposed staffing reduction (i.e., an explanation as to why 6.5 PYs are sufficient to fulfill the program's goals).]

3500 Department of Resources Recycling and Recovery

As previously noted, the DRRR was created pursuant to Chapter 21, Statutes of 2009 (SB 63; Strickland) and is largely the merger of the Waste Board (minus the board members and associated support staff) and the Department of Conservation Division of Recycling. As such, the DRRR protects public health and safety and the environment through the regulation of solid waste facilities, including landfills, and promotes recycling of a variety of materials, including beverage containers, electronic waste, waste tires, used oil and other materials. The DRRR also promotes the following waste diversion practices: (1) source reduction, (2) recycling and composting, and (3) reuse. Additional departmental activities include research, permitting, inspection, enforcement, public awareness, market development to promote recycling industries, and technical assistance to local agencies.

Governor's Budget. The Governor's Budget includes $1.4 billion (no GF) for the DRRR, including $1.2 billion for the Beverage Container Recycling and Litter Reduction Program, and $200 million for the Waste Reduction and Management Program (the old Waste Board).

DISCUSSION ITEMS

1. Trailer Bill Language (TBL): Beverage Container Recycling and Litter Reduction Program ("Bottle Bill" or Program) Overhaul.

Background. At its most basic, the Beverage Container Recycling Program ("Bottle Bill" or Program) collects a deposit on beverage containers of a certain size and material type, refunds the deposit when the container is recycled, and uses the revenue from any unredeemed deposits to support recycling programs (including operating subsidies to processors). As such, the Program's solvency depends upon a less than 100 percent recycling rate.

Previously operated by the DOC, but now under the DRRR, the Program ran quite successfully over the last decade at a recycling rate of between 60 and 70 percent, accruing fund balances sufficient to run a robust set of recycling programs and still lend $100s of millions to the GF. But as the current beverage container recycling rate approached nearly 80 percent, outflows began to outstrip inflows and, despite initial reductions in the summer of 2009, the Program ground to a screeching halt on October 20, 2009, when a 100-percent proportionate reduction was enacted due to an inadequate fund balance.

Even as the Program's fortunes flagged, the Legislature and the Governor tried to hash out a fix. However, the product of the Legislature's labor, SB 402, was ultimately vetoed, and the Program was left to flounder through the fall and into the winter of 2009-10 until the Governor released a new Bottle Bill proposal with his 2010-11 budget.

Governor's Budget. The Governor proposes TBL to make various programmatic and budgetary changes to the Bottle Bill, including the following: (1) incorporate the cost of beverage container recycling into the price paid by consumers; (2) eliminate several "unnecessary" recycling programs and subsidies; and (3) require Beverage Container Recycling Fund (BCRF) expenditures to go through the budget process—currently many are programmed in statute. As proposed, consumers would pay a higher container fee after 2013-14 (based on the findings of a cost study), once prior-year loans to the GF from the BCRF are repaid—with $54.8 million scheduled for repayment in 2010-11 and $98.2 million in 2011-12 (amounts that would be ear-marked solely for payment to processors).

Staff Comments. In the 2010 Eighth Extraordinary Session, the Legislature adopted and the Governor signed ABx8 7, which contained solutions to improve the short-term solvency of the BCRF, including the following:

- Accepted the Governor's plan to accelerate California Refund Value payments by distributors in order to provide a $100 million one-time revenue increase in the current fiscal year, and provided flexibility to allow certain distributors until April 30, 2010, to make first accelerated payment. Additionally, adopted July 1, 2012, sunset to acceleration.
- Consistent with the Governor's proposal to make all program participant's "whole" for the second half of FY 2010-11, authorized program payments retroactive to January 1, 2010.
- Capped processing fee offsets made by the DRRR to manufacturers for the 2010 and 2011 calendar years at 2008 calendar year levels, resulting in approximately $9 million in current year savings and $18 million in budget year savings.
- Identified additional savings of approximately $28 million in the current year (and approximately $56 million in the budget year) via two-year suspensions of various continuous appropriations (Public Resources Code Section 14581).

While these solutions injected badly needed cash into the Program in order to keep recyclers and other participants in business in the short-run, the Legislature did not intend for ABx8 7 to be a permanent or lasting fix to the Bottle Bill. Rather, from the outset (when the Governor's Bottle Bill proposal was first heard in full committee on January 21, 2010), the Senate Budget Committee stated its view that the policy committee process (not the budget process) was the proper venue for an overhaul of the Program. As such, the Committee may wish to inform the Administration that it does not plan to act further on the Governor's Bottle Bill TBL. Staff notes that the LAO also recommends that the Governor's major proposed policy reforms be evaluated in the policy process. Additionally, staff notes that the Bureau of State Audits was recently requested by the Joint Legislative Audit Committee to conduct an expedited review of the Program and its balance sheets, and the Legislature may wish to await the result of this audit before rushing to make any major policy changes.

Staff Recommendation: NO ACTION at this time. Inform the Administration that the Committee does not plan to act further on the Governor's TBL proposal.

Action: Consistent with the Staff Recommendation and the LAO, the Chair indicated to the Administration that the Governor's TBL proposal was best considered in the policy (committee) process, and indicated that the Committee does not plan to consider the proposal futher.

2. TBL: Change the Name of the Department of Resources Recycling and Recovery to "CalRecycle." The Governor proposes TBL to formally change the name of the DRRR to CalRecycle.

Background. As previously noted, SB 63 created the DRRR effective January 1, 2010.

Staff Comments. Based on conversations with DRRR staff, the proposed name change is intended to be more "user-friendly" to the public and create a more recognizable and easily comprehendible "brand" for the department.

Staff notes that, while "CalRecycle" may do each of these things, it is unnecessary to make the requested change in statute. If the DRRR wishes to operate using "CalRecycle" as a "handle," much as the Department of Boating and Waterways goes by the moniker "Cal Boating" (despite any statutory change to this effect), it may do so without a change in statute. In view of the additional facts that: (1) the Governor signed the name "Department of Resources Recycling and Recovery" into law only last July; and (2) "CalRecycle" fails to connote the fact that a large part of the DRRR's mission is waste management (in all its many forms), staff recommends the Committee deny the proposed TBL.

Staff Recommendation: DENY the request.

Action: Held open. The Chair concurred with the staff analysis and offered to the Administration to either let the proposal "die" (no action) or to deny it formally at a future hearing.

3940 State Water Resources Control Board

The State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards (Regional Boards or Water Boards) preserve and enhance the quality of California's water resources and ensure proper allocation and effective use. These objectives are achieved through the Water Quality and Water Rights programs.

Governor's Budget. The Governor's Budget includes $825.6 million (including $34.3 million) for support of the State Water Board in FY 2010-11. This is a 10.3 percent increase over current year expenditures due primarily to a proposed one-time augmentation of $158 million from the Underground Storage Tank Cleanup Fund (see more detail below). The $34.3 million in proposed GF reflects a decrease of approximately $2.4 million in expenditures that are the net result of the Governor's requests to shift various GF expenses to fee-supported special funds.

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-8: Create Waste Water Certification Fund (TBL). The Governor requests TBL to create the Waste Water Certification Fund as a repository for revenues from fees (authorized under current law) charged to certified operators of wastewater treatment plants, applicants to become certified operators, and contract operators for various services associated with certification. Additionally, the Governor requests to redirect one position from frozen general obligation bonds to help administer the increasing operator certification workload. The redirection would involve shifting $97,000 in Proposition 84 expenditure authority to the new fund.

Staff Comments. The Operator Certification program previously operated on a reimbursement basis; however, the State Water Board is now requesting creation of a separate special fund as the program and associated revenues continue to grow.

2. BCP-10: Enforce Mandatory Minimum Penalty (MMP) Violations of Water Quality Requirements. The Governor requests four positions and $384,000 (State Water Pollution Cleanup and Abatement Account) to timely enforce MMP violations.

Staff Comments. The State Water Board indicates that 25 staff have been redirected to address a backlog of more than 12,000 violations that occurred prior to December 31, 2007. While that work is progressing and the backlog will soon be eliminated, the State Water Board expects a new backlog to begin mounting if additional staff are not added to handle the approximately 2,000 new MMP violations that occur annually.

Staff notes that, according to the State Water Board, a minimum of $6 million in penalties would be generated annually if the requested staff are able to process the anticipated 2,000 MMP violations (each assessed a statutorily mandated $3,000).

Thus, this request would generate offsetting revenues while enforcing laws intended to safeguard public health and safety.

3. BCP-11: Waste Discharge Permit Fund Fee Collections. The Governor requests one position and $96,000 to assume front-end research duties and establish a collections strategy on debts owed to the Waste Discharge Permit Fund.

Staff Comments. The State Water Board currently pays the AG approximately $125,000 annually for fee collections. However, due to the current fiscal crisis, the Attorney General's (AG) office is no longer able to support front-end research duties, but will continue to file judgments once the State Water Board identifies which amounts are collectible. According to the State Water Board, the requested position will result in potential collections of $2 million or more per year (compared to $241,000 collected by the AG over one year). Staff has concern with this proposal given its ability to generate revenue sufficient to "pay for" itself.

4. BCP-13: Water Quality and Other Runoff—Watershed Improvement Plan (WIP) Workload (SB 310 Implementation). The Governor requests one two-year limited term position and $158,000 (Water Discharge Permit Fund) to assess the workload and level of service necessary to implement Chapter 310, Statutes of 2009 (SB 310, Ducheny), which allows local agencies to develop their own WIPs.

Staff Comments. SB 310 allows local agencies (locals) that have permits for stormwater systems to voluntarily develop a WIP, subject to approval of the regional Water Board. The WIP enables the local to not only identify regulatory requirements, but to provide a plan to meet them in a way that is most economical and effective. Improved stormwater management via a WIP allows the local to better meet water quality standards (e.g., Total Maximum Daily Loads), and to more effectively conserve stormwater to bolster limited water supplies. The requested limited-term position is intended to help the State Water Board assess the level of service required to enable local agencies to receive timely Water Board approval of their WIPs.

Staff Recommendation: APPROVE the above requests (Items 1-4).

Action: APPROVED the Staff Recommendation on a 2-0 vote. (Cogdill not present.)

DISCUSSION ITEMS

<u>Proposals to Shift GF Expenditures to Fee-Supported Special Funds (Items 1-3)</u>: According to the Administration, the following three items are proposals to help address the state's fiscal crisis by reducing GF expenditures for activities that, based on the "polluter pays" principle, arguably should be supported by fees.

1. BCP-1: National Pollutant Discharge Elimination System (NPDES) Wastewater Program Fund Shift.

Background. In FY 2006-07 the State Water Board redirected $4 million in NPDES federal funds to a different program and fee payers prevailed upon the Legislature and Governor to offset their fee burden by partially backfilling the $4 million with $1.4 million in GF. This proposal would remove the GF and increase fees to replace it.

The NPDES program is authorized by the Clean Water Act and administered by the Water Boards under an agreement with the United States Environmental Protection Agency that requires the Water Boards to help protect water quality by reviewing and renewing discharge permits, monitoring discharge reports, and issuing enforcement actions on permit violations.

2010-11 Governor's Budget. The Governor proposes to remove $1.4 million GF from the NPDES program and replace it with an equal amount from the fee-supported Waste Discharge Permit Fund (WDPF) so that the program would be entirely funded by the WDPF.

Staff Comments. The State Water Board is statutorily required to adjust fees annually to conform to the revenue levels set forth in the Budget Act. According to State Water Board staff, based on current NPDES fee schedules, a proposed 9.3 percent fee increase would be needed to fund this request.

Given the magnitude of the current fiscal crisis, staff has no concerns with the proposed "polluter pays" approach.

Staff Recommendation: APPROVE the request.

Action: Held open. [This item will be placed on the April 8 vote-only calendar, as the Chair noted no concerns with the Staff Recommendation.]

2. BCP-2: Irrigated Land Regulatory Program (ILRP) Fund Shift.

Background. When the ILRP fee schedule adopted by the State Water Board in June 2005, failed to raise the anticipated level of revenue, the Legislature allocated $1.8 million GF in FY 2006-07 to make up the difference. This proposal would remove the GF and increase fees to replace it.

The ILRP regulates discharges from irrigated agricultural lands in order to prevent impairment of the waters that receive the discharges. For example, discharges can affect water quality by transporting pollutants including pesticides, sediment, nutrients, salts (including selenium and boron), pathogens, and heavy metals from cultivated fields into surface waters. Regional Water Boards issue conditional waivers of waste discharge requirements to growers that contain conditions requiring water quality monitoring of receiving waters and corrective actions when impairments are found.

2010-11 Governor's Budget. The Governor proposes to remove $1.8 million GF from the ILRP and replace it with an equal amount from the fee-supported Waste Discharge Permit Fund (WDPF) so that the program would be entirely funded by the WDPF.

Staff Comments. The State Water Board is statutorily required to adjust fees annually to conform to the revenue levels set forth in the Budget Act. According to State Water Board staff, based on revenue estimates for the current agricultural waiver fee schedule, this proposal would require the current 12 cents per acre charge to be increased to approximately 42 cents per acre.

Given the magnitude of the current fiscal crisis, staff has no concerns with the proposed "polluter pays" approach.

Staff Recommendation: APPROVE the request.

Action: Held open. [This item will be placed on the April 8 vote-only calendar, as the Chair noted no concerns with the Staff Recommendation.]

3. BCP-4: Water Rights Program (WRP) Fund Shift.

Background. The Court of Appeal previously found against the state for funding certain WRP workload from a fee-supported special fund—the Water Rights Fund (WRF). Those activities are currently supported by the GF. The Governor is proposing to shift the bulk of these expenditures back to the WRF.

From its inception in 1914 until FY 2003-04, the WRP was primarily supported by the GF (90 to 95 percent). However, due to an earlier fiscal crisis, program funding was cut and eventually shifted entirely onto a fee-supported special fund—the WRF. Subsequently, fee payers challenged the statutes authorizing the WRF and the fees that are deposited into it. While a superior court upheld the fee statutes and associated regulations in their entirety, the Court of Appeal found that in some specific instances (about 30 percent of activities associated with pre-1914 and riparian rights), the benefits accruing to the fee payers were not sufficiently proportional to the size of the fee, and the related regulations were overturned. An appeal of this decision is currently pending with the Supreme Court, which has not yet scheduled oral arguments.

2010-11 Governor's Budget. The Governor proposes to remove $3.2 million GF from the WRF and replace it with an equal amount from the fee-supported WRF.

Staff Comments. The State Water Board contends that the Court of Appeal missed the mark when it concluded that about 30 percent of WRP resources were used to conduct activities associated with pre-1914 and riparian rights (and therefore not to be funded by WRF fees). Instead, the State Water Board contends that this workload uses only about five percent of WRP resources. Therefore, the requested fund shift represents the difference between what the Court of Appeal's estimate and the State Water Board—about 25 percent of WRP funding.

Staff notes that were the Supreme Court to rule against the state's interpretation of the allowable uses of water rights fees, the GF could be required to repay any inappropriate charges (which might include those proposed here).

Staff Recommendation: HOLD OPEN to allow more time to access the legal risks of the proposal.

Action: Held open.

4. BCP-5: Improve Efficiency of Water Rights Permitting.

Background. According to the State Water Board, one of the major delays in processing and enforcing water right permits and petitions is completing California Environmental Quality Act (CEQA) documents by the applicant/petitioner or their environmental consultant. This proposal would enable the State Water Board to pay environmental consultants directly and then seek cost recovery from the applicant/petitioner.

The State Water Board must comply with CEQA when it approves a water right permit or a petition for change of an existing water right. As CEQA Lead Agency, the State Water Board directs water right applicants and petitioners to enter into a Memorandum of Understanding for payment and completion of CEQA activities and documentation, and the applicant/petitioner, State Water Board staff, and the CEQA consultant(s) are all signatories to the memorandum. The current practice is for the applicant/petitioner to select and pay for a consultant, but the consultant works at the direction of State Water Board staff. Under this arrangement, the consultant effectively has two "bosses," and according to the State Water Board it is not uncommon for this to lead to below-par work and/or work stoppages—all of which delays the process. Under the proposed solution, with control over which consultants to hire and serving as the undisputed "boss," the State Water Board believes it will be able to expedite the water rights permit and petition processes.

2010-11 Governor's Budget. The Governor proposes to provide $1 million (Water Right Fund) so that the State Water Board may hire environmental consultants directly and seek cost recovery from applicants/petitioners.

Staff Comments. According to State Water Board staff, the $1 million requested is intended to serve as a pilot project for the proposed new approach, and would be sufficient to fund preparation of CEQA documents for approximately 20-30 permits/petitions.

Staff's primary concern with this proposal is the certainty (or uncertainty as the case may be) with which the State Water Board can recover costs from the applicant/petitioner. As State Water Board staff note, most CEQA documentation for water right approvals is for modifications to existing projects where applicants are operating under less restrictive conditions and, therefore, may not necessarily want to make the changes required under new CEQA documents. Similarly, three-quarters of all applications for new water right permits are for appropriations initiated illegally (without first obtaining a license) where the applicant will continue to illegally divert throughout the application process. In each case, it is unclear what incentive the applicant/petitioner has (or obligation they are under) to pay for CEQA documentation, the contents of which they may not like. Furthermore, to the degree that the CEQA documents cast doubt upon the eventual success of the requested permit or petition, the applicant/petitioner might have less (or no) motivation to pay for services already rendered. Staff notes that the Committee may wish to hold this item open until the State Water Board can adequately demonstrate its ability to recover these costs.

Should the Committee ultimately opt to adopt this pilot project, then staff recommends doing so on a limited-term basis (perhaps three years) and requiring the State Water Board to measure and report on the efficacy of the approach before seeking continued authorization.

Staff Recommendation: HOLD OPEN.

Action: Held open. The State Water Board indicated its intent to use its authority under CEQA to charge applicants/petitioners up-front for services. The Chair requested the Administration to work with staff to develop reporting language intended to allow assessment of the proposed "pilot" program in several years' time. [Regarding reimbursements: Staff requests the State Water Board to clarify whether the intent is to charge applicants/petitioners for all costs up-front, or only partial costs. If the latter, then please explain how compliance will be guaranteed. Regarding reporting language: Staff requests the State Water Board to identify performance metrics that can be used to assess the success of the program in determining whether it should be made permanent or expanded in future years.]

5. BCP-6: Expedite 401 Water Quality Certifications for Federal Energy Regulatory Commission (FERC) Hydroelectric Projects.

Background. Operators of publicly and privately owned hydroelectric facilities must obtain a license to operate from the FERC, which requires a water quality certification issued pursuant to the Clean Water Act (and the more stringent requirement of CEQA) by the State Water Board. According to the State Water Board, this request is intended to provide adequate staffing to address a surge in licensing and relicensing workload as projects initially approved in the 1950s and 1960s come up for relicense and new projects, and is aimed at helping expedite the licensing of new projects in order to achieve the 20-percent Renewable Portfolio Standard (RPS) set in statute as well the 33-percent renewable energy goal targeted by the Governor in Executive Order (EO) 2-14-08.

The State Water Board indicates there are currently 23 projects that are undergoing FERC relicensing, one project undergoing initial FERC licensing, and one undergoing FERC decommissioning. Additionally, there are 11 existing projects that will begin the relicensing process during the next decade, and six new pumped storage projects that may undergo FERC licensing.

2010-11 Governor's Budget. The Governor requests five positions and $603,000 (Water Right Fund), supported by a fee increase, to augment the State Water Board's Water Quality Certification Program.

Staff Comments. As noted above, the FERC licensing process (which can take up to 10 years) requires the State Water Board to issue a water quality certification pursuant to the Clean Water Act as well as the more stringent CEQA requirements. According to the State Water Board, FERC has expressed concern with the protracted time line needed to address CEQA concerns, and has expressed interest in jointly preparing National Environmental Protection Act (NEPA)/CEQA environmental documents as a means of expediting the certification process. For some time, the parties have been working to reach a joint agreement through a Memorandum of Understanding (MOU); however, the State Water Board indicates it will not be able to meet its staffing commitment in the MOU without the requested resources. Staff notes concern that, as of this writing, the details of the proposed MOU are still unclear, particularly in regard to any requirements that would necessitate a State Water Board staffing increase.

State Water Board staff have emphasized the need for the requested resources in order to more timely weigh-in on the large number of projects up for relicensing in order to ensure, among other things, the adequacy of flow criteria (particularly where it affects the Sacramento-San Joaquin River Delta). However, staff notes concern that the BCP explicitly cites the Governor's renewable energy standard EO as driving the need to expedite these "clean" energy projects. As was discussed earlier in this agenda under the Air Resources Board, it is the view of staff, the LAO, and many members, that the Governor has overstepped his authority in directing state departments, including, apparently, the State Water Board, to implement his 33-percent renewable energy goal.

Based on this, and the MOU concern noted above, the Committee may wish to hold this item open.

Staff Recommendation: HOLD OPEN.

Action: Held open. [Staff requests the State Water Board to provide some specific examples of (and quantify when/where appropriate) the benefits of approving these positions and/or the costs of not approving them. That is, what specific environmental benefits or costs avoided will occur if these positions are approved and the State Water Board is better able to participate in FERC relicensing activities?]

6. BCP-7: Augment Basin Planning and Water Quality Standards Program.

Background. The Basin Planning program sets the minimum water quality level that must be achieved in the waters of the state for the protection of beneficial uses. Federal regulations require a triennial review and update of each basin plan; however, according to the State Water Board, a lack of staffing has kept it from fully complying with this requirement. As a result, the State Water Board indicates it has experienced difficulty moving forward with regulatory decisions and is at an increased risk for litigation. The requested augmentation would address this deficiency.

The preparation, adoption, and regular updating of Regional Water Boards' basin plans provides the foundation for all the Water Boards' regulatory action and is required by state law as well as the federal Clean Water Act. Basin plans designate beneficial uses, establish water quality objectives, and specify a program of implementation needed for achieving these objectives for both surface and groundwater.

Between 1990 and 1995, program resources were increased—to 51.4 positions and $4.6 million (GF and bond funds)—in order to update all basin plans. However, as bond funds ran out and special funds were inadequate to make up the difference, the program was reduced to 37.5 positions in FY 1997-98, where it remained until $1 million in funds for contracts was added in FY 2006-07. Although, according to the State Water Board, the workload in this area has increased significantly over the years, no new staff resources have been provided, and the program is currently funded for 37.5 positions and $1 million in contracts.

2010-11 Governor's Budget. The Governor requests 8.9 positions and $746,000 (reimbursement authority), in order to allow third parties to fund priority work.

Staff Comments. The inability of the Water Boards to timely complete required triennial reviews of basin plans threatens the Water Boards' ability to adequately protect public health and safety by setting appropriate water quality standards. Additionally, as noted above, the current lack of resources has increased the state's vulnerability to litigation. For example, the State Water Board notes that in a recent court ruling, the Los Angeles Water Board and the State Water Board were ordered to cease regulation of stormwater discharges that are based on basin plan requirements until such time as the Water Boards complete a new triennial review. The State Water Board notes concern that the need to address an increasing number of lawsuits of this nature could further siphon away resources that would otherwise be applied to updating basin plans.

Although the Administration makes a compelling case for the need for more resources in the basin planning program, staff notes concern with the proposed approach to allow third parties to fund specific Water Board activities. This could create either the appearance, or the reality, of a "pay to play" system which could not only undermine public confidence in the state's water quality standards, but could also lead to "regulatory capture" and a weakening of state water quality oversight. While the State Water Board indicates this request is based on discussion with stakeholders of items of mutual interest, it is not clear how the state would maintain its independence and impartiality if an interested party is paying directly for the State Water Board's work. For example, listed below are a few of the potential projects and the funding/sponsoring entity:

- Santa Ana Water Board – $400,000 per year from the Storm Water Quality Taskforce (funded by Orange, Riverside, and San Bernardino Counties as well as Orange County Sanitation District) to review recreational water quality standards; and $150,000 per year from various cities and water and utility districts to revise the Nitrogen and TDS amendment.
- Central Valley Water Board – $100,000 per year from the California Urban Water Agencies for work on a drinking water policy; and $92,000 per year from the Meridian Beartrack Company for beneficial use assessment and possible de-designation.
- San Francisco Bay Water Board – $100,000 per year from the Bay Area Clean Water Agencies to work on mutually agreed upon issues.
- North Coast Water Board – $50,000 from the Department of Fish and Game to work on revising the Hatcheries Action Plan.

Staff notes, that while most, or all, of the above proposals may be perfectly above aboard, a quick Google search turns up the fact that the Central Valley Water Board previously issued a cease and desist order (in 2001) to Meridian Beartrack Company (see the second bullet) requiring it to meet waste discharge requirements in association with closure of the Royal Mountain King Mine. This history simply highlights the fact that the Water Boards are required to take enforcement action on behalf of the public from time-to-time, and raises the question: Would the Central Valley Water Board, consciously or unconsciously treat a mining company differently if it was, to some degree, fiscally dependent upon that company?

Staff notes that although current law does not allow the Waste Discharge Permit Fund to be used to support planning activities, if the Committee finds a compelling need to better fund basin planning, it may wish to consider a statutory change to permit this option given the concerns with the Governor's proposed funding plan noted above.

Recommendation: HOLD OPEN until the Administration has adequately addressed staff concerns regarding the independence and integrity of its oversight.

Action: Held open. The Chair agreed with staff's concerns regarding the potential perception and/or reality of this becoming a "pay to play" program, and requested the Administration to talk more with staff on how it plans ensure the integrity (independence and impartiality) of the state's oversight.

7. BCP-9: Implement AB 32 Climate Change Scoping Plan.

Background. The California Global Warming Solutions Act of 2006 (AB 32, Nunez) requires the reduction of statewide greenhouse gas (GHG) emissions in California. According to the State Water Board, development, conveyance, treatment, and discharge of water are one of the most energy intensive processes in the state, accounting for 19 percent of California's electrical generation, and are therefore a significant source of GHG emissions. As such, the proposed resources are intended to help the State Water Board implement portions of the Climate Change Scoping Plan (adopted by the Air Resources Board—ARB) intended to: (1) increase the availability of local water supply (thereby reducing the energy needed to transport, store, and convey it over long distances); and (2) increase water recycling at waste water treatment plants, the capture and infiltration or storage of storm water, and promote the development of regional infiltration facilities and neighborhood facilities.

2010-11 Governor's Budget. The Governor requests two positions and $535,000 (Air Pollution Control Fund—supported by the AB 32 Cost of Implementation Fee), to carry out GHG emission reduction measures identified for State Water Board implementation. Of the $535,000 requested, $300,000 is for contract resources to design a system to report on the water-energy benefits achieved and to measure progress towards the targeted GHG reduction for these measures contained in the Climate Change Scoping Plan.

Staff Comments. The California Global Warming Solutions Act of 2006 (AB 32, Nunez) requires the reduction of statewide greenhouse gas emissions (GHG) to 1990 levels by 2020; charges the Air Resources Board (ARB) as the sole state agency responsible for monitoring and regulating sources of GHG emissions; and gives the ARB a role in coordinating with other state agencies and stakeholders in implementing AB 32. Thus, the Committee may wish to defer action on this item until after discussion of AB 32 implementation with the ARB (currently scheduled for hearing on April 29, 2010). Additionally, the proposed expenditures are to be supported from a new AB 32 Cost of Implementation Fee that the ARB expects to levy beginning in fall 2010. This item is also scheduled for discussion on April 29.

Staff Recommendation: HOLD OPEN

Action: Held open pending discussion of AB 32 implementation on April 29.

8. BCP-12: Continuing Program Implementation for Propositions 13, 40, 50, & 84 (BBL).

Background. As the Committee discussed at its March 4 hearing, the cashflow crisis of FY 2008-09 precipitated a bond freeze in December 2008 in which there was insufficient cash to fund existing bond expenditure authorizations. Subsequently, the Treasurer conducted bond sales in March and April of 2009; however, the supply of bond proceeds was still insufficient to meet the statewide demand (reflected by bond appropriations in the Budget Act). As a result, the State Water Board received approximately one third of the money needed to fund its Proposition (Prop) 13, 40, 50, and 84 bond projects. This request is for reappropriation of many of those amounts as well as appropriation of new amounts in order to carry out the intended bond spending plan.

2010-11 Governor's Budget. The Governor requests various reappropriations of Prop 13 and 50 funds, reversions of various Prop 50 and Prop 84 amounts, and various new appropriations, including the following totals for local assistance: Prop 13 – $2.3 million; Prop 40 – $17.9 million; and Prop 50 – $36.5 million. Additionally, the Governor requests BBL to extend the encumberance period for the above amounts from one year to three years (i.e., make them available until June 30, 2013).

Staff Comments. Consistent with the Committee's approach at the March 4 hearing, the members may wish to hold this item open pending further news on spring bond sales and the state's overall fiscal health. Given that approximately two-thirds of the State Water Board's bond needs went unmet in last year's bond sales, the Committee may also want to have the Administration respond to the questions below.

Committee Questions:

1. What was the State Water Board's stated "need" going into the 2009 spring bond sales, and how much did it subsequently receive in the way of bond cash?
2. How many, and what kinds of, projects received funding and did not receive funding? How many projects started before the bond freeze have still not been restarted?
3. Why were State Water Board projects not more competitive in receiving scarce bond proceeds?
4. Does the State Water Board expect any greater success in upcoming bond sales? (Staff notes concern that this BCP indicates that staff previously working on bond-related functions have been redirected and are now working on other activities "for the next few years.")

Staff Recommendation: HOLD OPEN.

Action: Held open pending results of spring bond sales and more information on state's bond cashflow picture. The Chair requested additional information on the status of State Water Board bond projects, including an accounting of the project backlog. [Staff requests the department respond in writing to this request as well as the questions in the public agenda and provide an update on any bond proceeds received from the March 2010 sale.]

BCP-14: One-Time Augmentation for Underground Storage Tank Cleanup Fund (USTCF).

Background. Chapter 649, Statutes of 2009 (Ruskin, AB 1188) temporarily increased storage fees (until January 1, 2013) for each gallon of petroleum placed in an underground storage tank. The Governor requests a one-time augmentation from the fund to spend a portion of these new revenues.

The USTCF is in essence an insurance program supported by petroleum underground storage tank owners who pay a fee for coverage should they have a leak from their underground storage tank. The USTCF provides up to $1.5 million in reimbursement per occurrence to petroleum underground storage tank owners and operators. AB 1188 was passed in order to address a cash shortfall in the fund.

2010-11 Governor's Budget. The Governor requests a one-time augmentation of $158 million to the USTCF.

Staff Comments. Consistent with the requirements of AB 1188, a performance audit of the USTCF was recently released (February 2010) that found, among other things, that the program was premised on reimbursing participants as quickly as possible and, in so doing, lacks sound financial management practices and does not utilize effective cost containment measures. For example, the audit found that the USTCF does not require all claimants expecting reimbursements to provide project plans or cost estimates up front for review and approval prior to cleanup work beginning. The audit linked these inadequacies to the USTCF's 2008 financial crisis as average project costs skyrocketed—rising, over the last four years, from $131,000 to $250,000 (for closed projects) and approaching $400,000 for existing projects.

Given concerns raised by these recent audit findings, the Committee may wish to hold this item open pending an update from the State Water Board on steps it is taking to improve management of the USTCF.

Staff Recommendation: HOLD OPEN.

Action: Held open. The Chair requested the State Water Board to report back on the implementation of audit recommendations. [Staff requests a written update be provided no later than April 30, 2010, for consideration in a May hearing.]

2009 Water Package Implementation Proposals (Items 10-12)

9. BCP-15: Water Conservation Measures (Implement SBx7 7).

Background. Chapter 4, Statutes of 2009, Seventh Extraordinary Session (Steinberg, SBx7 7) enacted various requirements and processes aimed at improving urban and agricultural water planning and reducing statewide water use. Consistent with existing law and past practice, SBx7 7 tasked the Department of Water Resources (DWR) with implementing the bill; however, the State Water Board notes that it is the lead agency in the regulatory and adjudicatory aspects of applying and enforcing water conservation requirements. It is on this basis that the Governor is requesting an augmentation for the State Water Board in association with SBx7 7.

2010-11 Governor's Budget. The Governor requests one position and $155,000 (reimbursement authority) to perform an advisory role in implementation of SBx7 7.

Staff Comments. Staff notes concern that the requested resources are unnecessary as the State Water Board already has staff working on the California Water Plan and the "20x2020 Water Conservation Plan" that can act as advisors on SBx7 7 implementation. However, consistent with Committee actions on March 4, staff recommends this item be held open until all proposals related to the 2009 Water Package have been heard and the Governor's expenditure plan can be assessed in its entirety.

Staff Recommendation: HOLD OPEN.

Action: Held open pending consideration at a future hearing of other pieces of the 2009 Water Package.

BCP-16: Delta Watermaster and Delta Flow Criteria (Implement SBx7 1).

Background. Chapter 5, Statutes of 2009, Seventh Extraordinary Session (Simitian, SBx7 1) established a framework to achieve the co-equal goals of providing a more reliable water supply to California and restoring and enhancing the Delta ecosystem. In support of this effort, SBx7 1 requires the State Water Board to: (1) establish "the Delta Watermaster" to exercise the State Water Board's authority to monitor and enforce orders and license and permit terms and conditions that apply to conditions in the Delta; and (2) develop new flow criteria for the Delta ecosystem necessary to protect public trust resources, and inform planning decisions in the Delta Plan and the Bay Delta Conservation Plan. The requested resources would be used to implement these requirements.

2010-11 Governor's Budget. The Governor requests 4.5 positions and $673,000 (Water Rights Fund) for the Delta Watermaster Program and $590,000 (reimbursement authority) for development of Delta flow criteria.

Staff Comments. Staff notes no concerns with this proposal, as the resources requested are consistent with expectations of the bill's costs at the time of passage. However, consistent with Committee actions on March 4, staff recommends this item be held open until all proposals related to the 2009 Water Package have been heard and the Governor's expenditure plan can be assessed in its entirety.

Staff Recommendation: HOLD OPEN.

Action: Held open pending consideration at a future hearing of other pieces of the 2009 Water Package.

BCP-17: Improve Water Diversion and Use Reporting (Implement SBx7 8).

Background. Chapter 2, Statutes of 2009, Seventh Extraordinary Session (Steinberg, SBx7 8) enacted measures to improve accounting of water diversions, and appropriated existing bond funds for various activities to benefit the Delta ecosystem and secure the reliability of the state's water supply. Additionally, SBx7 8 provided 25 positions and $3.8 million (Water Rights Fund) to the State Water Board for water diversion reporting, monitoring, and enforcement.

2010-11 Governor's Budget. The Governor requests 2.5 positions and $253,000 (Water Rights Fund) to process new and supplemental Statements of Water Diversion and Use (Statements) filed in the first year after enactment, and to prepare emergency regulations that allow for the electronic filing of reports.

Staff Comments. According to the State Water Board, the fact that SBx7 8 deletes various exemptions for diverters, and establishes consequences for failure to file Statements or supplemental Statements will result in a near-term increase in workload justifying the requested resources. However, staff notes that SBx7 8 authorized 25 new positions (and associated funding), and the Legislature's expectation was that the State Water Board would implement the bill out of these resources. Therefore, in all likelihood staff will ultimately recommend this BCP be denied; however, consistent with Committee actions on March 4, staff recommends this item be held open for the time being until all proposals related to the 2009 Water Package have been heard and the Governor's expenditure plan can be assessed in its entirety.

Staff Recommendation: HOLD OPEN.

Action: Held open pending consideration at a future hearing of other pieces of the 2009 Water Package.

SENATE ENVIRONMENTAL QUALITY COMMITTEE
SENATE BUDGET SUBCOMMITTEE 2
INFORMATIONAL HEARING

Oversight on Green Chemistry: Implementation of AB 1879 (Feuer, 2008) and SB 509 (Simitian, 2008)

March 18, 2010
Upon Adjournment of Session
California State Capitol, Room 2040

Green Chemistry

The premise of green chemistry is to design chemicals, materials and processes that protect human health and the environment by replacing hazardous chemicals, processes and products with safer alternatives. There are twelve accepted principles of green chemistry that can be applied to the four main phases of every chemical and product lifecycle: design, manufacture, use and end-of-life. By providing a closed-loop (or lifecycle) system for the design, manufacture, use and management of chemical substances and wastes, green chemistry can prevent human and environmental exposure.

The Importance of Green Chemistry

There are currently more than 80,000 chemicals approved under federal law for use in the United States. Each day, a total of 42 billion pounds of chemical substances are produced or imported in the U.S. for commerical and industrial uses. An additional 1,000 new chemicals are introduced into commerce each year. Approximately one new chemical comes to market every 2.6 seconds. Global chemical production is projected to double every 25 years.

The average U.S. consumer comes into contact with 100 chemicals per day. Given the magnitude of chemical production, use and exposure in the United States, it is crucial to ensure that appropriate testing and safety policies for the design, manufacturer, use and disposal of chemicals and products are in place as safeguards for the protection of human health and the environment.

Chemicals and Human Health Impacts

In 2009, the U.S. Centers for Disease Control conducted the *Fourth National Report on Human Exposure to Environmental Chemicals* which measured 212 chemicals in the blood and urine of a representative population of California. This study and other "body burden" studies quantify known chemicals in human tissues. Many of these chemicals identified in body burden studies have been correlated with decreased male and female fertility, obesity, cancer and chronic diseases and, in animal models, have been shown to have causative effects.

Chemicals play a role in chronic disease. Among children, chemical exposures contribute to 100% of lead poisoning cases, 10-35% of asthmas cases, 2-10% of some cancers and 5-20% of neurobehavioral disorders. And the rate of disease is increasing. Even without clear causative effects, there are clear correlations of increasing disease that may have environmental origins:

- Leukemia, brain cancer, and other childhood cancers have increased by more than 20% since 1975 (Woodruff, 2008, USEPA).
- Breast cancer increased by 40% between 1973 and 1998 (Howe, 2001, JNCI)
- Asthma approximately doubled in prevalence between 1980 and 1995 and has stayed at the elevated rate (Woodruff, 2004, *Pediatrics*; Moorman, 2009, CDC).
- Difficulty in conceiving and maintaining a pregnancy affected 40% more women in 2002 than in 1982. The incidence of reported difficulty has almost doubled in younger women, ages 18–25

(Chandra and Stephen, 1998, *Family Planning Perspectives*; Chandra, 2005, *Vital and Health Statistics*; Brett, 2008, NCHS)
- The birth defect resulting in undescended testes has increased 200% between 1970 and 1993 (Paulozzi, 1999, EHP).
- Autism diagnoses have increased more than 10 times in the last 15 years (NIMH, 2009).

Susceptibility. While studies have established correlative relationships between health effects and body burden, the causality relationship is still unknown. There is still a lack of data concerning how having detectable levels of 212 chemicals impacts an individual's health now and what the health impact of today's exposure is in 30 years. Additionally, what are the potential different impacts on vulnerable populations: pregnant women, infants and children as well as both males and females during prime reproductive years?

Synergy. In addition to susceptibility questions, current scientific tests have not been able to fully determine what the synergistic effects of these chemicals are in the body, i.e., whether they are acting together and amplifying the effects of each other. New studies have provided some preliminary evidence, though, that many chemicals act and disrupt normal hormonal signaling (i.e., endocrine-disrupting), which have been shown to have additive or even multiplicative health effects.

Bioaccumulation and Heredity. Another aspect of the chemicals detected in body burden studies is that they are bioaccumulative, which means they persist in the body, often in fatty tissues, and are not quickly metabolized and excreted from the body, which means that they will add up over a lifetime. For example, although chemicals such as PCBs and DDT have been banned for years, they continue to be found in children today. More recently it has been shown that some chemicals, such as the much-discussed Bisphenol A (BPA), can have epigenetic effects, which means the chemicals and their health effects can be passed on from generation. For example, in a 2010 study in *Life Sciences*, with rats exposed to BPA, the male grandchildren, while not ever directly exposed, were still found to have reproductive defects. These new findings echo the well-known effects of other estrogen-like compounds such as diethylstilbestrol (DES), which has well-documented transgenerational reproductive effects in humans.

The Toxic Substances Control Act (TSCA)

The federal Toxic Substances Control Act of 1976 (TSCA) authorizes USEPA to require reporting, record-keeping and testing requirements, and set restrictions relating to chemical substances and/or mixtures. Certain substances are generally excluded from TSCA, including, among others, food, drugs, cosmetics and pesticides. TSCA addresses the production, importation, use, and disposal of specific chemicals. Among its provisions, TSCA requires USEPA to maintain the TSCA inventory which currently contains more than 83,000 chemicals. As new chemicals are commercially manufactured or imported, they are placed on the list.

TSCA requires the submission of health and safety studies which are known or available to those who manufacture, process, or distribute in commerce specified chemicals; and allows USEPA to gather information from manufacturers and processors about production/import volumes, chemical uses and methods of disposal, and the extent to which people and the environment are exposed.

Data Gaps in TSCA – Within TSCA there are several areas where there are vast gaps in data available about chemicals currently in use in the United States. For example:

- TSCA places the responsibility for conducting health and environmental impact testing on USEPA, not the producer of the chemical substance or mixture. To date, USEPA has conducted testing and published data on 200 chemicals on the inventory of 83,000 chemicals.

- TSCA does not provide for the review of synergistic health and environmental impacts of the potential interactions of the thousands of chemicals and the potential mulitude of exposures and exposure pathways.

- There were 62,000 chemicals in use in 1976 when TSCA was adopted into federal law. TSCA provides for a grandfather clause for those 62,000 chemicals.

- TSCA provides chemical producers protections for confidential business information (CBI), allowing producers to not publicly disclose information about new chemicals entering commerce.

> To date, the USEPA has reported that nearly two-thirds of the new chemicals reported under TSCA over the last 33 years have claimed CBI protection.

Current Actions under TSCA – On September 29, 2009, USEPA Administrator Lisa Jackson announced enhancements to the agency's current chemicals management program under TSCA in an effort to identify chemicals that pose a concern to the public, move quickly to evaluate them and determine what actions need to be taken to address the risks they may pose, and initiate appropriate action. EPA will produce "chemical action plans," which will target the agency's regulatory efforts on chemicals of concern.

On December 30, 2009, EPA posted action plans on phthalates, perfluorinated chemicals, polybrominated diphenyl ethers and short-chain chlorinated paraffins. These action plans summarize available hazard, exposure, and use information; outline some of the risks that each chemical may present; and identify specific steps that USEPA is taking to address those concerns.

However, even with the enhanced efforts, in 2009 the Government Accountability Office found USEPA's implementation of TSCA to be "high-risk" because "EPA has failed to develop sufficient chemical assessment information on the toxicity of many chemicals that may be found in the environment as well as tens of thousands of chemicals used commercially in the United States" and concluded by stating that Congress may wish to amend TSCA and extend the EPA more explicit authority. At a recent Congressional hearing in February 2010, the GAO director again reiterated concerns, brought up new insufficiencies in USEPA's use of the authority and direction of TSCA, and called for legislative reform of TSCA. USEPA's own Inspector General additionally declared on February 17, 2010, a need to make internal reforms to more strictly enforce TSCA and set timelines for how long confidential business information can be kept secret rather than allowing for indefinite disclosure protections.

Green Chemistry in California

For more than a decade, California has struggled to fill in the gaps in TSCA chemical policy. The Legislature has considered over a hundred bills proposing chemical bans and broader chemical policies for California, heard testimony from "battling scientists" and was interested in developing a broader, more comprehensive approach to chemicals policy. (For a review of California legislation in the last decade, see the attached table.)

In 2003, the Senate Environmental Quality Committee and the Assembly Committee on Environmental Safety and Toxic Materials commissioned a report from the University of California to investigate the current legal and regulatory structure for chemical substance and report on how a California chemicals policy could address environmental and health concerns about chemical toxicity, build a long-term capacity to improve the design and use of chemicals, and understand the implications of European policy on the California chemical market.

In 2006, the U.C. Berkeley authors presented the commissioned report, *Green Chemistry in California: A Framework for Leadership in Chemicals Policy and Innovation* and made a connection between weaknesses in federal policy, namely TSCA, and the health and environmental damage happening in California. The report broadly summarized their findings into what they called the "three gaps".

The Three Gaps

- **Data Gap:** There is a lack of information on which chemicals are safe, which are toxic, and what chemicals are in products. The lack of access to chemical data creates an unequal marketplace. California businesses cannot choose and make safer products and respond to consumer demand without ingredient disclosure and safety testing.

- **Safety Gap:** Government agencies do not have the legal tools or information to prioritize chemical hazards. Under TSCA only 5 chemicals out of 83,000 have been banned since 1976. The California legislature has frequently addressed this problem by approving individual chemical bans. Chemical bans come before the legislature because there are very few other mechanisms in place at the federal or state level that can remove harmful chemicals from the marketplace.

- **Technology Gap:** There is an absence of regulatory incentives, market motivation which stems from the data gap, and educational emphasis on green chemistry methodologies and technologies. In order to build a substantial green chemistry infrastructure a coincident investment and commitment must be made to strengthen industrial and academic research and development.

In order to fill the three gaps in chemicals policy, several policy recommendations were made in the 2006 report and expanded in a follow-up 2008 Cornerstone report. To fill the data gap, sufficient information for businesses, consumers and public agencies must be generated to choose viable chemical alternatives. To close the safety gap, known hazards must be addressed, chemical substances need to be prioritized and producer responsibility should be improved. To seal the technology gap, green chemistry education and research should be supported and technical assistance and incentives should be developed. The thesis of these reports explained that a more effective, comprehensive toxics policy approach would streamline California markets' ability to react to new scientific information and proactively protect California's health and environment.

In 2007, the California Environmental Protection Agency launched California's Green Chemistry Initiative within the Department of Toxic and Substances Control (DTSC). The California Green Chemistry Initiative Final Report released in December 2008 included the following six policy recommendations for implementing this comprehensive program in order to foster a new era in the design of a new consumer products economy – inventing, manufacturing and using toxic-free, sustainable products.

1. **Expand Pollution Prevention** and product stewardship programs to more business sectors to focus on prevention rather than simple source reduction or waste controls.

2. **Develop Green Chemistry** Workforce Education and Training, Research and Development and Technology Transfer through new and existing educational program and public/private partnerships.

3. **Create an Online Product Ingredient Network** to disclose chemical ingredients for products sold in California, while protecting trade secrets.

4. **Create an Online Toxics Clearinghouse**, an online database providing data on chemical, toxicity and hazard traits to the market place and public.

5. **Accelerate the Quest for Safer Products**, creating a systematic, science-based process to evaluate chemicals of concern and identify safer alternatives to ensure product safety.

6. **Move Toward a Cradle-to-Cradle Economy** to leverage market forces to produce products that are "benign-by-design" in part by establishing a California Green Products Registry to develop green metrics and tools for a range of consumer products and encourage their use by businesses.

International Green Chemistry Efforts

European Union – REACH

In 2006 the European Union adopted the Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH). REACH requires producers and importers to perform basic toxicity testing on their products and to disclose the identities of chemicals in their products. In addition, REACH prioritized chemicals based on their production volume or the risk-level they pose to humans. These prioritizations have created a warning list of 1100 chemicals that cannot be used in human-contact products and banned the first seven chemicals under this directive in June 2009, musk xylene, 4,4`-diaminodiphenylmethane (MDA), sort chained chlorinated paraffins (SCCPs), hexabromocyclododecane (HBCDD), and three pthalates**,** bis(2-ethylhexyl)phthalate (DEHP), benzylbutylphthalate (BBP), and dibutylphthalate (DBP).

European Union – RoHS.

The Restriction of Hazardous Substances was adopted by the European Union in 2003 and took effect in 2006. RoHS restricts the use of six chemicals, Lead, Mercury, Cadmium, Hexavalent chromium, Polybrominated biphenyls (PBB), and Polybrominated diphenyl ether (PBDE) in electronics and electrical equipment and sets their maximum permitted concentrations to 0.1% or 1000 ppm (cadmium is limited to 0.01%). This regulation has implications for the manufacture and design of many electronic components which relied heavily on the use of heavy metals as well as many commonplace household items that are imported into or sold into the European Union.

Canadian Chemicals of Concern

The Canadian Environmental Protection Act of 1999 governs many aspects of chemical assessment and regulation in Canada, including government screening and categorization of chemicals. The Domestic Substances List, an inventory of approximately 23,000 chemicals, was completed in 2006. The Chemicals Management Plan aims to gather additional information on about 200 high-priority chemicals, with industry required to provide information on their use, manufacturing, and importation. Screening is expected to be completed 2007–10, with risk management assessments completed 2010–13.

International Cooperation on POPs

The Stockholm Convention, also known as the “POPs Treaty,” is a global treaty aimed at protecting human health from persistent organic pollutants, or POPs: toxic compounds that persist in the environment and accumulate in human and animal fat cells. The Convention calls for ratifying governments to take steps to reduce or eliminate the release of 12 specific POPS, and provides technical and financial support for developing countries for its implementation as well as mechanisms for addition of new POPs. The 12 priority POPs are: aldrin, chlordane, DDT, Dieldrin, dioxins, endrin, furans, heptachlor, hexachlorobenzene, mirex, toxaphene, and PCBs. In 2009 parties to the Stockholm Convention agreed to add nine more POPs to its list of 12 substances targeted for elimination. This is the first time new chemicals were added to the list of POPs since the Convention took effect in 2004. More than 50 governments have ratified the convention, including the European Union. The US has signed, but not ratified, the treaty.

Chemical legislation in California the last decade:

Bill	Date	Chemical	Comment	Status
AB 2237 Chu	2002	Cadmium, Hexavalent Chromium, Lead, Mercury	Reduce use in packaging materials	Failed
AB 302 Chan	2003	PBDEs	Phase out penta- and octa-PBDEs by 2008	Chaptered
AB 455 Chu	2003	Cadmium, Hexavalent Chromium, Lead, Mercury	Toxics in Packaging Prevention Act	Chaptered
AB 689 Ortiz	2004	Chemical substances	Biomonitoring Program	Failed
AB 854 Koretz	2004	Perchloroethylene	Complete ban by 2014	Amended*
AB 1006 Chu	2004	Toxic pesticides	Prohibited for use in schools	Failed
AB 1139 Lowenthal	2004	DEHP (phthalate)	Prohibited use in medical device or require labelling	Failed
SB 1168 Ortiz	2004	Chemical substances	Biomonitoring Program	Failed
AB 1940 Chan	2004	High production volume chemicals	Regulate and monitor HPV chemicals	Failed
AB 2587	2004	PBDEs	Amends AB 302 (2003) and defines terms in the PBDE ban/phase-out	Chaptered
AB 263 Chan	2005	PBDEs	Amends prohibition to include fines	Amended*
AB 319 Chan	2005	BPA, Pthalates	Children’s products	Failed
SB 484 Migden	2005	Toxic substances	Safe Cosmetics Act	Chaptered
SB 490 Lowenthal	2005	Hazardous chemicals	Cooperate with Netherlands to compile hazards list	Amended*
AB 815 Lieber	2005	Toxic substances	Permissible exposure limits for hazardous substances	Failed
AB 816 Lieber	2005	Chemical substances	Require chemical distributors to report purchasers of chemicals that can harm employees	Vetoed
SB 600 Ortiz	2005	Chemical substances	Biomonitoring Program	Vetoed
AB 908 Chu	2005	Pthalates	Full prohibition in cosmetics; ingredient listings on internet	Failed
AB 990 Chan	2005	Halogenated solvents	Full prohibition requiring substitutes	Failed
AB 289 Chan	2006	Chemical substances	Testing information	Chaptered

			from manufacturer	
SB 849 Escutia	2006	Chemical substances	Establish CA Environmental Health Tracking Program	Vetoed
SB 960 Simitian	2006	Hazardous waste	Replace DTSC database with links to Massachusetts Toxic Use Reduction Institute	Vetoed
SB 1379 Perata	2006	Chemical substances	Biomonitoring Program	Chaptered
AB 1681 Pavley	2006	Lead	Children's jewelry	Chaptered
AB 2490 Ruskin	2006	Toxic substances	Establish CA Toxic Release Inventory Program	Vetoed
AB 258 Krekorian	2007	Plastics	Control plastic pellet discharges to marine environments	Chaptered
SB 456 Simitian	2007	Diacetyl	Full prohibition	Failed
AB 513 Lieber	2007	PBDEs	Adds deca-BDE ban in electronic products	Failed
AB 515 Lieber	2007	Hazardous chemicals	Permissible exposure limits for hazardous substances	Failed
AB 558 Feuer	2007	Hazardous materials	Reduce use and develop source reduction plan; recommendations for Green Chemistry Initiative	Failed
SB 578 Simitian	2007	High production volume (HPV)	Health info for HPVs already reported to foreign government	Amended*
SB 774 Ridley-Thomas	2007	Lead	Restricts glass bottle lead levels	Chaptered
SB 899 Simitian	2007	Packaging materials	Prohibit packaging with styrene, bisphenol-A, perfluorooctanoic acid, vinyl chloride, nonylphenol, oralkylphenol	Failed
AB 954 Brownley	2007	PVC, Pthalates	Packaging containers	Failed
SB 973 Simitian	2007	Chemicals of concern	Adopt from Canadian list	Amended*
AB 1108 Ma	2007	Pthalates	Children's products	Chaptered
AB 1604 Caballero	2007	Pesticides	Replace with less polluting and toxic fumigants	Amended*
SB 291 Simitian	2008	Chemical substances	Design for the	Failed

			Environment	
SB 509 Simitian	2008	Chemical substances	Toxic Information Clearinghouse	Chaptered
AB 514 Lieber	2008	Diacetyl	Employment prohibition	Failed
AB 558 Feuer	2008	Chemical substances	Test and evaluate hazard traits	Failed
AB 706 Leno	2008	Flame retardants	Extend labeling and use restrictions	Failed
AB 820 Karnette	2008	Polystyrene	Banned food containers	Failed
SB 1230 Maldonado	2008	Phosphorous	0.5% limit in cleaning products	Failed
SB 1313 Corbett	2008	PFOA	Food packaging	Vetoed
SB 1712 Migden	2008	Lead	Cosmetics (lipstick)	Failed
SB 1713 Migden	2008	Phthalates, BPA, lead	Children's products	Failed
AB 1879 Feuer	2008	Chemical substances	Green Chemistry	Chaptered
AB 2694 Ma	2008	Lead	Children's products	Failed
AB 2808 Garcia	2008	Cleaning products	Use environmentally sensitive cleaners and alternatives in schools	Failed
AB 2901 Brownley	2008	Lead	Children's jewelry	Chaptered
AB 3025 Lieber	2008	Polystyrene	Use of recycled material in packaging	Chaptered
SB 757 Pavley	2009	Lead	Wheel weights	Chaptered
AB 1078 Feuer	2009	Consumer products	Define consumer product; trade secret	Failed
AB 1131 Feuer	2009	Toxic substances	Life cycle toxic reduction	Failed
SB 22 Simitian	2010	Chemical substances	OEHHA hazard trait prioritization	Pending
SB 346 Kehoe	2010	Heavy metals; asbestos	Brakes	Pending
SB 443 Pavley	2010	Cleaning products	Risk assessment in supermarkets	Pending
SB 772 Leno	2010	Fire retardants	Exempts infant materials from fire retardant requirements	Pending
SB 797 Pavley	2010	BPA	Children's containers	Pending
AB 821 Brownley	2010	Cleaning products	Use environmentally preferable cleaners in schools	Pending
SB 928 Simitian	2010	Consumer products	Ingredient disclosure	Pending

*Subsequently amended to a new subject

Senate Budget and Fiscal Review—Denise Moreno Ducheny, Chair

SUBCOMMITTEE NO. 2 Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal

Agenda Part I

Hearing Outcomes

(see Subcommittee actions under individual issues)

Thursday April 8, 2010
9:30 am or upon adjournment of session
Rose Ann Vuich Hearing Room (2040)

Consultant: Bryan Ehlers

Environmental Protection

*These items were previously discussed on March 18, 2010, but a voting quorum was not present and no action was taken.

Resources—Environmental Protection—Energy—Transportation

SB 63-Implementation Budget Proposals

The Governor's Budget contains multiple budget change proposals (BCPs) designed to align the 2010-11 budget with the California Integrated Waste Management Board (Waste Board) reorganization enacted by Chapter 21, Statutes of 2009 (SB 63; Strickland). The BCPs are as follows:

1. Waste Board/DRRR – BCP-1: Eliminate the Waste Board. Deletes all Waste Board funding ($212.1 million) and positions (482.9). This includes 18 Board member and supporting staff positions, and $1.5 million for their salaries and wages. (All other positions and expenditures show up as additions/transfers to the DRRR and CalEPA—see below.)

2. DOC – BCP-9: Separate the Division of Recycling from the DOC. Deletes Division of Recycling funding ($1.2 billion) and positions (282.9) from the DOC budget. (These positions and expenditures show up as additions/transfers to the DRRR and CalEPA—see below.)

3. DRRR – BCP-2: Create the DRRR. Provides $1.4 billion and 765.8 positions to the new DRRR, including $1.2 billion and 282.9 positions from the DOC Division of Recycling (see DOC BCP-9 above) and $212.1 million and 482.9 positions from the Waste Board (see Waste Board/DRRR BCP-1 above).

4. DRRR – BCP-6: Transfer the Office of Environmental Education from the DRRR to CalEPA.
CalEPA – BCP-2: Transfer the OEE from the DRRR to CalEPA. These two BCPs transfer to the CalEPA 6.5 PYs (out of the current 13 PYs) assigned to the OEE—one BCP deletes the resources from the DRRR budget and the other adds them to the CalEPA budget.

Staff Comments. These items were previously discussed on March 18 and no concerns were raised with items 1-3. Item 4 was held open for additional consideration.

Staff Recommendation: APPROVE Items 1-3 and HOLD OPEN Item 4.

Action: DENIED Items 1-4 on a 2-0 vote (Cogdill absent). The Chair expressed his disappointment in the quality of the April 1 report on the status of the Beverage Container Recycling Fund (BCRF)—required of the DRRR pursuant to Chapter 5, Statutes of 2010, 8th Extraordinary Session (ABx8 7); and he noted concern that the DRRR had yet to provide all of the information necessary to inform program-reform deliberations of the Legislature and ensure adequate public transparency of the fund. He stressed the need for, and DRRR staff committed to providing, improved performance in this regard.

Integrated Waste Management Account (IWMA) Reductions

The Governor's Budget contains multiple budget change proposals designed to maintain the solvency of the IWMA. The BCPs are as follows.

BCP	**Expenditure Reduction**
1. **DRRR – BCP-4: IWMA Reduction Due to Declining Revenues and Loan from E-Waste Fund (Budget Bill Language—BBL)**. Deletes 16 positions from the waste management and reduction program and $5.8 million (including $1.3 million associated with the positions and $4.5 million in OE&E—including $3 million in contracts). Additionally, requests a $1.5 million loan from the Electronic Waste Recycling and Recovery Account (E-Waste Fund). The Governor proposes BBL to authorize the IWMA to borrow from any special fund controlled by the DRRR for cash flow purposes.	$5,750,000
2. **DRRR – BCP-3: Shift Funding for Ten Positions from the IWMA to the Waste Tire Management Fund (Tire Fund)**. Shifts 10 positions, including 6.5 previously associated with the Office of Environmental Education (OEE)—see prior discussion on page 20—from IWMA funding to the Tire Fund. The request would result in no net increase in Tire Fund expenditures, as the proposal includes a shift of $821,000 from Tire Fund local assistance—Reduction of Waste Tire Enforcement Grants (TEA)—to state operations.	$821,000
3. **DRRR – BCP-5: Shift AB 32 Funding for Six Positions from the IWMA to the Air Pollution Control Fund**. Replaces $501,000 in current IWMA funding for six DRRR positions carrying out climate change activities associated with AB 32 with an equal amount from the Air Pollution Control Fund. These expenditures would be supported by a new AB 32 Cost of Implementation Fee expected to be implemented in September or October of 2010.	$501,000
4. **CalEPA – BCP-1: Waste Board Funding Reduction per SB 63**. Reduces by $954,000 various expenditures from special funds administered by the former Waste Board and now under the control of DRRR, including: (1) $287,000 in salaries and wages associated with positions abolished in fiscal year (FY) 2009-10; and (2) $667,000 in operating expenses and equipment (OE&E) that currently support major policy and program leadership by the Secretary for Environmental Protection. Of these amounts, $771,000 is from the IWMA. The Administration has not clearly articulated what will happen to the policy and program leadership	$771,000

	previously supported by these funds.	
5.	**State Water Resources Control Board (State Water Board) – BCP-3: Shift Land Disposal Program Funding for 13 Positions from the IWMA to the Waste Discharge Permit Fund (WDPF)**. Shifts $2 million in State Water Board expenditures from the IWMA to the WDPF. The State Water Board has authority to raise fees annually to conform to the revenue levels assumed in the Budget Act.	$2,027,000
6.	**Office of Environmental Health Hazard Assessment (OEHHA) – BCP-1: Reduce IWMA Funding for Environmentally Preferred Products Testing**. Deletes $108,000 and 0.5 position associated with testing emissions from environmentally preferred products. The Administration indicates this position is currently vacant.	$108,000

Staff Comments. These items were previously discussed on March 18 and no concerns were raised with items 1 and 5, or with the staff recommendation to deny item 6. Items 2, 3, and 4 were held open for further review.

Staff Recommendation: APPROVE Item 1 (with placeholder BBL) and DENY Item 6. HOLD OPEN Items 2, 3, and 4, as well as Item 5 out of deference to Senator Cogdill (who is absent and wishes to vote on the item).

Action: APPROVED the staff recommendation on a 2-0 vote (Cogdill absent).

SUBCOMMITTEE NO. 2 Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal

Agenda Part II

Hearing Outcomes

(see outcomes under each issue in the agenda)

Day: Thursday, April 8, 2010
Time: 9:30 am or upon adjournment of session
Room: Rose Ann Vuich Hearing Room (2040)

Consultant: Brian Annis

Transportation

2660 Department of Transportation

Department Overview: The Department of Transportation (Caltrans) constructs, operates, and maintains a comprehensive state system of 15,200 miles of highways and freeways and provides intercity passenger rail services under contract with Amtrak. The Department also has responsibilities for airport safety, land use, and noise standards. Caltrans' budget is divided into six primary programs: Aeronautics, Highway Transportation, Mass Transportation, Transportation Planning, Administration, and the Equipment Service Center.

Budget Overview: The January Governor's Budget proposed total expenditures of $13.9 billion ($83 million General Fund) and 21,513 positions, an increase of about $100 million and a decrease of 44 positions over the revised current-year budget. For comparison purposes, Administration is not distributed by program in 2010-11 as it is in the Governor's Budget.

April 1 Finance Letters: On April 1, the Administration requested ten budget revisions that would on net increase Caltrans staffing by 13 positions and reduce expenditures by $12 million. With two exceptions, these April 1 issues are not included in this agenda and will be heard later. The two exceptions are an April 1 request related to bridge inspections and the Americans with Disability Act (ADA) lawsuit – since these topics overlap with two January proposals they are included here so the January proposals can be considered in a more complete context.

Issues on today's agenda: The Subcommittee heard transportation issues on March 11; however, there was not time at that hearing to complete all issues related to Caltrans. Most of the issues on this agenda are those remaining Caltrans issues, with some minor clarifications or additions where the Administration has provided additional detail and with the addition of two April 1 Finance Letter issues.

Issues proposed for Discussion and Vote:

1. **Zero-Based Workload Part I: Capital Outlay Support (LAO Issue)**. The Analyst reviewed the Capital Outlay Support (COS) program at Caltrans and indicates the cumulative evidence suggests that the program is overstaffed and lacks strong management. COS is a $2 billion program within Caltrans with about 12,000 personnel year equivalents of staffing and contract resources (about 90 percent state staff and 10 percent contract staff). The COS program provides the support needed to deliver highway capital projects, including completing environmental reviews, designing and engineering projects, acquiring rights of way, and managing and overseeing construction.

   LAO Findings: The LAO report (which is available at www.lao.ca.gov) makes the following findings:
   - The workload that is assumed in the department's annual COS budget request has not been justified.
   - Although comparisons are difficult, Caltrans appears to be incurring significantly higher costs for COS activities than similar agencies.
   - Comparisons of one Caltrans region to another suggest that COS staffing in at least some regions is excessive. There appears to be little relationship between the number of positions in a region and the size of its capital program.
   - The imposition of furloughs on Caltrans COS staff appears to have had no identifiable impact on its productivity, further suggesting that the department is over staffed for these activities.
   - A review of a sample of Caltrans projects showed that COS costs regularly exceeded the norm, often by a considerable margin.
   - Caltrans lacks systems and processes to manage and control COS costs.

   LAO Recommendations: The LAO report makes the following recommendations:
   - Adopt statutory language to require Caltrans to provide additional COS workload information beginning with the 2011-12 budget.
   - Caltrans should adopt cost controls for COS and report at the hearing the steps the department is taking to control costs.
   - The Bureau of State Audits (BSA) should audit Caltrans staff charging of work hours to projects to determine if these records are accurately kept.
   - Reduce COS by 1,500 position equivalents (state positions and contract resources). This LAO recommendation is subject to change if the Administration is able to provide workload justification for additional staff resources.

   Staff Comments: The LAO review raises serious concerns about the Department's ability to estimate staffing needs and manage resources. Caltrans was not able to reconcile their 2009-10 staffing request to workload data, nor could they provide the LAO with a full explanation of how workload is modeled to produce the staffing estimates. In the absence of any department methodology, the LAO used several proxy measures to estimate total workload and found baseline staff resources should be reduced from about 12,000 to about 10,500, which would reduce costs by approximately $200 million.

Staff Recommendation:

- Hold issue open.
- For the 2010-11 budget, request that the Administration works cooperatively and openly with the LAO and Legislative Staff as it develops its May Revision COS budget for 2010-11. An ongoing challenge with the May Revision workload adjustment is that it does not allow sufficient time for Legislative review as each house only has a week or two to act after the May Revision. The Administration should share their COS estimates in early April to allow a full review.
- For the 2011-12 budget, direct staff to work with the LAO and Administration this spring to develop statutory language that would specify necessary project detail to accompany the 2011-12 COS budget request so the request can be transparent and justified. Future COS requests should be based on solid data and defensible estimates – not unexplainable Caltrans estimates or LAO proxy estimates.

Action: Issue held open. The Chair requested that, in this month of April, the Administration explain their expanded COS data and reporting methodology, as well as preliminary numbers, to Committee staff and the LAO to allow sufficient time to adequately evaluate the upcoming revision to the staffing request. Caltrans agreed to comply with this request. The Chair also directed staff to work with the Administration and LAO to develop statutory language that would specify necessary project detail for future budgets.

2. Zero-Based Workload Part II: Civil Rights, Legal, and Information Technology (2009 Budget Act report). The 2009 Budget Act included language requiring Caltrans to *provide the Legislature information explaining and justifying the workload for the department's legal, information technology, administrative, and civil rights activities for all the department's program*. The report was provided for all the areas except administrative. The Department is proposing to change the administrative budget to "distributive administration" which will result in additional detail as centralized administration will be distributed to the individual program areas in proportion to work performed for each.

Detail from Report: Caltrans outlines staffing and workload for the three programs in the report. The approach the department took was to allocate existing staff to a specific task or activity, based on the activities that people currently perform. So current staffing exactly matches current workload. However, this is not truly a "zero-based" staffing analysis that would define workload first and then rebuild the staffing need from zero. The report includes the baseline budget staffing and funding for each program as follows (in millions):

Area	Personnel Years	Personnel Service Budget	Operating Expense Budget	Total Funding
Civil Rights	58.5	$4.3	$1.9	$6.3
Information Technology	630	$47.2	$2.3 (employee related) $33.3 (IT infrastructure)	$82.7
Legal	293.6	$31.3	$5.9 (employee related) $83.0 (tort and consultant)	$88.9

Staff Comment: This exercise indicates the challenge of zero-based budgeting. Ideally, departments should periodically review workload as it will change in an individual area due to, in these cases, such things as number of lawsuits, number of servers and newness of software for users, and number of contracts to review annually for Disadvantaged Business Enterprise (DBE) program compliance. Such periodic workload analysis might suggest the need for either a staffing augmentation or a staffing reduction.

Staff Recommendation:

- Hold open.
- Ask Caltrans to report back at a future hearing with updated information that would tie all the workload in each area to a relevant workload driver such as number of staff per lawsuit, number of civil rights staff per contract, etc.
- Direct LAO and staff to continue to review the reports and bring back recommendations for staffing adjustments if warranted.

Action: Issue held open. Caltrans testified it was working to compile workload drivers for each area and would be providing additional information to committee staff shortly.

3. **Budget Savings from Executive Orders Part I: Operating Expenses and Equipment**. The Governor has issued Executive Orders (EOs) to direct departments to generate budget savings from reduced operating expenses and equipment (OE&E) expenditures. However, those savings for 2009-10 and 2010-11 are generally not built into department budgets. Caltrans OE&E for the adopted 2009-10 budget was about $2.1 billion.

   Executive Order S-09-09 issued June 8, 2009, required departments to submit a plan to reduce new contracts, extended contracts, or purchases from statewide master contracts in 2009-10 by at least 15 percent. Caltran's adopted plan applied the 15 percent amount to the non-exempted amount of $47 million to generate savings of $7.1 million.

   Executive Order S-14-09 issued July 17, 2009, prohibited departments from purchasing vehicles for non-emergency use, required a 15 percent reduction to fleets, and reduces vehicle home storage permits by 20 percent. Caltran's adopted plan reduces the light duty fleet by 426 vehicles and reduces home-storage permits by 330. Caltrans does not anticipate any ongoing savings from this EO. The revenue from selling California's fleet vehicles was discussed with the Department of General Services as part of the March 11, 2010, Subcommittee #4 hearing.

   Other Caltrans Savings: Despite the relatively modest savings associated with these EOs, Caltrans indicates it has been aggressive in reducing travel, training, information technology purchases, and other such costs that have reduced OE&E costs by a full 10 percent. About $220 million was saved in this manner in 2008-09, and is reflected in the January Governor's budget as savings in the past year. Many of these savings measures are still in place and Caltrans anticipates significant savings in both 2009-10 and 2010-11. However, no savings is currently reflected in the Caltrans budget for 2009-10 and 2010-11.

   Staff Comment: Staff has been working with the department to determine the nature of the 2009-10 savings to understand how much of this can be continued, but the department has been unable to provide many specifics. If some reasonable level of savings can be estimated and scored, the budget would be more accurate and transparent and addition funding would then be available for new maintenance or State Highway Operations and Protection Program (SHOPP) expenditures.

   Staff Recommendation: Adopt a placeholder action that would score savings of $100 million in 2009-10 and $100 million in 2010-11. Direct staff to continue to work with Caltrans to determine a reasonable amount of savings – derived from existing Caltrans action – that can be scored. Direct staff to work with the Administration on a highway maintenance and/or SHOPP augmentation with the savings, which would improve California's infrastructure and create new construction jobs.

   Action: Adopted the staff recommendation on a 2-0 vote, with Senator Cogdill absent. Caltrans testified it will provide requested information to committee staff on anticipated savings in 2009-10 and 2010-11.

4. **Budget Savings from Executive Orders Part II: Workforce Cap**. The Governor issued Executive Order S-01-10 on January 8, 2010, requiring all State agencies and departments to submit a plan to achieve an additional five percent in salary savings. The Legislature recognized these savings in the 8^{th} Extraordinary Session actions and scored the General Fund salary savings of $450 million in AB X8 2. Since related OE&E savings will accompany personnel service savings, AB X8 2 included additional saving of $130 million General Fund. The EO requires departments to submit their workforce cap plans to the Department of Finance and the Department of Personnel Administration by February 1, 2010. The EO requires departments to begin implementing their plans by March 1, 2010.

Caltrans Workforce Cap Plan: On March 24, Caltrans provided the subcommittee staff some initial information on the department's workforce cap plan. The required Caltrans reduction is $80.6 million. Caltrans indicates that in August 2009, it reduced its use of Retired Annuitants from 400 to 81, and in September 2009, it eliminated student assistants. The department has curtailed hiring to increase vacancies and generate salary savings.

Staff Comment: While some information has been provided, there is no detail by program or by fund, and no report of impact of the reductions. The department should outline for the subcommittee any anticipated delay in transportation projects, maintenance, or other activities. Caltrans should also indicate if the workforce cap plan will result in any changes to other Administration budget proposals. For example, April Finance Letter #7 requests five new positions to meet bridge inspection schedules – with the workforce cap, will the Administration still realize a net increase in staffing for inspections, or will the new positions merely be held vacant to meet the required savings?

Staff Recommendation: Hold open for further review.

Action: Issue held open.

5. **Inspection and review of state bridges (BCP #16 & April FL #7).** In BCP #16, the Administration requests to absorb new workload for load rating of State bridges by: (1) redirecting 9 positions that provide engineering support for toll bridge traffic operations in the San Francisco Bay Area; and (2) shifting $1.3 million from the litter pickup budget. The load rating determines the weight or load of vehicles that a bridge can safely carry. The 9 new bridge positions would complete a new load rating assessment of 6,800 State bridges over a ten-year period to comply with new federal requirements. In April FL # 7, the Administration requests 5 new positions and $868,000 special funds and federal funds to add staff for physical inspection of bridges. This backfills for staff redirected to do the more-frequent review of the San Francisco-Oakland Bay Bridge, and to recognize new federal requirements and the state's aging infrastructure. The request also includes a redirection of about $4.8 million in federal bridge funds from local apportionment to state inspections. State funds would be reduced by a net of $1.2 million

   Detail on Request: New load ratings are not required for all State bridges – for example, excluded are those designed to current standards (designed since 1976), and bridges that do not carry vehicular traffic. For the 6,800 bridges in question, the existing load ratings were developed with older computer modeling that did not include all bridge design data and the base load rating cannot be verified or updated with the existing system. The requested positions in BCP #16 would review bridge records, perform a new load rating with new software, and write a summary report for each bridge. The requested positions in FL #7 would perform the physical inspection of bridges. With this request, Caltrans indicates it would have 120.7 personal years to complete bridge inspections.

   Past Legislative Hearings: On January 12, 2009, the Subcommittee held a joint hearing with the Senate Transportation and Housing Committee, and Senate Select Committee on Bay Area Transportation, and the Assembly Transportation Committee, on the topic of *2009 San Francisco-Oakland Bay Bridge Closures and Related Bridge Safety Issues*. Today's hearing is a good opportunity to hear an update from Caltrans.

   LAO Recommendation: The Analyst recommends the Administration look at alternatives that would allow the load-rating work to be completed more expeditiously (instead of over 10 years). For instance, Caltrans could contract out some of the work, or assign more State staff to the task in order to complete the work sooner.

   Staff Comment: Caltrans should explain why the 9 positions performing engineering support for toll bridges are no longer needed, and why this funding request is from redirected litter clean-up instead of a net funding augmentation. Caltrans should explain why 10 years is an acceptable length of time to perform these safety load ratings – instead of a quicker implementation as suggested by the LAO.

Staff Recommendation: Keep issue open for further analysis of alternatives that would result in a more rapid completion of new safety assessments of state bridges.

Action: Issue held open. Directed staff to continue to work with Caltrans to determine the adequacy of the staffing request given the vital nature of this safety work. Additionally, directed staff to review alternatives to a reduction in litter cleanup. The Chair also made an informal request that Caltrans report to the Subcommittee on inspection results of all state and local bridges under the department's purview that include "eyebars." (This was an informal request, no budget bill language or supplemental report language was adopted) Caltrans agreed to provide a report to the Subcommittee with this information.

6. **Americans with Disabilities Act (ADA) Lawsuit (BCP #16 and April FL #9).** In BCP #16, the Administration requests one-time funding of $8.5 million (State Highway Account) to pay attorneys' fees in the ADA lawsuit that was settled in December 2009. The request indicates that the exact amount of the payment is still undetermined, but the settlement agreement sets it between $3.5 million and $8.5 million. Final court approval of the settlement agreement is expected in April or May of this year. In April FL #9, the Administration requests $3.6 million in 2010-11 and 391,000 in 2011-12, to establish three limited-term positions and contract out to implement a transition plan and self evaluation plan and to develop long-term strategies for sustaining ADA compliance within the Department.

   Detail on ADA expenditures: While the budget request only deals with the one-time attorneys' fees, it should be noted the settlement includes agreement from the Administration to spend $1.1 billion over 30 years to make sidewalks and other pedestrian facilities ADA-compliant. The settlement defines minimum expenditures per year as follows:

   - Baseline funding is about $10 million per year.
   - Funding would increase to $25 million per year beginning in 2010-11.
   - Funding would increase to $35 million per year beginning in 2015-16.
   - Funding would increase to $40 million per year beginning in 2025-26.
   - Funding would increase to $45 million per year beginning in 2035-36.

   This funding would be accomplished within the State Highway Operations and Protection Program (SHOPP) funding and Maintenance funding as applicable.

   Staff Comment: Since the funding for increased ADA investments is part of the SHOPP item, no action is necessary for the actual road projects. The BCP request to the Legislature only relates to attorneys' fees. It should be noted that the 2009-10 budget includes new funding of $20 million to fund tort obligations – this was requested by the Governor in an April Finance Letter and approved by the Legislature. Caltrans should attempt first to absorb the cost of attorneys' fees within its current-year legal funding level. If the Subcommittee keeps this item open, the Department should report in May on its ability to absorb this one-time cost within the legal allocation.

   LAO Recommendation: The Analyst recommends holding the legal-fees item open until May, by which time the court is expected to decide the specific amount of attorney's fees that Caltrans will owe.

   Staff Recommendation: Hold open the both BCP #16 and FL #9 issue so the Subcommittee can consider the request with more complete information in May.

Action: Issue held open. Requested that the Administration report the final cost of attorney fees, when the court rules on that issue. The LAO also recommended the addition of a report requirement related to April FL #9.

7. **Cap on Tort Payments (BCP #18).** The Administration requests trailer bill language to place a $250,000 per individual, and a $500,000 per occurrence, cap on the amount of the non-economic damages that can be awarded against the State in a tort action. Additionally, the Administration requests language to limit the State's liability for economic damages to "several only and not joint." This means that if there are several parties at fault, including Caltrans, the department would only be responsible for its proportional or comparative fault and not have to compensate beyond that level (in the situation where other guilty parties had insufficient economic resources to fund their share of the payment). The Governor's proposed budget does not assume any savings from this proposal; however, Caltrans estimates they might see annual savings of approximately $28 million based on past litigation.

Detail on Caltrans' Total Liabilities: The historic tort budget funding and actual expenditures (in millions) are outlined in the following table.

	Budget Funding	Actual Expenditures	Shortfall
2000-01	$41.4	$65.1	$23.7
2001-02	41.4	62.4	21.0
2002-03	41.4	37.5	-3.9
2003-04	41.4	32.7	-8.7
2004-05	41.4	50.3	8.9
2005-06	41.4	66.7	25.3
2006-07	53.6	51.5	-2.1
2007-08	53.6	72.9	19.3
2008-09	53.6	68.8	15.2
2009-10*	73.6	73.6	0
2010-11*	73.6	73.6	0

* Estimate

Staff Comment: While there are Caltrans budget benefits from this request, there are policy implications that are not fully detailed in the Administration's request. This issue may benefit, and time should allow, for this issue to be heard and discussed in policy committees, such as the Judicial Committee, where the full range of issues to consider would be brought to light.

LAO Recommendation: The Analyst recommends that the Legislature evaluate the proposal on a policy basis rather than as apart of the budget process.

Staff Recommendation: Reject this request and suggest proponents pursue the policy process so the implications of this proposal can be more fully understood.

Action: Action held open. Senator Cogdill was unable to attend the hearing, but had made a prior request of the Chair to keep the issue open so his vote could be recorded at a future hearing.

SUBCOMMITTEE NO. 2 Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal

Hearing Outcomes
(See Subcommittee actions under each issue)

Day: Thursday April 15, 2010
Time: 9:30 am or upon adjournment of session
Room: Rose Ann Vuich Hearing Room (2040)

Consultant: Brian Annis

Transportation

Crosscutting Issue – Motor Vehicle Account transfer to the General Fund

Budget Issue: Should the Legislature add a transfer item to the budget to transfer $72 million from the Motor Vehicle Account (MVA) to the General Fund? This is not currently a proposal of the Administration.

Issue Background: The 2009 Budget Act included a $70 million transfer from the MVA to the General Fund. This was a transfer instead of a loan and is allowable because the revenue transferred was not attributable to fee revenue nor was it restricted in expenditure by Article XIX of the Constitution – this part of MVA revenue is sometimes referred to as "non-Article XIX funds". MVA revenue primarily comes from vehicle registration fees, and driver license fees, and supports the operations of the Department of Motor Vehicles (DMV), the California Highway Patrol (CHP), and the Air Resources Board (ARB). About $72 million in 2010-11 revenue comes from the non-Article XIX sources of "sales of documents" and "miscellaneous services to the public." This later category includes the sales of DMV data.

MVA Fund Condition: A primary consideration in determining the prudence of the MVA transfer to the General Fund is the short-term and long-term fund condition of the MVA. The January budget estimates the MVA will end the 2010-11 fiscal year with a reserve balance of $91 million. Total annual revenues for the fund are about $2.5 billion, so a balance of $91 million might be considered a minimum reserve to adequately allow for unanticipated revenue or expenditure changes. In discussions with the Administration, it has come to light that there is about $160 million in unscored savings to the MVA that would bring the reserve to about $250 million.

MVA savings (in millions) and some additional unscored issues or risks

	2009-10 Adjustment	2010-11 Adjustment	Total Adjustment
Savings not scored in Governor's Budget			
Workforce Cap Savings		$63	$63
CHP savings related to radio replacement	$53		$53
Operating expense savings	$26		$26
Savings from capital outlay projects	$12		$12
MVA loan repayment related to AB 32		$6	$6
April Finance Letters		-$3	-$3
TOTAL Savings not scored	**$91**	**$66**	**$157**
Other Unscored Issues / Risks			
Savings from Gov's compensation proposals		$126	$126
Risk from furlough litigation		-$76	-$76
TOTAL net for unscored issues / risks		**$50**	**$50**

This adjusted reserve would seem to allow room to repeat the $72 million MVA transfer to the General Fund and still maintain a prudent reserve for 2010-11. Adding the $72 million transfer to the General Funds would result in the updated MVA reserve falling from about $250 million to $180 million – still $90 million above the reserve anticipated in the January Budget.

The baseline Administration long-term fund condition statement maintains a positive balance through 2012-13 and then becomes insolvent in 2013-14. One factor in the 2013-14 deficiently is an assumption of $99 million for future facilities and some future growth in CHP Officers (beyond those requested in this budget).

Staff Comment: As indicated above, the Legislature approved and the Governor signed the 2009 Budget Act with a $70 MVA transfer to the General Fund. In this year's budget special session, the Legislature approved and the Governor signed legislation (AB X8 9) that directs "non-Article XIX" money in the State Highway Account to the General Fund for bond debt-service reimbursement. Given the remaining significant budget gap, the precedent for using non-Article XIX funds for General Fund relief, and this analysis of the MVA fund condition, the Subcommittee may want to consider taking a budget action to achieve $72 million in General Fund relief by transferring MVA funds to the General Fund. It is possible the Administration may submit May Revision budget requests to the Legislature that would increase MVA expenditures, but it seems unlikely they would be of the magnitude to change this analysis of the MVA fund condition.

Staff Recommendation: Reflect the expenditure savings in the budget as appropriate - direct staff to work with the Administration on the specific adjustments. Approve a $72 million transfer from the MVA to the General Fund as a one-time action.

Action: Approved Staff Recommendation on a 2 – 1 vote with Senator Cogdill voting no.

2720 California Highway Patrol

Department Overview: The mission of the California Highway Patrol (CHP) is to ensure the safe and efficient flow of traffic on the state's highway system. The CHP also has responsibilities relating to vehicle theft prevention, commercial vehicle inspections, the safe transportation of hazardous materials, and protection and security for State employees and property.

Budget Summary: The Governor proposes total expenditures of $2.0 billion (no General Fund) and 11,494.4 positions, an increase of $57 million and an increase of 205 positions.

Activity: (funding in millions):

Activity	**2009-10**	**2010-11**
Traffic Management	$1,676	$1,729
Regulation and Inspection	199	204
Vehicle Safety	45	46
Administration	306	307
TOTAL	**$1,921**	**$1,977**

Major Funding Sources (funding in millions)**:**

Fund Source or Account	**2009-10**	**2010-11**
Motor Vehicle Account (MVA)	$1,724	$1,779
State Highway Account (SHA)	59	60
Reimbursements	113	114
Federal funds	19	18
Other special funds (no General Funds)	6	6
TOTAL	**$1,921**	**$1,977**

Changes since the January 10, 2010, Governor's Proposed Budget: The Administration submitted two April 1, Finance Letters that would increase expenditures by $6.7 million ($2.8 million Motor Vehicle Account), with no change to authorized positions. Both the January and April budget requests are included in this agenda. Additionally, the Administration has indicated expenditure savings in 2009-10 which are not included in the January 10 numbers. The expenditure savings were discussed in more detail in the prior section of this agenda.

Issues Proposed for Vote-Only

1. **Operating Costs for Los Angeles Transportation Management Center (BCP #2):** The Administration requests a permanent augmentation of $191,000 (Motor Vehicle Account) to meet the increased maintenance and operations costs for the Los Angeles Regional Transportation Management Center (LARTMC). The CHP shares this facility with the California Department of Transportation (Caltrans) so the two departments can coordinate responses to more effectively respond to public safety issues, and return highways to full operation. Funding of $885,000 was approved for the CHP for LARTMC costs when the facility opened about five years ago; however, ongoing operations costs have been higher than anticipated and an additional $191,000 is necessary to meet the CHP's share of facility costs.

   Staff Recommendation: Approve this request.

2. **Vehicle Insurance Premiums (BCP #4, as modified by April FL #2):** The Administration requests a permanent augmentation of $4.2 million ($4.0 million Motor Vehicle Account) to meet the increased vehicle insurance costs, which are determined by the Department of General Services (DGS). The DGS billing to CHP will increase to $7.7 million – about $4.2 million more than the CHP budget for this expense. Statute requires the state to self-insure for vehicle insurance and DGS acts as the insurer. Premiums are charged by DGS based on a five-year average of claims and judgments paid.

   Staff Recommendation: Approve this request.

3. **California Motorcyclist Safety Program (BCP #5):** The Administration requests a permanent augmentation of $481,000 (California Motorcyclist Safety Fund) to allow CHP staff to conduct essential compliance visits at selected motorcycle training sites, to increase public outreach on motorcycle safety, and to sponsor research on motorcycle safety measures. The program is supported by a $2 fee on motorcycle registrations. The CHP indicated that the number of motorcycle registrations dipped a decade ago, but has since recovered – registered motorcycles in the state were 675,000 in 1987, 391,000 in 1997, and 773,000 in 2007. Program revenue followed a similar pattern and the CHP indicated it had to permanently reduce outreach and research due to funding constraints in 1997. Revenue has since rebounded with the registrations, but motor cycle collisions and fatalities are also on the rise. The CHP requests to restore certain outreach and research activities discontinued over a decade ago with the goal of reducing motorcycle accidents.

   Staff Recommendation: Approve this request.

4. **Workers' Compensation (BCP #6).** The Administration requests $4.1 million (Motor Vehicle Account) in 2010-11, and ongoing, to fund increased costs for workers' compensation adjusting services. The CHP's cost has increased to a new annual level of $12.3 million. The fee amount is based on two factors: (1) the Master Agreement between the Department of Personnel Administration (DPA) and the State Compensation Insurance Fund (SCIF), which was recently renegotiated to a statewide cost of $78 million per year, and (2) a department's share of open cases to the total caseload for all departments. The CHP has a total of 6,706 open workers' compensation cases which is about 16 percent of the statewide total.

Background: In 2007, the Sacramento District Attorney (DA) released a report on its review of CHP workers' compensation claims. The DA did not find sufficient evidence to charge fraud, but found *the workers' compensation system, as it was administered by the California Highway Patrol in these cases involving its top management, was riddled with opportunities for abuse and misuse*.

Staff Comment: The CHP indicates that it is still focused on fighting workers' compensation fraud within the department. In the period of 2005-2009, the CHP has referred a total 16 cases to the DA's Office for evaluation. The number of new CHP workers' compensation claims fell from an annual average of 1,750 in 2005-2007, to an average of 1,518 in 2008-2009.

Staff Recommendation: Approve the requests.

Summary of Vote Only Issues:

Issue #	Issue Description	Action	Vote
1	Traffic Management Center	Approve	3 - 0
2	Vehicle Insurance Premiums	Approve	3 - 0
3	Motorcycle Safety Program	Approve	3 - 0
4	Workers' Compensation	Approve	3 - 0

Issues for Discussion and Vote:

5. **CHP Enhanced Radio System (CHPERS) (Governor's Budget and Capital Outlay Budget Change Proposals [COBCPs] 1 & 2).** The Administration requests $84.6 million in state operations and $31.3 million in capital outlay funding – for a total of $115.9 million, for the fifth year of the public safety radio project.

   Background: In 2006-07, the Legislature approved this five-year project that had an estimated total cost of $491 million. As the project evolved, the CHP and its partner, the Office of the Chief Information Officer – Public Safety Communications Division (OCIO-PSCD) down-scoped the project to reduce costs, and the CHP now reports a revised total cost of $360 million for <u>a savings to the state of $131 million</u>. Some of this savings was already scored in the January 10 Governor's budget but about $53 million is new savings. The project will enhance radio interoperability with other public safety agencies and provide additional radio channels for tactical and emergency operations. The project involves new radio transmission equipment at CHP facilities, on remote towers, and in CHP vehicles. As part of project approval, the Legislature required annual project reporting for the life of the project - due annually each March 1.

   Detail: This year's budget request is expected to result in the completion of most project components on schedule and under budget. There will be additional expenditures of about $13 million in the out-years for additional radio towers where the existing towers were not structurally strong enough to accommodate new equipment. COBCP 1 requests funding of $3.3 million for preliminary plans and working drawings for eight tower replacement projects (it is the out-year construction of these towers that will cost an estimated $13 million). COBCP 2 will fund construction of 25 tower replacements. The remainder of budget funding is for radio equipment and other costs.

   Staff Comment: While several large State technology projects have failed or succeeded only after large cost overruns and delays, the CHPERS report suggests this project has managed through some unanticipated challenges and appears to be on track to successfully complete with cost savings.

   Staff Recommendation: Approve the budget request.

   Action: Approved budget requests on a 3 – 0 vote.

6. Officer Staffing Augmentation (BCP #18). The Governor requests $17.8 million ($28.5 million ongoing) to add 180 CHP Officer positions (of this number, 85 uniformed positions would be added in 2010-11 and 95 would be added in 2011-12). The funding level includes about $4.8 million for associated vehicles and equipment.

Background: Beginning in 2006-07, the Legislature started approving annual increases in CHP Officer positions. Through this process, about 600 Officers have been added, to bring the total number of authorized Officer positions to 6,491. With this year's request, the number of Officers added since 2006-07 would rise to 780 and the total number of Officers would rise to about 6,671. The Administration indicates their multi-year plan would continue to add additional Officer over the next few years via future budget requests until the total augmentation over the 2005-06 level is 1,000 Officers.

Outcome for Traffic Safety: As the Legislature has approved new CHP positions over the past four years, the Subcommittee has discussed goals and performance measures with the CHP. One goal was to staff all commands on a 24/7 basis – this goal has been achieved with the Officers approved in recent years. The BCP includes various measures of traffic outcomes, such as fatal collisions – that statistic was on the rise through 2005, but has since been falling (the annual number of deaths was 2,141 in 1998, it rose to 2,736 in 2005, but it has fallen to 2,091 in 2008). There are no specific goals for these types of statistics, but clearly the overarching goal is to see these positive trends continue.

Uniformed Staffing Study: Issues related to the efficiency of Officer staffing by location and the efficiency of the use of an Officer's time have also come up in Subcommittee discussions in past years. With a given number of Officer positions, the CHP has to decide where to assign the positions to maximize the public safety benefit. The LAO has also in the past looked at the efficiency of Officer time – for example, the amount of an Officer's time spent filling out reports instead of patrolling the highways. The CHP indicates it has hired a consultant to gather data and put together some recommendations on these issues. The report is complete, but the Administration is still reviewing before publicly releasing the information.

Staff Comment: The CHP should outline some of the positive trends in traffic safety and indicate what measures the Legislature should consider in determining the long-term optimal level of CHP staffing in a funding-constrained environment. Given the completed, but unreleased, staffing study, the Subcommittee may want to hold this open until that report is released. The report may contain information helpful to the evaluation of this budget request.

Staff Recommendation: Keep open pending the release of the staffing study.

Action: Issue kept open pending receipt and review of the staffing study. The Subcommittee also requested the CHP provide comparative data on the CHP's staffing versus officer staffing in other states.

7. Homeland Security Augmentation / License Plate Recognition System (April FL #1): The Administration requests a permanent augmentation of $3.9 million (federal funds) to allow the CHP to expend grant revenue from the federal Department of Homeland Security (DHS), to be distributed via the California Emergency Management Agency (CalEMA). These grants will be used to acquire security equipment and to provide training for coordinating the state security efforts with federal agencies. Items purchased would include commercial radiation detection devices, night vision goggles, and license plate recognition systems.

License Plate Recognition (LPR) System: Of the $3.9 million requested, $2.0 million would fund the purchase of 100 mobile LPR systems strategically located throughout the state and integrated into one LPR network. The CHP indicates this equipment could help track down a suspect, such as in an Amber Alert situation. The CHP also notes, the data would be retained "for a time." Therefore, the system would also store license plate data for every vehicle that passes by an LPR. The CHP indicates they already have some LPR units in operation.

Staff Comments: Last year, this Subcommittee reviewed a Department of Motor Vehicles (DMV) budget request to implement facial-recognition software. The Subcommittee voted to add budget bill language that prohibits expenditure for this purpose unless subsequent legislation authorizes use of this technology. This CHP budget raises similar privacy issues. The Subcommittee may want to hear from the CHP on the privacy implications of this proposal and how broadly the CHP would use the data.

Staff Recommendation: Staff has no budget concerns with the request, but the Subcommittee may want to consider the policy implications of this new CHP database on vehicle location.

Action: Issue kept open. Chair requested that the CHP work with the LAO and legislative staff to explain the CHP internal policy for license plate recognition systems and discuss placing key policies in budget bill language or trailer bill language to sunshine the policy and to create better oversight and accountability.

8. Construction or Renovation of State-owned Facilities (COBCPs #3, 4, & 5). The Administration requests $13.0 million (Motor Vehicle Account) in 2010-11 for three capital outlay projects for state-owned facilities. When future construction costs are added, the total costs for these projects, in 2010-11 through completion, is $52.6 million. Funding for some CHP COBCPs was rejected in the 2009 Budget Act to generate savings in support of the Motor Vehicle Account transfer to the General Fund.

Detail: According to the 2008 California Infrastructure Plan, the CHP occupies 102 area offices, 25 communications centers, 8 division offices, and 39 other facilities including the Sacramento headquarters and West Sacramento Academy. The Administration generally submits three budget requests over multiple years to complete a State-owned capital outlay facilities project. The first step is preliminary plans, the second step is working drawings, and the third step is construction. The three projects and phases are as follows:

- **Oakhurst Area Office – Replacement (Construction):** $10.2 million is requested to replace the Oakhurst Area Office. The Legislature previously approved about $2.0 million for preliminary plans, working drawings, and site acquisition.
- **Oceanside Area Office – Replacement (Working Drawings):** $1.5 million is requested for a replacement facility in Oceanside. The Legislature previously approved about $3.0 million for preliminary plans and site acquisition. The Administration will likely submit a COBCP for 2011-12 requesting approximately $20.0 million for construction.
- **Santa Fe Springs Area Office – Replacement (Working Drawings):** $1.3 million is requested for a replacement facility in Santa Fe Springs. The Legislature approved $6.3 million for preliminary plans and land acquisition for this project in 2007-08. The Administration will likely submit a COBCP for 2011-12 requesting approximately $19.6 million for construction.

Staff Comment: Given the number of aging facilities and growing number of CHP Officers, it is understandable that in any given year, the CHP has a number of facilities projects in process. <u>This year the Motor Vehicle Account (MVA) balance may be sufficient to allow both a transfer of $72 million to the General Fund and advancement on long-term capital outlay projects. If MVA funds are insufficient for both, the Subcommittee may want to prioritize the General Fund relief over the facilities projects</u>.

Staff Recommendation: Approve the requests.

Action: Approved all requests on a 3 – 0 vote.

2740 Department of Motor Vehicles

Department Overview: The Department of Motor Vehicles (DMV) regulates the issuance and retention of driver licenses and provides various revenue collection services. The DMV also issues licenses and regulates occupations and businesses related to the instruction of drivers, as well as the manufacture, transport, sale, and disposal of vehicles.

Budget Summary: The Governor proposes total expenditures of $954 million (no General Fund) and 8,477 positions, an increase of $61 million over the revised 2009-10 level and an increase of 35 positions. The year-over-year budget change is primarily explained by a $67 million spending reduction in 2009-10 due to furloughs and other employee compensation / retirement adjustments.

Activity: (in millions):

Activity	**2009-10**	**2010-11**
Vehicle/vessel identification and compliance	$502	$529
Driver licensing and personal identification	233	254
Driver Safety	111	120
Occupational Lic. And Investigative Services	45	49
New Motor Vehicle Board	2	2
Administration (distributed)	(100)	(107)
TOTAL	**$893**	**$954**

Major Funding Sources (in millions)**:**

Fund Source or Account	**2009-10**	**2010-11**
Motor Vehicle Account (MVA)	$502	$553
Motor Vehicle License Fee Account (MVLFA)*	319	325
Reimbursements	15	14
State Highway Account (SHA)	49	56
Federal funds	2	3
Other special funds (no General Funds)	6	3
TOTAL	**$893**	**$954**

Changes since the January 10, 2010, Governor's Proposed Budget: The Administration submitted three April 1, Finance Letters that would increase expenditures by $4.9 million (no General Fund), with no change to authorized positions. Both the January and April budget requests are included in this agenda. Additionally, the Administration has indicated expenditure savings in 2009-10 which are not included in the January 10 numbers. The expenditure savings were discussed in more detail on pages 1 and 2 of this agenda.

Issues Proposed for Vote-Only

1. **San Bernardino Commercial Driver License Test Center (BCP #1):** The Administration requests a one-time augmentation of $844,000 (Motor Vehicle Account) to relocate the San Bernardino Dedicated Commercial Driver License (CDL) Test Center. The owner of the current facility is unwilling to renew the lease with the DMV, so the department must move to a new location. The DMV believes separate CDL locations promote efficiency and public safety by not bringing larger commercial vehicles to the standard field office location.

   Staff Recommendation: Approve this request.

2. **Document Imaging (April FL #1):** The Administration requests a one-time augmentation of $4.8 million (federal funds) and three one-year limited-term positions to the purchase and implementation of a digital imaging system in field offices statewide. The federal funds come from two federal grants: (1) a $3.2 million 2008 Real ID Demonstration Grant, and (2) a $1.6 million 2010 Driver License Security Grant. DMV indicates these funds do not require matching state funds, nor do they require that the state become "REAL ID compliant." Under existing practice, DMV photocopies identity documents at field offices, mails the copies to DMV headquarters, and then runs them through a high speed scanner for storage. Under the new system, DMV would scan the documents at the field office and electronically transmit them to headquarters. DMV indicates the new process would be more secure and efficient.

   Staff Recommendation: Approve this request.

3. **Website Infrastructure Information Technology Project (April FL #2):** The Administration requests to extend the liquidation period for the remaining $7.4 million remaining unexpended for the Website Infrastructure (WSI) project. In 2006-07, the Legislature approved funding for this project to improve the DMV's website so additional transactions could be completed on the internet and annual field office visits could be reduced by up to 2.2 million people. The project has been delayed due to the bankruptcy of the original vendor, BearingPoint. DMV reports that IBM is now the replacement vendor and under contract.

   Staff Recommendation: Approve this request.

4. **Gold Star Family License Plates (April FL #3):** The Administration requests $115,000 from the Special License Plate Fund to implement the Gold Star License Plate program. This program is newly established by SB 1455 (Chapter 309, Statutes of 2008, Cogdill) to provide specialized license plates to eligible family of a member of the Armed Forces who was killed in the line of duty. For families who wish to apply for these plates, there is no charge.

   Staff Recommendation: Approve this request.

Summary of Vote Only Issues:

Issue #	Issue Description	Action	Vote
1	San Bernardino Dedicated Commercial Driver License (CDL) Test Center	Approve	3 - 0
2	Document Imaging	Approve	3 - 0
3	Website Infrastructure Project	Approve	3 - 0
4	Gold Star Family License Plates	Approve	3 - 0

Additional Action: Subcommittee requested that the Administration work with the LAO and legislative staff to develop budget bill language to specify that no funds in the Budget Act may be used in for Radio Frequency Identification (RFID), nor shall the DMV implement any future use of RFID without explicit legislative authorization.

Issues for Discussion and Vote:

5. **Budget Requests related to Driving Under the Influence (DUI) – (BCPs #8 and #10).** The Administration requests $3.0 million ($1.8 million federal funds, $1.2 million Motor Vehicle Account) and 19 new positions for DUI programs.

   - DUI Internet System / BCP #8: The Administration requests $1.8 million from a U.S. Department of Homeland Security grant (and no new positions) to fund a security upgrade to the identification process for the DUI Internet system. The DUI system is a mechanism for drug and alcohol treatment providers to provide data to the DMV concerning individuals who have a DUI. The DMV indicates the current system does not meet best-practices for the protection of personal identity data.
   - Ignition Interlock Devices / BCP #10: This BCP includes two component: (1) a three-county pilot program instituted by AB 91 (Chapter 217, Statutes of 2009, Feuer) to require ignition interlock devices for first-time DUI violators; and (2), a program instituted by SB 598 (Chapter 193, Statutes of 2009, Huff) that would allow repeat DUI violators an option to regain full driving privileges in a shorter period of time by installing and utilizing an ignition interlock device. An Ignition Interlock Device (IID) is a devise installed in a motor vehicle that tests the sobriety of the driver and locks the ignition if alcohol is detected. The budget request for AB 91 is $962,000 and 16 new positions, and the budget request for SB 598 is $188,000 and 3 new positions.

   Staff Comment: According to the DMV, in 2007 there were a total of 203,866 DUI arrests, of which 32,272 involved fatalities and/or injuries. The DMV indicates there will be a $45 fee applied to individuals who obtain an ignition interlock device, which will generate $1.3 million annually to fund the programs.

   The analysis for AB 91 indicates a DMV estimate of one-time programming costs of $300,000, and the bill requires that DMV obtain non-state funding for these costs prior to the implementation of the program. The BCP does not speak to this, but the Administration indicates the DMV received an Office of Traffic Safety grant of $345,000 (federal funds) to complete the programming work. This grant was received within existing DMV budget authority. The DMV expects to have the programming work completed by July 1, 2010.

   Staff Recommendation: Approve these requests.

   Vote: Approved budget requests on a 3 – 0 vote.

6. Capital Outlay - Construction or Renovation of State-owned Facilities. The Administration requests $34.6 million (special funds) in 2010-11 for six capital outlay projects for state-owned facilities.

Detail: According to the 2008 California Infrastructure Plan, DMV occupies 98 state-owned facilities, 117 leased facilities, and shares an additional 12 facilities with other state agencies. The Administration generally submits three budget requests over multiple years to complete a State-owned capital outlay facilities project. The first step is preliminary plans, the second step is working drawings, and the third step is construction. The six projects and phases are as follows:

- **Oakland Field Office Reconfiguration (Working Drawings and Construction):** $2.2 million is requested for 2010-11 ($155,000 is requested for working drawings and $2.1 million is requested for construction). The Legislature previously approved $145,000 for preliminary plans. This project is related to a 2008-09 BCP to consolidate the Oakland telephone service center into a new Central Valley facility. With the space opened up in the existing Oakland facility, the DMV would then reconfigure the second floor of the existing Oakland field office to house a DMV Business Service Center.
- **Fresno DMV Field Office Replacement Project (Working Drawings and Construction):** $19.9 million is requested for 2010-11 ($1.2 million for working drawings and $18.7 million for construction). The Legislature previously approved $912,000 for preliminary plans. This project will replace the existing facility at 655 West Olive Avenue that is 46 years old and is deficient in size and does not comply with current safety and accessibility codes. The DMV intends to meet a Leadership in Energy & Environmental Design (LEED) silver certification.
- **Stockton Field Office Reconfiguration (Construction Phase):** $3.5 million is requested for 2010-11. The Legislature previously approved $309,000 for preliminary plans and $310,000 for working drawings. Separately, a new Stockton field office is being constructed, and this BCP converts the existing facility (at 710 North American Street) into a stand-alone driver-safety office.
- **Victorville Field Office Reconfiguration (Construction Phase):** $3.7 million is requested for 2010-11. The Legislature previously approved $331,000 for preliminary plans and $308,000 for working drawings. DMV proposes to address physical infrastructure deficiencies by adding additional production terminals and expanding parking capacity.
- **San Bernardino Field Office Reconfiguration (Construction Phase):** $2.2 million is requested for 2010-11. The Legislature previously approved $217,000 for preliminary plans and $198,000 for working drawings. This project would add capacity to the existing office by shifting the current dealer vehicle registration workload to leased space and adding additional production terminals and lobby space.
- **Redding Field Office Reconfiguration (Working Drawings and Construction Phase):** $3.1 million is requested for 2010-11 ($237,000 for working drawings and $2.9 million for construction). The Legislature previously approved $258,000 for preliminary plans. This project would add capacity to the existing office by adding additional production terminals and lobby space.

Staff Comment: Given the number of aging facilities and growing state population, it is understandable that in any given year, the DMV has a number of facilities projects. Funding for some DMV COBCPs was rejected in the 2009 Budget Act to generate savings in support of the Motor Vehicle Account transfer to the General Fund. This year, the Motor Vehicle Account (MVA) balance may be sufficient to allow both a transfer of $72 million to the General Fund and advancement on long-term capital outlay projects. If MVA funds are insufficient for both, the Subcommittee may want to prioritize the General Fund relief over the facilities projects.

LAO Recommendation: The Legislative Analysis recommends the Legislature reduce the amount of funding for capital outlay projects by $23.7 million. The LAO reviewed the timeline for projects and found the Oakland, Fresno and Redding projects will not need construction funds until 2011-12. If construction funds are not needed until 2010-11, they should be requested in next year's budget process.

Staff Recommendation*:* Approve these requests, with the reduction recommended by the LAO***.***

Action: Approved requests for Stockton, Victorville and San Bernardino on a 3 – 0 vote. Held open the remaining requests for Oakland, Fresno, and Redding, to further review the LAO recommendation to delay appropriation for the construction phase until the 2011-12 budget.

7. New Facility Leases for Field Offices (BCP #1): The Administration requests a one-time augmentation of $983,000 (various special funds) to relocate the following four field offices to new leased facilities: Roseville, Lancaster, Palmdale, and Fontana. The Lancaster and Palmdale offices would be consolidated into one large field office. The Administration intends to submit an additional BCP request next year for Department of General Services (DGS) fees, equipment, cabling, and telecommunication costs. The DMV indicates the moves are necessary to address capacity deficiencies.

Background: Last year, the Administration requested $6.7 million for preliminary plans and site acquisition for state-owned replacement facilities for Roseville and Fontana. Those funding requests were denied without prejudice due to budget constraints.

Staff Comment: The Subcommittee may want to hear from the Administration on why the Roseville and Fontana projects have been converted from state-ownership to leases. In past years, the Administration has indicated the decision to own or lease was based on a long term analysis of demographics and levels of risk concerning future needs. A discussion on this point might be helpful as the Subcommittee considers the benefits of owning versus leasing.

Given the number of aging facilities and growing state population, it is understandable that in any given year, the DMV has a number of facilities projects. Funding for some DMV facility projects was rejected in the 2009 Budget Act to generate savings in support of the Motor Vehicle Account transfer to the General Fund. <u>This year the Motor Vehicle Account (MVA) balance may be sufficient to allow both a transfer of $72 million to the General Fund and advancement on long-term capital outlay projects. If MVA funds are not sufficient for both, the Subcommittee may want to prioritize the General Fund relief over the facility projects</u>.

Staff Recommendation: Approve this request.

Action: Approved requests on a 3 – 0 vote.

2700 Office of Traffic Safety

Department Overview: The Office of Traffic Safety (OTS) is responsible for allocating federal grant funds to State and local entities to promote traffic safety.

Budget Summary: The Governor proposes total expenditures of $96.5 million (no General Fund) and 34.0 positions – about the same as the current year. The Administration did not submit any Budget Change Proposals (BCPs) for OTS.

Issue Proposed for Discussion:

1. **Driving under the influence (DUI) checkpoints and vehicle seizures (informational issue):** Of the public safety grants OTS issues to local governments, about $14 million is used annually for DUI enforcement checkpoints. While not required by federal law, OTS has adopted "best practice" guidelines for DUI checkpoints that include asking for driver licenses (DL). When it is determined a driver is not carrying a valid driver license, current California law directs the seizure of the vehicle and impound of the vehicle for 30 days. According to the Investigative Reporting Program at the University of California, Berkeley, fees and charges to recover vehicles range between $1,000 and $4,000. These fees and charges generate an estimated $40 million annually that is paid to towing companies and local governments.

   Discussion points: While the Legislature has approved budget funding for DUI checkpoints and has passed laws requiring vehicle seizures for unlicensed drivers, there are no provisions in state law suggesting DUI checkpoints should be used for DL checks. Since the Administration has implemented this policy without Legislative direction, the Subcommittee may want to hear from OTS on the budget and policy implications of this action. The below bullets suggest some key issues:

   - Is it good policy to expand the DUI checkpoints into "DUI and DL checkpoints?" Does the DL examination reduce the number of drivers that can be checked for sobriety (due to additional time to review a license and seize a vehicle)?
   - Is it legal to stop cars without probable cause for a DL check? – the U.S. Supreme Court has ruled that DUI checkpoints are legal and do not violate the unreasonable search and seizure provisions of the US Constitution, but is this also true for DL checkpoints? Are DL checkpoints similarly effective and necessary?
   - Are vehicles being seized when a licensed driver is present, or can quickly arrive, to take control of the vehicle? If yes, how does seizing the vehicle meet a "community caretaker" test for public safety?
   - Have seizure fees ($1,000 to $4,000) become unreasonably high, and is the revenue generation becoming the driving force instead of public safety?

Staff Recommendation: Take no action on the OTS budget. If the Subcommittee wishes to modify the OTS budget at a later date, the department can be brought back.

Action: Held the Department's budget open. Requested that OTS provide the following information: (1) list of 31 cities with high DUI rates; (2) November 2009 court decision upholding driver-license-only checkpoints (and copies or other relevant caselaw); (3) 1996 Attorney General letter on driver-license verifications at DUI checkpoints; (4) OTS policy on checkpoints; and (5) funding for DUI checkpoints beyond OTS grants.

2665 High-Speed Rail Authority

Department Overview: The California High-Speed Rail Authority (HSRA or Authority) was created by Chapter 796, Statutes of 1996, to direct development and implementation of inter-city high-speed rail service that is fully coordinated with other public transportation services. The cost to build the initial phase (from San Francisco to Anaheim) is currently estimated by the HSRA to cost $43 billion (in year-of-expenditure dollars). Of the $43 billion cost, about $11.3 billion is currently "in hand" – $9 billion from Proposition 1A of 2008 (Prop 1A) and $2.3 billion in federal stimulus funds. The HSRA 2009 Budget Plan indicates the remainder of project funding will come from the federal government (~$15.7 billion), local governments (~$4.5 billion) and private funding through selling the concession (~$11 billion). The work of the department is primarily performed by contractors. Even with the 29 new positions requested by the Governor this year, the HSRA state staff would only total 40.5 positions. The number of position-equivalents in contract staff in 2009-10 is 469 positions.

January Budget: The January Governor's Budget proposed funding of $958 million for the HSRA ($583 million Prop 1A and $375 million federal funds). This compares to 2009-10 funding of $139 million (all Prop 1A funds). The 2009-10 budget included 11.5 authorized positions for HSRA and the January budget proposes 40.5 positions for 2010-11.

April Finance Letters: The Administration significantly modified its proposed HSRA budget on April 1 – the proposed funding was cut in half, from $958 million to $461 million. The largest budget adjustment was reducing acquisition (or right-of-way purchases) from $750 million to $250 million. The Administration also changed the funding split such that half of the capital outlay costs are Prop 1A and half are federal funds.

Prior Legislative Hearings: This Subcommittee has had two joint hearings with the Transportation and Housing Committee this year on the topic of high-speed rail and the HSRA December 2009 Business Plan. The first hearing was January 19 in Sacramento and the second hearing was January 21 in Palo Alto.

Summary table of the Governor's HSRA budget (as modified with April 1 Finance Letters (FLs)): The core permanent funding for the HSRA is only about $2.0 million, which is the funding for the current staff of 11.5 positions and the related office lease and equipment. Therefore, 99 percent of the HSRA budget for 2010-11 is included in budget change proposals (only the $2.0 million is baseline and not included in a BCP or April FL). The below table summarizes the HSRA budget by category.

Agenda Issue Number	Activity	BCPs or April FL	Positions or Contractor Equivalent	Funding Amount (in millions)
1	Baseline funding for state staff and operations (April FL for technical correction)	April FL 5	11.5	$2.0
2	New HSRA state staff	BCPs 2, 6, 8, April FL 1&6	29.0	$3.8
3	Program Management Contracts (including oversight contract)	BCPs 1&7	75.6	$39.0
4	Contracts with other governmental units	BCP 12 April FL 2&3	na	$5.0
5	Specialty contracts (for forecasts, communications, etc.)	BCPs 3, 4, 5, & 11	25.2	$4.2
6	Engineering Contracts for design and environmental	COBCP 1&2 April CO 1	368.2	$157.3
7	Acquisition of land / right of way	COBCP 1 April CO 1	na	$250.0
	TOTAL Budget Request		**509.5**	**$461**

* Position data is state "positions" for 2010-11 and the contractor equivalent is "personnel year equivalents" for 2009-10 (contractor position information for 2010-11 was not available).

The remainder of this agenda is organized consistent with the grouping and sequence of issues in this table. Additional Legislative Analyst and Committee Staff issues are grouped at the end of the agenda (Issues 8 and 9).

Issue Proposed for Vote Only:

1. **Baseline funding for state staff and operations – Technical Correction (April FL #5).** The Administration requests $289,000 as a technical correction to restore existing permanent funding that was inadvertently deleted in constructing the 2010-11 budget.

   Staff Recommendation: Approve the request.

   Action: Approved on a 2 – 1 vote with Senator Cogdill voting no.

Issues Proposed for Discussion:

2. New HSRA State Staff: The updated Administration budget request (including April Finance Letters) in the area of state staff totals of $3.8 million from Prop 1A bond funds and adds 29 state positions. The HSRA hired the firm KPMG to perform an organizational assessment of future staffing needs and organization. The function organization chart from that study is the last page of this agenda.

Detail: The six requests are as follows:

- BCP #2 – Staff for Preliminary Engineering and Design/Project Environmental Review: The Administration requests $1.4 million for 12 positions to review engineering and design work of the consultants to ensure that state and federal laws, regulation, and processes are followed. Included in the 12 positions, is a Chief Financial Officer and a Chief Program Manger.
- BCP #6 – Right-of-Way Preservation and Acquisition: The Administration requests $190,000 for two Right-of-Way Agent positions to identify at-risk properties and begin the preservation and procurement process.
- BCP #8 – Management and Administrative Staff: The Administration requests $2.0 million for 13 positions. Included in the funding is $254,000 for interdepartmental service to augment funding for Department of Justice services. The new positions will fill the following roles: regional directors, information officer, senior/associate management auditor, staff/associate information systems analyst, staff services manager, and support staff.
- April FL #1 – Accounting Positions: The Administration requests $217,000 and two accounting positions to implement the California State Accounting and Reporting System (CALSTARS) at the HSRA. The HSRA accounting functions are currently performed through an interagency agreement by the Department of General Services (DGS). CALSTARS is the accounting system used by most state departments.
- BCP #6 – Pay increase for Executive Director: The Administration requests $392,000 to augment the compensation of the existing Executive Director position. Of this amount, $150,000 would be one-time for recruitment incentives and moving expenses, the remainder would be ongoing. According to the Administration's *Salaries and Wages*, the base pay for the Executive Director is $140,000. Current statute allows the HSRA Board to set the salary for the Executive Director, and the Board has set a salary range of $250,000 to $375,000.

Impact of Workforce Cap: The HSRA indicates that the Governor's Workforce Cap Executive Order position reduction would result in the HSRA keeping two of the requested positions vacant – an Associate Engineer from BCP #2 and a Legal Secretary from BCP #8. So the real increase in positions would be 27 instead of 29.

KPMG Organizational Assessment. The State paid KPMG to perform an organizational assessment of the HSRA, and a functional organizational chart is attached on the final page of this agenda. Comparing the budget requests to the KPMG chart suggests the HSRA is filling some of the suggested functions, for example BCP # 2 includes a Chief Program Manger and a Chief Financial Officer, and BCP #8 includes three Regional Directors. However some functions remain excluded, such as a General Counsel or Senior Counsel.

Additional Exempt Staff: AB 289, as amended January 25, 2010, by Assemblymember Galgiani would allow the Governor to make five appointments to the HSRA who would be exempt from civil service. So like the Executive Director, these positions could have salaries exceeding the civil service ranges. According to HSRA, the Administration supports this bill. The HSRA indicates that if AB 289 passes, they would likely convert the Chief Program Manager, three Regional Directors, and the Chief Financial Officer to these exempt positions.

Staff Comment: Staff growth at the HSRA seems justified giving the increasing workload of the department, along with the need to bring expertise in-house. It also seems reasonable to set the pay for the Executive Director position at a parity level with similar governmental positions across the country to attract a quality and experienced individual. However, the HSRA should justify the need for the level of compensation requested for the Executive Director.

The January Budget assumed the new positions would be established on July 1, 2010, and budget documents reflect this. However, the Administration indicates that the establishment date has been accelerated and that the Administration went ahead and administratively established 27 new positions on March 1, 2010.

LAO Recommendation: The LAO withholds recommendation on these staffing requests pending more information from the HSRA on the short-term and long-term staffing needs of the organization. The LAO sees merit in the HSRA's request for five new exempt positions (as drafted in AB 289) because of the complex and costly work of the Authority. The LAO believes that if new exempt positions are created, the implementing statute should describe the positions so the Legislature has sufficient control over the specific positions established. For example, statute might define one of the positions as the Chief Financial Officer.

With regard to the right-of-way positions in BCP #6, the LAO indicates that the authority has procured a contractor, with experience in right-of-way assessment and the state process for land acquisition, to develop a plan for the authority to proceed with the purchase of rights of way for the proposed high speed rail system. Without this plan, the authority's staffing needs for this function are unknown. It is expected the plans will be completed in time for budget review.

With regard to the accounting positions in April FL #1, the LAO indicates the funding need is overstated because it does not recognize the base funding that HSRA has currently to pay DGS.

Staff Recommendation: Hold open for additional review.

Action: Budget requests held open. The HSRA anticipate the right-of-way assessment study will be competed in time for the May 6 HSRA Board meeting and would be available for legislative review at the same time. The HSRA will provide a multiyear staffing plan with additional explanation and justification.

3. Program Management Contracts: The Administration requests a total of $39 million from Prop 1A bond funds for the 2010-11 cost of two program-management service contracts.

Detail: The two requests are as follows:

- BCP #1 – Program Management Services: The Administration requests $37 million to continue funding for the program management team that is hired to assist the HSRA in the implementation of the high-speed train system. The BCP breaks the services into eight tasks as outlined in the table below (in whole dollars)

	Program Management Team	Total
Task 1	Project Mgmt. & Controls	3,154,706
Task 2	Public Education & Comms	216,000
Task 3	Eng. Criteria & Design Mgmt.	17,500,000
Task 4	Environmental Review	1,948,421
Task 5	Reg'l Consultant Oversight	
	A) LA - Palmdale	1,228,444
	B) LA-Orange Co.	1,098,067
	C) LA-San Diego	1,232,377
	D) Palmdale- Fresno	1,000,420
	E) Fresno - Sacramento	976,603
	F) Altamont Pass	814,666
	G) Merced - San Jose	1,052,354
	H) San Jose - San Francisco	1,172,068
Task 6	ROW Assm't & Acquisit'n	1,000,000
Task 7	Operations Mgt & Revenue	2,692,720
Task 8	Construction / Procurement	1,913,156
	Total Authority Cost	37,000,000

- BCP #7 – Program Management Oversight: The Administration requests $2 million to continue funding for the program management oversight team that is hired to assist the HSRA in the oversight and review of the program management team's work products and schedule.

	Program Management Oversight	Total
Task 1	Implementation Plan	-
Task 2	Project/Program Monitoring	1,398,765
Task 3	Technical Review	601,235
	Total Authority Cost	2,000,000

Contract costs exceed initial expectations: These contracts are in place to support the project through completion of preliminary engineering and completion of environmental work. In May of 2007, the HSRA estimated the total cost of the Program Management Contract would be $55 million and the total cost of the Program Management Oversight would be $2 million. The HSRA now indicates the total cost of the Management Contract will be $129 million and the total cost of the Management Oversight contract will be $7 million. These new costs are more than double what the HSRA estimated in May 2007 documents. The HSRA should explain these cost overruns.

LAO Recommendation: The LAO withholds recommendation on these contract requests because there is no basis for the Legislature to determine the appropriate level of contract funding that should be provided to the HSRA for 2010-11. The LAO believes supplemental information is needed for each request that would describe the amount of work to be accomplished in the budget year and describe how each contract fits into the overall development of the system.

Staff Recommendation: Hold open for additional information and review.

Action: Budget requests held open. The HSRA indicated it will get the annual contractor workplans on April 19, and that receipt of this information will allow the HSRA to respond to the Legislature with more detailed and complete information. The HSRA will provide these workplans to the LAO and legislative staff and also work with the LAO to reconcile the 2009-10 workplan to actual 2009-10 outcomes.

4. **Contracts with other governmental units:** The Administration requests a total of $5 million from Prop 1A bond funds for the 2010-11 cost of workload performed by other state departments, local governments, and the federal government.

Detail: The three requests are as follows:

- BCP #12 – Resource Agency Staffing Agreements: The Administration requests $1.8 million to fund the environmental review workload of five resource agencies who must approve the HSRA environmental documents. The agencies are: the U.S. Army Corps of Engineers; the U.S. Fish and Wildlife Service; the U.S. Environmental Protection Agency; the California Department of Fish and Game; and the State Historic Preservation Office. Caltrans has similarly funded staff at resource agencies to ensure a timely review of environmental documents.
- April FL #2 – Peninsula Corridor Joint Powers Board (Caltrain) Coordination: The Administration requests $1.6 million to fund the provisions of a Memorandum of Understanding (MOU) with Caltrain, whereby the HSRA will fund the Caltrain cost of cooperative planning activities on the HSRA/Caltrans corridor
- April FL #3 – California Department of Transportation (Caltrans) Coordination: The Administration requests $1.6 million to fund the provisions of a Memorandum of Understanding (MOU) with Caltrans, whereby Caltrans will perform new workload related to project coordination and oversight where the high-speed rail project interfaces with state highways.

Staff Comment: The resources agencies and Caltrans requests seem consistent with current state practice in other areas. The Peninsula Corridor request would seem to set a precedent for further HSRA MOUs with other local governments along the HSRA route. If the HSRA is intending to reimburse all local governments along the route for local governments' participation in planning activities, this would seem to add tens of millions of dollars in new costs to the project. The 2009 Business Plan assumes local governments will step up and fund $4.5 billion of project costs. If local governments have to be compensated to participate in planning and coordination activities, this would seem to suggest that the $4.5 billion future contribution from local governments is unlikely.

The HSRA should be prepared to speak more broadly about what local government costs the HSRA will fund over the life of this project and how this squares with the cost and revenue assumptions of the 2009 Business Plan.

LAO Recommendation: The LAO withholds recommendation on these contract requests because there is no basis for the Legislature to determine the appropriate level of contract funding that should be provided to the HSRA for 2010-11. The LAO believes supplemental information is needed for each request. The LAO notes for the Caltrain request that most of the workload should be accomplished in 2010-11 so the authority should be one-time.

Staff Recommendation: Hold open for additional information and review.

Action: Budget requests held open. The HSRA will provide additional information to the LAO and legislative staff to explain and justify these requests.

5. **Specialty Contracts.** The Administration requests a total of $4.2 million from Prop 1A bond funds for the 2010-11 cost of specialty contracts with private vendors in the areas of communications and ridership/revenue and fiscal studies.

Detail: The two requests are as follows:

- BCP #3 – Visual Simulation Plan Development: The Administration requests $375,000 to continue funding for the development of visual simulation programs. The HSRA indicates these simulations would be used to educate the public on the potential impacts high-speed trains may have their communities.
- BCP #4 – Ridership/Revenue Forecasts: The Administration requests $1 million to continue to refine the ridership/revenue model and testing various operational and fee scenarios to develop the range of options available. According to HSRA, the ridership and revenue data the HSRA currently has was developed by the Metropolitan Transportation Commission (MTC), in consultation with the HSRA, for the Program Level Environmental work, which is geared more towards the worst case scenario (largest number of riders, based on lower ticket costs, resulting in greater impacts to the physical environment). The HSRA indicates new forecasts are needed to provide investment grade information to private investment interests.
- BCP #5 – Financial Plan and Public Private Partnership Program (P3): The Administration requests $1 million for continued funding of the Financing Plan consultants and the commencement of the P3 Program for the financing of the high-speed train program.

Staff Comment: Staff understands that HSRA has contracted with the Institute of Transportation (ITS) Studies at the University of California, Berkeley, to review the existing ridership forecast. However, the HSRA is moving forward concurrently with revisions to the existing ridership model. The HSRA should be prepared to explain how these efforts are being coordinated – it may make sense to fully complete the ITS review, prior to continuing with new use of the ridership model.

LAO Recommendation: The LAO withholds recommendation on these contract requests because there is no basis for the Legislature to determine the appropriate level of contract funding that should be provided to the HSRA for 2010-11. The LAO believes supplemental information is needed for each request that would describe the amount of work to be accomplished in the budget year and describe how each contract fits into the overall development of the system.

Staff Recommendation: Hold open for additional information and review.

Action: Budget requests held open. The HSRA will provide additional information to the LAO and legislative staff to explain and justify these requests.

6. Engineering contracts for preliminary design and environmental impact reports: The Administration requests a total of $157.3 million for the 2010-11 cost of multiple contracts to continue work on the project-level environmental impact reports and preliminary design. For work on the Phase I, San Francisco to Anaheim corridor, the cost would be 50-percent Prop 1A funds and 50-percent federal stimulus funds. Work on the “various successive phases” would be funded all from Prop 1A funds.

Detail: The two requests are as follows:

- <u>CO BCP #1 as amended by April CO FL #1 – Phase I Corridor</u>: The Administration requests $148 million ($74 million Prop 1A and $74 million federal stimulus funds) to continue funding for the engineering and environmental work on the six segments in the Phase I HSRA corridor.
- <u>CO BCP #2 – Various Successive Phases Corridors</u>: The Administration requests $9.3 million in Prop 1A funds to continue funding for the engineering and environmental work on the three segments in the later-phases corridors (Sacramento to Merced, Los Angeles to San Diego, and Altamont Pass).

Staff Comments: Since the 2009 Business Plan includes no information on how to finance successive phases of the HSRA (Sacramento to Merced, Los Angeles to San Diego, and Altamont Pass), it is unclear that the requested $9.3 million is a prudent expenditure. While there is already a sunk investment in these corridors, the HSRA plans to spend $163 million through 2013-14 on these corridors. If there is no plan to proceed with these phases, then the environmental and design plans will eventually go out-of-date and may have to be redone. The HSRA should explain the benefit of the successive phase environmental and design work if there is no plan to construct those segments. The HSRA should also disclose the cost estimate to complete those other segments.

LAO Recommendation: The LAO withholds recommendation on these contract requests because there is no basis for the Legislature to determine the appropriate level of contract funding that should be provided to the HSRA for 2010-11. The LAO believes supplemental information is needed for each request that would describe the amount of work to be accomplished in the budget year and describe how each contract fits into the overall development of the system.

Staff Recommendation: Hold open for additional information and review.

Action: Budget requests held open. The HSRA will provide additional information to the LAO and legislative staff to explain and justify these requests. The HSRA will additionally provide the cost estimates for the entire proposed high-speed rail system – the costs beyond Phase I costs. The LAO will provide some additional detail on it's recommendation to establish annual reporting for the project.

7. **Acquisition of land / right-of-way:** The Administration requests a total of $250 million for the 2010-11 cost of right-of-way acquisition in the Phase I, San Francisco to Anaheim corridor. The cost would be 50-percent Prop 1A funds and 50-percent federal stimulus funds.

   Detail: The modified request is as follows:

   - CO BCP #1 as amended by April CO FL #1 – Phase I Corridor: The Administration requests $250 million ($125 million Prop 1A and $125 million federal stimulus funds) to continue funding for the engineering and environmental work on the six segments in the Phase I HSRA corridor. The April 1 Finance Letter reduced the Governor's January budget request which was $750 million ($375 million Prop 1A and $375 million federal stimulus funds).

   Staff Comment: It is unclear if even the reduced funding level of $250 million is necessary for 2010-11, because the timeline does not suggest the HSRA will be ready to purchase right-of-way in the budget year. Environmental documents must by "completed" (a Record of Decision/Notice of Decision [ROD/NOD] must be adopted by the Board) and that is not scheduled to occur in 2010-11. At the April 8, 2010, HSRA Board meeting, part of the public information was a document titled *Briefing on Draft Business Plan Addendum* that indicates the first ROD/NOD to be completed would not occur until August 2011. The federal stimulus funds must be obligated by September 2011, but obligation is not expenditure. Rather, the HSRA must complete the environmental phase and enter a cooperative agreement with the Federal Railroad Administration by September 2011. As this agenda was finalized, additional explanation from the Administration on the need for right-of-way funds in 2010-11 was still pending.

   LAO Recommendation: After reviewing the January budget proposal, the LAO recommended the funding level be reduced to $250 million. Subsequent to that recommendation, the Administration provided April Capital Outlay Finance Letter #1 that reduced expenditures to $250 million. The LAO indicates that the HSRA may be able to engage in a limited amount of negotiation for right-of-way in 2010-11, even though no purchases could occur until after the completion of the environmental process. So the requested appropriation would support the initiation of negotiations instead of land purchase in 2010-11. The LAO recommends adding provisional language to specify that the funds are for negotiation for right-of-way, and that funds shall not be available for expenditure until after environmental documents are completed for the associated segments of the process.

   Staff Recommendation: Hold open for additional information and review.

   Action: Budget requests held open. The HSRA will provide additional information to the LAO and legislative staff to explain and justify these requests. HSRA will work with LAO and legislative staff to develop budget bill language to restrict expenditure of funds on right-of-way purchase unless the environmental process is complete.

8. **2009 Business Plan (LAO Issue):** There were two joint hearings of this Subcommittee and the Transportation and Housing Committee in January concerning the HSRA December 2009 Business Plan. In the March 2, 2010, Transportation Budget Brief the LAO notes the following criticism of the plan:

   The Plan lacks discussion of risk management, including any detailed description of many key types of risk or mitigation processes. Also, there are few deliverables or milestones identified in the plan against which progress can be measured. Due to the multi-year nature of a project of this size, without clearly defined deadlines and work to be accomplished, it will be difficult for the Legislature and the administration to track progress in any meaningful way.

   April 8, 2010, Business Plan Addendum: At the April 8, 2010, HSRA Board meeting, Issue 8 on the agenda was a "Briefing on Draft Business Plan Addendum." This was submitted to the Board for review prior to submittal to the Legislature. The plan was emailed to Subcommittee staff on April 13.

   The document is available at this link:
   http://www.cahighspeedrail.ca.gov/about/default.asp?topic=boardArchive&year=2010&month=4

   Staff Comment: Given the recent release of this draft addendum, staff has not had an opportunity to perform a thorough review and discuss the addendum in detail with the HSRA. However, here are a few initial observations:

- It is encouraging that the HSRA produced this addendum to be responsive to concerns raised by the Legislature – it is not statutorily required.
- The document provides some additional timeline and milestone information for completion of environmental and initial design work, which is helpful for accountability.
- The document describes the prohibition on using state funds to subsidize the private operator and provides the HSRA perspective on why operations insurance and a revenue guarantee would not violate these provisions.
- The document includes more narrative on risk mitigation and reasonableness of the Plan's estimates.

   Insufficient time has passed since the release of the Addendum to allow a full review, but the Subcommittee may want to ask the LAO to make initial comments. This issue can be brought back at a future hearing as warranted.

   Staff Recommendation: Hold open for additional information and review.

   Action: Issue held open to allow time for additional review of the recently-released addendum to the 2009 Business Plan.

9. Scheduling HSRA Expenditure in the Budget Act (Staff Issue): The Subcommittee may want to consider scheduling HSRA expenditures in the budget act at a more-detailed level than that proposed by the Administration. As proposed, there are three expenditure categories in the budget act, as indicated in the below table. This is an improvement over past budgets when all expenditures were place in the state operations item without any scheduling.

State Operations Item	Capital Outlay Item
Undesignated	Phase I
	Subsequent Phase

Alternative Scheduling: The proposed scheduling may prove inadequate given the scope of the HSRA expenditures. The following table shows a possible scheduling approach that would provide additional transparency and legislative budget control. If the detailed schedule is adopted, and in the course of a fiscal year, the HSRA wants to shift expenditure authority across scheduled items, the Administration would have to provide 30-day notification to the Joint Legislative Budget Committee.

State Operations Item	Capital Outlay Item
Personal Services	Phase I Acquisition
Operating Expenses and Equipment	Phase I Design
	Phase I Construction
	Subsequent Phase Acquisition
	Subsequent Phase Design
	Subsequent Phase Construction

Staff Comment: The alternative is intended as an illustration for discussion, as Staff has not discussed specific language with the Administration. However, since the Administration is proposing to add new budget scheduling this year, it is appropriate to consider the multiple alternatives that would provide more or less budget control, and more or less transparency, in budget documents.

As an additional option, the Administration could schedule additional information in the accounting systems and the Budget Galley (the January Governor's document with a three-year expenditure summary) – perhaps even to the project segment level, such as the Los Angeles to Anaheim segment. The Budget Act itself need not include all the detail that appears in the Budget Galley. The accounting and scheduling should be made transparent and easily accessible via inclusion in annual budget documents, instead of in supplemental reports.

Staff Recommendation: Keep open for further discussion.

Action: Issue held open. Staff directed to work with LAO and Department of Finance to develop more-detailed scheduling of HSRA budget and expenditures that would appear in the annual budget act and the annual January Governor's Budget document.