

**AGENDA  
ASSEMBLY BUDGET SUBCOMMITTEE NO. 4  
ON GENERAL GOVERNMENT**

**Assemblymember John Dutra, Chair**

**WEDNESDAY, MAY 5, 2004  
STATE CAPITOL, ROOM 437  
1:30 P.M.**

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**ITEM 0550 SECRETARY FOR YOUTH AND ADULT CORRECTIONAL AGENCY**

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**OVERVIEW**

The Youth and Adult Correctional Agency (YACA) includes the Department of Corrections, Department of Youth Authority, Board of Prison Terms, Board of Corrections, Prison Industry Authority and Narcotic Addict Evaluation Authority and the Commission on Correctional Peace Officers' Standards and Training.

The Governor's Budget proposes funding of \$1.8 million and 14.9 positions in 2004-05 This represents an increase of \$630,000 and 6 positions over the expected expenditures in the current year. This increase is due to the proposed transfer of the Office of Inspector General to the Agency.

**ISSUE #1 TRANSFERRED POSITIONS**

At the April 28, 2004, hearing, the subcommittee requested information from the Youth and Adult Correctional Agency (Agency) on positions temporarily transferred from other boards, commissions and departments under the purview of the agency to the agency. At the time the agenda was being developed, the agency had not yet developed and reported that information.

The Agency has provided the subcommittee information listing of the five employees on long term loan and the six positions re-assigned for special projects.

**ITEM 1880 STATE PERSONNEL BOARD**

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**OVERVIEW**

Constitutionally established in 1934, the State Personnel Board (SPB) is responsible for California's Civil Service System. SPB ensures that the State's civil service system is free from political patronage and that employment decisions are based on merit. The SPB provides a variety of recruitment, selection, classification, appellate, goal setting, training and consultation services to state departments. The SPB also promotes efficiency and economy in state government and is a leader in efforts to improve and reform civil service practices.

The Governor's Budget proposes a budget of \$17 million and 120 positions, which is a reduction from the budget in 2001-02 of \$21 million and 190 authorized positions.

**ISSUE #1 GENERAL FUND REDUCTIONS**

Article VII of the California Constitution provides:

Section 1. (a) The civil service includes every officer and employee of the State except as otherwise provided in this Constitution.

(b) In the civil service permanent appointment and promotion shall be made under a general system based upon merit ascertained by competitive examination.

Section 2. (a) There is a Personnel Board of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for 10-year terms and until their successors are appointed and qualified. Appointment to fill a vacancy is for the unexpired portion of the term. A member may be removed by concurrent resolution adopted by each house with two-thirds of the membership of each house concurring.

1. The board annually shall elect one of its members as presiding officer.
2. The board shall appoint and prescribe compensation for an executive officer who shall be a member of the civil service but not a board member.

Section 3. (a) The board shall enforce the civil service statutes and, by majority vote of all of its members, shall prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions.

(b) The executive officer shall administer the civil service statutes under the rules of the board.

Executive Order S-6-04 signed by Governor Schwarzenegger on March 31, 2004: 1) directed all state officials and managers to vigorously enforce the policy of equal employment opportunity; 2) directed all state agencies to have clear written directives to guarantee equal employment opportunities; directed all state agencies to regularly review their employment practices to ensure equal employment opportunities; and 3) directed the State Personnel Board to provide leadership, coordination, technical guidance and enforcement efforts so that the State can achieve equal employment opportunity and non-discriminatory employment.

The Governor's Budget proposes a reduction of \$600,000 and 5.2 positions. These reductions would affect the board's administration of the Dymally-Alatorre Bilingual Services Act that seeks to allow the state to provide quality services to its non-English clients (\$76,000). It would also affect the board's ability address dismissals or disqualification for performance, psychological, medical or drug related reasons, demotions, discrimination complaints and whistleblower complaints. The buildup of a backlog in these areas would affect the efficiency and safety of services provided by the state (\$213,000).

**COMMENTS:**

The Board has indicated that it cannot offer enough examinations to meet the demand of state departments which results in a delay of hiring, or transfer of employees that would allow agencies to increase their efficiencies by properly allocating its resources. It is also unable to adequately review job classifications to ensure that they are current and reflect actual job duties.

**The subcommittee may want to ask the Administration:**

- What its plan is to maximize the efficiency and effectiveness in managing the civil service process including the hiring and examination process to keep the quality of state employees at a high level.
- What its plan is to comply with the directives in Executive Order S-6-04 which gives the State Personnel Board responsibility for oversight and enforcement of the State's goal of equal employment opportunity.

At the April 28, 2004 hearing, the subcommittee held over this items to give the Department of Finance to evaluate the latest information from the Board regarding the need to retain resources to sustain its efforts to support bilingual efforts for state clients and to oversee the proper disposition of employee disciplinary actions and to ensure that proper testing procedures are in place to assist the proper and efficient hiring of state employees.

The Board should also address how it proposes to meet the requirement leadership, coordination; technical guidance and enforcement requirements of Executive Order S-6-04 signed by Governor Schwarzenegger.

**ITEM 1900 PUBLIC EMPLOYEES' RETIREMENT SYSTEM****OVERVIEW**

The Public Employees' Retirement System (PERS) administers the retirement plan for 1.4 million State and local government employees. The plan for state employees is funded on an actuarial basis. As of June 30, 2002, the fund's resources totaled 95.2 percent of that needed to meet its obligations. The system paid out \$7 billion in retirement benefits to 396,000 annuitants. The system received \$1.9 billion in employee contributions and \$1.9 billion in employer contributions in 2002-03. At the end of 2002-03 the system had net assets of \$144.8 billion. This is a slight increase over the \$142.8 billion in net assets at the end of 2001-02.

**COMMENTS**

In the April 14<sup>th</sup> hearing, questions were raised regarding the allocation of investment funds by the agency. PERS may want to address this issue during its testimony. This item is recommended for approval.

**ITEM 5240 DEPARTMENT OF CORRECTIONS****OVERVIEW**

The Department of Corrections (CDC) mission is to develop and implement effective and innovative correctional policy, create a coordinated correctional system which is responsive to the citizen's right to public safety and governmental accountability, and maintain a reputation for excellence and integrity.

It operates 32 institutions, 11 of them with reception centers. In addition, the department administers the Narcotic Addict Evaluation Authority, the Richard A. McGee Training Center. The Community Correctional Program has a statewide group of field offices in addition to the Community Correctional Reentry Centers, Restitution Centers, Prison Mother Programs and Substance Abuse programs.

The Governor's Budget proposes a budget of \$5.3 billion and 48,655 positions for 2004-05. This compares with estimated expenditures of \$5.7 billion and 46,793 position in the current year.

The Governor's Budget estimated cost per inmate per year will be \$33,152 and an average daily population of 138,237 in the budget year. Annual costs for parolees are estimated at \$3,855 per year for a population of 132,084.

<b>Institutions</b>		<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>
Per Capita Cost		\$28,654	\$30,929	\$33,152
Population		151,176	146,510	138,237
<b>Parole</b>				
Per Capita Cost		\$3,195	\$3,364	\$3,855
Population		128,967	128,068	132,084

**ISSUE #1 ENERGY CONSERVATION GRANTS- CCF**

During the 2000-01 fiscal year, the state appropriated funds to offset the high-energy costs during that time period. Funds were appropriated to all of the correctional institutions at the Department of Corrections and five of the community correctional facilities (CCFs) operated by local governmental agencies. These CCFs were entitled to approximately \$150,000 each. At the time of this analysis, the funds have not been distributed to the CCFs and are scheduled for reversion on June 30, 2004.

The subcommittee may want to ask the Department of Corrections for further details regarding the allocation of these energy rebate funds to the CCFs.

If CDC cannot resolve the allocation of the funds to the CCFs by the June 30, 2004, the subcommittee may want to appropriate funds through budget bill language, from the CDC budget for the budget year to ensure the continued availability of these funds.

**Proposed Budget Bill Language**

Item #5240-101-0001

Provision 3

*Of the amount appropriated in this item, \$150,000 shall be appropriated allocation to each of the five community correctional facilities operated by local governmental agencies for a total appropriation of \$750,000. This appropriation shall be in-lieu of funds originally appropriated in the 2000-01 fiscal year to provide energy rebates state correctional facilities. If the Department of Corrections makes the allocation of funds for this purpose prior to June 30, 2004, the funds in 2004-05 shall become available to the department for any other purpose consistent with this item.*

**ISSUE #2 TELEPHONE CONTRACTS**

In February 2002, the State has entered into a contract with the MCI company to provide telephone service for the Department of Corrections (CDC) (28 of 32 institutions) and the Department of Youth Authority (CYA) (8 of 14 facilities and camps). MCI is required to provide inmate call processing and transport. In addition, it provides telephone recording and monitoring services to the department. It is estimated that the total number of calls processed on behalf of CDC and CYA clients are one million annually.

The contract provides for all of the hardware, software, installation and maintenance of approximately 2,600 phones in CDC and 120 phones in CYA. The hardware and software is provided at no extra cost to the State. In addition to call services for CDC and CYA, the MCI contract provides for providing public calling services through approximately 2,200 phones to state agencies, colleges, universities, cities and counties.

The phone system contract for correctional agencies has a number of requirements that are in addition to that for a public phone contract and they include:

- Identification to the recipient that the call is coming from a correctional institution.
- Intermittent announcement that the call is coming from a particular inmate or ward.
- Alerts investigators when the inmate makes a call of importance.
- Blocks calls to staff members, judges and victims.
- Allows calls to be monitored without the caller being aware of the monitoring.
- Allows investigators to talk to the call recipient as needed.
- Limits to the length of the call.
- Allows calls to be recorded and transferred to CD as needed.
- Allows investigators to place notes within a call that has been recorded.
- Security to limit access to the notes attached to the call.

The contract also currently provides \$26 million in annual payments to the General Fund.

**COMMENTS:**

Recently there have been concerns raised regarding the rates charged to CDC inmates and CYA wards. Under the current structure the rates are:

	<b>Local Rate</b>	<b>Interstate Rate</b>
<b>Department of Corrections</b>		
Per Minute Charge	\$.15	\$.89
Per Call Surcharge	\$1.50	\$3.95
<b>Department of Youth Authority</b>		
Per Minute Charge	\$.05	\$.89
Per Call Surcharge	\$.50	\$3.95

This reflects a recent reduction of 24 percent for CDC calls and 78 percent for CYA calls.

The subcommittee may want to ask the department what ongoing efforts are in place to assure the lowest rates while supporting the other needs of the State.

**ISSUE #3 VALDIVIA SETTLEMENT**

In 1994, a class action lawsuit was brought against the state, on behalf of parolees, alleging that the parole revocation process violates their rights to due process under the Fourteenth Amendment of the United States Constitution. Specifically, the plaintiffs argued that parolees had no opportunity to challenge the contents of the case against them, present their own evidence, or question witnesses prior to the revocation hearing. Plaintiffs also claimed that the length of time it takes to conduct the revocation process - over a month and sometimes longer than three months - was excessive. In June 2002, a federal district court ruled in favor of the plaintiffs and ordered the state to work with plaintiff's counsel to develop a remedial plan to rectify the identified problems.

In December 2003, the parties in the case jointly submitted to the court their plan, which includes several significant reforms to the revocation system. These reforms are designed to ensure a timely and fair revocation process for parolees. The proposal included:

- A probable cause hearing to take place prior to the revocation hearing. The probable cause hearing must take place within ten business days of when California Department of Corrections (CDC) notifies the parolee that he is being charged with a violation. At the probable cause hearing parolees will be allowed to present evidence on their own behalf, and they will have an opportunity to accept or reject BPT's screening offer.
- Requirement that every revocation hearing be held within 35 days of the parolee's arrest rather than the three months or longer it can take currently.
- Requirement that CDC provide attorneys to all parolees who are charged with a violation. These attorneys will prepare the parolee's case for both the probable cause hearing and the

revocation hearing. Under current practice, only parolees with disabilities, such as a learning disability that would impair their ability to understand the proceedings, are provided an attorney for their revocation hearing.

- Intermediate sanctions for nonviolent and non-serious parole violators, such as electronic monitoring, in lieu of prison time. This provision builds on the reforms instituted by CDC in the current year that allows parole agents to utilize intermediate sanctions, thereby reducing the number of nonviolent parole violators returned to prison. The agreement assumes that the use of intermediate sanctions by parole agents and BPT will reduce the total caseload of parolees in the revocation process, thereby allowing BPT to conduct the remaining hearings within the shortened time limits established in the agreement.
- Deadlines for BPT and CDC to begin the implementation of all provisions except the probable cause hearing (by July 2004) and for all provisions of the remedial plan to be fully implemented (by July 2005).

The Legislative Analyst's Office (LAO) had stated that at the time this analysis was prepared, the agencies were unable to identify the fiscal impact of the *Valdivia* settlement, and no expenditures are proposed in the Governor's budget for the implementation of the remedial plan. Administration officials state that an implementation proposal will be part of the May Revision. However, the LAO raised concerns that submission of the proposal at that time will provide limited opportunity for review by the Legislature. For this reason, LAO recommends that CDC and BPT report to the Legislature at budget hearings on the fiscal impact of the *Valdivia* remedial plan. In particular, the LAO recommends that departments should provide their estimates of the number of probable cause and revocation hearings that will occur, the staffing required to implement the plan, the amount of any offsetting savings, the projected impact on local governments, and any other expected costs.

#### COMMENTS:

The subcommittee may want to ask the Administration:

- What the estimated costs of the *Valdivia* settlement would be to CDC?
- Would there be any offsetting savings to CDC from a reduced number of parolees accepting alternate sanctions in-lieu of returning to custody?

It is predicted that the Administration will provide additional information regarding the costs of *Valdivia* settlement in the May Revision.

**ISSUE #4: FISCAL CONTROLS FOR CORRECTIONAL INSTITUTIONS**

In October 2003, the Administration notified the Joint Legislative Budget Committee of a possible deficiency for the Department of Corrections (CDC) in the amount of \$544.8 million. The department divided the areas of deficiency into three areas: 1) under-funded salary and retirement contribution costs (\$352.4 million); 2) unrealized population savings from reforms imposed in 2003-04 (\$137 million) and 3) under-funded amounts for merit salary increases, overtime, temporary help, workers' compensation, medical supplies and contracted medical services (\$243 million). These amounts totaling \$732.6 million will be offset by unspecified cost savings in the current year of \$187.8 million for a net of \$544.8 million. The Administration proposes that CDC absorb an additional \$50 million which would leave the proposed deficiency of \$493 million.

In the March 18<sup>th</sup> Assembly oversight meeting on correctional issues, the Administration had testified on the lack of fiscal controls within CDC at the institutional level, and discussed a plan to provide more detailed oversight over the department's expenditures. Further, the Administration stated that it would make available to the Legislature, fiscal data related to the budgets and expenditures for each correctional institution during the fiscal year.

The subcommittee may want to adopt trailer bill language that would require the Department of Corrections to: 1) impose budgetary controls on its facilities that reconcile to the department's budget; 2) update allotments and expenditure data throughout the fiscal year; and 3) make information on the allotments and expenditures available to oversight agencies such as the Legislature, Legislative Analyst's Office, the Department of Finance and the Bureau of State Audits.

**ISSUE #5: MEDICAL SERVICES COSTS - BSA AUDIT - INFORMATIONAL**

In April 2004, the Bureau of State Audits completed an audit of CDC's medical service contracts at the direction of the Joint Legislative Audit Committee. In 2002-03 medical services costs rose to \$239 million. The audit questions current contracting provisions that allow the award of many medical services contracts without seeking competitive bids. In addition it recommends additional training and oversight so that the department receives sufficient information from the provider to ensure that the billing amount is accurate and that it takes advantage of appropriate discounts.

The Assembly Health Committee is currently anticipated to hold an oversight hearing on the findings of the audit prior to the release of the May Revision on May 14. At that time, recommendations may be forwarded to this subcommittee for consideration as appropriate.

The Governor's Budget proposes savings within the Youth and Adult Correctional Agency of \$400 million in 2004-05. While the details of this proposal have not yet been released, potential savings from increased oversight of the payment for medical services may be considered. A 10 percent reduction medical services costs would save approximately \$25 million.

**ISSUE #6: PHYSICIAN AND AMBULANCE SERVICES - BSA AUDIT - INFORMATIONAL**

The April 2004 audit of medical services contracts conducted by the Bureau of State Audits raised issues regarding the effectiveness of CDC in contracting methods. In a sample of physician and ambulance invoices paid by the department, 83 percent of the physician bills and 100 percent of the ambulance bills exceeded the Medicare rate for similar service.

The re-negotiation of ambulance contract rates may be a challenge to the department due to the lack of competition in many areas. Statutory change may be considered to effect these changes. Should the state propose to statutorily enact a payment schedule for ambulatory and physician services, it would first require a full policy discussion. A further discussion should be held by the department regarding the hiring of additional state employed physicians where possible as an alternative to the use of registry services where cost effective.

CDC is expected to address the issue high costs for physician and ambulance services as part of the 60-day follow-up process, which is expected to be released in June 2004. In addition there will be a one-year follow up, which is due for release in April 2005.

**ISSUE #7: AUDITS OF CDC**

The Department of Corrections has a number of issues before it that affect its ability to operate in a manner consistent with its mission and within its budget. The department is facing a \$500 million deficiency in the current year. It is currently under federal oversight to provide medical and mental health services to its inmates (Madrid and Coleman). It is implementing provisions of the Armstrong case related to the treatment of inmates with disabilities. It is currently in settlement discussions in the Valdivia case related to the parolees found to be in violation of their terms of parole. The department is also facing an increasing institutional population and while attempting to implement and enhance programs to reduce recidivism. In general, the department faces conflicting pressures of litigation, population, programming and fiscal limitations.

Recent audits by the Bureau of State Audits (BSA) have raised a number of relevant issues regarding the fiscal exposure the state faces with regards to CDC costs for medical services (April 2004) (\$240 million program, and part of the current year deficiency); correctional officers hiring to mitigate overtime costs (July 2002) (\$90 million deficiency in 2003-04); pharmacy services (\$135 million program in 2000-01); fiscal controls (November 2001) (\$544 million deficiency in 2003-04); the management of sick leave and vacation liability (January 2000). Many of these issues would not have come to the attention of the Legislature had not the audit been performed.

Currently, the Bureau of State Audits performs mandatory audits in number of areas that include determining the accuracy of the state's financial statements. In addition, it completes reviews of programs at the direction of the Joint Legislative Audit Committee. The recent audits of CDC were in this category. Due to the many demands on the State Auditor, it is not currently possible to perform a comprehensive audit of CDC.

The Bureau of State Audits has a unique position in state government. While it often acts at the direction of the Legislature, it responds to both Assembly and the Senate. It does not report

to the Administration or any constitutional officer. Except for extraordinary circumstances, the findings are public.

In order to obtain a comprehensive overview of the operations of CDC, the subcommittee may want to consider directing the Bureau of State Audits to perform a review of the Department in the following areas:

- Fiscal review - analysis of expenditures as compared to its appropriation authority consistent with legislative intent in the Budget Act
- Compliance with statutory and regulatory requirements
- Efficiency - allocation and expenditures without waste.
- Performance - ability of the department to meet its mission.
- Risk Management - management of outstanding liabilities.

BSA would be required to annually issue an opinion in each of these areas. The actual work would be performed on the basis of a risk assessment performed by BSA.

A comprehensive audit of this scope would be a multi-year effort requiring at least three years of work, preferably four years. At \$1.5 million a year this project would cost \$6 million over the term of the audit. The subcommittee may use trailer bill to direct BSA to perform the audit of CDC for a four-year period.

**ITEM 5460 DEPARTMENT OF YOUTH AUTHORITY****OVERVIEW**

The California Youth Authority (CYA) was created in 1941. By 1943 the agency began to operate "reform schools," providing institutional training and parole supervision for juvenile and young adult offenders. It is the largest youthful offender agency in the nation, with some 4,055 young men and women in institutions and camps at the end of the current fiscal year and further declining to 3,820 by the end of 2004-05. The parole population is also decreasing with an estimated 4,025 parolees at the end of the fiscal year and 3,810 by the end of the budget year.

As part of the state's juvenile justice system, the CYA works closely with law enforcement, the courts, prosecutors, probation, and a broad spectrum of public and private agencies concerned with and involved in the problems of youth.

CYA's mission, as described in Section 1700 of the Welfare and Institutions Code, is to protect the public from criminal activity. The law mandates the department to:

- Provide a range of education, treatment, and training services for youthful offenders committed by courts;
- Direct these offenders to participate in community and victim restoration;
- Assist local justice agencies with efforts to control crime and delinquency; and
- Encourage the development of state and local programs to prevent crime and delinquency.

The CYA receives its youthful offender population from both juvenile and criminal court referrals, and offenders committed directly to the CYA do not receive determinate sentences. The Youthful Offender Parole Board, a separate administrative body, determines their parole release. Those committed by the criminal courts that cannot complete their sentence by age 21 are transferred to CDC prisons at age 18.

In practice, the period of incarceration is determined by the severity of the committed offense and the offender's progress toward parole readiness. The incarceration time may not exceed the limits of determinate sentences for adults committing the same crime.

**ISSUE #1: MT. BULLION YOUTH CONSERVATION CAMP**

The Governor's Budget proposes the closure of the Mt. Bullion Youth Conservation Camp. This is part of the department's strategy to reduce excess capacity consistent with the intent of Chapter 1124, Statutes of 2002 (AB 3000, Oropeza). This closure would follow that of Karl Holton, Ventura (partial) and Northern California Reception Center facilities, and would be in addition to the Administration's proposal to close the Fred C. Nelles Youth Correctional Facility by July 2004.

The Mt. Bullion camp is located in Mariposa County, is one of four camps statewide and is jointly operated with the California Department of Forestry (CDF). According to departmental regulations CYA staff is responsible for the custody and supervision and treatment of assigned offenders while the CDF staff plans and supervises the work projects performed by the wards. However, according to the Department, the custody of the wards actually is transferred to CDF staff during the day and returned to CYA after the end of the work shift. It is not clear what police powers the CDF staff has to address any problems that may occur involving the wards.

An important function of this camp is to employ the wards in a variety of tasks including fire prevention and conservation projects. In order to qualify for this assignment, the ward must: 1) be determined to be sufficiently physically fit to perform fire fighting activities; 2) have no history of possession or manufacturing of an explosive device; 3) not in need of psychotropic medication; be within 36 months of the current parole consideration date; not have escaped or attempted to escape from a state or local juvenile detention facility; 4) have outstanding felony holds or face court actions that could result in additional time in confinement ( including a hold by the US Immigration and Naturalization Service); 5) have had his or her parole revoked more than once; 6) does not have a history of sexual offenses and 7) have not been convicted of arson. While the regulations indicate that wards 16 and 17 years of age may qualify for camp assignments with parental consent, the department has indicated that due to liability issues, no ward under 18 years of age are eligible for camp.

The Mt. Bullion camp is one of four camps that has capacity to house 80 wards and according to the CYA may be expanded to house 100 wards. The closure of the camp is expected to save \$2.4 million or approximately \$30,000 per-year-per-ward at capacity. The average cost if filled to the 100 level would approach \$24,000 per-year-per-ward. This is significantly lower than the average cost for the department of nearly \$74,000 per-year-per-ward. The cost may also favorably compare with the cost of juveniles placed in county camps. According to information from Los Angeles County, the annualized cost for that county for a juvenile in camp is \$38,343.

The wards at the camp have provided an average of 54,000 hours of emergency services per year over the past 8 years. In addition they have provided an average of 120,000 hours of community service per year. As an example of the community services provided, wards and the staff have raised over \$200,000 by fund raising and providing in-kind services to Mt. Crisis Services, a local domestic violence agency. This has allowed the agency to purchase one domestic violence shelter and has contributed to the purchase of a second facility. These activities have been made possible with the support of the community including the County Board of Supervisors who supports the continuing operations of the camp.

While the camps appear to provide an option for CYA to reduce its average costs per ward, the Department indicates that there are only sufficient number of wards that meet the minimum requirements to staff three of the four camps.

**COMMENTS:**

**The subcommittee may want to ask the department to address the following:**

- What it has done to enhance the number of wards at the camps?
- Could it expand the number of wards in the camp by offering programs other than fire suppression?
- Has it sought additional commitments from counties for wards that would be eligible for the camp environment? On a reimbursable basis, the state may be able to charge an amount lower than the county's cost for incarceration.

**ITEM 8180 PAYMENT TO COUNTIES FOR THE COST OF HOMICIDE TRIALS****OVERVIEW**

Government Code Sections 15200 et. seq. provides a mechanism to reimburse counties for the extraordinary costs of homicide trials.

- Counties with a population of 300,000 or less at the time of the 1980 census, may apply for up to 90 percent of the cost of a homicide trial, that exceeds .00625 percent of the revenue from taxation of the assessed valuation of property in that county. These costs may accumulate over a number of fiscal years.
- Counties with a population of 200,000 or less at the time of the 1990 census, may apply for 90 percent of the cost of the first homicide trial and 85 percent of the costs from the second and subsequent homicide trials during that fiscal year, for costs that exceed .00625 percent of the revenue from taxation of the assessed valuation of property in that county. If only one homicide trial is held in this county then reimbursable can carryover between fiscal years.
- Counties with a population in excess of 300,000 at the time of the 1980 census may apply for reimbursement of up to 80 percent of the costs of a homicide trial that exceed .00625 percent of the revenue from taxation of the assessed valuation of property in that county.
- Counties may apply to the state for reimbursement for up to 100 percent of the costs of any homicide trial that exceed .0125 percent of the revenues from taxation of the assessed valuation, counties.
- The law places limitations on reimbursable travel costs.
- As of January 1, 2005, reimbursement to counties shall be limited to those costs that exceed .0125 percent of the tax revenue collected on the assessed valuation of the property in that county.

The Governor's proposes funding of \$5 million in 2004-05. This is similar to funding for this item in the current year.

Budget Bill language would limit the reimbursements for attorney services to the lower of: 1) the county's average hourly cost for public defenders; or 2) the hourly rate charged by the Attorney General. It would also limit the reimbursement for investigators to the lower of: 1) the county's average hour cost for county-employed investigators or 2) the hour rate charged by the Attorney General.

**ISSUE #1: BBL - TEHEMA COUNTY - ANDREW HAMPTON MCCRAE TRIAL**

The Administration proposes through budget bill language (Provision 3), to reimburse the County of Tehama for 100 percent costs associated with the trial of People v Andrew Hampton McCrae notwithstanding the provisions of other law on this issue (Government Code Sections 1520 et seq). In this case the defendant also known as Andrew Hampton Mickel, is accused of the homicide of Officer David Mobilo, of the Red Bluff Police Department on November 19, 2002.

**COMMENTS:**

While the costs of investigation, prosecution and trial are considered to be allowable for reimbursement, Section 15201 of the Government Code excludes the county's "normal salaries and expenses" from consideration. The law also places limits on acceptable travel costs. In addition, Budget Bill language would limit attorney and investigation costs for all claims under this program. It is not clear if the proposed budget bill language would circumvent limits on travel, costs for attorney and investigator services, and normal salaries and expenses.

Statutory changes to provide enhanced levels of reimbursements to smaller counties, such as Tehama (50,000 population in 1990), has been used before in cases of multiple homicides. They have been generally considered on a case by case basis. While the Administration proposes to enhance reimbursements to Tehama County for this case, it does not propose to increase funding to for this item. As a result, the subcommittee may want to consider whether special consideration for Tehama may be appropriately address through the policy process. A policy committee may want to consider Tehama's situation in the context of the expiration of the current program on January 1, 2005. It may also want to consider to whether it is appropriate to exempt it from current limitations on travel, costs for attorney and investigator services, and normal costs.

**ISSUE #2: BBL - CITY OF MODESTO/ STANISLAUS COUNTY - SCOTT PETERSON**

The Administration proposes through budget bill language (Provision 3), to reimburse the City of Modesto and County of Stanislaus for 100 percent costs associated with the trial of People v Scott Peterson notwithstanding the provisions of other law on this issue (Government Code Sections 1520 et seq). In this case the defendant, is accused of the homicide of his wife Laci, and her unborn son.

**COMMENTS:**

The County of Stanislaus had an estimated population of 268,000 in 1980 which would place it in the under 300,000 population category allowing it to seek reimbursement of up to 90 percent of the costs of a homicide trial without regard to fiscal year under current law.

The City of Modesto is not eligible of reimbursement of costs related to the investigation of the homicide of Laci Peterson under current law.

While the costs of investigation, prosecution and trial are considered to be allowable for reimbursement, Section 15201 of the Government Code excludes the county's "normal salaries and expenses" from consideration. The law also places limits on acceptable travel costs. In addition, Budget Bill language would limit attorney and investigation costs for all claims under this program. It is not clear if the proposed budget bill language would circumvent limits on travel, costs for attorney and investigator services, and normal salaries and expenses.

Statutory changes to enhance levels of reimbursement under this program has been given to the smallest of counties in the past. These benefits were generally granted on a case by case basis. Section 15202 (a) was intended to address the costs of homicide trials in counties of over 200,000 and under 300,000. According to Department of Finance statistics, Stanislaus County was the 19<sup>th</sup> largest county by population in 1980, the base year for calculating reimbursements under the homicide trial program. In 2000, the county moved up to the 16<sup>th</sup> largest county by population. The subcommittee may want to consider whether the decision to enhance reimbursements to a medium size county such as Stanislaus County may be more appropriately address within the policy process. A policy committee may then consider whether the County should receive a higher level of reimbursement and whether it should be exempt from the limits on cost for travel, attorney and investigator services, and normal salaries and expenditures.

The Administration's proposal to reimburse the City of Modesto for costs of a homicide investigation raises a number of issues such as:

- Is it appropriate for the state to reimburse cities for the cost of homicide investigations at all?
- Should investigative costs of all homicide cases be reimbursed? Or just for those cases that go to trial?
- Should there be a threshold of costs absorbed by the city prior to reimbursement by the state (such as a percent of property tax revenue collected by the county)?
- What share of cost (after it meets a threshold?) should the city expect to contribute toward these costs? (80 percent, 90 percent, 100 percent) Should it be the same for all cities or different for each category of city? Should cities be classified based upon population? Or ability to pay?
- Would the reimbursement of city costs for homicide investigations affect the costs reimbursed to counties?
- Would the reimbursement to cities encourage cities to do more investigations on homicide cases?
- Would a program to reimburse cities create a conflict between the city and the county district attorney?

As a result the subcommittee may want to have the issue of reimbursement for both the County of Stanislaus and the City of Modesto go through a policy discussion. It may want to recommend separate legislation be drafted so that a proper policy discussion can be held.

## **ITEM 8700 CALIFORNIA VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**

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### **OVERVIEW**

In 1911, the Board was created to exercise general supervision over the financial affairs of the State and to audit all claims against the State. The California Compensation and Government Claims Board, as it is now referred to, consists of three members: the Director of the Department of General Services; the State Controller and a public member appointed by the Governor. The Board's responsibilities include:

- The compensation of victims of violent crime and eligible family members for certain crime related financial losses.
- Consideration and settlement of all civil claims against the State in an equitable manner and to reduce the number of items requiring legislative review or judicial adjudication.
- Providing equitable travel allowances to certain State governmental officials (session per diem expenses for members of the legislature, elected state officers, judges and judicial branch employees).
- Responding to bid protests against the State alleging improper or unfair acts of state agencies in the procurement of supplies or equipment
- Providing for reimbursement of counties' expenditures for special elections, called for by the Governor to fill vacant seats in the Legislature and Congress.

The Governor's Budget proposes funding of \$141.3 million and 301 positions. This is \$2.8 million greater than estimated expenditures in the current year. An increase in federal funds of approximately \$10 million represents the largest change to the board's budget.

**ISSUE #1: FILING FEES FOR CLAIMS AGAINST THE STATE**

The Government Claims Program (GCP) at the Board resolves claims filed against the State of California alleging legal liability on the part of the State as well as claims requesting equitable relief for state actions where there is no remedy in law. GCP, at the direction of the Legislature administers programs to provide financial relief for citizens who have incurred damages due to natural disasters or through the actions or in-actions of state government.

The primary function of the GCP is to receive and process all civil claims for money or damages that are filed against state agencies under the Tort Claims Act. The filing of a claim is legally required before a lawsuit against a state agency can be filed. This process provides the State an opportunity to investigate and settle claims without incurring the cost of litigation.

The GCP processes two general types of claims: tort claims, for which state liability is established in law; and equity claims, for which the claimant has no remedy in law but for which principles of equity dictate that the state should provide compensation.

Tort claims alleges a legal obligation on the part of the state to reimburse the claimant for alleged damages caused by the State or its employees. Tort claims are filed pursuant to Government Code Section 910 et seq. With time limits for filing the claim established under Government Code Section 911.2. Claims for death or injury to a person or personal property or for growing crops must be filed within six months of the date of injury. Claims for other causes of action, such a real property damage or breach of contract, must be filed within one year.

Equity claims are established under Government Code Section 905.2 where there is no legal obligation on the part of the State for claimed damages or no appropriation available for payment, but the claimant is requesting equitable relief from the State. A typical equity claim involves: 1) claimants who are entitled to reimbursement for which there is either no appropriation or payment, or for which the appropriation has expired and the funds have reverted; 2) claims arising from valid state contracts that were not appropriately executed but for which work was completed; and 3) tort claims filed beyond the tort claim filing deadlines

GCP also has many responsibilities associated with numerous miscellaneous statutes for issues such as travel and per diem expense rule setting, fiduciary responsibilities, purchasing, overtime, and deferred compensation.

Upon receiving a claim, the Board's staff determines whether the jurisdictional and time requirements have been met and if the claim is complete. If the claim meets these criteria, staff forwards a copy of it to the Attorney General's Office and to the affected department or departments. The agency designates an appropriate contact person who coordinates an investigation of the claim. In addition, the Board's staff may undertake an independent investigation of the fact underlying a claim, especially in situations when multiple agencies provide conflicting recommendations.

After full participation by the claimants and affected departments, GCP staff makes recommendations to the Board that can be adopted, rejected, or modified by the Board. Claims for which there is no appropriation are subject to further oversight by the Legislature. The Board is required to submit claims it approved, and for which there is no appropriation to the Legislature.

One of the purposes of the Tort Claims Act is to create consistency in a manner in which claims against the State are handled. In 1961, the California Supreme Court declared the State's sovereign immunity from tort liability doctrine was mistaken and unjust in a tort case involving a slip and fall at a county hospital. After a lengthy discussion of the historical origins of sovereign immunity, the court in the Muskopf case, determined that the doctrine had become "riddled with exceptions, both legislative and judicial and the exceptions operate so illogically as to cause serious inequity. Some who are injured by governmental agencies can recover, others cannot; one injured while attending a community theater in a public park may recover, but one injured in a children's playground may not."

Rather than continue making these inconsistent distinctions, the Supreme Court in Muskopf discarded the immunity doctrine. This repeal of the Doctrine of Sovereign Immunity prompted the Legislature to create the Tort Claims Act of 1963. The Act set up the procedure for suing the State for torts and for breaches of contract. The Board of Control (which later became the California Victims' Compensation and Government Claims Board) was given the responsibility of processing the claims and became the first step in any litigation against the state for money or damages.

GCP's workload for a number of years has been approximately 10,000 claims. The Board has delegated its authority to some state agencies to process claims for lower amounts (generally \$1,000 or less). In addition, the Department of Transportation has statutory authority to process tort claims of less than \$5,000.

#### COMMENTS:

In 2001-02 expenditures for the GCP were \$901,000. For the current year the budget is \$807,000. The Governor's Budget proposes a budget of \$809,000 for 2004-05. Unlike prior years this program would be funded through reimbursements in-lieu of the General Fund. The Administration proposes a \$25 filing fee to be charged to claimants. According the Board, this fee is similar in amount to filing fees for small claims court actions. If the claimant is successful in its claim, the claimant could seek reimbursement from the appropriate state agency when the claim is final. The remainder of the costs for this program will come from an assessment upon the affected state agency in addition to cost of the claim and the reimbursement of the filing fees. This would require accompanying trailer bill language

#### **The Administration's proposal is significant for a number of reasons:**

- It transforms the process of addressing tort claims from a purely administrative process to a quasi-judicial process.
  - The imposition of an application fee for claimant that is described as being similar to that of a small claims court filing fee.
  - The Administration proposes to waive application fees by indigent applicants. The Board proposes to use the criteria developed by the Judicial Council for actions filed in Forma Pauperis consistent with other types of legal filings before the court.
  - The concept of "winner take all" is developed in that if the claimant prevails, he or she gets a return of the application fee with the claim amount
    - The language is not clear if the successful claimant would be required to "apply" for a return of his or her application fee.

- The additional fee will require claimants to more carefully analyze their case prior to filing. This proposal assumes that the claimants have the expertise to make a determination if a claim would be approved and thereby get reimbursement of the fee.
- The fee would be another consideration for vendors, especially small businesses when they decide whether to do business with the state. Currently, if the vendor believes that State is at fault, it files a claim, free of charge. Now it must consider whether it can prevail in its claim. The vendor may want to take more care in dealing with the State in future transactions, and may seek legal advice to assist with that decision. This could result in higher transaction cost to the vendor and then to the State.
- The claims process is not overseen by an administrative law judge nor any other justice. It does not raise the quality of the decision to a judicial level.
- This additional fee would not provide a higher level of services to the claimants.
- Should a claim be filed because the underlying appropriation has reverted, additional funding may be sought by the Legislature, however, the Department of Finance may require the department to pay for this claim out of a current appropriation. Under this circumstance, the Legislature would not be noticed nor requested to provide supplemental funds to liquidate the liability. As a result, since the department will be liable for a surcharge in addition to the return of the application fee, it will have a greater incentive to recommend the denial of the claim for fiscal reasons as it may not be able to afford the redirection of budgeted resources.
- If the percentage of successful applicants would increase, there could be a shortfall in funding unless the assessment against departmental budgets was to increase. If not, there would be insufficient resources to properly process these claims in a timely manner.

The subcommittee may want to consider whether this proposal to charge fees to the claimant and affected departments is appropriate or whether it would decide to restore \$809,000 in General Fund support to this program.

**ISSUE #2: CITY OF HERMOSA BEACH - COMMUNITY CENTER**

In the 2001-02 fiscal year, the City of Hermosa Beach was granted \$246,250 for the construction of a community center. During the budget process in 2002, a number of projects that were similarly funded in 2001-02 had not gone forward and funds were reverted. In the case of Hermosa Beach, the Department of Parks and Recreation (DPR) had declared the continued availability of funds as of March 4, 2002. In reliance of that representation, the City proceeded to complete the project and sought reimbursements of the \$246,250 from DPR. The Department now asserts that the letter of March 4, 2002 was in error and that the reversion of funds had occurred as part of the Parks Local Project Reduction Plan in 2002 and is no longer available. The City has filed a claim with the Victims' Compensation and Government Claims Board and it is pending resolution. Since the funds have reverted, DPR does not have sufficient resources to pay the claim should to be resolved in favor of the City.

The subcommittee may want to appropriate \$246,250 from the General Fund to be used in settlement of this claim.

**Proposed Budget Bill Language:**

*8700-101-0001 For local assistance, California Victim Compensation and Government Claims Board for allocation related to settlement of Claim G540694, City of Hermosa Beach Community Center.....246,250*

*Provision:*

1. *The amount in this item shall be used for payment to the City of Hermosa Beach associated with the claim before the California Victim Compensation and Government Claims Board re: Claim G540694 filed by the City regarding contract C50-25-061*