AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 4 ON STATE ADMINISTRATION

ASSEMBLYMEMBER TOM DALY, CHAIR

TUESDAY, APRIL 16, 2013

1:30 P.M. - STATE CAPITOL ROOM 447

CONSENT CALENDAR

VOTE ONLY ITEM

ITEMS TO BE HEARD

CONSENT

8955 DEPARTMENT OF VETERANS AFFAIRS

CONSENT ISSUE 1: STEAM DISTRIBUTION SYSTEM RENOVATION

Governor's Budget Proposal. The Governor's Budget includes a request for $4.1 million in Federal Trust Fund authority for the construction phase of the Veterans Homes California – Yountville steam system renovation.

The Yountville Home's primary source of heat for buildings and hot water is steam. The steam lines currently in place are insulated with material containing asbestos and are quickly deteriorating beyond repair. Additionally, the current steam distribution system is antiquated and does not maximize energy efficiency measures. The total cost of this project is $7.5 million and will be funded with a combination of federal funds ($4.1 million) and state lease revenue bonds ($3.4 million). The state portion of this funding already has been approved by the Legislature. This request would allow Cal Vet to receive federal funding when it is available.

CONSENT ISSUE 2: CHILLED WATER DISTRIBUTION SYSTEM RENOVATION

Governor's Budget Proposal. The Governor's Budget includes a request for $3.665 million in Federal Trust Fund authority for the construction phase of the Veterans Homes California – Yountville chilled water distribution system renovation.

The intent of the chilled water distribution system renovation project is to correct system deficiencies and ensure that the Yountville home has the necessary capacity to maintain a proper temperature throughout the home per California Department of Public Health Services guidelines. The total estimated project cost is $6.4 million and will be funded by the Veterans Home Bond ($497,000), state Lease Revenue Bonds ($2.236 million) and Federal Trust Fund ($3.665 million). The Legislature already has approved the state funds. This request would allow Cal Vet to receive federal funding when it is available.

CONSENT ISSUE 3: COUNTY ENTERPRISE STANDARD LICENSING FEES

Governor's Budget Proposal. The Governor's Budget includes a request for an increase of $96,000 in the Veterans Service Office Fund appropriation. The increased funding will be utilized on maintenance fees for the County Veteran Service Offices (CVSO's) enterprise standard case management software.

The Budget Act of 2010 included authority and one-time funding to use Veteran Service Office Funds (VSOF), which are derived from specialty license plate fees, to implement standardized statewide veteran claims management software. Currently, there is a $3,500 maintenance fee assessed on each of the 56 counties with CVSO operations. However, of the $654,000 budget authority provided to Cal Vet, only $100,000 is dedicated to maintenance and support of the software. Cal Vet has requested that the shortfall be addressed with a budget authority augmentation of $96,000. The fund condition of the VSOF will remain stable if the augmentation is authorized.

CONSENT ISSUE 4: STATE VETERANS CEMETERIES' FEDERAL FUNDING

Governor's Budget Proposal. The Governor's Budget includes a request for an increase of $153,000 in Federal Trust Fund Authority and two positions to augment staffing at Northern California Cemetery and Yountville Veterans Home Cemetery.

According to the Cal Vet, funding provided by the U.S. Department of Veterans Affairs (USDVA) will increase from the current level of $178,000 to $331,000 in 2013-14. The increase in funding can be largely attributed to the increased burial allowance provided by USDVA. CDVA will utilize the additional funding to provide each cemetery with an additional groundskeeper.

CONSENT ISSUE 5: YOUNTVILLE VETERANS HOME: VETERANS' CEMETERY RENOVATION

April Finance Letter. The Administration, via a Spring Finance Letter, has requested a reversion of unencumbered funds from the 2012 Budget Act. Additionally, the Administration has requested an appropriation of $2.9 million in Federal Trust Fund Authority in Budget Year 2013-14.

The 2012 Budget Act included an appropriation of Federal Trust Fund to support the construction phase of the Veterans Homes California – Yountville Cemetery renovation project. However, the construction phase of the project is not set to begin until January 2014 due to the project's current status with the USDVA. The authority provided in the 2012 Budget Act will have expired prior to federal funds becoming available. This proposal will remove the authority from the 2012-13 Budget and approve the authority in the 2013-14 Budget. The objective of this renovation project is to bring the cemetery in compliance with U.S. Department of Veterans Affairs National Cemetery Administration standards. Much of the infrastructure at the cemetery will need to be repaired or replaced. CDVA has submitted an application for federal assistance, and once the renovation is complete, it will be able to maintain the cemetery with existing resources.

VOTE ONLY

8955 DEPARTMENT OF VETERANS AFFAIRS

VOTE ONLY ISSUE 1: IMPLEMENTATION OF THE ENTERPRISE-WIDE VETERANS HOMES INFORMATION SYSTEM PROJECT

The Governor's Budget proposes one-time funding of $1.8 million General Fund for implementation of the Enterprise-wide Veterans Homes Information System (Ew-VHIS) at the Yountville Veterans Home.

BACKGROUND

The Ew-VHIS Project is an information technology project for the Veterans Homes of California that will provide electronic healthcare records and other automated services for the entire system. The project will allow records and other information to be accessed throughout the system, and provide headquarters with the opportunity to improve administrative procedures, business processes, and will provide a greater level of clinical data management capabilities within the network.

The project has followed state IT project processes, with a Feasibility Study Report and Special Project Reports approved by the California Technology agency. The Ew-VHIS has now been installed, configured, and implemented at Headquarters and at the homes in Barstow, Chula Vista, West Los Angeles, Ventura, and Lancaster. The state has spent about $20 million on the project so far, with an expected total costs of about $36.7 million.

Governor's Proposal. The proposal would provide $1.8 million to implement the system at the Yountville home. Yountville, which has the largest resident population and staffing, represents the third wave of implementation. The funding will largely go to the vendors hired for the project to install the system.

STAFF COMMENTS

The system will allow for standardized business practices and patient record-keeping throughout the system, which was not possible previously.

7350 DEPARTMENT OF INDUSTRIAL RELATIONS

VOTE ONLY ISSUE 2: CHILD PERFORMER SERVICES PERMITS – AB 1660

The Governor's Budget proposes $701,000 in FY 2013-14 and $625,000 ongoing from the newly created Child Performer Services Permit Fund and 8 positions to implement AB 1660 (Campos), Chapter 634, Statutes of 2012. The legislation requires that non-licensed talent agents who seek to represent minors in the entertainment industry receive a permit and to ensure those seeking permits are not registered sex offenders.

BACKGROUND

AB 1660 prohibits a person, except a licensed talent agent or other specified persons, from representing a minor in the entertainment industry unless the person is granted a permit from the Labor Commissioner. The legislation also created a new program with the Department of Industrial Relations' Division of Labor Standards Enforcement that will process an estimated 15,000 applications for permits, and require the department to work with the Department of Justice (DOJ) to ensure that permit-seekers are not registered sex offenders.

The legislation will require DIR to collaborate with DOJ and other law enforcement agencies to ensure that applicants are not sex offenders before permits are granted. Applicants who are confirmed as non-sex offenders will be listed on a web site that the Labor Commissioner is required to maintain of persons holding valid permits. Permits must be renewed bi-annually. An application fee will be charged to pay for the cost of administering this program.

Governor's Proposal. The Governor's Budget proposes $701,000 and 8 new positions in 2013-14 to implement the new program, and $625,000 in subsequent years. The 8 positions include 6 office technicians, an Accountant position, and one Deputy Labor Commissioner position.

The department's new duties will include developing a collaborative process with DOJ to check permit applicants for sex offender status and developing a website.

This proposal also includes a $250,000 loan from the Labor Enforcement and Compliance Fund to allow for the start-up of operations before the new fees begin to pay for the program. The loan would be repaid in 2015-16.

STAFF COMMENTS

The department estimates that it will receive 15,000 permit applications per year, based on data related to how many permits have been issued for minors in the entertainment industry under current permit requirements. The fee amount has not yet been determined but will be done so after the department developments an agreement with DOJ.

Because the department is estimating its workload, the LAO recommends approving the funding authority but approving the positions on a two-year limited-term basis. This will allow the department to determine appropriate long-term funding needs.

ITEMS TO BE HEARD

8955 DEPARTMENT OF VETERANS AFFAIRS

CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS (CALVET)

CalVet provides services to California Veterans and their dependents, and to eligible members of the California National Guard. The principle activities of the (CalVet) include:

1. Providing home and farm loans through the Cal-Vet Farm and Home Purchase to qualifying veterans using proceeds from the sale of general obligation and revenue bonds;

2. Assisting eligible veterans and their dependents to obtain federal and state benefits by providing claims representation, subventions to county veterans service officers, and direct educational assistance to qualifying dependents; and,

3. Operating veterans' homes in Yountville, Barstow, Chula Vista and Greater Los Angeles, and Ventura County with several levels of medical rehabilitation services, as well as residential services.

The Governor's Budget proposes total spending of $386.9 million ($316.3 million General Fund) for the Department of Veterans Affairs, a 17.7 percent increase from the current year, and 2,428.9 PYs, an increase of 8.1 percent from the current year.

Fund Source	2011-12 Actual	2012-13 Projected	2013-14 Proposed	BY to CY Change	% Change
General Fund	$194,055	$252,137	$316,341	$64,204	25.4%
Veterans Farm and Home Building Fund of 1943	$70,541	$68,277	65,506	($2,771)	(4.1%)
Other Funds (11)	$4,605	$8,232	$5,064	($3,168)	(38.5%)
Total Expenditures	$269,201	$328,646	$386,911	$58,265	17.7%
Positions	1,784.9	2,246.7	2,428.9	182.2	8.1%

ISSUE 1: COUNTY VETERANS SERVICE OFFICE IMPROVEMENTS PER SB 1006 AND VETERANS BENEFITS PROCESSING

The 2012 Budget Act included trailer bill language that sought to improve the state and counties' efforts to obtain federal compensation and pension benefits for California's 1.9 million veterans. The Subcommittee will hear an update from Cal Vet on the implementation of the trailer bill language, and can discuss other efforts to further assist veterans in receiving federal benefits and other services.

PANELISTS

- Department of Veterans Affairs
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

With the wars in Afghanistan and Iraq winding down, it is estimated that more than 208,000 veterans of these wars will return to civilian life in California. According to testimony provided this year to the Little Hoover Commission by veterans' advocates, these returning veterans have unique problems that will require consideration:

- Nearly 35 percent of veterans who served in Iraq and Afghanistan have been treated for Post-Traumatic Stress Disorder (PTSD);

- An estimated 30 percent of returning veterans have suffered a Traumatic Brain Injury (TBI);

- The fastest growing demographic of veterans is women, who are twice as likely to develop PTSD as men, and one in five women veterans report experiencing Military Sexual Trauma (MST) to the federal Department of Veterans Affairs.

In California, both the state Department of Veterans Affairs (Cal Vet) and County Veterans Service Offices (CVSOs) work to assist veterans in receiving federal benefits they are owed, including medical care, education, burial, and compensation and pension benefits. CVSOs are located in 56 of the state's 58 counties and are typically the entity that most veterans contact when seeking help in obtaining benefits. CVSOs have about 204 employees, while Cal Vet has only about 15 employees who work on veterans' benefits issues.

Since 2004, the state has distributed $2.6 million General Fund to CVSOs to help support their work in helping veterans secure benefits. Cal Vet also regulates CVSO activity and accredits CVSOs. The Governor's Budget again proposes $2.6 million for these activities.

A February 2012 oversight hearing held by this Subcommittee examined the state's efforts to aid veterans in securing the benefits they are owed. Approximately 16 percent of the state's veterans receive compensation and pension benefits, which is a lower participation rate than other states with large veteran populations, such as Texas and Florida. The hearing showed that California counties had dramatically differing federal compensation and pension payout rates, suggesting that CVSO performance varied from county to county.

Based on that hearing, the Legislature included language in SB 1006 (Senate Committee on Budget and Fiscal Review), Chapter 32, Statutes of 2012 that sought to improve the work done by CVSOs to secure veterans' benefits. The legislation called for Cal Vet to:

- Redesign it system for providing funding to CVSOs to incentivize CVSOs to perform work that helps veterans access federal compensation and pension benefits and other benefits; and,

- Conduct a review of high-performing and low-performing CVSOs, and based on this review, produce a best-practices manual for CVSOs by June 30, 2013.

STAFF COMMENTS/QUESTIONS

The Subcommittee has asked Cal Vet to provide an update in the implementation of the trailer bill from last year. The state's interest in improving the rate at which veterans receive federal benefits is clear, as it both helps veterans and brings more federal dollars into California. The Subcommittee may also wish to ask Cal Vet how the state can improve CVSOs' ability to handle returning veterans and their unique needs, including responding to veterans suffering from PTSD, TBI, and MST.

It should be noted that while CVSOs and the state work directly with veterans to file claims' requests, processing and issuing benefits is the responsibility of the U.S. Department of Veterans Affairs (USDVA). Recent media reports have highlighted a growing problem in the USDVA's inability to quickly process and approve benefit requests. According to internal USDVA documents obtained and published by the Center for Investigative Reporting, California veterans filing claims for the first time face extremely long waits before their claims are processed. This can lead to disabled veterans suffering from severe health issues, unemployment, or other problems waiting more than a year for federal assistance.

The table below shows the average processing times for the three USDVA offices in California and the national average. Nationally, it is taking nearly one year to process new claims; and in two of California's offices, the processing time is closer to two years.

Office	Average Processing Time - Days
Los Angeles	619.4
Oakland	617.8
San Diego	283.3
National Average	349.6

Some states have sought to address the USDVA's claims backlog. Texas, for example, has committed $1.5 million to create "State Strike Force Teams" to work with federal officials in processing requests for claims. The teams consist of claims counselors who work inside federal veterans offices to help expedite claims' processing. The state has signed a Memorandum of Understanding with the federal government to allow the strike force teams to work with USDVA officials. The Subcommittee may wish to question the department about whether a similar effort could be launched in California, to help California veterans obtain benefits more quickly.

Suggested Questions

1. Could the state of California create strike force teams similar to Texas to work with federal officials to shorten processing times for veterans' benefits? What would be the cost of such an effort?

2. What can Cal Vet do to ensure that CVSOs are properly trained to address returning veterans' needs, such as Post-Traumatic Stress Disorder, Traumatic Brain Injury, and Military Sexual Trauma?

3. Based on Cal Vet's current review of CVSO performance, what types of activities constitute best practices for increasing the amount of federal benefits flowing to California veterans?

ISSUE 2: RECTOR RESERVOIR

During the past three years, the Subcommittee has urged the Department of Veterans Affairs to pursue additional sources of revenue to help fund department programs such as the Veterans Homes of California. The Subcommittee will hear an update on the department's efforts to understand the potential value of one asset it owns – Rector Creek Dam and Reservoir near the Yountville Veterans Home in Napa County.

PANELISTS

- Department of Veterans Affairs
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

Rector Creek Dam and Reservoir is located at the base of the foothills of the Howell Mountains, approximately three miles from the town of Yountville in Napa County. The Dam is a 164-foot high, earth-fill structure with crest elevation at 381.5 feet. The License for Diversion and Use of Water was issued to the Cal Vet by the State Water Resource Control Board on November 2, 1970. Under the permit, Cal Vet is restricted to: 5.55 cubic feet per year, 1,767 acre-feet per annum by storage and shall not exceed 3,518 acre-feet per water year or the maximum withdrawal from storage 1,767 (out of a maximum allowed in storage of 4,400 acre-feet). Per the permit, the water can be "put to beneficial use" in:

1. Napa State Hospital;

2. Fish and Game Farm;

3. City of Yountville; and,

4. Irrigation of approximately 652 acres (within a defined area).

Cal Vet entered into an agreement (starting July 1, 2004 and ending June 30, 2024) with the Town of Yountville to offset water usage. Cal Vet provides the Town of Yountville with water and a monthly reading and the Town of Yountville provides the Home with a sewer usage bill. The fee for water is $667 per acre-foot of water sold to the Town of Yountville. The revenue is not reflected in the Cal Vet budget because of the offset agreement.

The 2010 Budget Act required Cal Vet to provide a report to the Legislature on, among other things, any inquiries from private parties as to the possibility of purchasing water from Rector Reservoir and any water conveyance facilities connected to the reservoir that might allow for delivery of water to other parties.

Cal Vet submitted its report to the Legislature on January 19, 2011. In the report, Cal Vet noted that it was implementing a Memorandum of Understanding with the Department of Water Resources (DWR) to address technical issues on water use options and to provide guidance on how to make changes to its license that might allow for other water uses.

Cal Vet has reported to budget staff that it received a draft report from DWR recently.

STAFF COMMENTS/QUESTIONS

The Subcommittee has urged Cal Vet for the last three years to explore potential options for increasing revenue from this resource. With DWR's report nearly complete, the department should have enough information to determine the best manner in which to manage Rector Reservoir in the future.

Cal Vet has been asked to provide an update on this issue.

Suggested Questions

1. How can Cal Vet maximize revenue from this resource?

2. What would be the pros and cons of selling Rector Reservoir? Are there barriers to this option?

3. Is there excess water that could be sold to interested parties?

4. Are there other uses for the Reservoir area that Cal Vet could pursue?

ISSUE 3: VETERANS HOMES OF CALIFORNIA – REDDING AND FRESNO ACTIVATION

An April Finance Letter requests an augmentation of $11.9 million General Fund, and 120.2 positions to continue staffing ramp up and the admission of residents at the Redding Veterans Home of California, and an augmentation of $12.6 million General Fund support and 127.8 positions to continue staffing ramp up and the admission of residents at the Fresno Veterans Home of California.

PANELISTS

- Department of Industrial Relations
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

Cal Vet provides residential and medical care services to honorably-discharged California veterans who served on active duty and are over the age of 62 or disabled. The Veterans Homes of California (VHCs) are long-term residential care facilities that provide California's qualified aged or disabled veterans with rehabilitative, residential, medical, and support services in a home-like environment. Once an eligible veteran selects a VHC as his or her long-term care option, and is approved for admission, the veteran becomes a fee-paying resident of the VHC. Spouses of veterans may also be eligible for VHC residency.

The VHCs provide a long-term continuum of care, from domiciliary care at one end of the spectrum, which is similar to independent living accommodations, to skilled nursing care at the other end of the spectrum, which provides continuous skilled nursing or rehabilitation services.

While construction of the homes has been funded largely through state bonds and federal funds, VHC operations are largely supported by the General Fund. Cal Vet does receive revenue for VHC from member fees, federal per diem, Medicare and Medi-Cal. In 2013-14, the Administration projects spending $281.3 million in state General Fund on the VHC, while receiving $81.5 million in revenue, for a net General Fund impact of $199.9 million.

The homes are located in Yountville, Barstow, Chula Vista, Lancaster, Ventura, West Los Angeles, Redding, and Fresno. VHC-Yountville was established in 1884 as the first veterans' home in the United States, but the rest of the system was built during the past 20 years. The Lancaster, Ventura, and West Los Angeles homes admitted their first residents in 2010, while Redding and Fresno will admit their first residents in October 2013.

The 2012 Budget Act appropriated a $1.9 million General Fund and 16.7 Personnel Years to hire staff in advance of admitting residents at the Redding facility and $2.3 million and 21.6 Personnel Years at the Fresno facility. Cal Vet plans to admit eight patients into the residential care facility beginning in October 2013 in both Redding and Fresno.

Governor's Proposal. An April Finance Letter proposes $11.9 million General Fund and 120.2 positions in 2013-14 and $17.8 million and 186.4 positions ongoing for Redding activation, and $12.6 million and 127.8 positions in 2013-14 and $19 million and 200 positions ongoing for Fresno activation. The $24.5 million request for 2013-14 is $2.5 million less than the $27 million the Governor originally proposed in the January Budget.

The intent is to admit the first residents in October, and continue to admit eight additional residents each month until full occupancy, which is currently forecasted to occur in June 2015 at the Redding facility and November 2016 at the Fresno facility. Upon completion, the Redding facility will have capacity for 150 residents (90 residential care, 30 skilled nursing, and 30 skilled nursing memory care). Capacity of the Fresno facility will be 300 residents (180 skilled nursing, 60 skilled nursing, and 60 skilled nursing memory care).

STAFF COMMENTS/QUESTIONS

An overwhelming majority of Cal Vet's expenditures – more than 80 percent under the Governor's 2013-14 Budget - go toward operating the VHC, leaving very little state funding to support other veterans' issues.

Due mostly to state budget constraints during the past several years, Cal Vet has operated the VHC well under capacity. The VHC have a total capacity of 2,995 beds, but the budgeted census for 2012-13 is 1,781. Cal Vet is proposing a significant increase in residents for 2013-14 due to admitting the first residents in Redding and Fresno and more than doubling the number of residents in West Los Angeles. The following table indicates the capacity of each home and the projected average daily census for 2013-14, should the Legislature approve the Administration's budget request. Even with the proposed increase, the system would maintain more than 1,000 empty beds.

Facility	Bed Capacity	Projected Average Daily Census, 13-14	Percent Change from 12-13
Yountville	1,229	1,959.7	0%
Barstow	400	212	0%
Chula Vista	400	290.6	0%
West Los Angeles	396	279	143%
Lancaster	60	60	0%
Ventura	60	60	0%
Redding	150	32	*No residents in 12-13*
Fresno	300	32	*No residents in 12-13*
Total	**2,995**	**1,959.7**	**13.2%**

To address VHC costs and seek ways to improve efficiencies, the Joint Legislative Audit Committee approved a request from the Assembly last year to conduct an audit of the system. The audit should be ready for release in May.

The Subcommittee may wish to revisit the VHC program once the audit is released. However, the current proposal is needed to begin the critical ramp-up of the Redding and Fresno facilities. Construction is complete and the activation process was begun in the 2012 Budget Act. Demand for both facilities appears high: 442 veterans filled out forms expressing interest in living in the Fresno facility, and 701 veterans expressed interest in living at the Redding facility.

In addition, Cal Vet has sought to cut costs even before the audit is concluded. Cal Vet has shifted the Residential Care Facility programs in both facilities from a "medical model" to a "social model," which will reduce staff-to-resident ratios and provide a greater level of independence to residents

7350 DEPARTMENT OF INDUSTRIAL RELATIONS

The Department of Industrial Relations protects the workforce in California, improves working conditions, and advances opportunities for profitable employment. The Department is responsible for enforcing workers' compensation insurance laws, adjudicating workers' compensation insurance claims, and working to prevent industrial injuries and deaths. The Department also promulgates regulations and enforces laws relating to wages, hours, and conditions of employment, promotes apprenticeship and other on-the-job training, assists in negotiations with parties in dispute when a work stoppage is threatened, and analyzes and disseminates statistics, which measure the condition of labor in the state.

The Governor's Budget proposes total spending of $586.1 million ($2.5 million General Fund) for the Department, a 42 percent increase from 2012-13, and 2,796.6 positions, a 3.3 percent increase from 2012-13. Much of the increase is due to growing department costs related to implementing workers compensation reforms.

Fund Source	2011-12 Actual	2012-13 Projected	2013-14 Proposed	BY to CY Change	% Change
General Fund	$4,321	$2,385	$2,468	$83	3.5%
Workers Comp Admin Fund	$155,475	$164,081	$309,456	$145,375	88.6%
Federal Trust Fund	$34,489	$35,395	$36,778	$1,383	3.9%
Occupational Safety/Health Fund	$40,557	$39,687	$51,169	$11,482	28.9%
Labor Enforcement Compliance Fund	$37,693	$38,655	$43,583	$4,928	12.7%
Other Funds (24)	$118,572	$132,268	$142,665	$10,397	7.9%
Total Expenditures	$391,107	$412,471	$586,119	$173,648	42.1%
Positions	2,378.8	2,706.6	2,796.6	90	3.3%

ISSUE 1: REGULATORY PROGRAM PROPOSALS

The Governor's Budget includes three inter-related proposals to fund oversight and enforcement of occupational health and safety laws and labor standards. Together, the proposals seek to streamline and stabilize funding for the key duties of the department. The proposals include:

- Eliminating the sunset dates and increasing the annual revenue caps on the Occupational Safety and Health Fund (OSH) and the Labor Enforcement and Compliance Fund (LECF);

- Shifting funds and providing a one-time loan to stabilize funding for the Compliance Monitoring Unit; and,

- Suspending the Targeted Inspection and Consultation Fund assessment on high hazard employers and shifting this assessment to the OSH Fund.

PANELISTS

- Department of Industrial Relations
- Department of Finance
- Legislative Analyst's Office

OSH FUND AND LECF BACKGROUND

The Division of Occupational Safety and Health (Cal/OSHA) is responsible for enforcing occupational safety and health standards, investigating occupational injuries, and inspecting and permitting elevators, amusement rides, and passenger tramways. Funding for Cal/OSHA has historically come from the General Fund, several special funds, and federal funds. Cal/OSHA is also supported by the OSH Fund, which is an employer assessment on an employer's total workers' compensation insurance premium or on total "indemnity" (workers' compensation losses) for self-insured employers.

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

In 2008-09, about $24 million of Cal/OSHA's operations and $38 million of DLSE's operations were funded by the General Fund. The 2009-10 budget eliminated General Fund support for Cal/OSHA and increased the assessment and funding in the OSH Fund to offset the reduction. The 2009-10 budget also created the LECF through a new assessment on all employers, to pay for DLSE costs formerly funded from the General Fund. General Fund support for DLSE was eliminated entirely in 2010-11. Both the OSH Fund and LECF assessments are subject to an annual cap on total revenue collections and a sunset date of July 1, 2013.

Governor's Proposal. The Governor's 2013-14 budget proposes to eliminate the July 1, 2013 sunset date on both assessments, and raise the current revenue caps on both funds. The cap on the OSH Fund would grow from $52 million to $57 million and the cap on the LECF would grow from $37 million to $46 million.

STAFF COMMENTS/QUESTIONS

Both of these funds support key state duties. The OSH Fund provides 213.4 positions and $30.1 million to Cal/OSHA, allowing it to do everything from respond to worksite accidents to providing onsite safety consultations. Cal/OSHA performance data submitted to the Legislature indicates numerous activities in calendar year 2011, including:

Inspections	7,836
Citations Issued	5,710
Violations Cited	14,425
Penalties Collected in FY 2010-11	$11.2 million

The LECF provides 380.8 positions and $43.6 million to the DLSE, allowing it to enforce labor laws such as the minimum wage and other working-condition standards. DLSE performance data provided to the Legislature indicates numerous activities in FY 2010-11, including:

Inspections	9,201
Citations	4,769
Penalties Collected	$7.7 million
Wages Collected	$8.7 million

The LAO notes that allowing the sunset date to eliminate the employer assessments for these funds would create approximately $80 million in new General Fund costs. The LAO also states that assessments are an appropriate funding mechanism, because it is appropriate for the costs of regulatory activities to be paid for by the regulated community.

The proposal to increase the caps could add costs for employers, although the amount is relatively small. The increases would increase overall assessments from 2.83 percent of an insured employer's premium up to 2.94 percent of premium and from 7.03 percent to 7.35 percent for self-insured employers.

The Administration notes that the current caps were fixed at a certain point in time, and ignore year-to-year adjustments for cash flow and the funds' appropriation authority approved by the Legislature. For example, they note the 2012 Budget Act includes appropriations for the LECF that is above its cap amount.

The proposed increases will partially backfill funds that are proposed to be redirected from both the OSH Fund and LECF to support the Compliance Monitoring Unit. The proposal related to the Compliance Monitoring Unit is described next.

COMPLIANCE MONITORING UNIT BACKGROUND

DIR is responsible for enforcing state prevailing wage laws for public works projects. In enforcing prevailing wage laws, the department determines local prevailing wage rates by occupational trade, responds to prevailing wage complaints, adjudicates wage claims, and investigates prevailing wage violations. Prior to 2009, the awarding bodies of public works contracts (mostly local governments) established Labor Compliance Programs (LCPs) to comply with prevailing wage enforcement requirements on projects that included state bond funding and other specified projects. The LAO raised concerns about the “self-enforcement” of prevailing wage laws by the LCPs in a 2007 report. In the report, the LAO raised concerns about the limited enforcement activity initiated by LCPs.

SB 9 X2 (Padilla), Chapter 7, Statutes of 2009, created the Compliance Monitoring Unit (CMU) within DIR, and shifted prevailing wage enforcement activities previously performed by LCPs to the CMU. Chapter 7 authorized DIR to charge a fee (for deposit in the State Public Works Enforcement Fund), not to exceed 0.25 percent of state bond funds allocated to a project (or 0.25 percent of total project costs for certain specified projects), for CMU operations. Chapter 7 exempted certain public works projects from CMU enforcement while also broadening the scope of prevailing wage enforcement by the CMU to nearly all state bond-funded projects as well as certain specified design-build projects.

From the inception of the CMU, the program's funding model has been insufficient to meet operational needs. To begin program operation, the CMU received a $1.3 million General Fund loan in 2009-10. However, program operation for the CMU was ultimately delayed until 2011 due in part to legal issues related to using state bond funding for CMU enforcement. In 2011-12, a $2.2 million special fund loan was made to provide additional resources to the CMU. During 2011-12, the CMU collected only $246,000 in fees with an estimated budget of $8 million and 67 authorized positions. The DIR filled only 9 of these positions and spent $611,000 for the CMU in 2011-12. The cap on CMU fees has prevented DIR from raising revenue commensurate with its appropriated budget.

In all, the CMU has only billed 153 projects and collected $142,000. Efforts to fund and operate this program so far have failed.

Governor's Proposal. The 2013-14 budget proposes the following budget solutions for the CMU in an effort to generate about $8 million in operating funds:

- Permanently shift $2 million in General Fund expenditure authority from other prevailing wage activities in DIR to the CMU, with a commensurate increase in Labor Enforcement and Compliance Fund (LECF) fees to backfill the redirection.

- Permanently shift $431,000 in General Fund expenditure authority from the Cal/OSHA that had supported the injury, illness, and statistics program to the CMU, with a commensurate increase in OSH Fund fees to backfill the redirection.

- Provide a one-time $5 million loan from the Targeted Inspection and Consultation Fund to the State Public Works Enforcement Fund for CMU operations in 2013-14.

- Eliminate the Construction Industry Enforcement Fund and a shift of civil penalties previously deposited into the fund. The penalties would be shifted to the LECF to provide $67,000.

- Budget trailer legislation that would authorize DIR to recoup CMU enforcement costs that exceeded the existing 0.25 percent cap on bond proceeds on CMU fees by requiring awarding bodies to reimburse the CMU using "other funding sources tied to the project." The legislation would also remove the 0.25 percent cap on total project costs for projects that were not state bond-funded.

STAFF COMMENTS/QUESTIONS

This is a complicated proposal to shift and backfill multiple funds. In the end, however, the Administration is seeking to stabilize CMU funding and provide the unit with a base amount of funds to operate, and to streamline some administrative functions by consolidating prevailing wage functions into the CMU and eliminating the Construction Industry Enforcement Fund. In addition, the department has proven to be good stewards of its funding, having reduced assessments on industry by $133 million between 2010-11 and 2011-12 by improving its billing processes.

The LAO raises some concerns with the proposal, most notably with the $2 million shift from the General Fund and the trailer bill language.

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

The Administration states, however, that the new funding from the LECF will allow the CMU to investigate and enforce all labor laws, not just prevailing wage issues, when it oversees public works projects. Thus, the fund shift will give the CMU more flexibility in carrying out its mission.

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

Staff notes that while the LAO's concern that many of the CMU oversight projects would not have additional funding sources, the trailer bill language would allow the department more flexibility in seeking funding.

TARGETED INSPECTION AND CONSULTATION FUND BACKGROUND

The Targeted Inspection and Consultation Fund (TICF) is supported by a special assessment on high hazard employers. TICF funds are used for workplace inspections and safety consultation services for employers in industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses.

Employers are assessed based on their workers' compensation experience modification rating. The fund has collected between $10 million and $21.9 million annually between 2007-08 and 2011-12, allowing for 53 authorized positions in 2011-12.

Governor's Proposal. The 2013-14 budget proposes suspending the TICF and folding the assessment for these services into the OSH Fund, consequently increasing appropriation authority for the OSH Fund by $9.1 million.

STAFF COMMENTS/QUESTIONS

High hazard employers currently pay both the high hazard and OSH Fund assessments. The Administration proposes a statutory change to suspend the high hazard assessment during a period when the OSHF assessment is being collected. It states as a rationale that this will simplify the assessment process for occupational safety and health operations and eliminate the "double billing" of high hazard employers. The Administration's proposal creates greater efficiency in the assessment process.

This proposal would lessen paperwork for both the department and businesses by consolidating two billing processes into one. However, the LAO proposes the following: The 2013-14 budget estimates a $13 million fund balance in the TICF (which is net of the $5 million proposed loan for prevailing wage enforcement). Because of the existing fund balance, there is no budgetary need to eliminate TICF funding for Cal/OSHA and backfill the eliminated funding with an increased OSHF assessment in 2013-14 as the Administration proposes. TICF funding for Cal/OSHA could continue at its historical level of approximately $9 million in 2013-14. In future years, if the Legislature has suspended or eliminated the high hazard assessment, DIR would likely need to increase OSHF assessments and budget expenditure authority to continue Cal/OSHA operations at current funding levels.

This suggestion appears reasonable and would lower business costs for one year, using already-existing funds.

In addition, the Administration proposes suspending the high hazard assessment. The Subcommittee may wish to consider simply repealing the assessment.

All three of these proposals are inter-related and support the department's key activities. As a package, the proposals stabilize and streamline occupational health and safety and labor standards enforcement. It should be noted that the Administration states that the CMU funding proposal is intended to provide a transition year to allow the unit to begin functioning properly and that they will likely have additional proposals in the future to further stabilize the unit.

The business community has raised concerns regarding how the OSH Fund and LECF are being utilized by the department, and thus the Subcommittee may wish to direct staff to work on supplemental reporting language that would provide a subsequent report on how the department is utilizing these resources and the outcomes associated with these regulatory activities. The table below indicates the Administration proposals and staff recommendations.

Administration Proposal	**Staff Recommendation**
Eliminate the sunset date and increase the annual revenue caps for the Occupational Safety and Health Fund and the Labor Enforcement and Compliance Fund	Approve the BCP and include supplemental reporting language to provide a report on the uses and outcomes related to the two funds
Five funding increases and shifts to stabilize funding for the Compliance Monitoring Unit	Approve the BCP
Suspend the Targeted Inspection and Consultation Fund and shift the high hazard assessment into the Occupational Safety and Health Fund	Approve the elimination of the Targeted Inspection and Consultation Fund, and on a one-time basis for 2013-14, shift the remaining money left in the Targeted Inspection and Consultation Fund into the Occupational Safety and Health Fund and decrease the OSH Fund assessment level by the same amount.

ISSUE 2: CAL/OSHA – PROCESS SAFETY MANAGEMENT UNIT

The Subcommittee will discuss appropriate staffing and training levels for the Process Safety Management Unit, which works to prevent or minimize the consequences of catastrophic releases of toxic, flammable or explosive chemicals as described in Labor Code Sections 7855-7870.

PANELISTS

- Department of Industrial Relations
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

Cal/OSHA's Process Safety Management (PSM) unit enforces "process safety management" procedures regarding potentially hazardous processes that exist in a wide variety of industries, including oil refineries. These regulations require these industries to implement a comprehensive safety plan that includes a precise determination of what hazards exist and procedures to eliminate or reduce them. Employers must ensure that machinery and equipment are in good condition, that work procedures are safe, that hazards are controlled, and that workers are trained to safely operate the equipment, recognize hazards, and respond appropriately in emergency situations.

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

The PSM unit currently has seven field inspectors.

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

Cal/OSHA immediately began an investigation into the fire and the leak repair procedures. In findings released in January 2013, Cal/OSHA found that Chevron did not follow the recommendations, dating back to 2002, of its own inspectors and metallurgical scientists to replace the corroded pipe that ultimately ruptured and caused the fire. Chevron also did not follow its own emergency shutdown procedures when the leak was identified, and did not protect its employees and employees of Brand Scaffolding who were working at the leak site. Also in January 2013, Cal/OSHA issued close to $1 million in fines against Chevron, the biggest penalty in the department's history and the maximum allowable under current law, for failing to replace the corroded pipe, not implementing its own emergency procedures, and violating leak-repair procedures. Cal/OSHA issued 25 citations against Chevron, 23 of which were classified as “serious” due to the realistic possibility of worker injuries and deaths in the fire. Eleven of these serious violations were also classified as “willful” because Cal/OSHA found Chevron did not take reasonable actions to eliminate refinery conditions that it knew posed hazards to employees, and because it intentionally and knowingly failed to comply with state safety standards.

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

STAFF COMMENTS/QUESTIONS

The U.S. Chemical Safety Board is an independent federal agency charged with investigating industrial chemical accidents. Testimony from board officials at a recent public forum in Richmond regarding the fire noted that "the California process safety regulatory system lacked sufficient well-trained, technically competent staff" and that Cal/OSHA's inspections of the Chevron Richmond refinery prior to the fire were minimal.

The U.S. Chemical Safety Board recommends that states utilize "an independent, well-funded, technically competent regulator that frequently audits major hazard facilities."

Based on this issue, the Subcommittee may wish to ask DIR to respond to the following questions.

Suggested Questions

1. How many refineries exist in the state? Is the PSM unit staffed adequately for the number of refineries in the state?

2. What type of training exists for PSM unit staff? Is it sufficient? How could it be improved?

State Senate Budget Subcommittee No. 5 also discussed this issue at its March 7, 2013 hearing. The Subcommittee voted to support a staff recommendation directing Subcommittee staff to work with the Administration on identifying possible improvements to the Cal/OSHA program, and it also redirected $350,000 and four positions currently associated with the high hazard assessment program to the PSM Unit. These positions would be available to be moved if the Legislature adopts the Governor's proposal to eliminate the high hazard assessment fee.

ISSUE 3: WORKERS' COMPENSATION REFORMS – SB 863

The Governor's Budget proposes an augmentation of $152.9 million in FY 2013-14 and $146.5 million in FY 2014-15 and 82 new positions from the Workers' Compensation Administration Revolving Fund to implement reforms to the workers' compensation system as enacted in SB 863 (De Leon), Chapter 363, Statutes of 2012. A majority of the funding - $120 million – will provide supplemental payments to specified workers suffering permanent disability. The proposal also includes trailer bill language specifying that the supplemental payments are for injuries occurring on or after January 1, 2013.

PANELISTS

- Department of Industrial Relations
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

California's workers' compensation system was established in 1913 and provides benefits for industrial injuries, irrespective of the fault of the employee or employer. All employers in California except the state must secure workers' compensation insurance or obtain a certificate of self-insurance from DIR's Office of Self-Insurance Plans. Injured workers receive medical treatment without cost as well as a variety of benefits depending on their situation, including temporary disability, permanent disability, funds for re-training, or death benefits to family members.

SB 863 reflects a negotiated compromise between employers and employees to adopt a significant increase in permanent disability benefits for some workers and savings for employers' workers compensation costs. The bill sought to return to the principles of workers' compensation, including relatively certain defined benefits and relatively timely delivery of those benefits. The bill made changes to the measurement of permanent disability, the compensation for permanent disability, the process for resolving disputes over appropriate medical treatment, medical fees and billing and collections, and took steps to improve the self-insurance program.

The legislation requires significant new duties for DIR, including:

- The Administration of a new Special Earnings Loss Supplement Program, which will provide $120 million annually in benefits to injured workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss.

- The creation of new Independent Medical Review and Independent Bill Review units, which will work to resolve disputes over medical treatment and medical billing.

- Improvements to the Office of Self Insurance Plans to allow for better oversight of self-insured public entities.

- Other new duties, including workload associated with new lien filing and lien activation fees, certification of administrative hearing and medical interpreters, more oversight of Medical Provider Networks.

- Conducting three new studies, including workers' access to specialty doctors, a comparison of the average loss of earnings for employees with permanent disability ratings, and a study recommending ways to improve the self-insurance program.

Governor's Proposal. The Governor's Budget proposes 82 positions and an augmentation of $152.9 million in FY 2013-14 and $146.5 million in FY 2014-15 from the Workers' Compensation Administration Revolving Fund. The proposal is broken into four components, as shown in the table below.

New DIR Duty	Cost	Positions
Special Earnings Loss Supplement Program. This program will administer $120 million in annual claims to be paid to workers who permanent disability benefits are disproportionately low in comparison to their earnings loss.	$120 million (claim payments) $5 million (administrative costs)	27.5
Division of Workers Compensation. Will administer Independent Medical Review, Lien Filing Review/Process Program, Interpreter Certification Program, Medical Provider Network, other new duties	$25.3 million (administrative costs)	36.5
Office of Self Insurance Plans. Will improve oversight of public self-insured workers' compensation programs	$2.4 million (administrative costs)	6
Additional Studies. Three new studies, as described above.	$317,000 in 2013-14; $217,000 in 2014-15	0

The Governor's proposal also includes budget bill language that would allow the department, subject to Department of Finance approval and legislative notification, to increase funding if claims exceed the $120 million appropriation described in SB 863.

Finally, the proposal includes trailer bill language that would clarify that the $120 million supplemental payments are intended for workers who are injured on or after January 1, 2013.

STAFF COMMENTS/QUESTIONS

Based on the expansive new duties for the department, and the workload estimates provided in this BCP, the request for positions appears to be appropriate.

The increased costs will be supported in part by several new fees that will be developed by the department through regulations, including:

- Interpreter candidates will pay a fee to cover testing costs and an annual certification renewal fee;
- Independent medical and bill review fees, to be paid by the employer; and,
- Filing fees on medical treatment liens and medical-legal liens.

According to a Fund Condition Statement provided by the department regarding the Workers' Compensation Administration Revolving Fund, total resources in the fund will grow by an estimated $335.9 million in 2012-13 to $455.6 million in 2015-16, with expenses growing from $165.2 million in 2012-13 to $303.8 million in 2015-16. The fund will retain a $151.8 million balance in 2015-16, according to department projections.

The trailer bill language specifying that the new funds are for workers injured on or after January 1, 2013 is intended to clarify the intent of the legislation and also appears appropriate.

However, the proposed budget language is problematic. The LAO notes that the department has yet to adopt regulations determining program eligibility and benefit levels for the Special Earnings Loss Supplement Program, therefore it is difficult to determine whether language is needed to allow the department to exceed $120 million. Further, the LAO notes that the legislation specified that the program would be funded with $120 million annually, not any more or less. The LAO recommends that the Legislature clarify its intent for the program, specifically as to whether it should be capped at $120 million annually or be allowed to go over that amount, before adopting new budget language.

The Administration has told staff that it appears unlikely that payments would exceed $120 million in the first year of operation, as the department is still developing the regulations for the program. In fact, given that this new program was not effective until January 1, 2013, it appears far more likely that the department will distribute less than $120 million. Therefore, the Subcommittee may wish to consider whether language is needed to address what would happen in years in which less than $120 million is expended.