AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 4 ON STATE ADMINISTRATION

ASSEMBLYMEMBER JOAN BUCHANAN, CHAIR

TUESDAY, MAY 1, 2012
1:30 P.M. - STATE CAPITOL ROOM 447

CONSENT CALENDAR

VOTE-ONLY CALENDAR

ITEMS TO BE HEARD

CONSENT ITEMS

1110-1111 DEPARTMENT OF CONSUMER AFFAIRS

ISSUE 1: SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS FUND

April Finance Letter. An April Finance Letter requests authority to remove from the Budget Bill language that authorizes the transfer of the remaining balance from the Hearing Aid Dispensers Account of the Speech Language Pathology and Audiology Fund to the Speech Language Pathology and Audiology and Hearing Aid Dispensers Fund.

BACKGROUND

The transfer authority language is no longer necessary because the transfer already occurred pursuant to Government Code Sections 16304.8-16304.9.

Staff Recommendation: Approve the April Finance Letter

2240 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

ISSUE 1: COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING REDUCTION

April Finance Letter. An April Finance Letter requests eliminating expenditure authority of $594,000 (All federal funds) in State Operations and $31.9 million (all federal funds) in Local assistance to reflect federal reductions to the Community Development Block Grant (CDBG) program.

BACKGROUND

The reductions are requested to eliminate excess budget authority that has accumulated due to federal budget reductions. In the CDBG program, the amount of federal dollars that can be used for administrative costs is a percentage of the total cost, so when the grant is reduced, so are the dollars available to administer the program. This request aligns the budget with the federal resources actually available for the program.

Staff Recommendation: Approve the April Finance Letter

ISSUE 2: TRANSFER OF HOUSING ASSISTANCE PROGRAM

April Finance Letter. An April Finance Letter requests abolishing four positions associated with the Housing Assistance Program (HAP) and reducing HAP expenditure authority in the following three ways:

- $1.1 million in federal funds for State Operations;
- $312,000 in General Fund for State Operations;
- And $5.5 million in federal funds for Local Assistance

BACKGROUND

Due to reductions in both federal funds and General Fund support for the Housing Assistance Program, the Department of Housing and Community Development is transferring the HAP to local housing authorities. HCD has concluded that reduced funding has limited its ability to properly administer the program and found local housing authorities interested in continuing the program and providing services to Californians in need of Section 8 assistance for housing expenses.

This proposal would transfer the administration of 935 housing vouchers to the Stanislaus County Housing Authority, the Butte County Housing Authority, the Shasta County Housing Authority and the Regional Housing Authority of Sutter and Nevada Counties. This transfer has been approved by the U.S. Department of Housing and Urban Development.

Staff Recommendation: Approve the April Finance Letter

VOTE-ONLY ITEMS

1110-1111 DEPARTMENT OF CONSUMER AFFAIRS

VOTE-ONLY ISSUE 1: FINGERPRINTING REQUIREMENT AND LEGISLATIVE (SB 543) AUGMENTATION

Governor's Budget Request. The Governor's Budget requests the redirection of $219,000 in 2012-13 and ongoing to establish one office technician position at the Board of Professional Engineers, Land Surveyors and Geologists to support the fingerprinting requirements established in SB 543 (Steinberg, Price), Chapter 448, Statutes of 2011. SB 543 requires the board to use applicants' fingerprints for a criminal history check before approval. The legislation also eliminated the structural engineer supplemental California specific examination; the resources used for that exam will be redirected to this new position.

BACKGROUND

The Board of Professional Engineers, Land Surveyors and Geologists licenses approximately 130,000 practitioners within the engineering, land surveying and geology professions. The Board processes 21,000 applications annually.

SB 543 will for the first time require applicants to submit fingerprints for the purpose of conducting a state criminal history record check through the Department of Justice. The proposed office technician position will review all fingerprint records received, confirm the accuracy of reports, and communicate with the Department of Justice and applicants who are identified as having a criminal record.

Previously, the state required those wishing to gain the title "Structural Engineer" to pass both a national structural engineering exam as well as a California state-specific exam. SB 543 eliminated the state-specific exam, allowing the Board to use the funds previously earmarked for this exam to enact the new fingerprinting requirements. The $219,000 will fund the office technician position ($69, 0000), the Department of Justice's costs ($100,000) and costs associated with hearings for applicants who appeal Board decisions to deny licensure ($50,000).

This request is in line with estimates in the analysis done by the Assembly Appropriations Committee when the legislation was approved.

Staff Recommendation: Approve the Budget Change Proposal

VOTE-ONLY ISSUE 2: OPERATION SAFE MEDICINE

Governor's Budget Request. The Governor's Budget proposes six positions and $513,000 to be redirected within the Medical Board of California to permanently establish the Operation Safe Medicine Unit, which expired June 30, 2011 at the end of a two-year limited-term basis. The unit was established to investigate and prosecute unlicensed individuals who portray themselves as licensed medical practitioners and violations of laws related to the use of lasers for cosmetic procedures. The Medical Board argues unregulated "clinics" and issues surrounding lasers in cosmetic surgery are a persistent problem that requires a specialized unit.

BACKGROUND

The Operation Safe Medicine unit was first established in 2000 to respond to increasing numbers of unlicensed and/or unregulated "clinics" operating in residences or other businesses, primarily targeting immigrant populations. Since then, the unit has opened 562 cases and referred 171 cases to district attorneys for prosecution.

The Medical Board believes a specialized unit is necessary to investigate these cases, as this unit is required to identify and infiltrate covert clinics. The unit was last funded in the 2009 Budget Act on a two-year limited-term basis. The funding expired on June 30, 2011, but the Board believes the unit should be funded on an ongoing basis and has cut costs in other areas, such as printing and external contracts, to fund these positions without a fee increase.

Staff Recommendation: Approve the Budget Change Proposal

1730 FRANCHISE TAX BOARD

VOTE-ONLY ISSUE 1: FTB ACTIONS AFTER AN ADVERSE DECISION

The Committee at its March 20, 2012 meeting voted to approve placeholder trailer bill language allowing Franchise Tax Board to appeal an adverse ruling by the Board of Equalization to the superior court through a *trial de novo.* This issue is being brought back for reconsideration by the committee.

Vote-Only Action: Rescind Previous Action

ITEMS TO BE HEARD

0502 CALIFORNIA TECHNOLOGY AGENCY

ISSUE 1: DEPARTMENT OVERVIEW, BCPS, AND RATE REDUCTIONS PROPOSAL

While many of the California Technology Agency budget change proposals are routine, the proposals for rate reduction and to reorganize CTA's role in the Administration could change the Agency's operations.

BACKGROUND

The California Technology Agency (CTA) establishes and enforces statewide information technology strategic plans, policies, standards, and enterprise architecture, and oversees information technology projects and public safety emergency communications systems for all state departments. The Agency's overall growth reflects the growth in customer service needs, as reflected below in the following budget chart.

Fund Source	2010-11 Actual	2011-12 Projected	2012-13 Proposed	BY to CY Change	% Change
General Fund	$3,230	$3,561	$4,156	$595	16.7%
State Emergency Telephone Number Account	120,017	124,928	113,013	(11,915)	-9.5%
Federal Trust Fund	502	1,931	1,931	-	0.0%
Reimbursements	4,205	3,175	3,181	6	0.2%
Technology Services Revolving Fund	307,627	338,409	379,294	40,885	12.1%
Central Service Cost Recovery Fund	3,203	3,670	3,136	(534)	-14.6%
Total Expenditure	**$438,784**	**$475,674**	**$504,711**	**$ 29,037**	**6.1%**
Positions	**1,149.70**	**1,261.80**	**1,266.50**	**4.7**	**0.4%**

RATE REDUCTION

The Budget reflects a $13 million revenue reduction that will result from a planned rate reduction for data center services. The Budget includes specific budgetary goals for the California Technology Agency and the Department of General Services that will result in reduced rates charged to other state agencies. This will result in more efficient government by making these services less expensive for both General Fund and special fund departments.

On April 4, 2012, the Technology Service Board approved a rate reduction that is expected to save state departments $21.5 million in the current year and $13 million in the budget year.

REORGANIZATIONAL PROPOSAL

The Governor's Budget proposes to move the functions of the California Technology Agency from a stand-alone agency to a new department under the new Government Operations Agency. This proposal was included in the Governmental Reorganizational Proposal that was submitted to the Little Hoover Commission on March 30, 2012. The GRP process will determine whether that reorganization move forward.

BUDGET CHANGE PROPOSALS

The CTA has submitted six budget change proposals as part of their budget submission. These proposals reflect the projected utilization of the State IT infrastructure in the budget year.

The table below details these budget requests:

BCP	Description	Total Budget Authority (Thousands)	PYs
Midrange Server Capacity	Represents the expected amount State departments will request for replacement and expansion of "midrange servers" which includes hardware, software, staff support, and disaster recovery for servers that run databases and email for several state departments.	$15,288	
Mainframe CPU Processing Capacity	Represents the expected amount State departments will request for mainframe use, estimated to be 1,927 million instructions per second.	6,335	
Data Storage	Represents the expected amount State departments will request for replacement and expansion of data storage.	5,534	
Network Capacity	Represents the expected amount State departments will request for upgrades, replacement and expansion of network capacity.	5,088	
Data Center Management and Operations	Represents the expected amount State departments will request to replace cooling and power equipment at existing data centers	1,895	
EDD Identity Management	CTA support for EDD Modernization Plan, also includes a proposal to begin in 2011-12 for six months. The new EDD Identity Management software would be supported by state staff at CTA dedicated for that purpose.	2,508	6.0
Total		**$36,648**	**6.0**

Since CTA provides services to other departments, the budget requests for CTA reflect the anticipated service needs for these other departments, which would ultimately reimburse CTA for services rendered.

WORKFORCE CAP AND PRIOR YEAR ADJUSTMENT

The Governor's Budget reflects a reduction of $5.3 million in budget authority and 44 positions from the CTA's compliance with the Governor's 2011 Workforce Cap Executive Order. The budget also includes an adjustment to appropriation levels in 2011-12 and 2012-13 to reflect adjustments to the CTA baseline budget to better reflect actual expenditures.

STAFF COMMENT

The proposed budget change proposals reflect anticipated demand from state departments that purchase services from CTA. These requests are normal and routine.

Staff Recommendation: Adopt proposed Budget Change Proposals

ISSUE 2: ELIMINATION OF 911 ADVISORY BOARD

The Governor's Budget includes a proposal to eliminate the 911 Advisory Board in budget trailer bill language.

BACKGROUND

The State 911 Advisory Board advises the Telecommunications Division of the California Technology Agency on the policies, practices and procedures for the California 911 Emergency Communications Office. It also advises on technical and operational standards for the California 911 system consistent with the National Emergency Number Association (NENA) standards; training standards for county coordinators and Public Safety Answering Point (PSAP) managers; budget, funding, and reimbursement decisions related to the State Emergency Number Account; proposed projects and studies conducted or funded by the State Emergency Number Account; expediting the rollout of Enhanced 911 Phase II technology. The Board meets quarterly and is composed of eleven members, who receive no salary.

The Governor's Budget proposes to eliminate this Board as part of the "Making Government More Efficient" effort first identified in the Governor's Budget. The Governor's Budget states that the policy and procedures considered by the Board will be performed by the State's administrative process. There are no anticipated savings from this proposal.

STAFF COMMENT

The Subcommittee has received feedback from the California Chapter of The National Emergency Number Association and the California Statewide Law Enforcement Association in opposition to this elimination. In a joint letter, the two groups indicated that the 911 Advisory Board will negatively impact the deployment and development of the Next Generation 911 system because the Board is the only publically assessable venue to present and deliberate issues related to the 911 system.

Given that this proposal has no savings, but could have possible impact on public safety, staff believes that the Subcommittee should reject this proposal. If the Administration chose to move forward on this proposal, staff believes a policy bill would be more appropriate. The policy process would offer stakeholders an opportunity to shape an alternative venue for the participation that could continue in lieu of the Board.

Staff Recommendation: Reject the proposed elimination of the 911 Advisory Board

ISSUE 3: ELIMINATION OF TECHNOLOGY SERVICE BOARD AND THE ELECTRONIC FUNDS TRANSFER TASK FORCE

The Governor's Budget includes a proposal to eliminate the Technology Service Board and the Electronic Funds Transfer Task Force

BACKGROUND

The Administration proposes Budget Trailer Bill to eliminate the Technology Service Board and the Electronic Transfer Task Force as described in the "Making Government More Efficient" section of the Governor's Budget Proposal. There are no savings projected from these proposed eliminations.

TECHNOLOGY SERVICE BOARD

The Board is responsible for the oversight and approval of the Office of Technology Services budget and rates. The Board was created as part of the Governor's Reorganization Plan that was approved in 2005. The Board is composed of eleven Agency Secretaries, the Director of Finance, and the Controller, all of whom appoint designees.

The Administration proposes to eliminate the Board and instead use an internal governance group of customers to review rate changes. The Department of Finance would continue to review rate proposals.

ELECTRONIC FUNDS TASK FORCE

The Task Force is responsible for providing a plan on the development and implementation of a new payment dispersal system using electronic funds transfer technology. The task force was established by AB 2098 (Liu), Chapter 818, Statutes of 2006. The rationale for creating the task force study and plan for the expanded use of electronic fund transfer technology. Representatives of five state departments, the BOE, the State Treasurer, and State Controller constitute the task force.

The Administration claimed that the Task Force is no longer needed because the plan was completed in 2008. This is incorrect, the report was never completed. Instead AB 1585 (Accountability and Administrative Review), Chapter 7, Statutes of 2010 defined this report as obsolete and removed it from the list of required reports maintained by Legislative Counsel.

RELATED LEGISLATURE

AB 2329 (Olsen), currently contains language to eliminate the Electronic Funds Task Force. The bill was passed by the Assembly Business and Professions Committee on April 18th and is currently before the Assembly Appropriations Committee.

STAFF COMMENT

Since the Technology Service Board provides a forum for different parts of the Administration to provide feedback and insight into the development of IT policy, it should be within the Administration's discretion to determine whether to continue its existence.

There does not appear to be any reason to preserve the Electronic Funds Task Force, although it is troubling that no report was ever submitted, as required by the Legislature. The Subcommittee may also wish to consider deferring to the existing policy bill in lieu of using the budget process.

Staff Recommendation: Approve elimination of the Technology Service Board and Electronic Funds Task Force

8880 FI$CAL

ISSUE 1: FI$CAL CONTRACT, FUNDING PLAN, AND IMPLEMENTATION

A Spring Fiscal Letter includes the proposed funding for the FI$CAL contract.

BACKGROUND

The Financial Information System for California (FI$CAL), is an Enterprise Resource Planning (ERP) information technology (IT) project intended to create and implement a new statewide financial system which will encompass the areas of budgeting, accounting, procurement, cash management, financial management, financial reporting, cost accounting, asset accounting, project accounting, and grant accounting. As an ERP system, FI$CAL will be a set of software applications that will integrate and streamline the aforementioned business processes, and, in so doing, replace aging legacy systems, inefficient “shadow” systems, and duplicate processes throughout the state’s departments and agencies.

The FI$CAL system evolved from an effort by the Department of Finance to create a new the Budget Information System (BIS). The project evolved and was increased in size into what is now known as the FI$CAL project into a full ERP system to replace the State Controller’s Systems and the California State Accounting and Reporting Systems (CALSTARS).

FI$CAL CONTRACT

After a two-year procurement process, Accenture was awarded the contract to create and implement FI$CAL. The total contract is expected to be 213 million and last five years.

The project used a two-step procurement strategy (similar to the one used on the 21st Century project) that included an open procurement for a Firm Fixed Price fit-gap analysis to three top bidders (in FY 2010-11), followed by the actual fit-gap analysis in which the bidders had nine months to review potential gaps between their software and the state’s business requirements. Each bidder receives a fixed price for production of a detailed implementation plan. At the end of the process, the state had three entirely viable FI$CAL proposals from which to choose. Through the procurement evaluation process, Accenture was deemed the winning bidder.

The fit-gap analysis is often referred to as a "bake-off" because the final vendor is selected from a pool of vendors that have developed tangible prototypes for evaluations before the final awards are made.

FUNDING PLAN

The FI$CAL project intends to use a "pay-as-you-go" funding mechanism for the expected $616.8 million project costs, of which $331.5 million is expected to be General Fund. Most of the project costs are one-time. The project is expecting to complete implementation in 2016-17, with its first year of maintenance and operations in 2017-18. As expected the total project costs have been reduced from the early estimates of $1.6 billion project costs projected in earlier analysis of the project. Funds have already been appropriated and spent for $94.6 million ($17.7 million General Fund) of the project costs. The project would recapture federal funds upon final completion of the project.

The chart below illustrates the proposed funding plan for the project:

Year	Total Project Cost	General Fund
Expenditures 2005-06 to 2011-12	$94,593.8	$17,668.6
2012-13	88,978.0	53,475.8
2013-14	84,596.6	50,842.6
2014-15	101,909.0	61,247.3
2015-16	130,014.6	78,138.8
2016-17	84,194.3	50,600.8
2017-18	32,519.3	19,544.1
Total	**$616,805.6**	**$331,518.0**

SPRING FISCAL LETTER REQUEST AND JAN 10 BCP

The Governor's budget includes $130.6 million ($64.9 million General Fund) for the FI$CAL project. The January Budget includes $39.1 million ($26.7 million General Fund) appropriated for development of the system, including 79 positions. In addition the budget assumed a $91.5 million ($38.2 million General Fund) project cost for the FI$CAL contract that was not appropriated, but was assumed in the overall budget scoring.

The Spring Fiscal Letter reflects the lower anticipated cost of the project now that the contract has been awarded. The new cost for 2012-13 is anticipated to be $89 million (53.5 million General Fund), $41.6 million less than anticipated in the budget. The Spring Fiscal Letter also changes the project positions requests 89 new positions, including 72 new positions at the FI$CAL project and 17 new partner agency positions for implementations.

Overall, the project is requesting 247 positions (235.73 PYs) for various FI$CAL functions as detailed below:

Function	Total PY's	Total Positions
Administration	32.26	36
Business Team	77.00	80
Change Management Office	29.00	32
Project Management Office	18.00	18
Technology Team	63.47	65
Executive	16.00	16
Total	**235.73**	**247**

WORKFORCE CAP

The Governor's Budget reflects a reduction of $430,000 in budget authority and 3.8 positions from the CTA's compliance with the Governor's 2011 Workforce Cap Executive Order.

BSA CONCERNS AND RECOMMENDATIONS

The Bureau of State Audits independently monitored the entire the FI$CAL procurement, a unique requirement placed on the project by the Legislature because of the size and risk of the project.

The BSA identified the following concerns:

1. In our last four status updates, we communicated a concern about the CTA’s plan to provide the IPO services for the project even though the Secretary of the CTA (technology secretary) serves as a voting member of the project’s steering committee. We are concerned that this arrangement—the CTA providing the IPO services and the technology secretary being a voting member of the steering committee—might, either in fact or appearance, create a conflict that undermines the purpose of the IPO, which is to provide an independent, unbiased perspective. In March 2012, the CTA made a request to the project to make the technology secretary a nonvoting member of the steering committee. The project expects the CTA’s request will be approved at the next steering committee meeting, which is scheduled for June 2012. Additionally, by fall 2012, CTA plans to transition the IPO role to a private contractor. As previously reported, we believe that such an action would help assure that project oversight is unbiased and independent.

2. To help assure that project oversight is unbiased, independent, and effective, we believe that IPO and IV&V services should be performed by different vendors. This allows the IPO vendor to objectively evaluate the performance of the IV&V vendor and to assess the project’s response to the IV&V vendor’s findings and recommendations. Further, because the contract for the current IV&V vendor will conclude by the end of fiscal year 2012–13, CTA plans to procure the services of another IV&V vendor in early fiscal year 2012–13. In regards to project staffing,

the vacancy rate remains near the levels we reported in January 2012. As of March 31, 2012, the IPO reports that 47 of the project's 156 full-time budgeted positions (30 percent) were vacant.

3. Furthermore, the project continues to experience turnover in key management positions, with the February 2012 departures of the individuals holding the deputy director positions of change management and project management. The project filled the position of the deputy director of change management in April 2012.

Recommendations

Given this inside role in the projects development, the BSA made several recommendations to the Legislature in a Status Report issued on Thursday May 26, 2012. The recommendations are:

- To ensure that the cost to implement FI$CAL accurately reflects the effort needed, the Legislature should require the project to track the cost of department subject matter expert staff and include this cost in the total cost for FI$CAL.
- To monitor the benefits that FI$CAL is projected to provide based on the October 2011 Hackett study, the Legislature should require the project to track projected benefits as they are achieved and to report annually on the total benefits achieved, any changes in total projected benefits, and actual and project benefits as compared to actual and projected FI$CAL costs.
- The Legislature should require the project to report annually on the cost and reasons for any significant customizations it makes to the software that were not anticipated at the onset of FI$CAL implementation.

LAO COMMENT AND OPTIONS

The LAO has also released a report on the FI$CAL project based upon their extensive oversight of the procurement.

From the April 28, 2012 LAO Report on FI$CAL:

In our view, project staff has spent a fair amount of time attempting to better define costs and thoughtfully plan for the project. Upon examining the project's proposed plans for FI$CAL, we believe that the benefits of proceeding with FI$CAL development outweigh the costs of the project. We therefore recommend the Legislature approve the continuation of the project. However, we appreciate that, given the state's budget situation, the Legislature has to make difficult decisions regarding programmatic reductions and realize the Legislature has many competing priorities for limited General Fund resources. Therefore, should the Legislature wish to proceed with project development, we offer alternative funding options that reduce the state's reliance on General Fund monies to pay for the project in the short term. Additionally, we point out ways the project's change management and staffing plans to implement FI$CAL statewide could be improved to reduce risk and maximize project benefits.

LAO Funding Options

As discussed above, the proposed plan would entail General Fund costs between $50 million and $80 million over the next several years. Should the Legislature opt to proceed with the FI$CAL project, the proposed pay-as-you-go funding approach, which puts significant pressure on the General Fund in the near term, could be modified. Below, we offer alternative funding approaches for the Legislature to consider that rely less on the General Fund over the next several years. These funding approaches could be combined with one another and with some degree of pay-as-you-go financing from the General Fund and special funds.

- The GS $Mart Loan Program is a public financing program administered and operated by DGS' Procurement Division. The DGS division prequalifies lenders to participate in financing IT and non-IT goods and services for state departments and assists departments in processing loans from these vendors at highly competitive interest rates. While the GS $Mart program has generally been used to finance single purchases under $10 million, it has secured financing for IT-related costs greater than this amount on several occasions. It is also possible for a project to receive multiple loans from multiple vendors through the GS $Mart program, which would increase the amount able to be financed. This program would not likely be able to finance the full cost of FI$CAL development, but FI$CAL project staff may want to take advantage of it to cover some of the costs that would otherwise be funded through the General Fund or special funds.
- Vendor financing may still be a viable financing option for the project to consider. We believe the STO's concern about the language included in the terms of financing (that vendor repayments would be subject to annual appropriation) could be addressed via statute. For example, the Legislature could explicitly state in statute its intent to appropriate funds for its debt obligation to the vendor even if the project is halted. This could reduce the risk that the state would default on its debt obligation, thereby reducing the possibility of a downgrade of the state's credit rating. As stated above, the actual project amount that could be financed via this option are not currently known, but likely would not be more than $200 million.
- Another option the project could consider is a tweak of the pay-as-you-go approach so as to shift the payment of General Fund monies to later years. The project could advance the contributions from the special funds over the next few years with the General Fund in effect making greater contributions in later years. (This could be set up as loans to the General Fund from the special funds. We would expect the General Fund would need to pay back the special funds along with any interest that might be owed those funds over the life of the loan.)

The Legislature could direct that a mix of the above financing approaches along with some degree of pay-as-you-go financing be used to reduce the project's reliance on the General Fund in 2012-13 and the subsequent few years. For example, if project staff utilized GS $Mart to finance $30 million, vendor financing to finance $100 million to $125 million, and advanced contributions from special funds for an additional $125 million, the General Fund contribution over each of the next three years could be reduced from an average of about $55 million (under the project's current financing plan) to an average closer to $20 million to $25 million. While the General Fund would contribute to the repayment of GS $Mart loans and vendor financing and have to repay the special funds, these repayments will be spread out over several years, hopefully to include years where the General Fund contribution is more affordable tan currently.

LAO Recommendations:

- **Project Should Update Change Management Plan.** We recommend the Legislature direct project staff to develop an up-to-date, fully fleshed out change management plan as soon as possible, presuming that one does not exist unofficially. This plan should be made available to the Legislature and other stakeholders so they can be assured that change management best practices are being employed and that those responsible for using the new system will be adequately trained.

- **Project Staff Should Report at Hearings on Plan to Ensure Departmental Buy-In, Including Costs to Implement Plan.** Given the importance of department staff buy-in to the success of implementation and proper utilization of the new system, we recommend the Legislature direct project staff to report at hearings on plans that ensure that departments will have adequate staff to successfully transition to FI$CAL. Plans could include alternatives to the current proposal to at least partially compensate departments for the proper level of resources needed to implement FI$CAL statewide

STAFF COMMENT

The award of the FI$CAL contract marks the end of a planning and procurement process that began in 2005 and has been subject to intense scrutiny, oversight, and best practice discussion since that time. This significant seven-year investment does not guarantee that a project of this size and complexity will be fully implemented without any problems. However, this upfront effort significantly reduces the risks inherent in the project and has likely reduced the total project costs. These benefits could be lost if the project does not move forward at this time.

Financing

The LAO has put options for reducing the budget year costs for the project. Based upon these options, the Subcommittee could direct the Administration to reduce the overall General Fund cost of the project for the first year and then authorize the Project to work within these different approaches, or other options, to fit the project within the appropriated General Fund.

Staff recommends that the Subcommittee direct the project to reexamine its funding options and provide the Subcommittee, by May 15, with at least one option to allow the project to move forward with significantly less funding General Fund costs in 2012-13

Reporting

Staff recommends that the Subcommittee adopt Placeholder Trailer Bill Language to require FI$CAL to report on the costs, benefits, and customizations outlined by the Bureau of State Audits as well as a change management plan, as proposed by LAO. This reporting will help the Subcommittee continue to provide oversight as the project moves forward. However, the staff has heard feedback from the Administration that some of this reporting could be onerous and expensive to track, such as the cost of partner agency staffing and accounting of system benefits. Therefore, staff will work with the Administration, LAO, and BSA on language to insure that the Legislature has sufficient information to continue to monitor the project but avoids unnecessary reporting costs.

Staff Recommendation:

Direct the Administration to provide an alternative funding plan for FI$CAL that results in less General Fund cost in 2012-13 by May 15, 2012.

Adopt Placeholder Trailer Bill Language to implement reporting requirements.

8830 CALIFORNIA LAW REVIEW COMMISSION
8840 COMMISSION ON UNIFORM STATE LAWS

The California Law Revision Commission has the responsibility to make a continuing substantive review of California statutory and decisional law, to recommend legislation to make needed reforms, and to make recommendations to the Governor and Legislature for revision of the law on major topics (as assigned by the Legislature) that require detailed study and cannot easily be handled in the ordinary legislative process. The Commission consists of seven gubernatorial appointees plus one Senator, one Assembly Member, and the Legislative Counsel. The Governor's Budget proposes $666,000, paid through reimbursements from the Legislative Counsel Bureau, and five positions for the commission for Fiscal Year 2012-13.

The California Commission on Uniform State Laws presents to the Legislature uniform laws recommended by the National Conference of Commissioners on Uniform State Laws and then promotes passage of these uniform acts. The Commission consists of one Senator, one Assembly Member, six gubernatorial appointees, the Legislative Counsel, and life members based on service as a member of the Commission. The Governor's Budget proposes $148,000, paid through reimbursements from the Legislative Counsel Bureau, and no positions for the commission for Fiscal Year 2012-13.

ISSUE 1: CONSOLIDATE THE CALIFORNIA LAW REVISION COMMISSION AND THE COMMISSION ON UNIFORM STATE LAWS WITHIN THE LEGISLATIVE COUNSEL BUREAU

Governor's Budget Request. The Governor's Budget proposes consolidating the California Law Review Commission and the Commission on Uniform State Laws within the Legislative Counsel Bureau. **Update: On Friday, April 27, 2012, the Department of Finance notified the Subcommittee that this proposal is being modified and revised Trailer Bill Language proposes to consolidate the Commission on Uniform State Laws within the Legislative Counsel Bureau, but not the California Law Revision Commission.**

BACKGROUND

The California Law Review Commission undertakes large-scale studies of state law to determine if there are revisions or restructuring needed to make statutes easier to understand. The commission does not suggest changes based on policy considerations and makes only consensus-based, non-partisan recommendations. In recent years, the commission worked to revise firearms statutes and statutes regarding homeowners associations. The commission has a staff of five that includes three attorneys.

The California Commission on Uniform State Laws currently is staffed by the Legislative Counsel Bureau and works with the National Conference of Commissioners on Uniform State Laws to ensure that laws, particularly related to intrastate business, are uniform across the country.

Prior to the 2010 Budget Act, both commissions were funded by the General Fund. Since then, both have received funding through reimbursements provided by the Legislative Counsel Bureau. The Governor's proposal would continue the reimbursement in 2012-13.

STAFF COMMENT

Staff has heard no concerns regarding moving the Commission on Uniform State Laws within the Legislative Counsel. In effect, the move has already taken place, as the Commission has no separate staff.

Legislative Counsel Diane Boyer-Vine has stated concerns regarding the proposal to move the California Law Review Commission directly under her purview, however. Government Code Section 10210 states that "Neither the Legislative Counsel nor any employee of the bureau shall oppose or urge legislation." Because the Law Review Commission does suggest legislation aimed at reorganizing statutes, there is concern that placing the Commission within the Legislative Counsel Bureau could conflict with the statute.

As stated above, the Administration has removed its proposal to move the California Law Revision Commission within the Legislative Counsel Bureau. New Trailer Bill Language has been prepared to move the Commission on Uniform State Laws into the Legislative Counsel Bureau, but not the Law Review Commission. The Law Revision Commission would remain independent, but be funded in 2012-13 through reimbursements by the Legislative Counsel.

Staff Recommendation: Approve the revised trailer bill language consolidating the California Commission on Uniform State Laws within the Legislative Counsel Bureau.

1110 DEPARTMENT OF CONSUMER AFFAIRS - REGULATORY BOARDS
1111 DEPARTMENT OF CONSUMER AFFAIRS – BUREAUS, PROGRAMS, DIVISIONS

The Department of Consumer Affairs (DCA) is responsible for promoting and protecting the interests of millions of California consumers by serving as a guardian and advocate for their health, safety, and economic well-being and by promoting legal and ethical standards of professional conduct. The Department helps to promote good business practices and to ensure that California's consumers receive quality services by establishing minimal competency standards for more than 240 classifications involving approximately 2.5 million professionals. The Department is also an important advocate on consumer and business issues. In general, the DCA's Boards and Bureaus provide exams and licensing, enforcement, complaint mediation, and education for consumers.

There are currently 23 boards, a commission, three committees, seven bureaus and one certification program under the broad authority of the DCA. The department's budget is displayed in two parts.

The Governor's Budget proposes total spending of $276.4 million (No General Fund) for the Department of Consumer Affairs, Regulatory Boards in 2012-13, and an increase of 2.9 percent compared with estimated spending for the current year. Proposed staffing totals 1,495.3 personnel years (PYs), an increase of 4.4 PYs compared with the current year. The department and its boards are funded by 41 separate funds, most of which are assessed on individuals and entities regulated by the boards.

The Governor's Budget proposes total spending of $223.5 million (No General Fund) for the Department of Consumer Affairs, Bureaus, Programs, Divisions, in 2012-13, a decrease of .5 percent compared with estimated spending for the current year. Proposed staffing totals 1,373.3 personnel years (PYs), a decrease of 13.3 PYs compared with the current year. The department and its bureaus, programs and divisions are funded by 15 separate funds.

ISSUE 1: BREEZE SYSTEM

Governor's Budget Request. The Governor's budget includes a request for $8.4 million (Special Funds) for continued support of the Department of Consumer Affairs, Consumer and Client Services Division's automated licensing and enforcement system. Funding in 2012-13 is proposed for project consulting services, the IT program, and a credit card fee that will allow BreEZe to interface with a third-party payment processor, allowing DCA to accept credit card payments from licensees. In addition, the request includes Budget Bill language that would allow the department to make minor changes to its vendor payment schedule.

BACKGROUND

The BreEZe project will replace legacy enforcement and licensing systems and provide expanded on-line uses for licensees and consumers, and bring all of the Department of Consumer Affairs' boards and bureaus into an integrated system. The project includes the purchase and implementation of a commercially integrated enterprise enforcement case management and licensing system that can be fitted specifically for DCA's needs and was first approved by the California Technology Agency in 2009. Funding has been approved by the Legislature in Fiscal Year 2010-11 and 2011-12.

All funding will be provided by the boards and bureaus that will use the system. DCA estimates the project will cost $51.6 million to fully implement and has set an estimated completion date for October 2013. DCA's contract with the vendor providing this system requires the vendor to fully deploy the system before it is paid.

This Budget Change Proposal also includes a request for additional funding for all boards and bureaus to fund credit card processing fees on behalf of users of credit card payments through the BreEZe system. The BreEZe system will interface with a third-party payment processor, which will provide DCA with the ability to accept electronic payments, while meeting compliance with Payment Card Industry Security Standards, via the third-party payment processor. The department is requesting $2 million to support credit card processing fees on behalf of users of credit card payments through the BreEZe system. This $2 million is part of the overall request for $8.4 million in funding.

Budget Bill Language: The Department of Consumer Affairs has submitted Budget Bill language that would allow the agency to make minor schedule changes to alter the vendor payment schedule:

1110-401 and 1111-401--Notwithstanding any other provision of law, upon the request of the Department of Consumer Affairs, the Department of Finance may make technical revisions to the amount available for expenditure to pay BreEZe project costs based on the BreEZe deployment schedule for each Board and Bureau. The revision may increase or decrease any individual Budget Act item for the Department of Consumer Affairs, but the total net revisions shall be consistent with project costs as approved by the California Technology Agency in the most recent BreEZe Special Project Report. This provision shall apply to all Budget Act items for the Department of Consumer Affairs that have an appropriation for BreEZe.

STAFF COMMENT

Staff does not have any issue with the requested funds to implement BreEZe. However, the Legislative Analyst's Office has raised concerns with the Budget Bill Language and recommends incorporating language that allows the Legislature to maintain an appropriate level of oversight over the fund. Modifying the proposed Budget Bill language to ensure that the Legislature is notified in advance of any adjustments would address this concern.

The LAO provided the following proposed change to the language, with the change in bold:

1110-401 and 1111-401--Notwithstanding any other provision of law, upon the request of the Department of Consumer Affairs, the Department of Finance may make technical revisions to the amount available for expenditure to pay BreEZe project costs based on the BreEZe deployment schedule for each Board and Bureau. ***Any augmentations or***

technical revisions may be made no sooner than 30 days after notification in writing to the chairpersons of the committees in each house of the Legislature that consider appropriations and the Chairperson of the Joint Legislative Budget Committee, or no sooner than whatever lesser time the chairperson of the joint committee may in each instance determine. *The revision may increase or decrease any individual Budget Act item for the Department of Consumer Affairs, but the total net revisions shall be consistent with project costs as approved by the California Technology Agency in the most recent BreEZe Special Project Report. This provision shall apply to all Budget Act items for the Department of Consumer Affairs that have an appropriation for BreEZe.*

Staff Recommendation: Approve the Budget Change Proposal and the modified Budget Bill Language

ISSUE 2: BUREAU OF AUTOMOTIVE REPAIR – ENHANCED FLEET MODERNIZATION PROGRAM

Governor's Budget Request. The Governor's budget includes a request for 12 two-year limited-term positions and an associated special fund augmentation of $720,000 to continue administration of the two emissions reduction programs authorized by AB 118 (Nunez), Chapter 750, Statutes of 2007. The Bureau of Automotive Repair proposes to allocate these positions to administer the off-cycle vehicle retirement program that will retire over 25,000 qualified vehicles, and the vehicle and transportation voucher program administered by the California Air Resources Board (ARB) designed to assist low-income consumers. In addition, an April Finance Letter requests a technical adjustment to reduce the Enhanced Fleet Modernization Program (EFMP) by $35.6 million in Fiscal Year 2012-13 and ongoing, and formally request an augmentation of $35.6 in Fiscal Year 2012-13 and 2013-14 only.

BACKGROUND

A key part of California's air quality emissions reduction strategy is to implement incentive-based air quality programs to encourage the early retirement and replacement of older vehicles with newer, cleaner ones. Older vehicles account for approximately 25 percent of the miles driven but contribute up to 75 percent of the emissions released. Reducing emissions from the older vehicles is a critical part of California's State Implementation Plan (SIP), which outlines the state's clean air strategy. The SIP is used by the federal government to determine the amount of federal transportation funds California will receive.

The Consumer Assistance Program (CAP) was originally started in 1997 and contains two parts: vehicle retirement and vehicle repair. Under the vehicle repair program, qualified low-income consumers can receive financial assistance up to $500 to repair a vehicle that is unable to pass biennial Smog Check inspection when it exceeds specified emission standards. To receive the repair assistance, eligible consumers must pay the initial $20 in repairs.

AB 118 (Nunez), Chapter 750, Statutes of 2007 established the Enhanced Fleet Modernization Program (EFMP), which required the Air Resources Board (ARB), in consultation with the Bureau of Automotive Repair (BAR) to establish guidelines for administering a vehicle retirement program. As part of this legislation, BAR pursued a Budget Change Proposal to implement the Enhanced Fleet Modernization Program and received three year limited-term funding and position authority. The budget was further augmented on a limited-term basis on the passage of AB 787 (Hill), Chapter 231, Statutes of 2010, which increased the vehicle retirement incentive for low-income consumers. This brought the total limited term funding to $41.3 million dollars with 18.8 positions in Fiscal Year 2011-12.

Funding for this program is provided by a $1 registration fee on all vehicles in California. Since December 2010, the bureau has retired approximately 2,333 vehicles per month.

The original Budget Change Proposal requested only $720,000 and position authority for 12 positions in Fiscal Year 2012-13 and 2013-14 to administer the Enhanced Fleet Modernization Program. The original request only included the administrative funding EFMP, as the Vehicle Retirement and Voucher Schedules were originally built into the Governor's 2012-13 budget as an ongoing appropriation. However, it was not the intent of the original request for this funding to be an ongoing appropriation. The Bureau of Automotive Repair has submitted an April Finance Letter that requests that the $35.6 million dollar request be identified as limited term for Fiscal Years 2012-13 and 2013-14. This request will result in net zero change to the Enhanced Fleet Modernization Program's funding levels.

Staff Recommendation: Approve the Budget Change Proposal as modified by the April Finance Letter

2240 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

The mission of the Department of Housing and Community Development (HCD) is to preserve and expand safe and affordable housing opportunities and promote strong communities for all Californians. The HCD: (1) administers housing finance, economic development and community development programs; (2) develops housing policy and advocates for an adequate housing supply; and (3) develops building codes and regulates manufactured homes and mobile-home parks. The HCD also provides technical and financial assistance to local agencies to support housing development.

The Governor's Budget proposes total spending of $275.4 million ($7.4 million General Fund) for HCD in 2012-13, a decline of 56 percent compared with estimated spending for the current year. The General Fund portion of the HCD budget is proposed as almost the same as the current year, increasing by .3 percent. Proposed staffing totals 542.1 personnel years (PYs), a slight decrease of 1.4 PYs, compared with the current year. The large decrease in proposed expenditures is due to the lessening availability of bond funds and the Governor's proposal to freeze HCD bond awards in 2012-13.

Fund Source	2010-11 Actual	2011-12 Projected	2012-13 Proposed	BY to CY Change	% Change
General Fund	$8,487	$7,350	$7,372	$22	.3%
Federal Trust Fund	$198,343	$189,456	$189,920	$464	.2%
Other Funds (22)	$269,616	$429,961	$78,063	($351,898)	-81.8%
Total Expenditure	$476,446	$626,767	$275,355	($351,412)	-56.1%
Positions	522.7	543.5	542.1	1.4	1.4%

ISSUE 1: HOUSING ELEMENT REVIEW

BACKGROUND

To facilitate the improvement and development of housing for all economic segments of a community, every city in the state is required to adopt a housing element as part of its general plan. The two main requirements of a housing element are that the city or county 1) identify specific sites that are suitable and adequately zoned to accommodate the community's share of the regional housing need; and 2) analyze, address, and where appropriate and legally possible remove governmental constraints to the development of housing.

Statewide housing policy, including efforts to encourage affordable housing and promote infill development, rests largely upon the effective implementation of local housing elements.

Prior to adopting or amending a housing element, a city or county must submit a draft of the element to the Department of Housing and Community Development (HCD) for review. HCD must prepare written finding regarding whether the draft substantially complies with the statutory housing provisions. HCD's approval of a housing element is significant, as it creates a rebuttable presumption that the city's or county's housing element is valid, significantly shielding the jurisdiction from lawsuits, and makes the city or county eligible for various state programs.

Historically, local jurisdictions were required to file housing element updates every five years on a staggered schedule, allowing HCD staff time to work with local governments and to provide thorough review. This staggered schedule was essential, as HCD must review both draft and final housing elements of 539 jurisdictions. HCD states that typical housing elements go through at four drafts before becoming final.

SB 375 made profound changes to housing elements and HCD's review schedule. In 2007, the Legislature enacted SB 375 (Steinberg), Chapter 728, Statues of 2007, which sought to help the state achieve greenhouse gas emission goals outlined in AB 32 (Nunez), Chapter 488, Statutes of 2006, by reducing vehicle emissions. SB 375 requires regional greenhouse gas reduction targets, requires regional agencies to prepare land use plans for the regions that will help achieve the greenhouse gas reduction targets (known as a Sustainable Communities Strategy), and provides incentives for high-density, transit-oriented housing projects. SB 375 requirements have become part of the state's AB 32 activities and are described in the AB 32 Scoping Plan created by the state Air Resources Board.

SB 375 changes the state Housing Element law in important ways – and, for the first time, links regional planning efforts for transportation and housing. Under the bill, all transportation and housing planning processes are put on the same eight-year schedule – that is, the housing plans must be updated once every eight years, which will now align with two 4-year Regional Transportation Plan planning cycles.

This change in timing will have dramatic impact on HCD. Instead of receiving housing elements on a staggered schedule, SB 375's changes require that 85 percent of the state's 539 cities and counties will be submitting housing elements in calendar years 2013 and 2014. Below is a chart indicating the jurisdictions with housing elements due to HCD for review in 2013 and 2014:

Jurisdiction	**Number of Housing Elements Requiring HCD Review**	**Due Date**
San Diego Association of Governments	19	April 30, 2013
Southern California Association of Governments	195	October 15, 2013
Sacramento Area Council of Governments/Tahoe Regional Transportation Agency	29	October 31, 2013
Butte County Association of Governments	6	June 15, 2014
Other Local Governments: 25 counties and each city within the county	90	June 30, 2014
Santa Barbara County Association of Governments	9	September, 2014
Association of Bay Area Governments	110	October 31, 2014
TOTAL	**458**	

Moreover, as a result of SB 375, effective housing elements are now even more critical in achieving state policy goals. In addition to the historic goal of ensuring that opportunities exist to develop affordable housing in each community, housing elements now represent the only tool available to help implement a region's SB 375 Sustainable Communities Strategy (SCS). A region's housing need allocations must be consistent with the SCS, to the extent that rezoning of land is required by housing element law. They will occur primarily in those cities and counties where the region is hoping to see additional growth. HCD's role in reviewing housing elements will play a critical role in implementing SB 375, as the review will provide assurance that local governments are providing the proper zoning and land-use planning needed to hit greenhouse gas reduction goals.

HCD staffing is clearly not sufficient to handle upcoming workload. HCD notes that most jurisdictions submit a first draft of its housing element about nine months before their due date. Thus, post-SB 375 housing elements that are due in April 2013 or October 2013 – 243 in total - will begin arriving at HCD in Fiscal Year 2012-13.

Many jurisdictions submit four drafts before a final version is approved. HCD states that an average housing element review process requires 30 hours of staff time per draft review. Thus, the typical housing element review requires 120 hours of staff time.

The table on the next page illustrates the number of staff hours required to review each jurisdiction's housing elements, based on four drafts per review, that are due in 2013 and 2014:

Year	Housing Element Draft Submittals	Total Number of HCD Review Hours
2013	972	29,160
2014	896	26,880

Based on previous Budget Change Proposals from HCD, which state that one PY works 1,778 hours per year, HCD would require 16 PYs in 2013 and 15 PYs in 2014 to conduct the review process in the same manner as it has in the past.

Due in part to a cut enacted by the Governor in the 2011 Budget Act, which reduced the number of positions in the HCD Policy Unit, HCD states that it currently has two PYs assigned to conduct housing element review.

HCD is developing a focus group comprised of department personnel and stakeholders to develop a plan to handle the upcoming workload. The department states that it seeks to reduce its review time by at least 50 percent by limiting the review process.

STAFF COMMENT

In developing housing element law during the past 43 years, the Legislature has clearly outlined an interest in ensuring that local land use and housing policies adhere to state interests. SB 375 increases the importance of HCD's housing element review at a time when HCD has limited resources to perform an appropriate review.

Should the Subcommittee determine that a much less rigorous review of local housing elements is undesirable, it could look at an alternate funding source to allow HCD to better respond to SB 375-related changes.

The AB 32 Implementation Fee. The AB 32 Cost of Implementation Fee, implemented through regulation by the Air Resources Board, establishes a schedule of fees to be paid by sources of greenhouse gas emissions to support the administrative costs of implementing AB 32. Approximately 285 fee payers, including oil refineries, cement manufacturers and large natural gas distributors and large users of natural gas, are billed annually for the work required to administer AB 32. The fee also is used to collect funds to repay loans that were used to start the AB 32 program.

The Governor's budget proposes a Cost of Implementation Fee of $58.2 million for 2012-13, which includes $36 million in administrative costs and $22.2 million to repay previous loans. The Air Resources Board and the Department of Finance meet annually to determine the required workload for the following year, and based on a formula implemented through regulation, assess the fee. The Legislature has authority over the fee, as it is included in each year's Budget Act.

The chart on the following page illustrates the proposed use of the administrative costs for 2012-13:

Department	Proposed 2012-13 Funding	Positions
Secretary for Environmental Protection Agency	$586,000	4
HCD	$115,000	1
Department of Resources Recycling and Recovery	$496,000	6
Department of Water Resources	$316,000	3
Air Resources Board	$33,575,000	159
State Water Resources Control Board	$555,000	2
Department of Public Health	$348,000	0
Totals	**$35,991,000**	**175**

As the chart indicates, HCD currently receives funding for one position. The position currently works on a number of AB 32-related activities, including revising the housing element process to include climate change considerations and working to help local governments integrate housing and transportation planning to meet greenhouse gas reduction totals.

The Subcommittee may wish to consider whether it is appropriate to increase HCD's portion of the AB 32 Cost of Implementation Fee to allow it to properly review local housing elements per the SB 375 timeline.

There is a clear nexus between the goals of AB 32 and housing element review, given that the review is the state's key tool in implementing SB 375 goals, which are part of the state's strategy for meeting emissions reductions required by AB 32. HCD's intent to dramatically limit its review process to handle the increased workload could in fact limit the state's ability to ensure SB 375 is properly implemented.

The Subcommittee could consider adding five positions at HCD, at a cost of $575,000, in 2012-13 to handle the large wave of housing elements that will be filed with the department. This is less than 2 percent of the proposed fee total, and will allow HCD to provide a more thorough review and respond to the SB 375 workload.

Based on the expected workload, HCD could seek an additional five positions in the 2013-14 fiscal year.

Staff Recommendation: Approve Budget Bill Language increasing Item 2240-001-0115 by $575,000, payable from the Air Pollution Control Fund, to be used for five positions at the Department of Housing and Community Development for housing element review

1700 DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
1705 FAIR EMPLOYMENT AND HOUSING COMMISSION

The Department of Fair Employment and Housing is responsible for protecting the people of California from unlawful discrimination in employment, housing, and public accommodations, and from the perpetration of acts of hate violence. The Department's jurisdiction extends to individuals, private or public entities, housing providers, and business establishments within the state.

The Governor's Budget proposes total spending of $21.6 million ($16 million General Fund) for the department in 2012-13, an increase of 3 percent compared with estimated spending for the current year. The proposed staffing totals 184 personnel years (PYs), a slight increase (.4 percent) as the current year.

Fund Source	**2010-11 Actual**	**2011-12 Projected**	**2012-13 Proposed**	**BY to CY Change**	**% Change**
General Fund	$14,384	$15,576	$15,983	$407	2.6%
Federal Trust Fund	$5,030	$5,436	$5,589	$153	2.8%
Total Expenditure	**$19,414**	**$21,012**	**$21,572**	**$560**	**3%**
Positions	178.1	183.3	184	.7	.4%

The Fair Employment and Housing Commission is a quasi-judicial body responsible for the promotion and enforcement of the state's civil rights laws concerning discrimination in employment, housing, and public accommodations; family, medical, and pregnancy disability leave; hate violence, and threats of violence. The seven members of the Commission are appointed by the Governor and confirmed by the Senate.

The Governor's Budget proposes total spending of $580,000 ($496,000 General Fund) for the Commission in 2012-13, a 49 percent decrease compared to the current year. The proposed staffing totals 2.5 personnel years (PYs), a 50 percent decrease from the current year.

Fund Source	**2010-11 Actual**	**2011-12 Projected**	**2012-13 Proposed**	**BY to CY Change**	**% Change**
General Fund	$797	$976	$496	$480	-49.2%
Reimburse-ments	$36	$168	$84	$84	-50%
Total Expenditure	**$833**	**$1,144**	**$580**	**$564**	**49%**
Positions	5	5	2.5	2.5	-50%

ISSUE 1: ELIMINATE THE FAIR EMPLOYMENT AND HOUSING COMMISSION AND TRANSFER ITS FUNCTIONS TO THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

Governor's Budget Request. The Governor's Budget proposes eliminating the Fair Employment and Housing Commission and transferring the Commission's adjudicatory and regulatory functions to the Department of Fair Employment and Housing. This would create a net savings of $391,000 to the General Fund in 2012-13.

BACKGROUND

California has two state agencies to enforce state laws intended to reduce discrimination in housing and in the workplace.

The Department of Fair Employment and Housing receives complaints regarding discrimination and issues "right to sue" letters to complainants who wish to take their case to state Superior Court or investigates the complaint itself. After investigation, the Department can dismiss cases or acts as a conciliator, mediator or prosecutor and prosecutes cases before the Fair Employment and Housing Commission or in Superior Court. The chart below illustrates the number of complaints the Department has received during the past five years:

Year	Number of Complaints
2007	17,730
2008	20,074
2009	18,729
2010	19,437
2011	18,941

The Fair Employment and Housing Commission have seven members who are appointed by the Governor and confirmed by the state Senate. The commissioners are paid $100 per diem for attending commission meetings and hearings. The Commission conducts hearings and issues decisions in cases prosecuted by the department. The Commission also promulgates regulations interpreting the state Fair Employment and Housing Act.

An overwhelming majority of the complaints filed with the Department are resolved through means other than a Commission decision. During the 2007-2011 period, the Commission issued only 37 decisions, according to information it provided the Subcommittee, or an average of only 7.4 decisions per year.

The Governor's proposal. The Administration proposes eliminating the Commission on January 1, 2013 and shifting its duties to the Department. The proposal would shift .7 positions from the Commission to the Department in 2012-13, with that number growing to 1.5 positions in 2013-14, reflecting the consolidation for six months in 2012-13 and for the full year in 2013-14. The net impact would be General Fund savings of $391,000 in 2012-13 and $784,000 in 2013-14, and a reduction of 1.8 positions in 2012-13 and 3.5 positions in 2013-14.

The proposal would place the Commission's adjudication function within the Mediation Division of the Department, and the 1.5 positions added to the Department would be Administrative Law Judges (ALJs) who would handle adjudicatory hearings. The Department states that there already is a firewall between the Mediation Division and the rest of the Department. The new division would be renamed the Hearing and Mediation Division. Adding the 1.5 ALJs, the new division would have one Chief ALJ, as well as three full-time and four half-time ALJs to handle mediation and hearings. The Department states that it can easily absorb the handful of cases that previously were heard by the Commission.

Parties that were dissatisfied with an ALJ decision could petition for reconsideration with the Chief ALJ, who would select two other ALJs not previously involved in the case to convene a panel to review the decision. The panel could reverse and remand the matter back to the original ALJ, or uphold the decision, allowing the petitioner to appeal the case to the state Superior Court or Court of Appeals.

The Department already has authority to promulgate regulations and states that it would be able to absorb the Commission's rule-making duties without additional personnel.

STAFF COMMENT

A 2010 study analyzing the impact of the California Fair Employment and Housing Act conducted by the Center for Law and Public Policy, a joint project of the UCLA Law School and the RAND, noted that the number of Commission decisions had dropped considerably in the 2000s, and concluded that the Commission "can only be described as a shadow of an effective adjudicatory commission and of its former self."

There clearly is a need for change. During a period of extreme pressure on the budget, the state is projected to spend more than $1.1 million in 2011-12 on a Commission whose output does not appear to match expenditures.

The state's system of enforcing the Fair Employment and Housing Act has simply evolved to a point where the Commission is rarely utilized. A key reason that the Commission rarely hears cases is that respondents to Department complaints can ask that complaints go to court, instead of the Commission, and for various reasons, this appears to be the options chosen by respondents in the great majority of changes.

Despite the need for a change, the Administration's proposal to consolidate prosecutorial and adjudicatory functions within the same department may be problematic. Even with a so-called "firewall" between the proposed Hearings and Mediation Division, housing prosecutors and judges within the same agency could create divided loyalties and present at least the appearance of a conflict of interest. It is clear as to why the current system was set up in the first place: having independent commissioners determining the fate of complaints brought by the Department provides victims of discrimination with a faithful prosecutor on their side, and provides all sides with an impartial decision-maker.

The 2010 RAND-UCLA study, entitled, "California Employment Discrimination Law and its Enforcement: The Fair Employment and Housing Act at 50," suggested two possible fixes: somehow reinvigorating the Commission, or simply abolishing the Commission and allowing the Department to prosecute cases in state Superior Court.

The Subcommittee is aware that stakeholders, including employment rights attorneys, have had preliminary discussions with the Administration as to possible changes to the Governor's proposal. The Subcommittee may wish to wait to take action on this matter to determine if there is a solution that addresses the conflict-of-interest problem while also achieving some General Fund savings.

Staff Recommendation: Hold open