

**AGENDA****ASSEMBLY BUDGET SUBCOMMITTEE NO. 3 RESOURCES AND TRANSPORTATION****ASSEMBLYMEMBER RICHARD BLOOM, CHAIR****WEDNESDAY, APRIL 24, 2013  
9:00 A.M. - STATE CAPITOL ROOM 447**

<b>CONSENT CALENDAR</b>		
<b>VOTE-ONLY CALENDAR</b>		
<b>ITEM</b>	<b>DESCRIPTION</b>	
<b>0555</b>	<b>ENVIRONMENTAL PROTECTION AGENCY</b>	
ISSUE 1	TRANSFER OF THE OFFICE OF THE EDUCATION AND THE ENVIRONMENT TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY	2
<b>3900</b>	<b>AIR RESOURCES BOARD</b>	<b>3</b>
ISSUE 2	CLEAN AIR ACT AMBIENT AIR QUALITY	3
ISSUE 3	CLEAN SCHOOL BUSES – ALLOCATION OF REVERTED BOND FUNDS	<b>3</b>
<b>3360</b>	<b>CALIFORNIA ENERGY COMMISSION</b>	4
ISSUE 4	PGC RAMP-DOWN PLAN	4
ISSUE 5	CONVERSION OF SOLAR INITIATIVE LIMITED-TERM POSITIONS TO PERMANENT	4
<b>3340</b>	<b>CALIFORNIA CONSERVATION CORPS</b>	5
ISSUE 6	DATA COLLECTION AND REPORTING SYSTEM REPLACEMENT	5
ISSUE 7	REAPPROPRIATION: PROPOSITION 84 PROGRAM DELIVERY AND PROJECT FUNDING	5

<b>ITEMS TO BE HEARD</b>		
<b>ITEM</b>	<b>DESCRIPTION</b>	
<b>3360</b> <b>6110</b>	<b>CALIFORNIA ENERGY COMMISSION (DEPARTMENT OF EDUCATION)</b>	<b>6</b>
INFORMATIONAL	GOVERNOR'S PROPOSITION 39 PROPOSAL	6
<b>0555</b>	<b>ENVIRONMENTAL PROTECTION AGENCY</b>	<b>9</b>
INFORMATIONAL	SECRETARY MATT RODRIQUEZ – OVERVIEW OF ENVIRONMENTAL PROTECTION BUDGET	9
<b>3900</b>	<b>AIR RESOURCES BOARD</b>	<b>10</b>
INFORMATIONAL	CAP AND TRADE REVENUE PROPOSAL	11
<b>3360</b>	<b>CALIFORNIA ENERGY COMMISSION</b>	13
ISSUE 1	ELECTRIC PROGRAM INVESTMENT CHARGE (EPIC)	14
<b>8660</b>	<b>CALIFORNIA PUBLIC UTILITIES COMMISSION</b>	<b>17</b>
INFORMATIONAL	CORRECTIVE ACTION PLAN – SAFETY CULTURE	17
INFORMATIONAL	CORRECTIVE ACTION PLAN – BUDGET PROCESS	17
ISSUE 1	VARIOUS BUDGET PROPOSALS	19
ISSUE 2	DRA BUDGET PROPOSALS	21
ISSUE 3	ENERGY EFFICIENCY DATA TRANSPARENCY	24

**CONSENT CALENDAR**

<b>April 1 Finance Letter Issues</b>		
<b>Org Code</b>	<b>Department</b>	<b>Summary</b>
3340	California Conservation Corps	Requests \$163,000 in additional reimbursement authority so that the CCC can perform additional maintenance activities for Caltrans. All CCC expenses will be reimbursed by Caltrans.
3340	California Conservation Corps	Requests the reappropriation of construction funding for the Delta Service District Center. The project is scheduled to proceed to bid in 2013-14 and reappropriation would allow the project to continue.

**VOTE-ONLY****0555 ENVIRONMENTAL PROTECTION AGENCY**

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**VOTE-ONLY ISSUE 1: TRANSFER OF THE OFFICE OF THE EDUCATION AND THE ENVIRONMENT TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

Pursuant to SB 1018 (Budget and Fiscal Review Committee), Chapter 39, Statutes of 2012 the Governor's Budget requests transferring the Office of Education and Environment, from Cal/EPA to CalRecycle. This proposal will shift 10 existing positions and the associated funding from Cal/EPA to CalRecycle as a new program.

**STAFF COMMENTS/QUESTIONS**

Staff has no concerns with this proposal.

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**Staff Recommendation: Approve as Budgeted.**

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**3900 AIR RESOURCES BOARD**

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**VOTE-ONLY ISSUE 2: CLEAN AIR ACT AMBIENT AIR QUALITY**

The Governor's Budget requests five permanent positions and a technical budget adjustment that realigns existing federal grant funds and the respective State match. This alignment is needed to meet federal mandates tied to the grant funds. The mandates are focused on data quality and meant to better equip the Federal Government to withstand legal challenges. This will meet immediate program requirements for air monitoring recently identified by the U.S. EPA and avoid the risk of losing some grant funding. This is a net zero cost proposal to the State.

**VOTE-ONLY ISSUE 3: CLEAN SCHOOL BUSES – ALLOCATION OF REVERTED BOND FUNDS**

The Governor's Budget requests authority to spend \$1,119,000 in reverted bond funds from Proposition 40 and Proposition 1B and technical changes to the Health and Safety Code for the treatment of 2007 dispersed funds. The requested fund will be used to replace pre-1987 model year school buses with new lower-emitting models and retrofit existing buses with Air Resources Board-verified emission control equipment. The filters will reduce toxic particulate matter emissions by 85 percent from each retrofitted bus.

**STAFF COMMENTS**

Staff has no concerns with this proposal.

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**Staff Recommendation: Approve as Budgeted Issues 2 & 3**

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**3360 CALIFORNIA ENERGY COMMISSION**

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**VOTE-ONLY ISSUE 4: PGC RAMP-DOWN PLAN**

The Governor's Budget identifies the reduction of positions and the elimination of new project funding as of FY 2013-14 through the Public Goods Charge (PGC) for the Renewable Energy Program and the Public Interest Energy Research (PIER) Program. This proposal is in response to the sunset of the authority to collect the PGC on January 1, 2012. As a result, no additional funds will be collected and the duties and positions necessary to administer the Renewable Energy and PIER Programs will continue ramping down.

**ISSUE 5: CONVERSION OF SOLAR INITIATIVE LIMITED-TERM POSITIONS TO PERMANENT**

The Governor's Budget requests the conversion of two limited-term positions to permanent to continue implementation of the ongoing and permanent solar electric system mandates of SB 1 (Murray), Statutes of 2006.

**STAFF COMMENTS**

Staff has no concerns with this proposal.

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**Staff Recommendation: Approve as Budgeted Issues 4 & 5**

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**3340 CALIFORNIA CONSERVATION CORPS**

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**VOTE-ONLY ISSUE 6: DATA COLLECTION AND REPORTING SYSTEM REPLACEMENT**

The Governor's Budget requests to convert two expiring limited-term positions to permanent positions to oversee the California Conservation Corps' (CCC) Automated Data Collection and Reporting System (CADCARS). The proposal seeks to fund these IT positions by redirecting existing OE&E funding currently being used to fund IT contractors to oversee the CADCARS legacy system.

**VOTE-ONLY ISSUE 7: REAPPROPRIATION: PROPOSITION 84 PROGRAM DELIVERY AND PROJECT FUNDING**

The Governor's Budget requests reappropriation of the unexpended balances of the allocation authorized for CCC Program Delivery costs associated with the administration of resource conservation and restoration projects under the Prop 84.

The CCC has been unable to fully expend Program Delivery funds due to an initial delay in hiring Program Delivery staff. Without approval of the request for reappropriation, the CCC will be unable to administer remaining Local Corps projects and ensure appropriate closeout of CCC projects and fully utilize the funding previously approved for CCC Program Delivery

**STAFF COMMENTS**

Staff has no concerns with this proposal.

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**Staff Recommendation: Approve as Budgeted Issues 6 & 7**

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## ITEMS TO BE HEARD

### **3360 CALIFORNIA ENERGY COMMISSION (6110 DEPARTMENT OF EDUCATION)**

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#### **INFORMATIONAL ONLY - GOVERNOR'S PROPOSITION 39 PROPOSAL**

The Governor's 2013–14 budget includes a plan to implement the provisions of Proposition 39, which increases state corporate tax (CT) revenues and requires that half of these revenues for a five–year period be used for energy efficiency and alternative energy projects. The Governor proposes to count all associated revenues toward the Proposition 98 minimum guarantee for schools and community colleges. The Governor also proposes to designate all energy–related Proposition 39 funds to schools (\$400.5 million) and community colleges (\$49.5 million) in 2013–14 and for the following four years. The proposal provides this funding to the California Department of Education (CDE) and the California Community Colleges (CCC) Chancellor's Office to distribute on a per–student basis.

On March 19, 2013, the Assembly Budget Subcommittee No. 2 considered the treatment of Proposition 39 revenues in calculating the Proposition 98 minimum guarantee. This hearing will examine how the Governor's plans to allocate Prop 39 revenue for energy efficiency, and alternative energy projects.

#### **BACKGROUND**

Proposition 39 (Prop 39), passed by the voters in November 2012, requires that half of the annual revenue raised from the measure (up to \$550 million) be transferred to a new Clean Energy Job Creation Fund, to support projects intended to improve energy efficiency and expand the use of alternative energy. The initiative states that the fund could be used to support: energy efficiency retrofits and alternative energy projects in public schools, colleges, universities, and other public facilities; financial and technical assistance for energy retrofits; and job training and workforce development programs related to energy efficiency and alternative energy.

Further, Prop 39 directs the Legislature to determine spending from the fund and be required to use the monies for cost-effective projects run by agencies with expertise in managing energy projects. The measure also specifies that all funded projects must be coordinated with CEC and CPUC and creates a new nine-member oversight board to annually review and evaluate spending from the fund.

The Administration's proposal differs substantially from the language of Prop 39 with regard to the allocation of funding. The Administration proposes to allocate this funding on a per-student basis, with school districts and community colleges receiving \$67 and \$45 per student, respectively. Further, the Governor proposes that the Department of Education and the Chancellor's Office for the California Community Colleges be responsible for distributing funding, and may consult with both the CEC and the CPUC to develop guidelines for prioritizing the use of the funds.

**LAO ANALYSIS**

The Legislative Analyst's Office (LAO) argues that the Governor's proposed allocation method:

- Excludes many eligible projects;
- Fails to account for energy consumption differences;
- Fails to sufficiently leverage existing programs and experience;
- Does not account for significant past investments in K–14 facilities; and,
- May not guarantee return on investment.

To maximize energy and job benefits, the LAO recommends an alternative process for allocating funding. The LAO suggests designating the California Energy Commission as lead Agency for Proposition 39 energy funds; using a competitive grant process open to all public agencies; and requiring applicants to provide certain energy-related information in order to qualify for grant funding (e.g., climate zone, size, design, and age of a building).

**STAFF COMMENTS/QUESTIONS**

In addition to the Governor's Budget proposal, there are two Legislative proposals pending on proposed implementation of Proposition 39:

- AB 39 (Skinner/Pérez), pending in the Assembly Utilities and Committee, requires the Energy Commission to administer grants, loans, and other financial assistance to K-12 public schools, for projects that create jobs in CA by reducing energy demand and consumption. The bill would also continuously appropriate a portion of the funding to the Energy Commission for the purposes of administering funds, and sets forth criteria for prioritizing projects. The bill further requires money, upon appropriation by the Legislature, to be used for public-private partnerships.
- SB 39 (De León/Steinberg), pending in the Senate, establishes the Clean Energy Employment and Student Advancement Act of 2013 and requires the Office of Public School Construction (OPSC) to establish a school district assistance program to distribute grants, on a competitive basis, for energy efficiency upgrade projects pursuant to CA Clean Energy Jobs Act.



The Subcommittee may wish to ask the following questions:

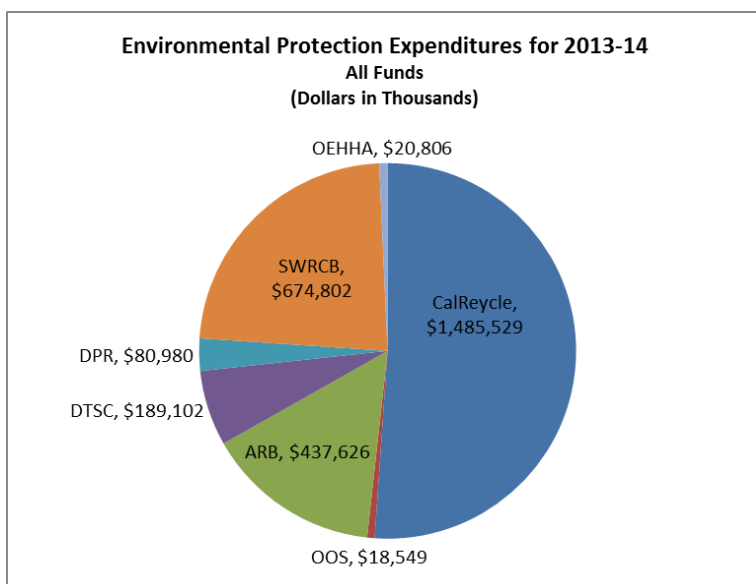
- What are the benefits/trade-offs of providing Prop 39 revenues on a per student basis?
- Why does the Governor's proposal exclude the UC and CSU systems?
- What savings could be achieved by expanding the Governor's proposal to include other state facilities, especially 24-hour facilities such as state hospitals?
- What expertise in managing energy projects and programs does the Department of Education and the Chancellor's Office have?

## 0555 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

### INFORMATIONAL ONLY - SECRETARY MATT RODRIQUEZ – OVERVIEW OF ENVIRONMENTAL PROTECTION BUDGETS

California Environmental Protection Agency programs restore and protect environmental quality, and protect public health. The Secretary coordinates the state's environmental regulatory programs and ensures fair and consistent enforcement of environmental law, which safeguards the state's residents and promotes the state's economic vitality.

The Governor's Budget proposes \$2.9 billion (\$42 million General Fund and \$2.86 billion other funds) and 4,989 personnel years for the California Environmental Protection Agency (Cal/EPA) boards, departments, and offices. This represents a decrease of 36.1 personnel years from the revised current year budget. The year-over-year decrease in total funds reflects less bond money available for expenditure in the budget year as well as a reduction in General Fund and Special Fund.



## 3900 AIR RESOURCES BOARD

The U.S. EPA sets air quality standards for specified pollutants pursuant to the federal Clean Air Act. The U.S. EPA also requires states to develop state implementation plans to achieve compliance with these standards. In California, air quality regulation is divided between the state California Air Resources Board (ARB) and 35 local air quality management districts. The local air districts manage the regulation of stationary sources of pollution (such as industrial facilities) and prepare local implementation plans to achieve compliance with federal and state standards. The ARB is responsible primarily for the regulation of mobile sources of pollution (such as automobiles) and for the review of local district programs and plans.

The ARB also has primary responsibility for implementation of the California Global Warming Solutions Act of 2006, AB 32 (Núñez), Chapter 488, Statutes of 2006. This responsibility includes establishing ambient air quality standards for specific pollutants, administering air pollution research studies, evaluating standards adopted by the U.S. Environmental Protection Agency, and developing and implementing plans to attain and maintain these standards. These plans include emission limitations for vehicular and industrial sources established by the Board and local air pollution control districts. The Governor's Budget proposes \$438 million and 1,278 positions for support of the Board.

Fund Source	2011-12 Actual	2012-13 Projected	2013-14 Proposed	BY to CY Change	% Change
<b>General Fund</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>0</b>	<b>0</b>
<b>Motor Vehicle Account, State Transportation Fund</b>	115,117	116,264	119,902	3,638	3%
<b>Air Pollution Control Fund</b>	154,431	148,586	114,988	(33,598)	-23%
<b>Cost of Implementation Account, Air Pollution Control Fund</b>	-	-	35,894	0	0
<b>Bond Funds</b>	128,598	73,250	81,560	8,310	11%
<b>Other</b>	79,121	83,558	85,282	1,724	2%
<b>Total Expenditure</b>	<b>\$477,267</b>	<b>\$421,658</b>	<b>\$437,626</b>	<b>\$15,968</b>	<b>4%</b>
<b>Positions</b>	1,243.10	1,273.20	1,278.20	5	0%

**INFORMATIONAL ONLY - CAP AND TRADE DRAFT INVESTMENT PLAN**

The Air Resources Board released its Draft Cap-and-Trade Auction Proceeds Investment Plan: Fiscal Years 2013-14 through 2015-16, on April 16, 2013. This document is a draft of the first investment plan for cap-and-trade auction proceeds. The purpose of this plan is to evaluate the opportunities for greenhouse gas emission reductions, and identify priority State investments to help achieve greenhouse gas reduction goals and yield valuable co-benefits. The final version of this plan will be provided to the Legislature to support the appropriation of funds from auction proceeds received during the three-year period from Fiscal Year (FY) 2013-14 through 2015-16.

A multi-agency team composed of agency Secretaries and staff, and Governor's Office leaders, heard more than eight hours of public comment and reviewed more than 400 written comment letters from dedicated groups and individual stakeholders about investment of auction proceeds. The resulting draft investment recommendations focus on a few key sectors: sustainable communities and clean transportation, energy efficiency and clean energy, and natural resources and waste diversion.

**BACKGROUND**

The goal of the State's climate plan is to reduce Green House Gas (GHG) emissions to 1990 levels by the end of this decade. The Cap and Trade program is a key element in this plan. It sets a statewide limit on the sources of greenhouse gases and establishes a financial incentive for long-term investments in cleaner fuels and more efficient energy use. As part of its program, the Air Resources Board (ARB) will give free allowances to the State's large industrial emitters as well as the State's electric utilities in order to reduce the economic impact of the Cap and Trade program.

In November 2012, the ARB conducted its first auction of GHG emission allowances as part of a market-based compliance mechanism. The auction resulted in \$55.8 million in proceeds to the state and \$233 million directly to investor-owned utilities. Two more auctions are proposed in February and May of this year. This is significantly less than the \$1 billion in cap and trade revenues anticipated in Governor's proposed 2012-13 budget.

The 2012-13 enacted budget authorized \$500 million be used to offset existing General Fund costs of GHG mitigation activities. This year, the Governor's Budget proposes expenditure authority of \$400 million in 2013-14 and adjusts down current year expenditures to \$200 million. This reflects recognition of an initial over-estimation of revenues from the auction of cap and trade allowances.

In order to comply with AB 1532 (Pérez), Chapter 807, Statutes of 2012, the Department of Finance must provide a three-year investment plan for auction proceeds in the May Revision per (AB 1532). Further, SB 535 (De León), Chapter 830, Statutes of 2012, requires the investment plan allocate a minimum of 25 percent of the available moneys in the fund to projects that *provide* benefits to identified disadvantaged communities and a minimum of 10 percent of the available moneys in the fund to projects *located within* identified disadvantaged communities.

#### LAO ANALYSIS

Last year, the Legislative Analyst's Office (LAO) suggested a number of helpful criteria by which to evaluate an auction proceeds investment plan, such as ensuring all funds are used to mitigate (reduce) GHG emissions or harms caused by GHG emissions. Additionally, the LAO suggested that the Legislature prioritize those programs that have the greatest potential return on investment in terms of GHG emission reductions relative to the proposed funding investment. Specifically, it recommended that an expenditure plan rank potential programs based on this criteria.

LAO argued that this would help ensure that the state is able to meet the emission reduction goal specified in AB 32.

#### STAFF COMMENTS

The Air Resources Board will hear the draft Plan at a public hearing on Thursday, April 25th. The Department of Finance will then submit the final Plan to the Legislature with the May Revise. The draft Investment Plan was developed by the Department of Finance in consultation with ARB and other state agencies pursuant to AB 1532 (Pérez), Chapter 807, Statutes of 2012. It identifies opportunities for greenhouse gas reductions and recommends priorities for investment of Cap-and-Trade proceeds for consideration by the Legislature during the annual budget process.

The draft Investment Plan is a three-year plan and does not include dollar amounts. Expenditures of Cap-and-Trade proceeds for FY 2013-14 will be proposed in the May Revise. The ARB should be prepared to present a summary of its Draft Cap-and-Trade Auction Proceeds Investment Plan to the Committee.

### 3360 CALIFORNIA ENERGY COMMISSION

The Energy Resources Conservation and Development Commission (Energy Commission or CEC) is responsible for ensuring a reliable supply of energy to meet state needs while protecting public health, safety, and the environment. Activities include: permitting energy facilities, designating transmission line corridors, assessing current and future energy demands and resources, developing energy efficiency standards, stimulating development of alternative sources of energy, analyzing transportation fuel supplies, prices, and trends and, maintaining capacity to respond to energy emergencies.

The Budget includes \$485.7 million and 662 positions for support of the Commission. Decreases in Federal Funds reflect the DOF's efforts to "right size" special funds to better reflect actual expenditures. Decreases in the Renewable Resource Trust Fund are due to the ramping down of the Public Goods Charge programs. The appearance of a larger decrease in the Alternative and Renewable Fuel and Vehicle Technology Fund is the result of the carryover of \$75 million from Fiscal Year 2011-12, due to a 2-year encumbrance period.

Fund Source	2011-12 Actual	2012-13 Projected	2013-14 Proposed	BY to CY Change	% Change
<b>General Fund</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>0</b>	<b>0</b>
<b>Federal Funds</b>	21,121	51,956	16,688	(35,268)	(68%)
<b>Renewable Resource Trust Fund</b>	64,358	88,866	55,752	(33,114)	(37%)
<b>Energy Resources Programs Account</b>	56,465	66,970	70,176	3,206	5%
<b>Alternative and Renewable Fuel and Vehicle Technology Fund</b>	97,960	171,298	106,160	(65,138)	(38%)
<b>Electric Program Investment Charge Fund</b>	-	1,094	193,275	192,181	17,567%
<b>Other</b>	80,519	126,064	43,670	(82,394)	(65%)
<b>Total Expenditure</b>	<b>\$320,423</b>	<b>\$506,248</b>	<b>\$485,721</b>	<b>(\$20,527)</b>	<b>(4%)</b>
<b>Positions</b>	542.1	612.6	662.1	50	8%

**ISSUE 1: ELECTRIC PROGRAM INVESTMENT CHARGE (EPIC)**

The Governor's Budget includes various proposals totaling \$192 million that would be funded from EPIC. Specifically, the budget proposes the following increases for CEC:

- \$5.7 million to support an additional 58.5 permanent positions to implement the EPIC program (55.5 positions) and New Solar Homes Partnership (NSHP [3 positions]);
- \$159.3 million to fund EPIC program projects, which had previously been funded from the public goods charge;
- \$25 million to fund NSHP projects, which had previously been funded from the public goods charge; and,
- \$2 million to support technical assistance for the EPIC program and NSHP.

**BACKGROUND**

The Electrical Utility Industry Restructuring Act (AB 1890 (Brulte), Chapter 854, Statutes of 1996), widely referred to as AB 1890, established among other things the Public Interest Energy Research (PIER) program and the Renewable Energy Program. Both of these programs are administered by the CEC. The PIER program provides grants for research to develop, and help bring to market, energy technologies that provide greater system reliability, lower system costs, benefit the environment and provide other tangible benefits to California electric and natural gas utility customers. In comparison, the Renewable Energy Program supports the operation of existing renewable facilities as well as the development of new and emerging renewable technologies.

In order to fund the above programs, AB 1890 authorized a temporary surcharge on Investor Owned Utilities (IOU) electricity bills. This surcharge is commonly referred to as the "public goods charge" (PGC). From 1998 through 2011, a total of about \$2 billion (or roughly \$150 million a year) from this surcharge was spent on the PIER program and the Renewable Energy Program. The PGC was not reauthorized by the Legislature and, thus, funding for the programs expired at the end of 2011.

The Governor turned to the CPUC hoping it would continue to collect an amount similar to the PGC surcharge in order to support the continuation of programs previously funded from the PGC. Thus, the CPUC created the new surcharge referred to as EPIC.

In a CPUC decision, approved on May 24, 2012, the CPUC selected the CEC to administer 80 percent of the funds collected for EPIC and also directed the three IOUs (i.e., PG&E, SCE & Sempra) to administer 20 percent of the EPIC funds collected. All EPIC funds are to be administered under the oversight and control of the CPUC.

The 2012–13 budget included \$1 million for the CEC to develop an investment plan to administer EPIC dollars to fund activities previously provided through the PIER program and the Renewable Energy Program. Under the CPUC's plan, these activities will collectively be referred to as the EPIC program. The EPIC is expected to raise roughly \$200 million between January 2012 (when the new surcharge began) and June 2013.

#### LAO RECOMMENDATION

The Legislature has not specifically authorized the EPIC. Although the Governor has directed the CPUC to collect this surcharge, Legislative Counsel advises us that the CPUC does not currently have the constitutional or statutory authority to order and collect EPIC. Thus, the Governor's Budget proposals are dependent on whether the Legislature authorizes the new surcharge. Until such authorization is provided, we find the specific proposals related to EPIC are premature and circumvent legislative authority and oversight. To the extent that the Legislature takes action to authorize EPIC, it will want to weigh the Governor's proposed uses of the funds versus other priorities.

**LAO Recommendation.** In view of the above, absent legislative authorization of EPIC, we recommend that the Legislature reject the Governor's Budget requests related to EPIC.

#### STAFF COMMENTS/QUESTIONS

The CEC has spent considerable time and effort to develop the EPIC Investment Plan. This plan largely mirrors previous efforts to renew the PGC. Given lingering questions about the validity of the charge, it would be premature to authorize any spending for this program without clear statutory authorization. However, with statutory authorization, the plan for expenditure of funds, including the ramp-down of previous PGC programs, and possible shifts to new and emerging research and development programs is a good policy discussion.



**Questions for the Agency.** The CEC should address these questions in its opening statement:

- The EPIC program clearly needs to be authorized by the Legislature in statute and should include program parameters, focus and goals. The CEC, not the CPUC, sets renewable or energy efficiency policy for this state. Can the Administration produce draft legislation authorizing this program for review by budget and policy committees?
- What is the impact of holding off funding this program until statute authorizes the expenditure of funds?

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**Staff Recommendation: (1) APPROVE positions and funding provisionally such that no positions may be added, nor funds expended until a statute (whether trailer bill or policy bill) expressly authorizes the EPIC program, including program provisions.**

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**8660 CALIFORNIA PUBLIC UTILITIES COMMISSION**

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**INFORMATIONAL ONLY - CORRECTIVE ACTION PLAN – SAFETY CULTURE**

On April 17, 2013, the Subcommittee discussed a report commissioned by the CPUC to uncover the existing culture, culture changes needed and to develop a draft problem statement that would allow the CPUC to plan its culture change strategy.

The report revealed significant cultural problems at the CPUC and strongly suggested that safety concerns are not a top priority at the Commission. The Subcommittee Chair requested that the CPUC return to the Committee with a corrective action plan (CAP) for improving the safety culture at the CPUC that sets specific short-, mid- and long-term milestones that will help the Committee track the Commission's progress.

**INFORMATIONAL ONLY - CORRECTIVE ACTION PLAN – BUDGET PROCESS**

The California Public Utilities Commission (CPUC) submitted its CAP to the Subcommittee and to the Department of Finance, Office of State Audits and Evaluations (OSAE) on April 10, 2013. The Plan is in response to OSAE's audit of the CPUC's budget process performance. The CAP includes a timetable for development of corrective action measures that the CPUC plans to implement to correct the deficiencies found in the performance audit.

The Audit found significant failures in all aspects of the CPUC's budget process – too few budget analysts, poorly trained and inadequately supervised personnel, and insufficiently implemented procedures. The CAP lays out the CPUC's plan for bringing its budget process up to best practices and addresses all of the Audit findings and recommendations.

**BACKGROUND**

The Subcommittee held an oversight hearing on March 6, 2013, to discuss OSAE's audit to evaluate whether CPUC's budget process for developing the 2012-13 and the 2013-14 Governor's Budgets provided reliable and accurate information to Finance, the Governor, the Legislature, and other stakeholders.

The OSAE audit found "widespread weaknesses within CPUC's budget operations which compromise its ability to prepare and present reliable and accurate budget information." The audit revealed: ineffective management over budgeting functions; budget forecasting methodologies and monitoring need improvement; fiscal management practices need improvement; and non-compliance with statutory requirements specified to the Division of Ratepayer Advocates.

The CPUC formally stated that it agrees with nearly all of the findings, except for how it handles the DRA budget process, and has communicated to auditors that it is working on correcting problems. According to the CPUC, the "audit correctly identifies the primary issue the CPUC must address is that its management practices over the budget functions were ineffective. All subsequent observations stem from this shortcoming."

The Legislature relies on this information to make budgeting decisions. Staff concurs with the audit's assessment that inaccurate and incomplete information "make it impossible for the Legislature to know the actual performance of CPUC's funds and programs."

As part of the outcome of the March 6, 2013 hearing, the Subcommittee took action to request the CPUC report back on its CAP at its budget hearing on April 24, 2013.

#### **STAFF COMMENTS**

The CAP provides goals, expected completion dates (ranging from April 2013 to "ongoing") and the status of each the audit recommendations. The CPUC has committed to mapping out the budget control process and providing a level of quality control, including improving relational responsibilities between budget control management and staff and providing necessary redundancies in the budget process. However, there is no process articulated in the CAP on how the activities of the CPUC will be monitored to ensure that the CPUC implements the CAP to correct the extensive deficiencies found in the OSAE audit.

While it appears that the CAP is a step in the right direction, the Committee may wish to instruct the CPUC to provide it with regular updates to ensure continued progress toward correcting the aforementioned budget weaknesses. The Committee may also wish to ask the Department of Finance what it plans to do to ensure CPUC's addresses these issues in a timely, honest, and transparent manner.

**ISSUE 1: BUDGET PROPOSALS**

The Governor's Budget requests the following proposals:

- 1) 3 positions and \$210,000 various special funds to provide budget support for the CPUC. There is currently only one person compiling the Governor's Budget at the CPUC;
- 2) 3 positions and \$330,000 (Public Transportation Account, State Transportation Fund) to oversee the design and construction of the High Speed Rail system;
- 3) 1 position and \$88,000 reimbursements authority for oversight of the EPIC program;
- 4) 1 position and \$88,000 (PUC Utilities Reimbursement Account) to expand non-utility energy efficiency program administration and enable the growth and integration of demand response into wholesale markets.
- 5) \$70,000 (one-time) for the existing staff of the Communications Division (High-Cost Fund-A, Administrative Committee Fund) for overtime; and,
- 6) 2 Administrative Law Judge positions and \$231,000 for enforcement staff to support legal enforcement activities.

**BACKGROUND**

The OSAE audit discussed above observed inadequate internal controls over CPUC's budget process, insufficient staffing levels in the budget office and limited to no guidance or oversight for these tasks.

Since 2001-02, CPUC's administration of special funds has grown from 4 to 14. However, management did not adequately respond to the related administrative challenges of the increased complexity and workload. The Budget Office consists of one employee who is responsible for managing the budget responsibilities for 14 funds. This has led to tasks being farmed out to part-time annuitants, members of the executive management and program staff who receive limited to no guidance or oversight. Who ultimately is responsible for CPUC's budget operations is unclear.

The audit also found that CPUC does not provide comprehensive training to staff responsible for developing, monitoring, and reporting budget information. This includes basic understanding of budget processes and procedures. Non-Budget Office staff lacked an understanding of how tasks performed contributed to the information reported in the Governor's Budget. Further, program staff are not trained regarding the reporting of encumbrance and accrual information to the Fiscal Office, which increases the risk that incorrect and inaccurate information may be communicated to and relied on during budget preparation by decision makers.

<b>STAFF COMMENTS</b>
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As mentioned above, there is currently only one person compiling the Governor's Budget at the CPUC. The proposal to add three positions to provide budget support for the CPUC is consistent with the audit recommendation to increase staffing in the CPUC Budget Office. These positions should help strengthen the CPUC's fiscal controls over its budget process.

However, because the OSAE's audit of CPUC's budget process for developing the 2012-13 and the 2013-14 Governor's Budgets revealed a serious breakdown of fiscal controls, staff lacks confidence that the information contained in the current proposals provide reliable and accurate information. Thus, staff suggests the Subcommittee consider rejecting the remaining CPUC's budget requests.

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**Staff Recommendation: APPROVE 1 - DENY 2-6**

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**ISSUE 2: DRA BUDGET PROPOSALS**

The Governor's Budget requests the following proposals for the Division of Ratepayer Advocates (DRA):

- 1) 2 positions and \$151,000 (CPUC Ratepayer Advocate Account) to perform audits of energy companies financial records in conjunction with General Rate Cases, natural gas proceedings, and other proceedings;
- 2) 2 positions and \$151,000 (CPUC Ratepayer Advocate Account) to meet the increased workload associated with the inspection of water utilities' accounting records; and,
- 3) 1 position and \$89,000 (CPUC Ratepayer Advocate Account) to accommodate expanding workload related to natural gas safety.

**BACKGROUND**

The Division of Ratepayer Advocates (DRA) is a division within the CPUC established to advocate on behalf of residential and small commercial utility customers and to ensure the lowest possible rates for service. Monies from the Public Utilities Commission Reimbursement Account are transferred to the Ratepayer Advocate Account in the annual Budget Act. The Ratepayer Advocate Account is authorized to be used only by DRA in the performance of its duties.

**STAFF COMMENTS**

In the CPUC's response to the OSAE audit discussed above, the CPUC disagreed with OSAE's finding that it had not complied with current law regarding its preparation of DRA's budget. Current law requires the director of the DRA to develop the DRA budget and submit it to the commission for final approval. However, OSAE found that DRA does not prepare its own budget, nor is it reviewed and approved by the director of DRA or approved by the commission. Rather, the CPUC Budget Office prepares and approves the DRA budget for them. Staff concurs with the audit's assessment that this process does not follow the law and lacks transparency.

Further, while DRA generally has full knowledge and control over its personal services budget and direct Other Operating Equipment and Expense (approximately \$20 million), it has no control or information about the administrative and legal support services costs provided by the Commission (just over \$7 million). As a result, it has been unable to specifically budget or track these costs.

The Subcommittee took action on March 6, 2013, to direct staff to work with the Department of Finance on drafting provisional budget language that stipulates that any funds authorized from the Public Utilities Commission Ratepayer Advocate Account shall be utilized exclusively by the DRA in the performance of its duties as determined by the director. The Subcommittee also directed staff to work with the Department of Finance on drafting language to define the scope of a fiscal audit of the CPUC to be conducted by the Office of Audits and Evaluations. As part of that request, staff recommends that the CPUC reimburse OSAE for the cost to conduct the fiscal audit. Staff further recommends that the Committee consider making DRA its own department for the following reasons.

- DRA is currently a subaccount in the CPUC's budget. As mentioned previously, current law states that the funds in the Public Utilities Commission Ratepayer Advocate Account shall be utilized exclusively by the division in the performance of its duties. Making DRA its own department would ensure that there is no comingling of Ratepayer Advocacy funds with the Commission's fund and no movement of funds in or out of the DRA account without the approval of the Legislature; and,
- Legal support services for DRA are currently part of the administrative cost paid out of the DRA budget to the CPUC. DRA reports that the CPUC does not properly account for budgeting DRA legal services. Under law, DRA has a Lead Attorney whose legislative responsibility is to manage the attorneys that work for DRA. However, the practice at the CPUC is to provide DRA attorneys on a case by case basis from the CPUC's Legal Division, as determined by the CPUC's General Counsel. Current law states that the attorneys that work on DRA cases answer to and take direction from the DRA Chief Counsel. But, the attorneys administratively work for the CPUC's General Counsel. This creates confusion (and a perception of conflict) when the interests of DRA are not aligned with the CPUC, and does not comport with the intent of the existing law that the attorneys have a clear reporting requirement to the DRA Chief Counsel. Making DRA its own department would ensure that resources already allocated to DRA legal services are exclusively used for DRA purposes.
- The Sacramento Bee reported on April 5 that a Senate Budget prehearing with representatives of the CPUC and the Department of Finance a CPUC staffer was caught trying to secretly record the meeting. The discovery surprised -- and angered -- many of the more than a dozen attendees of the meeting, which was quickly called to an end. The CPUC staffer initially denied that he was trying to covertly record the meeting, but later apologized to some attendees.

A CPUC spokeswoman issued a statement saying the employee had "accepted responsibility and acknowledged that it was a poor spur of the moment action on his part." Legislative Counsel advises that recording the meeting without the permission of the participants was illegal. The incident came a month after

CPUC officials faced questioning from members of this Subcommittee over the agency's budgeting and accounting practices and its auditing of utility balancing accounts.

Staff in attendance at the prehearing reported that the CPUC employee who initiated the recording explained that he was trying to get a representative from the DRA on tape giving DRA's interpretation of its responsibilities with regard to certain audit obligations. The issue being discussed was whether DRA's rate case audits satisfy the CPUC's statutory obligations to conduct regularly scheduled audits of utility balancing accounts every three to five years. The CPUC staffer resorted to taping the DRA employee without consent, which is unfortunately consistent with comments contained within the Business Advantage Consulting report on the CPUC Safety Culture which the Subcommittee discussed last week.

Making DRA its own department would more clearly separate the roles of DRA and prevent future intimidation tactics by the CPUC against the DRA.

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**Staff Recommendation: APPROVE as Budgeted 1-3 provisionally, such that these funds shall be used solely for the support of the Division of Ratepayer Advocates activities. No funds in this item may be redirected for any other use by the Public Utilities Commission. Draft trailer bill language that establishes DRA as its own department, commencing July 1, 2014. Direct the CPUC to reimburse OSAE to conduct a fiscal audit of the CPUC programs. Prior to contracting with the OSAE, the scope of the audit shall be defined by the CPUC in consultation with the Legislature. The CPUC shall provide information to the OSAE as necessary to complete the analysis and provide recommendations.**

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**ISSUE 3: ENERGY EFFICIENCY DATA TRANSPARENCY**

The CPUC oversees the investor owned utilities (IOU) rate-payer funded energy efficiency programs. For the last several three-year program cycles these programs have been budgeted to expend just over \$1 billion a year, making it the largest clean energy funding program in the State. The funding encourages and incents building designers, owners, managers, and occupants to reduce energy consumption in new construction or existing buildings. As the Legislature is considering program design for new fund sources, such as Proposition 39 and greenhouse gas cap and trade auction revenue, the lessons learned and from this massive program should provide valuable design guidance.

**STAFF COMMENTS**

Unfortunately, neither the CPUC, nor the IOUs, make publically available the results of the ratepayer investments in other ratepayer's buildings. This year the Legislature has been requesting information on the results of programs from the IOUs. However, legislative staff have been unable to acquire the data from either the IOUs or the CPUC. This is problematic for a number of reasons:

- It prevents the Legislature and public from gauging the effectiveness of different program design choices and limits the ability to hold the CPUC accountable for the results of those choices;
- It prevents market participants from gathering information that they can use to improve energy efficiency delivery in the State (this data release has been done for the California Solar Initiative through a publically available database and it has proven very effective for solar companies to craft business plans around what is actually working in CA); and
- The lack of data leaves the Legislature with little design assistance as they consider decisions for new sources of funds.

A publically available database of the non-confidential results of ratepayer investments into energy efficiency and clean energy and other data availability strategies would be a significant benefit to the Legislature, the clean energy business community, ratepayers and the public.

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**Staff Recommendation: Direct staff to develop budget trailer bill language to require the CPUC to increase access to non-confidential utility data related to their energy efficiency and clean energy program results.**

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