

AGENDA

**ASSEMBLY BUDGET SUBCOMMITTEE NO. 4
ON STATE ADMINISTRATION**

ASSEMBLYMEMBER JOAN BUCHANAN, CHAIR

PART 2

WEDNESDAY, MARCH 7, 2012

1:30 P.M. - STATE CAPITOL ROOM 437

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CONSENT ITEMS

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT

ISSUE 1: CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD – ADMINISTRATIVE CONSOLIDATION
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Governor's Budget Request. The Governor's Budget proposes that the Employment Development Department and the California Unemployment Insurance Appeals Board (CUIAB) consolidate administrative functions, shifting duties such as business services and human resources from CUIAB to EDD. The result is a cost savings of \$2 million in Special Funds and General Fund and the reduction of 17.4 positions. This consolidation has already occurred and can remain in place regardless of the Legislature's action on the Governor's proposal to eliminate CUIAB.

Background. Since the 1990s, CUIAB has had separate administrative support staff, including a Business Services Division, Personnel Services Division, Budget and Workload Division, and Strategic Planning and Training Division. In all, administrative support staff totals 48.8 PYs. EDD is a much larger agency that includes all of the same administrative functions.

With this proposal, the EDD Administration Branch would assume the responsibilities of CUIAB's administrative services based on a service level agreement between the two agencies. This is a similar modeled used between the Department of Industrial Relations and EDD.

Staff Recommendation: Approve the Budget Change Proposal to shift administrative functions at CUIAB to EDD.

VOTE-ONLY**7100 EMPLOYMENT DEVELOPMENT DEPARTMENT****VOTE-ONLY ISSUE 1: EXPAND THE FINANCIAL INSTITUTIONS RECORDS MATCH PROGRAM TO THE EMPLOYMENT DEVELOPMENT DEPARTMENT**

Governor's Budget Request. The Governor's budget proposes to expand the Financial Institution Records Match program to the Employment Development Department (EDD). The program, currently used by the Franchise Tax Board (FTB), is an enforcement tool used to collect delinquent taxes by identifying the accounts of tax debtors at banks and other financial institutes in California. EDD would provide reimbursements of approximately \$296,000 in 2012-13, \$236,000 in 2013-14, and \$150,000 ongoing to FTB to include EDD's tax debtor data in the data runs it submits to banks. The costs in the first two years are higher due to one-time costs to set up the system and implement the process into EDD's Automated Collection Enhancement System (ACES).

Background. FIRM requires banks doing business in California to match FTB records information on delinquent tax and non-tax debtors against their customer records on a quarterly basis. EDD anticipates the implementation of the FIRM Program will result in \$6 million to \$12 million in additional revenues collected annually. These revenues will likely result in an increase in General Fund revenue of between \$1.6 million and \$3.3 million ongoing.

Staff Recommendation: Approve the request and related trailer bill language

VOTE-ONLY ISSUE 2: AUTOMATED COLLECTION ENHANCEMENT SYSTEM

Governor's Budget Request. EDD requests a one-time augmentation of \$8.8 million, from four Special Funds, and 41 positions for final implementation of the ACES project. ACES is an information technology project that improves EDD's ability to collect taxes on businesses used to pay for programs such as Unemployment Insurance. The Governor also proposes a continuous appropriation of \$5.7 million from Special Funds and 22 positions in 2013-14 for ongoing ACES support.

Background. ACES is an automated tax collection system that allows EDD's Tax Branch to better administer its program to collect employer payroll taxes. ACES was first approved in the 2006 Budget Act and the program "went live" in January 2011. This request constitutes the final year of implementation and ongoing operations.

EDD's Tax Branch is a major tax revenue collection organization for the state, receiving almost \$51 billion annually from 1.3 million employers. ACES is designed to replace an antiquated accounting system. ACES enables EDD to better track, collect and audit employer taxes, and provides employers with additional payment options and Internet access to account history. Through June 30, 2011, EDD reports that ACES has generated almost \$75 million in additional revenue.

Once fully implemented, the program will allow EDD to examine accounts, determine the risks and probability of collection, and prioritize cases to allow the department to maximize revenue generation.

ACES also allows the state to collect penalties and back-wages that are due to the Department of Industrial Relations (DIR). These funds were previously collected by the Franchise Tax Board. Proposed trailer bill language removes from statute the Franchise Tax Board's authority to collect delinquent accounts for DIR.

Staff Recommendation: Approve the request and related trailer bill language

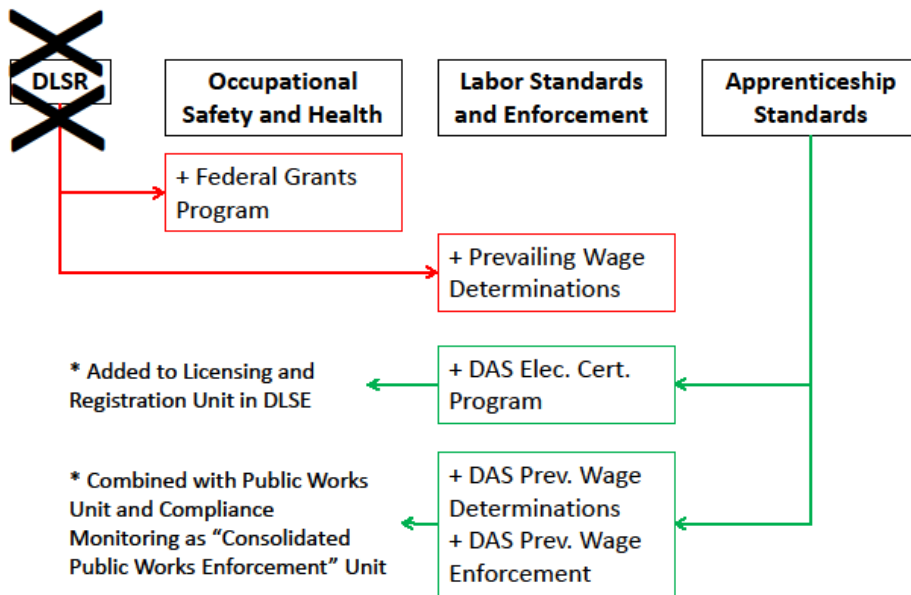
7350 DEPARTMENT OF INDUSTRIAL RELATIONS

VOTE-ONLY ISSUE 1: CONSOLIDATED PUBLIC WORKS ENFORCEMENT

Governor's Budget Request. The Governor's budget proposes to consolidate functions related to investigating and enforcing public works issues such as prevailing wage, job safety, and apprenticeship standards. The consolidation will result in the reduction of one position and \$231,000 in ongoing savings to the General Fund. Specifically, the Governor proposes eliminating the Division of Labor Statistics and Research (DLSR) and shifting its responsibilities to the Division of Labor Standards Enforcement (DLSE) and the Division of Occupational Safety and Health and creating a Public Works unit in DLSE that would conduct the public works investigation and enforcement functions of DLSE, the public works apprenticeship enforcement responsibilities currently performed by the Division of Apprenticeship Standards and the prevailing wage rate determination functions currently performed by DLSR.

Background. DIR states that the current DLSR performs two main tasks that are largely unrelated: obtaining and maintaining job safety records, reports and statistics; and, determining prevailing wage rates for public works projects. The proposal would eliminate the division and the position of division chief. The determination of prevailing wage rates would be performed by DLSE and job safety records, reports, and statistics would be maintained by DOSH. In addition, this proposal also creates an integrated Public Works unit within DLSE and consolidates within that unit: Existing public works investigation and enforcement at DLSE; the Compliance Monitoring Unit, and public works apprenticeship enforcement responsibilities. This proposal also would transfer the administration and authority of the Electricians Certification Program and Fund from to DLSE.

The chart below illustrates the proposed reorganization:



STAFF COMMENT

This request eliminates a division with two unrelated duties and should improve the effectiveness of public works enforcement by consolidating similar duties into a new unit.

Staff Recommendation: Approve the request and corresponding trailer bill language to eliminate the Division of Labor Statistics and Research and establish consolidated public works enforcement within the Division of Labor Standards Enforcement.

ITEMS TO BE HEARD

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT

The Employment Development Department (EDD) pays benefits to eligible workers who become unemployed or disabled, collects payroll taxes, and provides employment and training programs under the federal Workforce Investment Act of 1998. In addition, the EDD collects and provides comprehensive economic, occupational, and socio-demographic labor market information concerning California's workforce. The Governor's budget proposes total spending of \$14.3 billion (\$438.8 million General Fund), a decrease of \$6.1 billion (30 percent) compared to the current year, and 10,073.1 positions, a decrease of 24 positions compared to the current year. The large decrease in expenditures is due to major reductions in the Unemployment Fund, as a result of the possible end of federal extensions of Unemployment Insurance benefits.

Fund Source	2010-11 Actual	2011-12 Projected	2012-13 Proposed	Change from CY	% Change
General Fund	\$38,943	\$344,379	\$438,758	\$94,379	27
Total Expenditure	\$26,975,292	\$20,437,306	\$14,331,715	(\$6,105,591)	(30)
Positions	11,237.1	10,097.1	10,073.1	(24)	(.2)

ISSUE 1: UNEMPLOYMENT INSURANCE LOAN INTEREST

Governor's Budget Request. The Governor's budget proposes both a continuation of the strategy used in FY 2011-12 to address the insolvency of the Unemployment Insurance Fund (UI Fund) and a new proposal. The budget proposes making an interest payment of \$417 million to the federal government from the General Fund and immediately covering the cost to the General Fund with a loan of the same amount from the Disability Insurance Fund (DI Fund.)

In addition to this loan, which is similar to a loan enacted in 2011-12, the Governor also proposes a new strategy to pay for future interest payments related to the UI Fund debt. The Governor calls for a new employer surcharge, estimated to increase costs to employers by \$40 to \$61 per employee, to cover interest payments to the federal government in 2013-14 and future years, and to begin paying back the DI Fund. The Governor also proposes to increase the earnings threshold an unemployed worker must satisfy to qualify for UI benefits. The EDD estimates that this change would reduce annual UI benefit payments by \$30 million by prohibiting 40,000 unemployed workers from receiving benefits.

BACKGROUND

The Unemployment Insurance Program is a federal-state program that provides weekly UI payments to eligible workers who lose their jobs through no fault of their own. Benefits range from \$40 to \$450 per week depending on the earnings during a 12-month base period. UI benefit payments to workers averaged \$278 per week during 2011. The Budget proposal includes \$6.7 billion for unemployment benefit payments in 2012-13, a 48 percent decrease from 2011-12 projected spending due to the possible elimination of federally-approved benefits extensions.

UI program benefits are financed by employers who pay state unemployment taxes on the first \$7,000 in wages paid to each employee in a calendar year. Employers responsible for a high number of unemployment claims pay the highest tax rate. Estimated receipts for unemployment benefits in calendar year 2011 are \$5.7 billion.

The state's UI Fund was exhausted in January 2009 due to an imbalance between the benefit payments and annual employer contributions. EDD suggests three reasons for the insolvency:

- Significant statutory increases to UI benefit levels that began in 2002 and increased maximum weekly benefits from \$230 per week to \$450 per week;
- No change in the UI financing structure despite those increases in benefits;
- Sustained double-digit unemployment rates. A 2010 report by the Legislative Analyst's Office noted that the state's recession may be the biggest factor in the current UI Fund imbalance.

To make UI benefit payments without interruption, the EDD began borrowing funds from the Federal Unemployment Account (FUA) to pay benefits to an increasing number of unemployed claimants. California is one of 32 states forced to borrow money from the federal government to handle surging unemployment during the past five years. By the end of 2009, the UI Fund had a projected deficit of \$6.2 billion. Based on Department of Finance economic assumptions, EDD anticipates that California will have an Unemployment Fund deficit of \$11.7 billion at the end of calendar year 2012.

Beginning in September 2011, the state was required to pay interest on the outstanding federal loan. The interest must come from state funds, and the state faces dire consequences if the interest is not paid: federal unemployment insurance taxes on employers would skyrocket (about \$6 billion annually), and the federal government would stop covering administrative costs for unemployment insurance. The Governor proposed and the Legislature approved a plan in 2011-12 to use General Fund monies to pay interest due in September 2011. To offset the General Fund expenditure, a loan was approved from the Disability Insurance (DI) Fund to the General Fund, resulting in no net cost to the General Fund. Provisional budget language required that the loan from the DI Fund to the General Fund be repaid with interest by 2016. The administration made an interest payment to the federal government of \$303.5 million in September 2011.

The Governor's budget proposes a similar strategy for the next loan payment, due in September 2012, by: (1) making an interest payment from the General Fund and (2) immediately covering the cost to the General Fund with a loan of the same amount from the DI Fund. The January proposal estimated the September 2012 payment would be \$417 million, but in February, the

federal government announced an interest rate lower than anticipated, and EDD now estimates the payment will be \$330 million. A new estimate will be released with the May Revise.

In addition to the loan mechanism first approved in 2011-12, the Governor also proposes a new strategy to pay for future interest payments. The Governor calls for a new employer surcharge, estimated to increase costs to employers by \$40 to \$61 per employee, to begin covering interest payments to the federal government in 2013-14 and begin paying back the DI Fund. The exact amount of the surcharge each year would be based on EDD's projections of interest costs in the following year. EDD estimates the first surcharge, which would be effective January 1, 2013, would cost employers a total of \$472.6 million.

The administration acknowledges that implementing this proposed surcharge will require the support of two-thirds of the Legislature.

The Governor also proposes to increase the earnings threshold an unemployed worker must satisfy to qualify for UI benefits. Presently, to qualify for UI benefits, an unemployed worker must have earned at least \$900 in the highest quarter or \$1,300 in any one quarter of his/her 12-month base period. Under the Governor's proposal, these limits would be increased to \$1,920 and \$3,200 respectively. The EDD estimates that this change would reduce annual UI benefit payments by \$30 million by prohibiting 40,000 unemployed workers from receiving benefits.

STAFF COMMENT

Unemployment in California has dipped below its peak of 12.5 percent in late 2010, but remains high. The state, which had an unemployment rate of 11.1 percent in December, has faced double-digit unemployment rates for three years. Additionally, the state's differing regions are currently seeing significantly different unemployment rates, including 14.3 percent in the Bakersfield/Delano labor market and 8.9 percent in the San Francisco/Oakland/Fremont market, according to a February 27, 2012 LAO report.

In addressing the UI Fund issue, the Legislature must carefully weigh the need to address the fund's insolvency with the impacts increased employer taxes or lowered employee benefits would have on the state's fragile economic recovery.

Among the issues to consider:

- **The DI Fund appears capable of covering a second loan but the loans are clearly not a long-term solution.** The administration believes the DI Fund has enough of a balance to cover a second loan and continue to fund its core mission, which is providing benefits to workers due to pregnancy or a non-work related illness or injury. An October 2011 DI Fund Forecast published by EDD in October 2011 projected the DI Fund would have a \$2.5 billion balance at the end of 2012. Similar to the loan made in 2011-12, the administration's proposal for 2012-13 would ensure that the loans from the DI Fund cannot cause an increase in annual contribution rates to the DI Fund. While DI Fund loans may be a suitable short-term solution, continuing to use the DI Fund is not a viable long-term solution, and shifts responsibility for UI costs from employers – who traditionally pay UI costs – to employees, who pay DI costs.
- **The proposed employer surcharge would come at the same time as employers' federal unemployment taxes increase.** Due to the UI Fund's insolvency, federal UI-related taxes on employers are slated to increase annually until the loan is repaid. The first such increase was imposed in January 2012 and added \$289.8 million to employers'

federal UI tax bills. An additional state surcharge would come on top of the federally-imposed tax increases.

- **The proposed eligibility changes would provide little relief for UI Fund costs and impact the lowest-earning workers.** EDD estimates the proposed changes, designed to limit eligibility for UI benefits, would reduce annual UI benefit payments by \$30 million – less than one percent of the UI Fund's projected deficit in 2012. EDD also notes that the workers most impacted by these changes would be in industries with the lowest wages, including agriculture, retail and food service.
- **The Legislative Analyst notes that the Governor's proposal does not address long-term UI insolvency.** The Governor's proposal would be limited to repayment of interest on the loans – both to the DI Fund and the federal government – to keep the UI fund solvent. In its initial analysis of the Governor's budget, the LAO notes the proposal does not address paying down the principal of the loan. The LAO states the Legislature could consider a more comprehensive plan.
- **Federal proposals have been introduced to address nationwide problem.** In response to UI fund insolvency in numerous states, at least three proposals have been introduced in Congress to make changes to the UI program and address states' deficits. According to the LAO, at least two of those proposals would likely eliminate California's UI fund deficit. In addition, as part of his 2013 budget proposal, President Obama included reforms to address nationwide UI Fund debts, including tax relief for employers. It is unclear whether any of these proposals will be enacted.

Because the Governor's proposal regarding an employer surcharge would require a 2/3 vote, the Subcommittee may wish to propose significantly more discussion of this issue before determining a course of action to resolve the long-term problem.

Staff Recommendation: Approve the loan of \$417 million from the Unemployment Compensation Disability Fund to the General Fund to pay the September 2012 unemployment insurance loan interest payment due to the federal government, including the budget provisional language. Reject the other aspects of the request, including proposed trailer bill language, pertaining to (1) the additional employer surcharge and (2) new income eligibility requirements for unemployment insurance benefits.

**ISSUE 2: CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD – RESTRUCTURING
SECOND LEVEL APPEALS**

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

BACKGROUND

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

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

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

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

STAFF COMMENT

California's recession has nearly doubled the CUIAB workload: after reviewing 16,318 appeals in 2007-08, the board reviewed 32,234 appeals in 2010-11. It is unclear how a major reorganization of the second-level appeals process during a period of high workload, would impact the state's ability to address appeals in a timely manner.

Additionally, the Governor's proposal would reduce legislative oversight of UI appeals. The proposal does call for the director of the new bureau to face the state Senate confirmation process, but no other bureau employee would undergo confirmation as the current seven board members do.

A new bureau within EDD that decides second-level appeals may lead to a temporary increase in appeals of those decisions to state Superior Court, at a time when lowered court funding has significantly impacted courts' abilities to handle current caseloads. Because the new bureau may not be perceived to be as independent from EDD as an appointed board, more court appeals may result. EDD also acknowledges that their proposal would not provide 100 percent review of second-level decisions made by ALJs to ensure the quality of decisions. Currently, ALJs write decisions that are reviewed by board members; that quality check would not occur on every decision under the new model, which also could lead to more court appeals.

Finally, EDD acknowledges that the proposal may need to be negotiated with the bargaining unit representing ALJs (CASE, or California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment). Unlike board members, ALJs do have workload limits.

Because this is a complex proposal with potentially significant impact on unemployment insurance appeals, and because the General Fund savings related to this change are minimal, the Subcommittee may wish to continue discussions on this topic.

Staff Recommendation: Hold open.

7300 AGRICULTURAL LABOR RELATIONS BOARD

The Agricultural Labor Relations Board is responsible for: 1) conducting secret ballot elections so that farm workers in California may decide whether to have a union represent them in collective bargaining with their employer; and, 2) investigating, prosecuting, and adjudicating unfair labor practice disputes. The Governor's Budget proposes \$5.4 million (\$4.9 million General Fund) for the board, a 7.8 percent increase from 2011-12, and 39.4 positions, the same number as approved in 2011-12.

Fund Source	2010-11 Actual	2011-12 Projected	2012-13 Proposed	BY to CY Change	% Change
General Fund	\$4,393	\$4,805	\$4,904	\$99	2
Labor and Workforce Development Fund	--	--	\$500	\$500	
Total Expenditures	\$4,393	\$5,016	\$5,404	\$388	7.7
Positions	32.9	39.4	39.4	0	0

ISSUE 1: GENERAL COUNSEL STAFF AUGMENTATION FOR UNFAIR LABOR PRACTICES WORKLOAD

Governor's Budget Request. The Governor's Budget requests four positions and \$500,000, from a Special Fund, to improve its timeliness in investigating and adjudicating potential unfair labor practice violations. The proposal would add two attorneys and two clerical positions to a current authorized staff of 39.4 PYs.

BACKGROUND

The Agricultural Labor Relations Board (ALRB) was created in 1975 to enforce the Agricultural Labor Relations Act (ALRA), which sets labor standards in the agricultural industry, provides that workers are to be free from restraint or coercion by unions or employers and protects employees' rights to act with other employees to seek changes in working conditions.

ALRB's Office of the General Counsel employs field examiners and attorneys to investigate Unfair Labor Practice claims, and bring them to the board for adjudication if necessary. The office has three regional locations in Salinas, Visalia and El Centro. ALRB has historically been funded through the General Fund, and budget pressures during the past decade have reduced its staffing in the regional offices. ALRB's Office of the General Counsel saw a 28 percent reduction in staffing between 2001-02 and 2010-11, and ALRB reports that it currently has no clerical staff in two of its three regional offices, forcing attorneys and field examiners to answer phones and perform other clerical duties.

As its staff has been reduced, the Office of General Counsel is handling more complex cases involving more employees. The number of affected employees in cases under investigation grew from 11,309 in 2007-08 to 17,190 in 2010-11, according to ALRB data.

With its current workforce, ALRB states that it is not meeting its mandate of enforcing the ALRA. The Office of the General Counsel has recently enacted new goals to improve outcomes, requiring that investigations be completed in 90 days, and decisions on whether to prosecute violators at a board hearing within 180 days of a filed complaint. These tight timelines are necessary, ALRB states, because of the migratory nature of most agricultural employees. ALRB believes it can improve its ability to meet these deadlines with the additional four PYs, which would allow each regional office to have at least one clerical staff, and add two attorney positions to improve its timeliness in Unfair Labor Practice investigations and prosecutions.

STAFF COMMENT

ALRB's backlog of cases was the subject of a September 2010 legislative hearing, and the new deadlines are intended in part to address that issue. It should be noted that the 90- and 180-day deadlines are not mandated by statute, but are instead an internal goal that the Office of General Counsel believes is necessary for the ALRB to properly enforce the ALRA. The goals seem appropriate, as investigations and prosecutions in the agricultural industry become increasingly difficult over time, as witnesses move on to other employment.

This request marks the first time the ALRB would be utilizing a non-General Fund source. The proposal would use \$500,000 from the Labor and Workforce Development Fund, which is established in Labor Code Section 2699 and is a repository for funds awarded through civil actions by employees against employers. The fund is intended to be used by the Labor and Workforce Development Agency to enforce labor laws and educate employees and employers about labor laws. The fund has typically received between \$4 million and \$5 million annually and has a balance of \$7.9 million in FY 2011-12. This proposal seeks \$500,000 annually from the fund.

Staff Recommendation: Approve the Budget Change Proposal to allow the ALRB to hire four additional positions.

7350 DEPARTMENT OF INDUSTRIAL RELATIONS

The Department of Industrial Relations 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 \$425.1 million (\$4.4 million General Fund) for the Department, a three percent increase from 2011-12, and 2,717.3 positions, less than a 1 percent increase from 2011-12.

Fund Source	2010-11 Actual	2011-12 Projected	2012-13 Proposed	BY to CY Change	% Change
General Fund	\$4,235	\$4,556	\$4,392	(\$164)	(3.6)%
Total Expenditures	\$359,739	\$412,395	\$425,114	\$12,719	3.1%
Positions	2,449.9	2,701.8	2,717.3	15.5	.6

ISSUE 1: COMPLIANCE MONITORING UNIT CASH FLOW

Governor's Budget Request. The Governor's Budget proposes provisional language in the Budget Act to allow the State Public Works Enforcement Fund to borrow from the Uninsured Employers Benefits Trust Fund, the Labor Enforcement and Compliance Fund and/or the Construction Industry Enforcement Fund for cash flow purposes.

BACKGROUND

SB 9 X2 (Padilla), Chapter 7, Statutes of 2009-10 of the Second Extraordinary Session, established the Compliance Monitoring Unit to ensure that public works projects funded by state bonds met prevailing wage requirements. The legislation also established the State Public Works Enforcement Fund, which supports the unit. The fund's revenue is derived from bond money, not to exceed one-quarter of one percent of the bond proceeds. The nature of bond funding requires that the Compliance Monitoring Unit program expenses may only be charged in arrears, and may not exceed actual expenses incurred. Therefore, a cash flow loan will be needed on an annual ongoing basis to allow the program to operate and fulfill its statutory mandate.

STAFF COMMENT

Without this loan, the Compliance Monitoring Unit would not be able to operate and meet its statutory mandate. The loan will be paid within the same fiscal year, but then re-borrowed again and again. This request authorizes borrowing from three other funds, two of which - the Uninsured Employers Benefits Trust Fund and the Labor Enforcement and Compliance Fund - receive some revenue from an employer assessment that varies annually. To prevent these loans from requiring a larger assessment, the Subcommittee may wish to consider modifying the requested provisional language to specify intent that the annual assessments for both funds shall not increase as the result of any loan made to the State Public Works Enforcement Fund.

Staff Recommendation: Approve the provisional budget language, as modified, to allow the State Public Works Enforcement Fund to borrow from the Uninsured Employers

Benefits Trust Fund, Labor Enforcement and Compliance Fund, and/or the Construction Industry Enforcement Fund for cash flow purposes.

ISSUE 2: AB 1401 – MINOR'S TEMPORARY ENTERTAINMENT WORK PERMIT PROGRAM

Governor's Budget Request. The Governor's budget proposes increased expenditure authority of \$583,000 (Entertainment Work Permit Fund-EWPF) and four positions in 2012-13, and \$307,000 ongoing, to comply with the requirements of AB 1401 (Committee on Arts, Entertainment, Sports, Tourism, and Internet Media), Chapter 557, Statutes of 2011. The legislation allows for a minors' temporary entertainment work permit program.

BACKGROUND

Minors aged 15 days to 18 years must have written consent from DIR to work in the entertainment industry. Permits are issued by DIR staff working in district offices throughout the state, and permit applications are received over-the-counter and are also accepted via mail at all district offices. In 2010, DIR issued 60,361 entertainment work permits.

AB 1401 created an online permit approval process for the issuance of temporary work permits for minors working in the entertainment industry. The legislation created the Entertainment Work Permit Fund to pay for costs associated with administering the program. DIR states that at least one-third of the 60,631 permits issued would start the process as a temporary permit using the new online application process. The resulting workload related to these 20,210 permits results in the four positions reflected in this request.

STAFF COMMENT

Staff notes no concern with the programmatic specifics of this request, as it is consistent with the legislation that was approved by the Legislature last year. With regard to the budgetary resources requested, staff notes that the level of resources requested is beyond that which was estimated last year by the Appropriations Committees in their analysis of the bill. DIR indicated to staff that it regrets the discrepancies between the information initially provided to the Appropriations Committees and the resources contained in this request. Apparently communication breakdowns internal to DIR caused this to occur. DIR has assured both budget and fiscal staff that such discrepancies will not occur in the future.

Because it is not yet clear that the DIR workload estimate will prove correct, the Subcommittee may wish to consider authorizing the resources on a two-year limited-term basis to allow the resource level to be revisited in two years' time when actual workload is known.

Staff Recommendation: Approve the request on a two-year limited-term basis.

ISSUE 3: IMPLEMENTATION OF 2011 LEGISLATION SUPPORTED BY THE LABOR ENFORCEMENT COMPLIANCE FUND: PREVAILING WAGE VIOLATIONS (AB 551) AND WILLFUL MISCLASSIFICATION OF INDEPENDENT CONTRACTORS (SB 459)

Governor's Budget Requests. The Governor's budget proposes increased expenditure authority from the Labor Enforcement and Compliance Fund (LECF) to comply with two recent statutory changes, as follows:

1. AB 551 (Campos), Chapter 677, Statutes of 2011

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

BACKGROUND

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

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

2. SB 459 (Corbett), Chapter 706, Statutes of 2011

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

BACKGROUND

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

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

STAFF COMMENT

Staff notes no concern with the programmatic specifics of these requests, as they are consistent with the legislation that was approved by the Legislature last year. With regard to the budget resources, staff notes that the levels of requested resources are beyond that which was estimated last year by the Appropriations Committees in their analyses of the bills. DIR indicated to staff that it regrets the discrepancies between the information initially provided to the Appropriations Committees and the resources contained in these requests. Apparently, communication breakdowns internal to DIR caused this to occur. DIR has assured both budget and fiscal staff that such discrepancies will not occur in the future.

In addition, staff notes that the requested resources are permanent, yet the workload estimates are less certain as these are new activities and there are unknowns as to the actual amount of workload that will materialize. Therefore, in considering these requests, the Subcommittee may wish to consider authorizing the resources on a two-year limited-term basis to allow the resource levels to be revisited in two years' time when actual workload will be known.

Staff notes several concerns about the Labor Enforcement and Compliance Fund (LECF), which is the fund source supporting these requests. As part of the 2009 Budget Act, the GF costs of the Labor Standards Enforcement and the Occupational Safety and Health Programs (\$15.2 million and \$24.8 million, respectively) were shifted to fees – trailer bill language was adopted (Chapter 12, Statutes of 2009-10 Fourth Extraordinary Session) establishing the LECF and an assessment structure based on the size of the employer. The surcharge levied would not exceed \$37,000,000. The statutory authorization for the LECF sunsets on June 30, 2013. At present the Subcommittee does not have a proposal before it to reauthorize the LECF, yet these requests would utilize the LECF on a permanent basis.

The Administration indicates that it is currently considering a request from DIR to pursue LECF reauthorization. Staff expects receipt of this proposal as part of the spring budget process. Therefore, the Subcommittee may wish to defer action on these requests until such time as the Administration submits a comprehensive proposal to reauthorize the LECF.

Staff Recommendation: Hold open and defer action on these requests pending receipt of additional information from the Administration.

ISSUE 4: EMPLOYEE/EMPLOYER EDUCATION AND OUTREACH

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

BACKGROUND

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

Figure 2 – Expenditure Plan for Employee/Employer Outreach

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

STAFF COMMENT

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

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

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

Due to the concerns related to the Labor Enforcement and Compliance Fund, the Subcommittee may wish to delay action on this request until that fund's future is determined, to ensure that the implementation of legislation approved in 2011 is funded before this proposal.

Staff Recommendation: Hold open.

ISSUE 5: ELIMINATION OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Governor's Budget Request. The Governor's budget proposes eliminating the Occupational Safety and Health Standards Board, which the administration states would reduce two PYs in 2012-13 and four PYs in 2013-14 and ongoing, for a savings of \$324,000 in 2012-13 and \$649,000 beginning in 2013-14. The board is paid for by federal funds and the Occupational Safety and Health Fund.

BACKGROUND

The seven-member board is housed within the Division of Occupational Health and Safety (DOSH), and is charged with adopting and maintaining occupational safety and health regulations, considering petitions for new or revised regulations, and granting temporary and permanent variances from occupational safety and health regulations. Board members are appointed by the Governor from the areas of field labor, field management, field occupational health, field occupational safety and the general public. The board meets once a month. Board members are not salaried but receive \$100 per diem for meetings they attend.

The board currently has 15.9 PYs and an operating budget of \$2.4 million.

The Governor's proposal would abolish the board and shifts its duties to DOSH. Positions eliminated would be the executive officer, principal safety engineer, staff service analyst and an executive secretary. The remaining staff would be transferred to DOSH. According to the proposal, DOSH would create a stakeholder advisory panel to advise DOSH on regulatory matters, with members of the panel appointed by the Director of the Department of Industrial Relations.

STAFF COMMENT

This proposal is identical to one first suggested in the Governor's 2011-12 May Revise. That proposal was rejected by the Subcommittee on a 5-0 vote on May 26, 2011. The administration's only argument in favor of abolishing the board is that the action is part of a "continuing effort to reduce the size of state government and create efficiencies."

The Subcommittee has received two letters in opposition to this proposal. The California Labor Federation notes that eliminating the board would save no General Fund money, and states, "The Standards Board's balanced representation requires regulations to be reached by consensus, yet this proposal is silent regarding how a similarly consensus-driven process could be preserved absent a Standards Board." In addition, a coalition of 17 associations representing both employers and labor organizations in the construction industry oppose the proposal. The coalition states that if "the board were to be eliminated, there would be no savings, but there would be lack of public accountability since the current board would be replaced with bureaucrats within the agency."

The coalition includes: the Associated General Contractors of California, the Air Conditioning Sheet Metal Association, the California Association of Sheet Metal and Air Conditioning Contractors, National Association, the California Fence Contractors Association, the California Chapter of American Fence Contractors, the California Landscape and Irrigation Council, the California Legislative Conference of the Plumbing, Heating and Piping Industry, the California State Council of Laborers, the Construction Employers Association, the Engineering Contractors Association, the Engineering and Utility Contractors Association, the Flasher Barricade Association, the International Union of Operating Engineers, the Marin Builders Association, the

National Electrical Contractors Association, the Southern California Contractors Association, and the State Building and Construction Trades Council of California.

Staff Recommendation: Reject the elimination of the Occupational Safety and Health Standards Board.
