

AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 4 ON STATE ADMINISTRATION

ASSEMBLYMEMBER JOAN BUCHANAN, CHAIR

MONDAY, MAY 21, 2012

UPON ADJOURNMENT OF SESSION - STATE CAPITOL ROOM 437

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CONSENT CALENDAR

8840 COMMISSION ON UNIFORM STATE LAWS

ISSUE 1: ELIMINATE BUDGET BILL ITEM ON COMMISSION ON UNIFORM STATE LAWS AND AMEND BUDGET BILL CONTROL SECTION 13.00

May Revision. At its May 1, 2012 hearing, the Subcommittee adopted the Administration's proposal to consolidate the Commission on Uniform State Laws within the Legislative Counsel Bureau. In the May Revision, the Administration requests that the Commission's budget, Budget Bill Item 8840-001-0001, be eliminated and Control Section 13.00 be revised to reflect the consolidation. This is a technical adjustment to conform the previously-approved trailer bill language with the budget bill.

Staff Recommendation: Approve the elimination of the Commission on Uniform State Laws in the Budget Bill.

1110 DEPARTMENT OF CONSUMER AFFAIRS

ISSUE 1: IMPLEMENTATION OF BUSINESS AND PROFESSIONS CODE SECTION 35 SUPPLEMENTAL REPORTING LANGUAGE

BACKGROUND

At the May 1, 2012 Subcommittee hearing, the Department of Consumer Affairs (DCA) was asked about its efforts to implement Business and Professions Code Section 35, which requires professional-licensing boards to seek ways in which military experience can be used to meet requirements for professional licenses. The section states:

"It is the policy of this state that, consistent with the provision of high-quality services, persons with skills, knowledge, and experience obtained in the armed services of the United States should be permitted to apply this learning and contribute to the employment needs of the state at the maximum level of responsibility and skill for which they are qualified. To this end, rules and regulations of boards provided for in this code shall provide for methods of evaluating education, training, and experience obtained in the armed services, if applicable to the requirements of the business, occupation, or profession regulated. These rules and regulations shall also specify how this education, training, and experience may be used to meet the licensure requirements for the particular business, occupation, or profession regulated. Each board shall consult with the Department of Veterans Affairs and the Military Department before adopting these rules and regulations. Each board shall perform the duties required by this section within existing budgetary resources of the agency within which the board operates."

STAFF COMMENT

While the department provided some information about ongoing efforts to implement this code section, the Subcommittee may wish to adopt formal language requiring a report on which boards have rules or regulations addressing military experience, which boards do not have rules or regulations, and what efforts the department has undertaken to work with boards to develop rules and regulations.

Staff Recommendation: Adopt the following Supplemental Reporting Language:

"The Department of Consumer Affairs shall prepare a report describing its implementation of Business and Professions Code Section 35. No later than October 1, 2012, the department shall report to the Subcommittee the following:

- 1. A list of the boards that have statutes, rules, regulations or agreements allowing military experience to be used to meet professional licensure requirements and a description of the statutes, rules, regulations, or agreements.***
- 2. A list of the boards that do not have statutes, rules, regulations or agreements allowing military experience to be used to meet professional licensure requirements with an explanation from the boards on why they do not have statutes, rules, regulations or agreements.***
- 3. If the board has decided not to accept military experience, an explanation from the board about why they do not accept military experience.***
- 4. A description of the department's actions to direct the boards to implement this code section, including any memoranda to boards or other evidence of the department's actions.***
- 5. A description of how the department has interacted with the Department of Veterans Affairs and the Military Department regarding this issue."***

0559 SECRETARY OF LABOR AND WORKFORCE DEVELOPMENT

ISSUE 1: LABOR ENFORCEMENT TASK FORCE REPORTING LANGUAGE

Governor's Budget Request. The January budget removed budget bill provisional language requiring the LWDA to report on the progress of the Economic and Employment Enforcement Coalition (EEEC), a federal-state multi-agency partnership formed to combat the worst violators of federal and state labor, licensing, and tax laws operating in the underground economy.

BACKGROUND

The initial EEEEC budget request was approved as three-year limited term in the 2005 Budget Act; the 2008 Budget Act extended the EEEEC for two additional years. The 2010 Budget Act permanently established the EEEEC, with 66 positions and ongoing funding of \$7.208 million (special fund and reimbursements). Those positions were allocated as follows: LWDA – one position; Department of Industrial Relations (DIR) – 29 positions; EDD – 25 positions; and Contractors State License Board (CSLB) – 11 positions.

The 2011 Budget Act required LWDA to report by January 1, 2012, on the progress of the EEEEC and transferred authority and one position for the EEEEC from the LWDA to the DIR, as part of a larger reorganization of LWDA.

The goal of the EEEEC is to target violators who operate in the underground economy and assist legitimate businesses that do comply with California law. Within the underground economy, employers utilize various illegal schemes to conceal their true tax liability, as well as reduce their operating costs associated with insurance, payroll taxes, licenses, employee benefits, safety equipment, and safety conditions.

In January 2012, the EEEEC was reconstituted and renamed the Labor Enforcement Taskforce (LETF). The Administration indicates that the changes were made in this time of scarce

resources so the effort would be directed closely by the two key programs that enforce labor law issues. The Administration reports that all partner agencies of the EEEEC are part of the reconstituted LETF, and that the Board of Equalization and Department of Insurance are new secondary partners. The Administration also reports that the LETF will be focusing more on labor law violations, specifically in low wage industries, with targeting of employers empirically based. The Task Force also intends to evaluate the effectiveness of its efforts.

The LWDA submitted the required January 1, 2012, EEEEC progress report on February 28, 2012. An additional LETF interim report was submitted on April 28, 2012, containing updated information from January 1, 2012. The interim report also provided detail on the value added of each entity's participation in the LETF (versus the entity's baseline accomplishments).

STAFF COMMENT

This issue was discussed in the Senate Budget Subcommittee No. 5 hearing on March 8, 2012. At that hearing, it was noted that because the EEEEC was a budget creation there is no statutory citation that delineates program priorities or parameters. Therefore, by eliminating the budget reporting requirement, venues to ensure legislative oversight were effectively limited. Since that hearing, the Administration has provided a LETF interim report, detailing work since January 1, 2012. To ensure continued oversight of the LETF, and consistency with the original mission to combat the worst violators of federal and state labor, licensing, and tax laws operating in the underground economy, the Subcommittee may wish to consider reinstating a periodic reporting requirement through the annual budget act.

The Senate Subcommittee No. 5 on May 10, 2012 adopted provisional budget language requiring the task force to produce a bi-annual report. Staff suggests the Subcommittee concur with Senate actions.

Staff Recommendation: Adopt the budget provisional language, instituting a biennial reporting requirement for the Labor Enforcement Task Force beginning on March 1, 2013, by adding the following provision to Item 7350-001-0001:

The Department shall report to the Director of Finance and the Joint Legislative Budget Committee by March 1, 2013, and biennially thereafter, on the accomplishments of the Labor Enforcement Task Force and its enforcement activities regarding labor, tax, and licensing law violators operating in the underground economy. The Task Force is funded at \$7.2 million and 66 positions (30 positions within the Department, 25 positions within the Employment Development Department, and 11 positions within the Contractors' State Licensing Board). Secondary partners of the Task Force include the Bureau of Automotive Repair, the Department of Alcoholic Beverage Control, and the State Board of Equalization. The report shall include, but is not limited to, the following information:

- a) The "value added" by the Task Force; i.e., distinct reporting of the baseline accomplishment(s) of each participating entity versus the additional accomplishment(s) achieved by virtue of its participation in the Task Force, and efforts to increase collaboration and coordination of the inter-agency enforcement efforts of the Task Force.*
 - b) Efforts by the Task Force to develop targeting and statistical reporting methods that facilitate empirical identification of non-compliant employers.*
 - c) Any recommended statutory changes to improve the operation of the Task Force, including data sharing across participating agencies.*
 - d) Detailed objectives of the Task Force for the next reporting period and a description of how it intends to achieve those objectives.*
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VOTE-ONLY**7100 EMPLOYMENT DEVELOPMENT DEPARTMENT****ISSUE 1: UNEMPLOYMENT INSURANCE INTEREST PAYMENT**

May Revision. The May Revision proposes a reduction of \$104.4 million in the loan from the Disability Insurance Fund (DI Fund) to the General Fund (GF) to pay interest due to the federal government for Unemployment Insurance. The reduction is due to lowered interest rates required by the federal government.

BACKGROUND

At its March 7, 2012 hearing, the Subcommittee approved the Governor's request to authorize a loan of \$417 million from the DI Fund to the GF to cover GF costs associated with paying interest to the federal government on a loan related to Unemployment Insurance. Since the Governor's January proposal, the federal government announced a lower interest rate on this payment.

The new interest payment will be \$312.6 million, which is due in September 2012. Accordingly, the Administration has requested that the Budget Bill reflect the lowered payment amount.

Staff Recommendation: Approve the Reduced Unemployment Insurance Interest Payment

ISSUE 2: MAY REVISION UPDATES: UNEMPLOYMENT INSURANCE, DISABILITY INSURANCE AND SCHOOL EMPLOYEES FUND ADJUSTMENTS

May Revision. Every May, the Administration provides a revised budget request to adjust funding for the new estimates of claims and payments for the Unemployment Insurance (UI) Program, the Disability Insurance (DI) Program, and the School Employees Fund. The following changes are currently being requested for 2012-13:

- **Unemployment Insurance Program and Benefit Adjustments.** An increase of \$4.3 billion for Unemployment Insurance Benefits, due to the continuation of the federal benefits extension program. In addition, the Administration requests that benefit payments in the current year be increased by \$895.7 million.
- **Disability Insurance Program.** A reduction of \$64.4 million to reflect a decrease in DI payments. Additionally, DI benefit authority would be decreased by \$10.8 million in the current year.
- **School Employees Fund (SEF).** An increase in authority of \$19 million for benefit payments for the School Employees Fund. Additionally, a decrease in benefit authority of \$13.2 million for the current year. The SEF is a joint, pooled risk fund administered by the EDD, which collects contributions based upon a percentage of total wages paid by public school and community college districts.

Staff Recommendation: Approve the Requested Adjustments to Benefits

ISSUE 3: WORKFORCE INVESTMENT ACT ADJUSTMENTS

May Revision. The May Revision requests a decrease of \$55.3 million in Workforce Investment Act (WIA) discretionary funding. The decrease reflects changes in federal funding that have reduced state WIA funds from 15 percent of total statewide WIA funding to 5 percent, with 95 percent of funding now going to local WIA boards. The Administration also requests an increase in WIA local assistance funding of \$5 million, and \$5.3 million in the current year.

BACKGROUND

Changes in federal law have dramatically reduced the amount of discretionary WIA funding to the state. Previously, local workforce investment areas received 85 percent of WIA funding, while the state received 15 percent. This amounted to \$69.1 million in 2011-12. Under the new provisions, states only receive five percent of funds, which is estimated to be \$20.5 million in 2012-13.

The Administration states this new level of funding is only enough to cover state administrative costs, ending funding to programs the Legislature previously supported such as the Governor's Award for Veterans Grants and Green Technology/Green Collar Jobs program. Proposed funding is depicted in the following chart:

Program	Funding
Employment Development Department	\$1.2 million
California Unemployment Insurance Appeals Board	\$.1 million
Audit, Compliance and Fraud Prevention	\$5.3 million
Labor Market Information Program	\$1.9 million
Local Program Oversight and Technical Assistance	\$7.7 million
Financial Management and Information Technology	\$2.1 million
California Workforce Investment Board Administration	.3 million
Policy Development and Partner/Program Coordination	\$1.9 million
Total	\$20.5 million

In addition, provisional Budget Bill Language is needed to allow the expenditure of WIA funds if they are unspent or if EDD receives unanticipated additional federal WIA discretionary funds. Proposed language allows EDD to expend the unanticipated funds consistent with an expenditure plan and requires legislative notification.

Staff Recommendation: Approve the Proposed Changes in WIA Funding and provisional Budget Bill Language

7350 DEPARTMENT OF INDUSTRIAL RELATIONS

ISSUE 1: TRANSFER OF STATE MEDIATION TO THE PUBLIC EMPLOYMENT RELATIONS BOARD

Spring Finance Letter. A Spring Finance Letter proposes to transfer the State Mediation and Conciliation Service program within the Department of Industrial Relations (DIR) to the Public Employment Relations Board (PERB). The Administration states that the transfer would consolidate public-sector labor relation functions under PERB and would have no net effect on the General Fund (GF).

BACKGROUND

The State Mediation and Conciliation Service provides five types of services:

- Mediation of labor disputes;
- Maintains a list of private arbitrators whom parties can request to resolve labor disputes;
- Provides labor-related election and representation services;
- Provides conflict resolution for the workplace services; and
- Provides training and facilitation services.

Mediation services are provided free of charge, but the other services are provided on a cost reimbursement basis. The services are available to the private sector but are provided primarily to non-federal public sector employees and unions.

PERB is a quasi-judicial administrative agency charged with administering the collective bargaining statutes covering employees of California public schools, colleges, universities, state government, and other public employees.

This proposal would result in the transfer of 14.1 positions and \$2.1 million in budget authority (\$2 million GF) from DIR to PERB. One position would expire June 30, 2013.

STAFF COMMENT

Government Code Section 3540 calls for PERB to expand its jurisdiction to cover all public sector labor relations. The Administration states this transfer would comply with this statute and the transfer is part of the Governor's efforts to streamline and consolidate state government.

Staff Recommendation: Approve the Trailer Bill

2310 OFFICE OF REAL ESTATE APPRAISERS

ISSUE 1: EXTENSION OF REPAYMENT DATE

May Revision. A Finance Letter requests a one-year extension to repay a loan from the Real Estate Appraisers Fund to the General Fund (GF).

BACKGROUND

The 2008 Budget Act authorized an \$11.6 million loan from the Real Estate Appraisers Fund to the GF. The Administration requests that repayment of the loan be extended until Fiscal Year 2013-14. According to the January budget, the fund has a \$2.4 million projected balance for 2012-13 after \$5.1 million in projected expenditures.

Staff Recommendation: Adopt the proposed Budget Bill Language

8885 COMMISSION ON STATE MANDATES

ISSUE 1: REPEAL MANDATE REGARDING FILIPINO EMPLOYEE SURVEYS**BACKGROUND**

At its March 13, 2012 hearing, the Subcommittee voted to reject the Administration's proposal to repeal selected local mandates, instead suspending them for the 2012-13 year. On March 8, 2012, Senate Subcommittee No. 5 voted to repeal a local government mandate related to Filipino Employee Surveys. The Senate has asked for concurrence in their action.

The Filipino Employee Surveys mandate requires local agencies to categorize Filipino employees as a separate ethnic calculation in employee ethnicity survey and tabulations. Legislation creating this mandate, authored by Senator Alan Robbins, became law in 1978 as Government Code 50087. The mandate has been suspended since 1990, and the Administration asserts that this mandate should be repealed because other laws require similar information. Further, in the Administration's tabulation of the constitutionally-required 2012-13 GF expenditure if the mandates are neither suspended nor repealed, no funding is scheduled for the Filipino Employee Surveys.

STAFF COMMENT

Staff Comment. The Subcommittee's action at its March 13, 2012 hearing was to direct requests for repealing mandates to policy committees. However, given that the Filipino Employee Survey mandate has been suspended since 1990, and other laws require similar information, staff recommends this mandate be repealed.

Staff Recommendation: Concur with Senate action

ITEMS TO BE HEARD

0510 STATE AND CONSUMER SERVICES AGENCY – OFFICE OF PRIVACY PROTECTION

The Office of Privacy Protection provides information and assistance to consumers on identity theft and other privacy issues and recommends policies and practices that protect individual privacy rights to business and government. The 2011-12 budget for the office includes \$224,000 GF and \$174,000 Special Fund and 3.3 positions.

ISSUE 1: ELIMINATION OF THE OFFICE OF PRIVACY PROTECTION

The Governor's Budget proposes to eliminate the Office of Privacy Protection for a savings of \$246,000 GF and \$190,000 Special Fund. The Administration states that many other state, federal and business resources exist that promote and protect the privacy rights of consumers.

This issue was first discussed and held open by the Subcommittee on April 18, 2012. See below for further discussion.

STAFF COMMENTS/QUESTIONS

The Office of Privacy Protection was created by the Legislature in 2000, making California the first state in the nation to create a state agency devoted to privacy issues. The office acts as a clearinghouse for information on privacy rights and assists consumers, businesses and law enforcement on privacy-related issues. Among the office's functions are:

- **Recommended Privacy Practices.** The office publishes best practice recommendations for individuals, businesses and other organizations.
- **Law Enforcement Manual on Identity Theft.** The office compiled and edited the Identify Theft Reference Manual for California Law Enforcement, which is used by the Commission on Peace Officer Standards and Training in identity theft courses.
- **Cyber Safety for Children.** The office sponsors a website for parents and educators, www.cybersafety.ca.gov, and a Speakers Bureau that provides speakers for PTA-sponsored events.
- **Foster Youth Identity Theft Remediation.** The office coordinated a pilot program in 2010 and 2011 that helped 247 foster children in Los Angeles County clear up credit records that were damaged by identity theft. Since then, federal legislation was enacted requiring all states to request credit reports on foster children annually starting at age 16. The office is working with the credit agencies and the U.S. Health and Human Services Agency and Federal Trade Commission to develop a standardized process to enact this law.
- **Consumer Assistance.** The office responds to an average of 5,000 Californians per year who call its toll-free phone line or send an email with questions or concerns regarding issues such as identity theft, medical privacy, information security and online privacy.

- **Business Assistance.** The office provides seminars, presentations and other information to businesses on topics such as handling data breaches, email marketing and information sharing.

The Subcommittee received two letters supporting the Office of Privacy Protection and urging the rejection of the administration's proposal.

Consumer Action, a non-profit consumer education and advocacy group, states, "Eliminating this office with a staff of four and a budget of just over \$400,000 would have a very small effect on our state budget, but would send a distressing signal about the value of our citizens' privacy. We are proud that California has been an historic leader in privacy protection, and the privacy-related issues and concerns this office handles have never been more important than they are today, making it especially important for California to continue its leadership on the privacy front."

The Privacy Rights Clearinghouse, a San Diego-based non-profit consumer education and advocacy organization, states, "the office provides a wealth of resources on privacy for individuals, businesses, state government and other organizations. There is no other agency that provides information and assistance on the range of privacy concerns covered by the office."

The Administration first proposed eliminating this office in the 2011 May Revision. The Subcommittee rejected that proposal.

Following the April 18, 2012 Subcommittee discussion, the Administration was asked the following question, should the Office of Privacy Protection be eliminated:

- Is there a specific plan to continue the work of the office through some other office or agency, including maintaining the website and hotline, conducting training for business, government and other groups, working with the federal government on foster youth identity theft, etc.? If so, please provide information on which office, how many PYs would be involved, etc.

On May 3, 2012, the Department of Finance responded to the question by stating there was no formal plan for another office to assume the office's website, hotline or other duties. The Department of Finance noted that numerous other public and private agencies provide information on privacy issues, and the Federal Trade Commission operates a hotline to assist victims of privacy-related crimes. The department also noted that the U.S. Department of Health and Human Services is currently working on guidance for state agencies regarding Foster Youth Identity Theft issues.

Staff notes that most state agencies that provide information or help on privacy issues, such as the Attorney General's Office or the Department of Motor Vehicles, work with the Office of Privacy Protection. Thus, eliminating the office could lead to added costs for other state agencies or less service for Californians on privacy-related issues. For example, the office provides direct services to California foster youth who are victims of identity crimes; this service might disappear without the office.

Additionally, it is unclear whether California residents who are victims of privacy-related crimes would know to contact the Federal Trade Commission.

This proposal would likely lead to less service for Californians on privacy-related issues while achieving minimal savings to the state. This comes at a time when these issues continue to

grow, and become more complex. Privacy issues related to social networking, mobile privacy, children's online safety and privacy, and data breaches are all on the rise.

On May 10, 2012, the Senate Budget Subcommittee No. 4 voted to reject the proposal to eliminate the office and restore funding to the office.

Staff Recommendation: Reject Trailer Bill Language to Eliminate the Office of Privacy Protection and Restore Current Funding of the Office.

0890 SECRETARY OF STATE

ISSUE 1: SB 636 PERSONAL INFORMATION: INTERNET DISCLOSURE PROHIBITION – SAFE AT HOME PROGRAM

Governor's Budget Request. The Governor's Budget proposes 0.5 new positions and \$42,000, GF, to implement SB 636 (Corbett), Chapter 200, Statutes of 2011. The legislation prohibits Internet search companies from providing confidential address information of Safe at Home participants to third parties to incite or aid in the commission of violence or threat of violence. The new Program Technician II position will implement the legislation by:

- Providing expert technical customer assistance on the procedures for notifying Internet search providers to withdraw the personal information from their websites; and,
- Coordinating with the Office of Privacy Protection and local and state law enforcement agencies on steps to identify and prosecute search providers who are out of compliance.

This issue was discussed at the April 18, 2012 hearing but held open, pending a decision by the Subcommittee on the Governor's proposal to eliminate the Office of Privacy Protection.

STAFF COMMENT

First created in 1998, the Safe at Home program allows victims of domestic violence, sexual assault and stalking, as well as reproductive health care employees, to keep their addresses and other personal information confidential. The program has served more than 3,600 families. SB 636 creates a new crime, and allows the state to quickly stop and prosecute individuals and associations that post "hit" websites that post information about reproductive health care professionals.

According to the Secretary of State, the new position will be an important communications lynch pin between the SOS, the Office of Privacy Protection and Safe at Home participants. The request is in line with the analysis of the legislation by the Assembly Appropriations Committee, which suggested implementation would cost less than \$50,000.

This proposal could be altered in the future should the Legislature adopt the Governor's proposal to eliminate the Office of Privacy Protection. If that office is eliminated, it is possible that workload associated with implementing this legislation could increase for the Secretary of State. **If the Subcommittee decides to reject the proposal to eliminate the Office of Privacy Protection and continue its operation, staff sees no concerns with this proposal.**

Staff Recommendation: Approve the Budget Change Proposal

ISSUE 2: CAL-ACCESS AND CALVOTER SERVER STABILITY

Finance Letter. A Finance Letter requests an augmentation of \$375,000 (\$206,000 GF) in Fiscal Year 2012-13 and \$95,000 (\$66,000 GF) in 2013-14 to purchase servers, software licenses and to contract for services to address failing operating systems related to the Cal-Access and CalVoter databases. The Secretary of State's Office (SOS) states that this request is required to comply with the California Political Reform Act of 1974 and the Help America Vote Act of 2002.

BACKGROUND

Created in 1999, Cal-Access is a database maintained by the Secretary of State's Office used to make lobbying and campaign finance information available to the public. CalVoter is a database containing voter registration information. Both systems are run on servers that are more than 12 years old, and are the only two of nine Secretary of State information technology programs that have not been updated since 2010.

The Cal-Access system went down on November 30, 2011, and again on December 9, 2011. The system was restored on December 30, 2011 through a process called virtualization, which runs the system by creating a new system on new servers and software to emulate the old system.

CalVoter cannot be operated at full capacity while the Cal-Access system is operated in its current state. To address this issue, SOS proposes to separate the two systems onto different servers. SOS proposes to spend \$130,000 on new servers, \$130,000 on a virtualization software license, and \$40,000 on contract services in 2012-13. Another \$20,000 in contract services for 2013-14 is proposed.

SOS believes this proposal will allow it to operate these systems through the 2012 election cycle. In addition, SOS proposes to temporarily relocate the operating systems in January 2013, at a cost of \$75,000 in 2012-13 and another \$75,000 in 2013-14.

STAFF COMMENT

This is a temporary but necessary fix. While CalVoter will eventually be replaced by the VoteCal system, which SOS expects to implement by 2015, SOS will likely propose a permanent replacement for Cal-Access in the coming years.

Staff Recommendation: Approve the Finance Letter request

ISSUE 3: STATEMENTS OF INTEREST BACKLOG

Finance Letter. A Finance Letter requests a two-year limited augmentation of \$947,000 in Reimbursement authority to more quickly fill positions and allow for paid overtime to reduce the backlog regarding processing annual Statement of Information documents filed by businesses. The Secretary of State's Office notes this will not require a fee increase, and could reduce the turnaround time on processing these forms from 117 days to 68 to 78 days.

BACKGROUND

Corporations and limited liability companies are required to file an annual Statement of Interest with the Secretary of State's Business Programs Division that contains information regarding the business and its key personnel. Filed Statements of Information are used by businesses to open checking accounts and enter into contracts.

Businesses pay a fee when submitting this form, and they can pay a higher fee for expedited service. SOS states that it has 100,000 Statements of Information waiting to be opened and processed, many of which have a check for \$20 to \$25 attached. Current processing procedures are manually

SOS proposes to use funding from expedited fees, which are deposited in the office's Reimbursements account, to quickly fill positions and pay overtime to decrease the current 117-day turnaround time for processing Statements of Interest. This will not increase fees and is only a request to expend existing funds.

STAFF COMMENT

At its April 18, 2012 hearing, the Subcommittee approved an SOS request to use \$1.1 million from its Business Fees Fund to help quicken the processing time around other business documents, such as Business Formation Documents. This is a similar request to improve the office's handling of Statements of Interest. Quicker processing times will improve the state's business climate and increase revenue to the state.

Both of these requests are temporary fixes until the SOS implements its California Business Connect project, which will automate the filing and retrieval of business documents and create a centralized database for all business records. The project is expected to be completed in June 2016.

Staff Recommendation: Approve the Finance Letter request

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT

ISSUE 1: CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD – RESTRUCTURING SECOND LEVEL APPEALS

Governor's Budget Request. The Governor's Budget proposes the elimination of the seven-member California Unemployment Insurance Appeals Board. The proposal would restructure the second-level appeals process, with administrative law judges, instead of board members, responsible for decisions. The proposal also establishes a process for precedent decisions, provides for review of decisions, and reorganizes the leadership structure to function without the board. The Governor's Budget suggests this change would result in \$600,000 in savings in 2012-13 (\$3,000 GF), and \$1.2 million (\$6,000 GF) annually after that.

This issue was first discussed and held open at the March 7, 2012 Subcommittee hearing.

BACKGROUND

The California Unemployment Insurance Appeals Board (CUIAB) was established by the Legislature in 1943 to provide due process for claimants and employers who dispute Employment Development Department benefit determinations related to Unemployment Insurance, Disability Insurance, and payroll tax petitions. Currently, a seven-member board oversees more than 900 employees who handle first- and second-level appeals.

The board consists of five members appointed by the Governor and confirmed by the state Senate and two members appointed by the Legislature. Two members must be attorneys. The Governor appoints one of the members as a chairperson. Board members work full-time and are paid \$128,109 per year, with the chairperson earning \$132,179 annually. While two levels of appeals are not required by the federal government, it is encouraged and funded: the board's budget, which is proposed for 2012-13 to be \$102.1 million, is 93 percent federal funding. California is one of 49 states with two levels of appeals.

First-level appeals are handled by administrative law judges. Second-level appeals are reviewed by a separate administrative law judge, who reviews the case and prepares a proposed decision, which is then reviewed by two members of the board who act as a panel. The panel issues a decision, or if they cannot agree, the chairperson breaks the tie.

The Governor's proposal would abolish the seven-member board and create the California Unemployment Insurance Appeals Bureau. A director appointed by the Governor would head the bureau. Under the proposed process, decisions on second-level appeals would be made by administrative law judges. Four newly-created Presiding Administrative Law Judge positions would conduct routine reviews of decisions to ensure quality, and a new Precedent Decisions Committee would be created to have oversight of precedent decisions.

STAFF COMMENT

Discussion of this issue at the March 7, 2012 raised several concerns about the Administration's proposal:

- **The new structure would eliminate independent review of proposed decisions.** Under the current structure, board members review proposed decisions written by ALJs. The Administration's proposal would eliminate the board, and thus eliminate independent review. While the proposal does call for Presiding ALJs to perform random reviews of decisions, the Administration acknowledges there would not be 100 percent review. And Presiding ALJs would not have the same independence as appointed board members.
- **Without independent review, appeals to the already-overburdened court system might increase.** Based on questions from the Subcommittee, the Administration provided information about the percentage of appeals cases that end up in court in the two other states that have second-level appeals handled by entities other than independent boards, such as a state agency. About 3.5 percent of cases end up in court in Virginia and Colorado, the two states that handle second-level appeals within the department that administers first level appeals. This is a much higher percentage than the current system in California, where 0.6 percent of cases end up in court. While it is difficult to determine how this structural change would impact California courts, it appears possible that more appeals would go to court, and thus increase workload for a state court system that is already struggling to handle current workloads.
- **Eliminating the board would lessen legislative oversight of unemployment insurance appeals.** Under the current structure, the seven board members are either appointed by the Legislature or subject to Senate confirmation. The Administration's proposal would require confirmation of only the new Bureau Director, thus lessening legislative oversight.
- **The current board has reduced its backlog and appears to be effective.** According to testimony from the current board chairman, the board's backlog decreased by 35 percent between December 2010 and March 2012, and the number of days workers and employers waited for decisions fell by 22 days.

The Administration states that the purpose of its proposal is to streamline state government and improve efficiencies. However, the Administration acknowledges that the new process would only reduce the number of days to address a second-level appeal by 1 or 2 days out of the 54 days it currently takes, on average, to render decisions. In addition, this proposal includes minimal GF savings.

The LAO noted many of these same concerns with the Administration's proposal, and provided an alternative set of actions for the Subcommittee to consider. The LAO proposal includes eliminating two vacant ALJ positions in the budget year and four vacant ALJ positions in 2013-14, for a savings of \$354,000 and \$710,000, respectively. This mirrors the Governor's proposal and thus achieves the same savings the Administration proposed. Additionally, the LAO called for reducing the board from seven members to five and shifting the board's function to conducting random reviews of ALJ decisions, instead of its current function to review and approve all ALJ proposed decisions. Finally, the LAO called for requiring board members to have qualifications and salaries akin to those of ALJs.

Staff concurs with the majority of the LAO's alternative, except for the components that would: (1) transfer the responsibility for issuing decisions on second-level appeals to ALJs and (2) reduce the compensation of Board members to align with the compensation of ALJs. With regard to the former, and similar to the Governor's January proposal, this approach would include random quality control reviews, which would result in less than 100 percent review, no independent review, and a potentially higher workload for the courts. With regard to the latter, the point of the LAO alternative was to align Board compensation with that provided to ALJs. However, upon further review, staff finds that the current compensation of the Board is on par with ALJs, due to the fact that ALJs receive, in addition to their base salary, a pay differential for completing Judicial College. Further, senior level ALJs also receive an annual recruitment and retention bonus.

On May 10, 2012, the state Senate Budget Subcommittee No. 5 approved a proposal that modified the LAO alternative. This proposal address legislative concerns by continuing independent review of all decisions and retaining legislative authority to appoint or confirm all board members while still achieving budgetary savings proposed by the administration. Staff suggests concurring with the Senate action.

Staff Recommendation: Adopt a refined LAO alternative that retains the Board level review of the appeals caseload, including placeholder budget trailer bill language, as follows:

1. Eliminate two vacant ALJ positions in the budget year and four vacant ALJ positions in 2013-14, for savings of \$354,000 in the budget year and \$710,000 in the out years.

2. Maintain the Board but reduce its size and modify Board member qualifications, resulting in annual savings of \$360,000, as follows:

a) Reduce the size of the Board from seven to five members, with the Legislature retaining its authority to appoint two members and the Governor having authority to appoint the remaining three members, subject to legislative confirmation.

b) Align the required qualifications of the Board members with those of ALJs to, at a minimum, require Board members to be an attorney and have one year of experience in conducting judicial hearings or five years of experience in the practice of law.

ISSUE 2: SINGLE CLIENT DATABASE DATA CENTER COSTS

Spring Finance Letter. A Spring Finance Letter requests provisional budget bill language that would allow the Employment Development Department (EDD) to increase appropriations from two Special Funds to cover potential increased costs related to the Single Client Database modernization project. Costs related to database servers have been higher than anticipated, and EDD seeks language allowing them to increase appropriations from the Unemployment Administration Fund (UI Admin Fund) and Unemployment Compensation Disability Insurance Fund (DI Fund) by as much as \$2 million during the 2012-13 Fiscal Year.

BACKGROUND

The Single Client Database is a database for the Unemployment Insurance and Disability Insurance programs, and includes 1.2 billion records. In 2009, EDD began a project to modernize the database by converting it to a DB2 relational database management system. This project was begun in part due to changes enacted by the Legislature through ABX3 29, (Coto) Chapter 23, Statutes of 2009, which required EDD to enact an alternative base period that expanded eligibility for unemployment insurance benefits. The previous database system could not implement the new benefit rules.

The new Single Client Database system went live in November 2011.

Since then, post-conversion costs related to batch processing and online processing work done by Office of Technology Services (OTech) within the California Technology Agency have been higher than expected. EDD and OTech are working to make the conversion process more efficient and less costly, and OTech is soon expected to lower its rates to all state agencies, which will lower costs to EDD. In addition, the administration notes that EDD will be able to use \$3.3 million in salary savings accumulated in 2011-12 to pay for potential higher costs in 2012-13.

However, the Administration is concerned that costs may still be higher than anticipated, and is thus seeking language that will allow it to use as much as \$660,000 from the DI Fund and \$1.3 million from the UI Admin Fund.

BACKGROUND

The provisional language includes notification to the Joint Legislative Budget Committee and a cap on the appropriation, ensuring legislative oversight and spending limitations. Staff agrees with the need for the language.

Staff Recommendation: Approve the Spring Finance Letter

ISSUE 3: DISABILITY INSURANCE AUTOMATION PROJECT

Spring Finance Letter. A Spring Finance Letter requests \$33.8 million (Special Funds) to fund a net 68 positions to continue the Disability Insurance Automation project. This will provide funding for the fourth year of a project that will automate several manual work processes involved with filing a claim for disability insurance.

BACKGROUND

The DIA project will allow claimants, medical providers, and employers to use the Internet to submit claims data using a direct electronic interface or through web-based intelligent forms. The project also will convert paper claims to electronic formats and allow some claims to be paid automatically. The project is expected to go live in summer 2012.

The positions requested for 2012-13 include 27 new positions, 70 existing positions, and a reduction of 29 positions, for a net 68 positions. The 29 eliminated positions are Key Data Operators, whose work is being reduced due to the automations included in this project.

The project, which is funded through the Disability Insurance fund, is expected to cost \$157.9 million. EDD has expended \$76 million through 2011-12.

STAFF COMMENT

The resources in this request are consistent with Special Project Report (SPR) 3, which was approved by the California Technology Agency in November 2011. SPR 3 reflects a number of changes relative to SPR 2, including the project end date being extended from August 2012 to June 2013. The additional time is needed to ensure this system interacts with the Single Client Database (SCDB) DB2 system, which was initiated after this project was first launched.

SPR 3 also reflects a total cost of increase of \$38.6 million (DI Fund) over SPR 2. While this is an accurate figure, it is potentially misleading given the extension of the project completion date. In addition, SPR 3 includes *possible* additional vendor support. The more meaningful figure is that one-time costs increased by \$6.1 million and annual support costs increased by \$2 million once the project is fully implemented. Additionally, should EDD become vendor independent sooner than expected, the additional resources may not be required.

As part of its oversight activities, the Technology Agency has asked EDD to provide a report by January 31, 2013 regarding how it will transition the department off vendor services on three separate information technology projects, including the DIA project.

Staff Recommendation: Approve the Spring Finance Letter

**7100 EMPLOYMENT DEVELOPMENT DEPARTMENT
0530 HEALTH AND HUMAN SERVICES AGENCY****ISSUE: UNEMPLOYMENT INSURANCE MODERNIZATION PROJECT**

Spring Finance Letters. A Spring Finance Letter requests a one-time budget augmentation of \$16.9 million (\$11.6 million Contingent Fund and \$5.3 million American Recovery and Reinvestment Act Unemployment Fund) and a redirection of \$6.3 million Unemployment Administration Fund for the Employment Development Department for the Unemployment Insurance Modernization (UIMOD) project. The increase will fund 47 existing positions, hardware purchases, and consultant and vendor costs for the project, which is automating processes related to unemployment insurance.

A separate but related Spring Finance Letter from the Office of Systems Integration (OSI) in the Health and Human Services Agency requests a reduction in OSI spending authority of \$8.9 million in Fiscal Year 2011-12, \$12.2 million in 2012-13, and \$10.9 million in 2013-14. EDD has contracted with OSI to manage the UIMOD project, and the reductions are in line with the revised plan for the project. OSI's costs are being reduced as the project is implemented.

BACKGROUND

Federal law requires Unemployment Insurance (UI) benefits to be paid promptly. The U.S. Department of Labor measures compliance with the federal law through a number of performance measures. While California continues to make timely payments for the vast majority of claims, the EDD continues to not fully meet the federal performance measures, in part due to the state's continuing high unemployment rates and in part because the current UI payment authorization system is more than 30 years old.

The UIMOD project is comprised of two distinct automation efforts: the Call Center Network Platform Automation Upgrade (CCNPAU) sub-project and the Continued Claims Redesign (CCR) sub-project.

The CCNPAU sub-project was implemented in June 2011. The new system can route calls throughout the state to available staff, also allows customers the opportunity to certify for benefits bi-weekly by phone in lieu of submitting paper forms.

The costs requested in the Finance Letter are reflective of the needs of the CCR sub-project, currently in the Design, Development and Implementation phase. The CCR sub-project is developing a solution with customer self-service capabilities (enhanced telephone and the Internet) for reopening UI claims, certifying for continued benefits, and obtaining information about customers' UI claims.

The project is expected to be available for public use in March 2013.

STAFF COMMENT

According to the Special Project Report 4 approved on April 18, 2012 by the California Technology Agency, the implementation date of the CCR portion of this project has been delayed by one year, and the total cost for the UIMOD project has grown from \$158.6 million to \$185.2 million - a \$26.6 million increase - since the last approved Special Project Report in November 2009.

EDD attributes much of the delay and cost increase to the Single Client Database Modernization Project, which was prompted by 2009 legislation that created an alternate base period for UI benefits. (That project is discussed earlier in this agenda.) The database upgrade added delay and cost to other EDD IT projects, including this one.

Because this project is partially federally funded and necessary to improve the state's ability to meet federal standards for prompt handling of UI benefits, staff recommends approving the proposed funding.

Staff Recommendation: Approve the Spring Finance Letters

7350 DEPARTMENT OF INDUSTRIAL RELATIONS**ISSUE 1: IMPLEMENTATION OF 2011 LEGISLATION SUPPORTED BY THE LABOR AND WORKFORCE DEVELOPMENT FUND: PREVAILING WAGE VIOLATIONS (AB 551) AND WILLFUL MISCLASSIFICATION OF INDEPENDENT CONTRACTORS (SB 459)**

May Revision. The May Revision changes a January budget proposal that sought to fund the implementation of two new laws through the Labor Enforcement Compliance Fund. Because that fund will sunset on July 1, 2013, the Administration has withdrawn that proposal and now requests \$2.5 million in expenditure authority from the Labor and Workforce Development Fund to fund implementation of AB 551 (Campos), Chapter 677, Statutes of 2011, and SB 459 (Corbett), Chapter 706, Statutes of 2011.

BACKGROUND

AB 551 (Campos), Chapter 677, Statutes of 2011 increases the minimum and maximum daily penalty amounts for the failure of a contractor or subcontractor to pay the applicable prevailing wage rate to workers on public works projects, the minimum and maximum daily penalty amounts assessed to contractors and subcontractors with prior violations, and the daily penalty amount for failure to timely produce payroll records if requested. In addition, the legislation requires that a contractor or subcontractor who does not provide a timely response to requests for payroll records will be subject to disbarment proceedings.

DIR states that the increased amount of penalty assessments and the stricter requirements for consideration of disbarment prosecution will impact workload by increasing citation appeal hearings and debarment proceedings. DIR is requesting two new Industrial Relations Counselor positions and two new Deputy Labor Commissioner positions.

The budget proposes \$765,000 and four positions in 2012-13, and \$639,000 ongoing, to comply with the requirements of AB 551, related to prevailing wage violations. Of the requested resources in 2012-13, \$100,000 is for one-time costs to redesign and/or upgrade the existing database system.

SB 459 (Corbett), Chapter 706, Statutes of 2011 prohibits the misclassification of an individual as an independent contractor rather than as an employee and provides that persons or employers violating the prohibition are subject to specific civil penalties assessed by the Labor and Workforce Development Agency or a court. The legislation requires DIR to conduct an investigation on any wage claim asserting misclassification and in any field investigation with respect to adequate workers' compensation coverage in which classification of an individual as an employee vs. an independent contractor is brought into question in order to determine whether the classification is willful or a pattern or practice.

DIR is seeking authority to add 11 new deputy labor commissioner one positions, one new deputy labor commissioner III positions, and one new industrial relations counsel III positions to implement the legislation.

The budget proposes \$1.7 million and 13 positions in 2012-13, and \$1.65 million ongoing, to comply with the requirements of SB 459.

STAFF COMMENT

This issue was first discussed at the Subcommittee's March 7, 2012 hearing. At that time, the administration's proposal was to use the Labor Enforcement and Compliance Fund as the fund source. However, because this fund sunsets on June 30, 2013 and the Administration has not offered a proposal to extend the sunset, it is now seeking to use the Labor and Workforce Development Fund.

The Labor and Workforce Development Fund was expected to have a fund balance of \$8.7 million in 2012-13, and this proposal seeks to use \$2.5 million from that fund. The Labor and Workforce Development Fund is established in Labor Code Section 2699 and is a repository for funds awarded through civil actions by employees against employers. The fund is intended to be used by the Labor and Workforce Development Agency to enforce labor laws and educate employees and employers about labor laws.

While staff is unaware of any concerns relating to the implementation of AB 551, the Subcommittee received one letter of opposition to implementing SB 459. The letter is from the California Chamber of Commerce, Associated General Contractors, California Grocers Association, California Independent Grocers Association and the Messenger Courier Association of America, all of whom opposed the legislation.

The letter notes the legislative intent was to only pursue bad actors who willfully misclassify independent contractors, and the department's request to add 13 new positions to implement the legislation is "not warranted for a bill that was portrayed as having limited applicability except for certain cases."

The department states that it will require extensive investigation to determine where misclassification was "willful."

The Subcommittee received a letter in support of implementing this legislation from the California Labor Federation, which sponsored SB 459. The Labor Federation notes that the consequences of misclassification affect workers and employers who are face unfair competition from employers who misclassify workers to avoid paying employee benefits. They state the department will require resources to investigate patterns of misconduct that could construe willful misclassification.

Staff Recommendation: Approve the use of \$2.5 million from the Labor and Workforce Development Fund to implement Chapters 667 and 706, Statutes of 2011.

ISSUE 2: EMPLOYEE/EMPLOYER EDUCATION AND OUTREACH
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Governor's Budget Request. The Governor's budget proposes a three-year limited-term increased expenditure authority of \$2.3 million in 2012-13, and \$1.6 million in 2013-14 and 2014-15, from the Labor and Workforce Development Fund to provide focused training, outreach and communication in multiple languages on wage and hour laws and health and safety laws, redirect staff to provide increased education and enforcement of labor laws, and provide enhanced training and investigative tools to increase the effectiveness of field staff.

This item was heard in the March 7, 2012 Subcommittee hearing but held open pending a determination of how DIR would propose to fund the implementation of 2011 legislation.

BACKGROUND

DIR enforces minimum labor standards to protect employees and to protect employers who comply with the law from those employers who attempt to gain an advantage by failing to comply with minimum labor standards. This request would allow two divisions within DIR – the Division of Labor Standards Enforcement and the Division of Occupational Safety and Health – to perform numerous outreach efforts aimed at increasing awareness of various labor laws. The chart below provides details.

Figure 2 – Expenditure Plan for Employee/Employer Outreach

Division of Labor Standards Enforcement (DLSE)			
#	DESCRIPTION	2012-13	2013-2015
1	Translation & duplication of wage claim video and written resources for waiting rooms.	\$432,000	
2	Development of language cards for investigators.	\$3,000	
3	Educational outreach partnerships with industry groups and other public agencies.	\$374,000	\$374,000
4	Educational outreach via ethnic media outlets.	\$135,000	\$100,000
5	Educational outreach via out-of-home (outdoor) advertising.	\$135,000	\$100,000
6	Employer training regarding labor costing and litigation pursuant to LC Section 2810.	\$371,000	\$221,000
	DLSE Grand Total	\$1,450,000	\$795,000
Division of Occupational Safety and Health (DOSH)			
#	DESCRIPTION	2012-13	2013-2015
1	Media buys for heat outreach to agricultural workers and employers.	\$200,000	\$200,000
2	Integrated training programs on significant hazards for internal staff, joint external training.	\$450,000	\$450,000
3	Multilingual outreach materials.	\$100,000	\$100,000
4	Training of trainers for worker organizations to better utilize and communicate with DOSH.	\$100,000	\$100,000
	DOSH Grand Total	\$850,000	\$850,000
	Department of Industrial Relations Grand Total	\$2,300,000	\$1,645,000

STAFF COMMENT

DIR states that a previous campaign authorized in the 2009 Budget Act to increase awareness of heat-related illness among Spanish-speaking agricultural and construction workers and their employers significantly increased awareness around heat illness prevention. The department will utilize lessons learned during that campaign in this new outreach effort.

As it did with the heat illness campaign, DIR intends to study the outcomes of this effort, including whether employer outreach programs mitigate wage and hour violations, and the number of attendees at outreach events and whether compliance increases following such outreach. Given that this outcome analysis is already planned, in considering approval of this request, the Subcommittee may wish to require a written report of the outcomes and achievements of the outreach effort when it concludes in fiscal year 2014-15.

The proposed fund source, the Labor and Workforce Development Fund, is comprised of funds collected through civil penalties assessed in legal cases brought by private attorneys on behalf of employees. The fund has historically received between \$4 million and \$5 million annually and has a Current Year balance of \$7.9 million.

Staff Recommendation: Approve the Budget Change Proposal
