AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 4
ON STATE ADMINISTRATION

ASSEMBLYMEMBER JIM COOPER, CHAIR

TUESDAY, APRIL 23, 2019

1:30 PM – STATE CAPITOL, ROOM 447

VOTE-ONLY

7350 DEPARTMENT OF INDUSTRIAL RELATIONS

VOTE-ONLY ISSUE 1: DEPARTMENT OF INDUSTRIAL RELATIONS BUDGET CHANGE PROPOSALS

The Subcommittee will consider the Governor's proposed increases for the Department of Industrial Relations (DIR).

BACKGROUND:

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

GOVERNOR'S PROPOSALS

The Governor's budget proposes providing DIR with 15.5 positions and $3.1 million in 2019-20 and $2.7 million ongoing to fulfill the provisions of recently chaptered legislation:

- **Assembly Bill 2358 (Carrillo), Chapter 675, Statues of 2018.** This bill prohibited discrimination in any building and construction trades' apprenticeship program on the basis of certain enumerated categories with regards to acceptance into or participation in the program as specified. The BCP requests one position and $161,000 for 2019-20 and $148,000 in 2020-21 and ongoing to provide resources for the Division of Apprenticeship Standards to implement this bill.

- **Assembly Bill 3018 (Low), Chapter 882, Statutes of 2018.** This bill increased public agency reporting requirements, creating penalties for noncompliance, and providing the Labor Commissioner with the authority to issue a civil wage and penalty assessment against a contractor or subcontractor found in violation of state law. The BCP requests 4.5 positions and $813,000 in 2019-20 and $743,000 ongoing from the Apprenticeship Training Contribution Fund to implement AB 3018.

- **Senate Bill 1402 (Lara), Chapter 702, Statutes of 2018.** This bill required DIR to post on its website the name and other essential information, regarding any port drayage meter carrier with an unsatisfied judgment finding that the meter carrier failed to fulfill its wage, payroll tax or workers' compensation obligations, or misclassified its employees as independent contractors. DIR is required to remove these postings within 15 business days after the division determines that there has been full payment, or an approved settlement, of the unsatisfied judgment. DIR requests 10 positions and

$2.1 million in 2019-20 and $1.8 million ongoing from the Labor Enforcement and Compliance Fund.

The Governor's budget also provides DIR with 10 positions and $1.6 million ongoing from the Labor Enforcement and Compliance Fund to provide permanent authority for proposals approved only for a limited-term basis in prior fiscal years. In addition to ongoing support for these positions, this proposal also requests six positions and $817,000 for a two-year limited-term from the Labor and Workforce Development Fund to further educate awarding bodies and contractors of their requirements under public works law to maximize compliance with registration requirements. Specifically, this proposal extends positions associated with the following:

- **Senate Bill 588 (de León), Chapter 803, Statutes of 2015.** This bill allowed the Labor Commissioner to file a lien or levy on an employer's property in order to assist the employee in collecting unpaid wages when there is a judgment against the employer. The budget change proposal (BCP) requests four positions and $768,000 ongoing from the Labor Enforcement and Compliance Fund to make permanent positions previously authorized on a limited-term basis.

- **Senate Bill 1001 (Mitchell), Chapter 782, Statutes of 2016.** This bill prohibited an employer from requesting more or different employment authorization documents than are required under federal law, refusing to honor documents tendered, refusing to honor documents or work authorization based upon the specific status or the term of status accompanying the authorization, or reinvestigating or reverifying an incumbent employee's authorization to work. Violation of these provisions could result in a civil penalty of not more than $10,000 imposed by the Labor Commissioner. The BCP requests three positions and $461,000 ongoing from the Labor Enforcement and Compliance Fund to make permanent positions previously authorized on a limited-term basis.

- **Senate Bill 1063 (Hall), Chapter 866, Statutes of 2016.** This bill amended the Equal Pay Act to prohibit employers from paying employees a wage rate less than the rate paid to employees of a different race or ethnicity for substantially similar work. The BCP requests three positions and $390,000 ongoing from the Labor Enforcement and Compliance Fund to make permanent positions previously authorized on a limited-term basis

- **Assembly Bill 97 (Committee on Budget) Chapter 14, Statutes of 2017.** Extended Support for Public Works Education. The 2017 Budget Act provided six positions on a limited-term basis to provide outreach and education to public works awarding bodies on benefits of the existing pre-qualification guidelines and how to better manage their responsibilities on public works projects. Educating and engaging awarding bodies and providing them with a strong tool to weed out unscrupulous contractors allows the unit to work as partners on the offensive to prevent labor law violations, including non-registration. The BCP requests an extension of the six limited-term positions for an additional two-years and an associated $817,000 from the Labor and Workforce Development Fund.

Additionally, the Governor's budget provides DIR with five positions and $859,000 in Federal Trust Fund authority for 2019-20. Funding provided by the federal Apprenticeship USA State Expansion Grant will enable DIR's Division of Apprenticeship Standards to expand its outreach activities to targeted nontraditional industries, while promoting increased apprenticeship opportunities to new and underrepresented demographics such as women, veterans, people with disabilities, disconnected youth and people of color. This is the second round of federal grant funding. The continued support will also enable the division to address additional priorities including: implementing a regional approach when engaging high-demand industry employers, providing internal staff training to effectively work with these same employers, establishing pipelines to connect youth with pre-apprenticeship or apprenticeship programs, and developing funding opportunities to expand apprenticeship into state civil service.

STAFF COMMENTS

The Governor's proposed costs are consistent with the Senate and Assembly Appropriations Committee cost estimates for implementing the bills. Staff has no concerns with these proposed increases.

Staff Recommendation: Approve as Budgeted.

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT

VOTE-ONLY ISSUE 2: INFORMATION SECURITY ENFORCEMENT TEAM

The Subcommittee will consider the Governor's proposed augmentations for the Employment Development Department (EDD) to establish a new Information Security Enforcement Team.

BACKGROUND

The Employment Development Department (EDD) connects employers with job seekers, administers the Unemployment Insurance, Disability Insurance, and Paid Family Leave programs, and provides employment and training programs under the federal Workforce Innovation and Opportunity Act. Additionally, EDD collects various employment payroll taxes, including the personal income tax, and collects and provides comprehensive economic, occupational, and socio-demographic labor market information concerning California's workforce.

GOVERNOR'S PROPOSALS

The Governor's budget provides EDD with $1.99 million ($996,000 in Contingent Fund and $996,000 in Disability Insurance Fund) and five positions in 2019, and $882,000 ($441,000 in Contingent Fund and $441,000 in Disability Insurance Fund) and five positions in 2020-21 and ongoing to establish a new Information Security Enforcement Team (ISET). The request for 2019-20 includes operating expenses for a one-time consulting contract and equipment purchases. The 2020-21 and ongoing request includes equipment maintenance costs. These resources will accommodate workload growth within the critical functions of information security, including detection and remediation of system security issues, infrastructure improvements, and improved compliance with current state and federal security standards.

The Administration proposes provisional budget bill language to augment the unemployment compensation disability fund and the EDD Contingent Fund by up to $1 million each one-time, above the budget change proposal, for necessary security-related software in 2019-20.

STAFF COMMENTS

Staff recommends approving the Governor's proposed increases, but adopt modified budget bill language to require notification to the Joint Legislative Budget Committee should the Department of Finance approve increase fund authority on the unemployment compensation disability fund and EDD Contingent Fund.

Staff Recommendation: Approve as budgeted, adopt modified budget bill language to require notification to the Joint Legislative Budget Committee should the Department of Finance approve increase fund authority on the unemployment compensation disability fund and EDD Contingent Fund.

7120 CALIFORNIA WORKFORCE DEVELOPMENT BOARD

VOTE-ONLY ISSUE 3: MUTUAL AID AGREEMENTS

The Subcommittee will consider the Governor's proposed augmentations for the California Workforce Development Board.

BACKGROUND

The California Workforce Development Board (CWDB) collaborates with both state and local partners to establish and continuously improve the state workforce system, with an emphasis on California's economic vitality and growth. CWDB also provides leadership for a unified state plan that works in partnership with other state entities such as the Health and Human Services Agency, the Departments of Social Services and Rehabilitation, the Community Colleges, and the Department of Education. The workforce system is comprised of state and local programs and services that prepare current and future workers to meet the ever-evolving demands of California's businesses and industries. These services include matching job seekers with career opportunities and jobs; supplying high-skill workers to business and industry; providing labor market and economic information necessary for state, local, and regional planning; preparing the neediest youth for advanced learning and careers; and encouraging the inclusion of special populations as critical elements of the workforce.

GOVERNOR'S PROPOSALS

The Governor's budget provides CWDB with 0.6 positions and $62,000 General Fund in 2019-20 and 2020-21 to develop a policy regarding mutual aid agreements among Local Workforce Development Boards to enable them to effectively respond to disasters, pursuant to AB 2915 (Caballero), Chapter 722, Statutes of 2018.

AB 2915 requires CWDB to develop, in conjunction with the Employment Development Department and with input from local workforce development boards, a policy regarding mutual aid agreements between local boards to enable them to effectively respond to disasters.

STAFF COMMENTS

Staff has no concerns with this proposal. The cost estimate is consistent with the Assembly Appropriations Committee analysis.

Staff Recommendation: Approve as Budgeted.

7300 AGRICULTURAL LABOR RELATIONS BOARD

VOTE-ONLY ISSUE 4: AGRICULTURAL LABOR RELATIONS BOARD BUDGET CHANGE PROPOSALS

The Subcommittee will consider the Governor's proposal to provide $245,000 General Fund for the Agricultural Labor Relations Board to implement recently enacted legislation.

BACKGROUND

The Agricultural Labor Relations Board (ALRB) is responsible for: (1) carrying out the policy of the state to encourage and protect the associational rights of agricultural employees; (2) conducting secret ballot elections so that farm workers in the state may decide whether to have a union represent them in collective bargaining with their employer; and, (3) investigating, prosecuting, and adjudicating unfair labor practice disputes.

GOVERNOR'S PROPOSAL

The Governor's budget provides ALRB with $245,000 General Fund and two Field Examiner II positions to work exclusively on all tasks necessary to complete award calculations to meet the requirements of AB 2751 (Stone), Chapter 718, Statutes of 2018. AB 2751 required ALRB to process findings of liability for monetary amounts due to final order within one year. This significantly shortens the timeline for staff to complete this detailed and time-consuming process. According to the Administration, the timeline required by AB 2751 cannot be met with existing staff.

The Governor's budget also includes $593,000 General Fund to convert 2.5 limited-term positions to permanent. The Office of the Board (Board) requests permanent funding of $593,000 General Fund for existing limited-term positions: 1.5 Hearing Officer II positions and one Attorney IV position. These positions have been limited-term for four years and the workload for these positions has not decreased. ALRB's objective is to resolve legal matters in a proactive and timely manner for our stakeholders and thereby advance the policies of the Agricultural Labor Relations Act. The request for permanent funding will provide the Board with resources to continue to achieve that objective and ALRB's mission. The 1.5 hearing Officer II positions have allowed the Board to maintain no backlog and continue to schedule hearings within a 60 to 90 day timeframe. Prior to these resources being added in 2015-16, it took between 200 and 600 days to schedule a hearing.

STAFF COMMENTS

Staff has no concerns with the proposed funding for ALRB.

Staff Recommendation: Approve as Budgeted.

ITEMS TO BE HEARD

0160 LEGISLATIVE COUNSEL BUREAU

ISSUE 1: WORKPLACE CONDUCT UNIT

The budget includes funding for the Workplace Conduct Unit.

BACKGROUND

The Legislative Counsel Bureau (LCB) requests $1,692,000 General Fund and four positions in 2019-20 and ongoing to continue operating the Workplace Conduct Unit mandated by Chapter 450, Statutes of 2018 (SB 867). SB 867 established a Workplace Conduct Unit within the LCB, charged with receiving and investigating complaints of harassment, discrimination, and retaliation related to the Legislature. SB 867 appropriated $1,506,000 in 2018-19 to fund the implementation and operation of the unit during its first year.

The responsibilities of the unit are a new function for the LCB. To continue operating the unit in 2019-20 and ongoing, the LCB is requesting funding and position authority for four new positions: a Career Executive Assistant to serve as the Director of the unit, two attorney positions to conduct investigations (one Deputy Legislative Counsel III and one Deputy Legislative Counsel IV), and an Office Technician (Typing) to provide clerical support. The LCB is also requesting operating expenses for the new unit, which includes funding for personal services contracts with five employment attorneys to serve on the Workplace Conduct Panel as required by the bill, additional office space, and the basic information technology needs of the unit.

STAFF COMMENTS

Assemblymembers and staff have received extensive training about this new unit and are highly familiar with this request. However, the public has not had an opportunity to provide feedback on this proposal.

Staff Recommendation: Approve as Budgeted.

7350 DEPARTMENT OF INDUSTRIAL RELATIONS

ISSUE 2: DOMESTIC WORKER RIGHTS EDUCATION AND OUTREACH

The Subcommittee will hear the DIR's preliminary findings of their report on labor law enforcement in the domestic worker industry. Additionally, the Subcommittee will hear a budget request related to education and outreach for domestic worker rights.

PANELISTS:

- Department of Industrial Relations
- California Domestic Workers Coalition

BACKGROUND:

In 1938, the U.S. Congress enacted the Fair Labor Standards Act introducing the forty-hour work week and establishing minimum wage and overtime protections for workers, with some exceptions including domestic workers and farmworkers. "Domestic workers," or "household workers," are generally comprised of housekeepers, nannies and caregivers of children and others, including the disabled and elderly, who work in private households to care for the health, safety and well-being of those under their care. According to a University of California, Los Angeles Labor Center report, 16 percent of all households in the state hire for housecleaning, childcare or homecare support, with as many as two million households in California hiring domestic workers. About two-thirds reside in Southern California, 26 percent in the Northern California and 11 percent in Central California. Based on labor market information from the EDD, the report finds that by 2022, the number of personal care aides in California will increase by 52 percent to over half a million workers.

Until very recently, domestic workers in California were excluded from the employer requirement of overtime for hours worked beyond the state minimum of eight hours a day, or 40 hours a week. AB 241 (Ammiano), Chapter 374, Statutes of 2013, enacted the Domestic Worker Bill of Rights, extending overtime compensation rights to domestic workers who are personal attendants after nine hours of work in one day and 45 hours a week. The provisions of AB 241 included a sunset date of January 1, 2017. SB 1015 (Leyva), Chapter 315, Statutes of 2016 repealed the sunset date making these provisions permanent.

In 2018, AB 2314 (Ting, Gonzalez Fletcher) was vetoed by Governor Brown. AB 2314 sought to require the Division of Labor Standards Enforcement (DLSE), upon appropriation of funds, to create the Domestic Work Enforcement Pilot Program for the provision of resources, education, and training regarding labor standards in the domestic work industry for both employees and employers.

2018-19 Budget
The 2018-19 Budget included the following Supplemental Reporting Language (SRL):

On or before July 1, 2019, the Division of Labor and Standards Enforcement (DLSE) shall submit to the Legislature a report regarding labor law enforcement in the domestic worker industry. The report shall include the following information: (a) An overview of the domestic worker industry. (b) An update on labor law enforcement actions that have been taken related to domestic workers. (c) An analysis of what barriers exist that may prevent greater enforcement. (d) Recommendations regarding how enforcement could be improved. (e) Recommendations regarding how employer compliance could be improved through outreach and education. In preparing the report, the DLSE shall incorporate expertise, feedback, and comments from domestic workers' employers and from domestic worker employee representatives.

Preliminary Report
DIR provided staff with a partial preliminary report. The report notes that there are about 545,940 formal, direct caregivers in 2017, of whom 25,180 were home health aides. DLSE conducted a statewide review of 2016, 2017 and 2018 claims received to date that were attributed to domestic workers. The statewide median annual salary for personal care aides is $26,220 ($11.41 per hour) and $31,610 ($13.06 per hour) for home care aides. Workers reported an average hourly wage of $13.64, and the median was $11.50. Nearly a quarter of claimants who reported their wage received an hourly wage between $10-$11 and one in five claimants were paid less than $10 per hour.

Between 2016 and 2018, there was an increase in the number of wage claims filed with the Labor Commissioner by domestic workers. In total, 798 wage claims met the criteria to be reviewed for purposes of evaluating filings submitted by domestic workers. DIR notes that limited number suggests findings should be interpreted with caution and are not necessarily generalizable to all domestic workers. Over a third of cases with reported outcomes were settled. One in five were abandoned by the claimant and 16 percent failed to appear for their case. An average $4,337 was awarded to claimants who filed wage claims from 2016 to 2018.

DIR notes that there are logistical and jurisdictional barriers for enforcement. For example an employer/client's home is the place of employment. The DLSE Bureau of Field Enforcement (BOFE) would not enter the employer/client's home for investigation, but instead set up an Order to Appear (OTA). Additionally, a worker may fear of loss of job and/or benefits such as room and board. Moreover, there are legal complexities, and case laws that impact this group of workers and employers need to be clarified.

BUDGET REQUEST

The California Domestic Workers Coalition is requesting $5 million General Fund to create a Domestic Worker Rights Education and Outreach Program within the California Division of Labor Standards Enforcement (DLSE). The program would provide grants to community organizations to provide education, outreach and training to domestic work employees and employers on minimum wage, overtime, sick leave, record-keeping, retaliation and the DLSE adjudication and retaliation process.

STAFF COMMENTS

The domestic work industry is unique from other low-wage industries. Domestic workers typically work one-on-one and in private homes (sometimes living in the home). These workers are uniquely vulnerable to workplace violations. Many workers and employers do not know laws apply to this industry.

Staff recommends the Subcommittee dedicate $5 million in one-time General Fund to provide grants to community organizations to provide outreach and education to both workers and employers. There are many community organizations already connected to these workers and employers and are best equipped to inform them of the law and their rights.

Staff Recommendation: Provide $5 million in one-time General Fund to create the Domestic Worker Rights Education and Outreach Program within the California Division of Labor Standards Enforcement. Adopt placeholder trailer bill language to implement the grant program.

ISSUE 3: LEAD EXPOSURE LIMITS FOR WORKERS

The Subcommittee will hear an update from the Department of Industrial Relations on updating the permissible exposure limit (PEL) for occupation lead poisoning prevention.

PANELISTS:

- Department of Industrial Relations
- Jose Mejia, California State Council of Laborers

BACKGROUND:

The California Department of Industrial Relations (DIR), Division of Occupational Safety and Health (Cal/OSHA) maintains a permissible exposure limit (PEL) for occupation lead poisoning prevention. The current standard requires that every employer shall assure that no employee is exposed to lead at concentrations greater than 50 micrograms per cubic meter of air (50 μg/m3) averaged over an 8-hour period. That standard is based on medical and scientific information that is more than 35 years old. Over this time much has been learned about the effects of lead among adults at lower exposure levels.

According to the California Department of Public Health (CDPH), current science from the Environmental Health Perspectives, the National Toxicology Program, and the US EPA, strongly indicates that worker blood lead levels should not exceed 5 to 10μg/dL over a working lifetime, yet existing standards allow workers to have blood lead levels up to 50 - 60 μg/dL before they have to be removed from significant lead exposure.

Since 2011, Cal/OSHA has been working on revising the PEL, known as the General Industry Lead Standard and Construction Industry Lead Standard for the protection of workers who are exposed to lead on the job, but it has not yet been updated.

BUDGET PROPOSAL

The California State Counsel of Laborers is requesting trailer bill language requiring the Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) to complete rulemaking to establish a revised permissible exposure limit (PEL) for lead for workers by February 1, 2020. Specifically, the proposal includes the following trailer bill language:

Section 105258 is added to the Health and Safety Code, to read:

(a) The Division of Occupational Safety and Health shall complete rulemaking to establish a revised permissible exposure limit for lead in the lead standards of the general industry safety orders (Section 5198 of Title 8 of the California Code of Regulations) and the construction safety orders (Section 1532.1 of Title 8 of the California Code of Regulations) by February 1, 2020.

(b) The division may promulgate emergency regulations as necessary to implement this section.

STAFF COMMENTS

Lead has been listed under California's Proposition 65 since 1987 as a substance that is known to the State of California to cause reproductive damage and birth defects, and has been listed as a chemical known to cause cancer since 1992. According to the Office of Environmental Health Hazard Assessment, lead has multiple toxic effects on the human body, including decreased intelligence in children and increased blood pressure in adults are among the more serious non-carcinogenic effects. There is no level of lead that has been proven safe for children or for adults.

In addition to this request, the Subcommittee has received another budget request related to DIR's budget. Advocates are requesting a one-time investment to backfill the Garment Restitution Fund in the amount of up to $5 million to remove the waitlist for the fund. Current law, enacted 20 years ago by AB 633 (Steinberg, 1999), created the Garment Restitution Fund in order to improve the ability of a garment industry worker who has been subjected to workplace violations to be compensated. The revenues generated for the fund come from garment manufacturing registration and annual renewal fees. However, the fees have not kept up with claims against the Fund. As a result, workers who have proven their claims and won judgments are waiting for years to be compensated for thousands of dollars in stolen wages.

Suggested Questions:

- Why has Cal/OSHA not updated the lead exposure limit for workers? When do they anticipate updating this?
- Can DIR provide an update on the wait list for the Garment Restitution Fund?

Staff Recommendation: Hold Open.

ISSUE 4: SUBSEQUENT INJURY BENEFIT TRUST FUND

The Subcommittee will hear the Governor's proposed changes to the Subsequent Injury Benefit Trust Fund (SIBTF) and the request for additional positions to reduce caseloads for investigators of SIBTF claims.

PANELISTS:

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

BACKGROUND:

Many states, including California, enacted the Subsequent Injury Benefit Trust Fund (SIBTF) statutory schemes as a post-war program to encourage the employment of disabled veterans returning from World War II. Labor Code section 4751 provides that if an employee who is already permanently partially disabled, in a manner that is actually labor disabling at the time, suffers a subsequent industrial injury that is compensable through the workers' compensation system, and if the employee's resulting total permanent disability is greater than the disability caused solely by the subsequent injury itself, the employee is entitled to special additional compensation, to be paid from the Subsequent Injuries Benefits Trust Fund (the "Fund"), to compensate for that degree of additional permanent disability caused by the combination of the prior partial permanent disability and the subsequent industrial injury.

An example would be a worker who had previously lost an arm and who then suffers a subsequent industrial injury to the other arm. The total resulting permanent disability for this worker would be much greater than would otherwise have been caused solely by an injury to one arm. The purpose of the SIBTF is to encourage the employment of disabled workers by relieving employers of liability for the greater levels of permanent disability that may result if an already-disabled worker later suffers an industrial injury. Rather than incurring workers' compensation liability for the entirety of the worker's resulting total permanent disability, the employer is responsible only for the disability that results directly from the subsequent industrial injury. A special fund, the SIBTF, created by assessments on all employers, pays special additional compensation as necessary to make up the increment and to compensate the worker for his or her total resulting permanent disability. SIBTF cases are limited to those in which the injured worker has total permanent disability of at least 70 percent, reflecting the original intent that the Fund is available only for those workers who have suffered significant injuries and disability.

Chapter 34, Statutes of 2004, (SB 899) changed apportionment rules. Once the amended provisions of Labor Code sections 4663 and 4664 established that apportionment of permanent disability was to be based on causation of the disability. This means that the employer would only be liable for the percentage of permanent disability directly caused by the work injury and that workers were not entitled to compensation for aggravating a preexisting condition. As a result, applications for SIBTF benefits and SIBTF benefit payouts increased from $8 million in 2003-2004, the last fiscal year before the 2004 reforms, to $67.4 million in 2017-2018.

GOVERNOR'S PROPOSAL

The Governor's budget proposes providing the Department of Industrial Relations (DIR) with 30.0 positions and $4.8 million in 2019-20, 30.0 positions and $4.4 million in 2020-21 and 2021-22, 23.0 positions and $3.4 million in 2022-23, with 14.0 positions and $2.0 million in 2023-24 and ongoing from the Workers' Compensation Administration Revolving Fund to: (1) reduce caseloads per claims examiner to a manageable level; and, (2) provide sufficient claims examiners and attorneys to perform due diligence investigations and reduce the State's long term liability from Subsequent Injury Benefit Trust Fund (SIBTF) claims.

The Governor's budget also proposes trailer bill language making the following changes to the SIBTF:

- Requires SIBTF claimants to prove that the initial disability was "actually labor disabling," meaning that the prior disability resulted in loss of earnings or interfered with the employees work activity, or a demonstrated impact on the employee's ability to perform work activity.
- Requires the claimant to provide evidence in a medical-legal report, based on prior contemporaneous medical records, testimony or other documents that predate the subsequent injury.
- Requires the prior disability to be rated using the whole person impairment rating, also called the impairment standard, as determined in accordance with the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment, without adjustment for diminished future earning capacity, occupation or age of the employee, or the adjustment factor.
- Makes changes to when the initial date of an entitlement is awarded to be the latest date that the employee is found to have reached permanent and stationary status.
- Prohibits claimants from using medical legal evidence from more than one evaluator, and does not allow such costs to be reimbursable.
- Includes a limitation period for employees to file a claim of five years. Currently there is no limitation period.
- Specifies that these changes would not apply to pending claims.
- Allows for the Director of DIR to issue regulations related to these changes.

STAFF COMMENTS

The SIBTF unit currently has 15.0 authorized positions, including 9.0 Workers' Compensation Consultants (WCC). The WCCs are responsible for the calendaring, preparation, medical referral, investigation, liability analysis, and settlement negotiation of all SIBTF claims. As of November 30, 2018, the WCCs had an average caseload of approximately 1,000 cases per examiner. The Governor's proposal would reduce the caseload to approximately 360 per examiner. Staff agrees that additional positions may be needed in order to reduce the caseload to allow for the WCCs to fully vet these cases. However, the Governor's proposed 30 positions in 2019-20 and 14 ongoing positions is a significant increase.

The Administration's proposed trailer bill language would make significant policy changes to SIBTF, which could have a significant impact on the fund's participants. These proposed changes should be vetted through the policy process.

The Administration recently pulled back the proposed trailer bill language, but is still requesting the positions associated with this proposal.

Staff Recommendation: Hold Open.

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT

ISSUE 5: DEFERRED MAINTENANCE

The Subcommittee will consider the Governor's proposal to provide $2 million in one-time General Fund to address deferred maintenance within the Employment Development Department (EDD).

PANELISTS:

- Department of Finance
- Employment Development Department
- Legislative Analyst's Office

GOVERNOR'S PROPOSAL

The Governor's budget provides EDD with $2 million in one-time General Fund to address deferred maintenance needs at EDD's Modesto and Merced facilities. Specifically, funds will be used in the construction phase of replacing the heating, ventilation and air conditioning (HVAC) systems at both facilities, and the fire alarm system at the Merced facility. At Merced, a study conducted by the Department of General Services (DGS) found that the facility's HVAC system is past its equipment service life, and can no longer be maintained or serviced. For the Merced facility, DGS is currently preparing the study with recommendation for replacement of the HVAC and fire alarm systems, and will begin working drawings upon completion of the study.

In addition to the two facilities above, EDD has identified four other EDD owned facilities with deferred maintenance needs. These facilities are not funded by the Governor's budget. Specifically, the Eureka facility requires $1.27 million to replace HVAC, San Bernardino requires seismic bracing and repair to the Americans with Disabilities Act (ADA) pathways for $1.9 million, El Centro's parking lot requires ADA corrections and geotechnical work to address the sinking foundation for $1.7 million and Pasadena requires seismic bracing and repair for ADA pathways for $1.5 million. The Subcommittee may wish to ask the rational for prioritizing the Modesto and Merced facilities.

STAFF COMMENTS

Staff recommends holding this issue open pending updated revenue estimates at the May Revision.

Staff Recommendation: Hold Open.

ISSUE 6: PAID FAMILY LEAVE

The Subcommittee will consider the Governor's proposed trailer bill language to expand the Paid Family Leave program.

PANELISTS:

- Department of Finance
- Employment Development Department
- Legislative Analyst's Office

BACKGROUND

Paid family leave was implemented in California in 2004 with SB 1661 (Kuehl), Chapter 7 of 2002. The program was created as an extension of the existing disability insurance program. Almost all California employees pay into the state's disability programs, including paid family leave, and are therefore eligible to receive benefits. According to the Employment Development Department (EDD), approximately 18.1 million California workers are covered by the state Disability Insurance (DI) program. In 2018, approximately 247,000 workers utilized paid family leave to bond with a child and about 37,000 workers took leave to care for an ill family member.

California's current paid family leave program provides up to six weeks of partial wage replacement to workers who take time off to bond with a new child (including newly fostered and adopted children) or care for an ill family member. Birth mothers are also eligible to take up to ten weeks of paid pregnancy related disability leave (four weeks prior to birth and six weeks after). Eligible recipients receive between 60 to 70 percent of their weekly wages, capped at $1,216. Low-wage workers, those earning less than one-third of the state average wage ($21,328 in 2019), receive weekly benefits equal to 70 percent of their weekly pay and workers making above that threshold receive weekly benefits equal to 60 percent of their weekly pay, up to the cap.

The EDD estimates that in 2019 the average benefit amount will be $695 per week and the average claim will last 5.5 weeks. The table below provides historical data related to paid family leave participation and benefits:

Paid Family Leave Historical Data

Calendar Year	First Claims Filed	Weeks Compensated	AWBA	Average Duration	Total Benefits Paid	Percentage of Claims	
						Bonding	Care
2014	238,575	1,190,443	$536.88	5.3	$639,122,491	89%	11%
2015	237,864	1,211,169	$551.17	5.4	$667,565,980	89%	11%
2016	256,835	1,292,627	$571.06	5.3	$738,166,947	88%	12%
2017	259,756	1,316,592	$599.21	5.4	$788,908,994	89%	11%
2018	284,218	1,484,180	$660.52	5.5	$980,328,408	87%	13%

Source: Employment Development Department

Since 2009-10, the number of bonding claims has increased by 40 percent, much of which can be attributed to an increase in men taking leave. In 2017-18, women made up 60 percent of bonding claims and men made up 40 percent. The LAO estimates that approximately half of eligible mothers and about one-quarter of eligible fathers made bonding claims in 2017. Additionally, the percentage of participants with higher incomes is growing (especially among men). However, the state currently only collects data on the income of the claimant, not the household income.

Funding for Paid Family Leave

Covered employees pay a 1 percent payroll tax to the Disability Insurance Fund, which funds disability and paid family leave benefits. Employees pay the payroll tax on annual earnings up to $118,371. The payroll tax raises about $8 billion each year for the fund. Approximately 85 percent of benefit payments go toward disability claims and about 15 percent go toward paid family leave claims (about $1 billion annually for paid family leave). The payroll tax rate is adjusted administratively in order to ensure the contributions are sufficient to cover the benefits; however, statute caps the rate at 1.5 percent. Current law also requires the fund maintain a reserve balance equal to about 45 percent of benefit payments. In 2019, the EDD estimates the reserve balance will be $3.4 billion.

Recent Legislation

AB 908 (Chapter 5, Statutes of 2016) increased the State Disability Insurance (SDI) wage replacement rate from 55 percent to 60 for middle and high-income workers, and 70 percent for low-income workers. The bill also eliminated the paid family leave waiting period and required EDD to: (1) provide a report, by July 1, 2017, on the cost/benefit of reducing or eliminating the current one-week waiting period for the SDI program; and, (2) provide a report, by March 1, 2021, on the impact of AB 908 on how DI and PFL benefits were utilized based on income categories, the cost of the increased wage replacement rates, and on the SDI contribution rates. The bill went into effect on January 1, 2018, and is scheduled to sunset on January 1, 2022.

SB 63 (Chapter 686, Statues of 2017) expanded the scope of job protection laws for bonding leave by reducing the threshold size of firms from 50 to 20 employees.

Additionally, SB 1123 (Chapter 849, Statutes of 2018) expanded the paid family leave program to include time off to participate in a qualifying exigency related to covered active duty, as defined, or call to covered active duty of the individual’s spouse, domestic partner, child, or parent in the armed forces of the United States. The bill will take effect on January 1, 2021.

GOVERNOR’S PROPOSAL

The Governor’s proposed trailer bill language related to Paid Family Leave would:

- Expand the annual maximum duration of Paid Family Leave from six weeks to eight weeks for bonding or caregiving, beginning July 1, 2020.

- Reduce the reserve requirement for the fund that supports Paid Family Leave to 25-35% of annual disbursements from the current 45-50% reserve requirement beginning July 1, 2019.
- Exempt the EDD from Parts 1 and 2 of the Public Contract Code and from Department of General Services review when entering contracts to implement the proposed trailer bill language; also exempts the EDD from the Project Approval Lifecycle requirements administered by the California Department of Technology when implementing certain aspects of this proposal.
- Include intent language to convene a task force by November 2019, to develop a proposal to increase the Paid Family Leave duration to a full six months by 2021-22 for parents to care for and bond with their newborn or newly adopted child.

STAFF COMMENTS

The Subcommittee held a joint hearing with Assembly Labor and Employment Committee on Paid Family Leave on March 19, 2019. The Administration did not have trailer bill language or any details of their proposal at that time. The trailer bill language related to Paid Family Leave was made available on April 11, 2019.

There are currently policy bills going through the process related to Paid Family Leave, including AB 196 (Gonzalez) which would provide a 100 percent wage replacement benefit for workers earning $100,000 or less annually. The Governor’s proposal would increase the duration of Paid Family Leave benefits from six weeks to eight weeks. Staff recommends the Legislature look comprehensively in expanding Paid Family Leave benefits. Additionally, the Administration intends to convene a task force to consider options for further expanding Paid Family Leave; however, the trailer bill language does not specify any details of the task force, such as the members, scope or timeline. Staff recommends the task force report any recommendations to the Legislature for consideration.

Staff Recommendation: Hold Open.

7120 CALIFORNIA WORKFORCE DEVELOPMENT BOARD

ISSUE 7: REMOVING BARRIERS TO EMPLOYMENT ACT (AB 1111)

The Subcommittee will consider the Governor's proposal to redirect $3.3 million of existing local assistance expenditure authority to state operations expenditure authority to implement the Removing Barriers to Employment Act (AB 1111) grant program.

PANELISTS:

- Department of Finance
- California Workforce Development Board
- Legislative Analyst's Office

BACKGROUND

AB 1111 (E. Garcia), Chapter 824, Statutes of 2017, established the Breaking Barriers to Employment Initiative for the purpose of assisting individuals who have multiple barriers to employment to receive the remedial education and work readiness skills to help them to successfully participate in training, apprenticeship, or employment opportunities that will lead to self-sufficiency and economic stability.

This grant targets a broad array of populations, which includes: (1) youths who are disconnected from the education system or employment; (2) women seeking training or education to move into nontraditional fields of employment; (3) displaced workers and long-term unemployed; (4) unskilled or under-skilled, low-wage workers; (5) persons for whom English is not their primary language; (6) economically disadvantaged persons; (7) CalWORKs participants; (8) persons who are incarcerated and soon to be released or formerly incarcerated; (9) armed services veterans; (10) Native Americans; (11) migrants or seasonal farmworkers; (12) persons with developmental or other disabilities; (13) immigrants; and, (14) persons over 50 years of age who need retraining for in-demand skills, among others.

AB 1111 funds are to supplement and not supplant state or federal funding for programs. This grant is eligible for a broad array of activities, which includes: (1) English language improvement training; (2) basic skills and adult education; (3) high school diploma and General Education Development (GED) acquisition; (4) skills and vocational training that aligns with regional labor market needs identified as part of the California Workforce Innovation and Opportunity Act regional planning process; (5) work experience; (6) on-the-job training; (7) stipends for trainees; (8) earn and learn training; (9) Industry certifications; (10) pre-apprenticeship; and, (11) mentoring, among others.

The Assembly Floor Analysis for the final version of the bill (September 8, 2017), stated that the bill would result in an unknown cost pressure to fund a grant program. State administrative costs would depend upon the size of the grant program. For illustrative purposes, the analysis states that for a future appropriation of $10 million, the grant will incur administrative costs of approximately $430,000.

The 2018-19 budget act provided $15 million one-time General Fund for AB 1111, and funds are available for encumbrance or expenditure until June 30, 2020, and for liquidation until June 30, 2022. The budget bill also capped state operations and administrative expenditures at five percent, or $750,000.

GOVERNOR'S PROPOSAL

The Governor requests six positions (one staff services manager I, one research analyst II, and four associate governmental program analysts) and redirection of $914,000 General Fund in 2019-20, and $1.2 million in 2020-21 and 2021-22 to administer and oversee the AB 1111 grant. This results in a total of $3.3 million, or 22 percent, redirection from the $15 million grant that was approved in the 2018-19 budget.

CWDB notes that they plan to provide assistance to grantees and work closely with grantees through the life of the grant. They plan to provide frequent project check-ins, resolve issues, and offer technical support. Managers and analysts will develop community of practice for each program to build support network for grantees to learn from each other through meetings, webinars, and conference calls. Program managers oversee the development of materials from policy briefs to best practices, highlighting solutions.

STAFF COMMENTS

The Governor's proposal redirects a significant portion of the $15 million provided for the AB 1111 grant program. The Administration argues that this funding is necessary in order to provide the technical assistance and support to grantees in order for the program to be successful. Many of the grantees are community organizations that do not have the capacity or expertise in executing grant programs. However, this was not contemplated when originally providing the $15 million for the program. The Subcommittee could consider providing additional General Fund for CWDB to support grantees.

Staff Recommendation: Hold Open.

ISSUE 8: CAP AND TRADE EXPENDITURE PLAN: WORKFORCE DEVELOPMENT TRAINING AND APPRENTICESHIPS

The Subcommittee will consider the Governor's proposal to provide a total of $130.5 million over five years from the Greenhouse Gas Reduction Fund for various workforce development programs.

PANELISTS:

- Department of Finance
- California Workforce Development Board
- Legislative Analyst's Office

BACKGROUND

The California Global Warming Solutions Act, Chapter 488, Statutes of 2006 (AB 32) and Chapter 249, Statutes of 2016 (SB 32), requires the reduction of GHG emissions across California's economy, to 1990 emissions levels by 2020, and to 40% below 1990 emissions levels by 2030. The Act establishes a comprehensive program to reduce GHG emissions in the state, utilizing revenues from the cap-and-trade program deposited into the Greenhouse Gas Reduction Fund (GGRF) for use in accordance with the Act.

State law also requires the investment of GGRF monies to, in part, support projects within and benefitting specified disadvantaged and low-Income communities per Chapter 830, Statutes of 2012 (SB 535), and Chapter 369, Statutes of 2017 (AB 1550). These investments must support a variety of benefits including, but not limited to, maximizing economic benefits to the state and fostering job creation per Chapter 807, Statutes of 2012 (AB 1532).

CWDB Initiatives
The CWDB is currently working on two initiatives to advance workforce development with the state's climate change goals in mind:

- <u>High Road Construction Careers (HRCC)</u>. Through the HRCC initiative, the CWDB has established 12 pre-apprenticeship training partnerships under the California Clean Energy Jobs Act and will use Chapter 5, Statutes of 2017 (SB 1) funding ($25 million over five years) to expand this model to all 14 workforce regions statewide. Since the majority of jobs related to state infrastructure development and aimed at reducing carbon emissions are in the construction trades, a pre-apprenticeship system that provides access to those jobs also provides a pathway to the middle class.

- <u>High Road Training Partnerships (HRTP).</u> CWDB currently supports eight HRTP demonstration projects. These industry sector initiatives convene workers and employers from multiple firms to analyze climate- and technology-related occupational changes, develop skills training solutions for current workers, and create opportunities for disadvantaged Californians to move into entry-level jobs. These partnerships are models for new non-construction apprenticeship and pre-apprenticeship programs. Each partnership works regionally to advance equity, mobility, and job quality for workers; deliver skilled workers for employers; and address the challenges of climate change throughout a given industry.

CWDB Report on Workforce Development

Chapter 135, Statutes of 2017 (AB 398) requires the CWDB to report to the Legislature on the need for increased education, training, and workforce development resources to support business/industry, as well as workers and communities, to transition to economic and labor-market changes related to specified statewide greenhouse gas emissions reduction goals. This report was due to the Legislature on January 1, 2019. The report has not yet been provided to the Legislature.

GOVERNOR'S PROPOSAL

The Governor's budget includes a total of $130.5 million over five years from the Greenhouse Gas Reduction Fund for the following workforce development programs, administered by CWDB:

High Road Construction Careers (HRCC)

The Governor's budget provides $10 million annually for five years for HRCC. The proposal intends to double the training capacity of each of 14 regional HRCC partnerships. Community Workforce Agreements on specific public works projects can help create the "pull" for these workers, ensuring apprenticeship slots are available. The intent of the proposal is to serve 3,000 disadvantaged Californians prepared for apprenticeship in the trades and 14 scaled regional HRCC partnerships organized into a seamless statewide network that can sustain the work long-term.

High Road Training Partnerships (HRTP)

The Governor's budget includes $10 million annually for 5 years for HRTP. The intent of the proposal is to expand to 20 projects in climate-impacted Industries, including transportation/ logistics, healthcare, manufacturing, mass transit, water and utilities. The proposed outcomes include: 2,000 disadvantaged workers served, 10 new state-approved apprenticeship programs, and 28 High Road industry sector partnerships sustained for long-term work.

Transition Initiatives

The Governor's budget includes $5 million annually for 5 years for the California Worker Transition Fund. The California Worker Transition Fund will provide individual skills accounts, integrated with the HRTP and HRCC projects, that may include income support, in tandem with retraining, to alleviate family economic insecurity. A portion of the monies will also fund HRTPs to create redevelopment strategies in communities affected by climate change, focused on building more resilient regional economies with quality jobs and access to quality jobs. The proposed outcomes include: 500 transitioning workers served.

Workgroup on the Future of Work

The Governor's budget includes $2 million in 2019-20 and 2020-21 and $500,000 in 2021-22 and 2023-24 to support the HRCC and HRTP projects and convene a workgroup within the Labor Agency on the Future of Work made up of labor, industry, community, and state partners to study and make policy and program recommendations to the Governor. This workgroup will integrate and amplify the future of work conversations held by each HRTP.

Proposed outcomes include: Actionable policy and program recommendations to proactively address worker and labor market impacts of climate change and automation. Collaboration and buy-in through Workgroup process among selected community, labor and industry leaders, implementation planning will ensure integration with climate-based just transition investments.

The chart below summarizes the requested resources:

Component	2019-20	2020-21	2021-22	2022-23	2023-24	Total
High Road Construction Careers	$10 Million	$10 Million	$10 Million	$10 Million	$10 Million	**$50 Million**
High Road Training Partnerships	$10 Million	$10 Million	$10 Million	$10 Million	$10 Million	**$50 Million**
California Worker Transition	$5 Million	$5 Million	$5 Million	$5 Million	$5 Million	**$25 Million**
Workgroup, Administration and Technical Support	$2 Million	$2 Million	$500,000	$500,000	$500,000	**$5.5 Million**
	$27 Million	**$27 Million**	**$25.5 Million**	**$25.5 Million**	**$25.5 Million**	**$130.5 Million**

STAFF COMMENTS

The Subcommittee has received numerous letters from local labor organizations in support of the Governor's proposal.

Staff recommends holding this issue open to evaluate all GGRF related proposals after the May Revision. Additionally, staff recommends holding this issue open until the report required by AB 398 is complete.

Staff Recommendation: Hold Open.

7320 PUBLIC EMPLOYMENT RELATIONS BOARD

ISSUE 9: PUBLIC EMPLOYMENT RELATIONS BOARD OVERALL BUDGET

The Subcommittee will consider the overall funding level for the Public Employment Relations Board (PERB).

PANELISTS:

- Department of Finance
- Public Employment Relations Board
- Legislative Analyst's Office

BACKGROUND

The Public Employment Relations Board (PERB) is a quasi-judicial administrative agency charged with administering eight collective bargaining statutes covering employees of the state, local public agencies, trial courts, the judicial council, and California's public schools, colleges, and universities. Since PERB's establishment in 1976, its jurisdiction has grown from overseeing one labor relations statute covering 470,000 employees to eight statutes covering approximately 2.5 million employees. In enacting these statutes, the Legislature sought to "promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations." (Government Code section 3500.)

In performing its mission, PERB investigates violations of state labor laws, conducts informal settlement conferences and formal hearings, and issues written decisions that adjudicate disputes involving public employers, employee organizations, and employees. PERB's quasi-judicial role is carried out by the following three distinct bodies:

- The Office of the General Counsel, which investigates unfair practice claims; investigates and adjudicates representation petitions, which includes conducting elections to determine formal workplace representation; defends final Board decisions that are challenged by either party in state courts; evaluates requests for injunctive relief and prepares court documents when the Board determines that injunctive relief is warranted; assists parties in reaching negotiated agreements through evaluation of mediation and fact-finding requests; and conducts informal settlement conferences before cases are heard by an Administrative Law Judge (ALJ).
- The Division of Administrative Law, which holds evidentiary hearings on formal complaints and issues proposed decisions.
- The PERB Board, a five-member body appointed by the Governor, which functions as an appellate body to hear challenges to proposed decisions and dismissals that are issued by PERB staff. This includes administrative appeals and requests to reconsider

decisions, injunctive relief, judicial review, and expedited hearings. Decisions of the Board itself may be appealed to state courts under certain circumstances.

Additionally, the State Mediation and Conciliation Service (SMCS) mediates labor disputes between employers and employee organizations, conducts consent elections, provides lists of arbitrators, and provides training/facilitation services in interest-based bargaining, labor/management processes, and managing workplace conflict.

As part of the 2016 and 2017 Budget Acts, additional positions and funding (three positions and $1.6 million General Fund total) were provided to address PERB's backlogs and caseload, and to provide the appropriate level of permanent funding to support all existing permanent positions. However, the backlog of cases that continued to be unaddressed remained high.

2018-19 Budget

As part of the 2018-19 Budget, an augmentation of $1.5 million General Fund and seven positions were provided to address immediate workload and continued backlog needs within the Office of General Counsel and the Division of Administrative Law. Additionally, given longstanding concerns and continued interest by external stakeholders to improve the efficiency of PERB, $900,000 General Fund was set-aside to support any identified resources needs upon completion of a Mission-Based Review to determine whether the current level of resources and expenditures are sufficient to meet regulatory and statutory requirements, review existing practices utilized for processing cases, and conduct an in-depth review of the department as a whole to determine the proper and most efficient organizational structure.

GOVERNOR'S PROPOSAL

Based on the Mission Based Review conducted by the Department of Finance, the Governor's budget includes eight positions and $626,000 of the $900,000 General Fund set-aside in the current year ($1,200,000 General Fund on an ongoing basis) to provide adequate staffing, address existing backlogs, and improve the timeliness of case resolutions. In turn, PERB has committed to working with Finance to develop and implement workload metrics to more accurately capture "legal" versus "non-legal" tasks within the Office of the General Counsel and Division of Administrative Law.

STAFF COMMENTS

Last year many labor groups advocated for a budget request for $5 million in ongoing funding for PERB's budget. The 2018-19 Budget included about $2.4 million. This year, Assemblymember Rodriguez is requesting an additional $2.5 million in ongoing funding for PERB's budget in order to reduce PERB's backlog and cope with its expanded jurisdiction and regulatory roles.

Staff Recommendation: Hold Open.