

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

Assemblymember Juan Arambula, Chair

**TUESDAY, APRIL 21, 1:30 PM
STATE CAPITOL, ROOM 447**

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CONSENT ITEMS**ITEM 7100 EMPLOYMENT DEVELOPMENT DEPARTMENT**

**ISSUE 1: FINANCE LETTER – FEDERAL UNEMPLOYMENT TRUST
ACCOUNT LOAN REVERSION.**

The approved 2009-10 budget allocated \$20.2 million in anticipation of interest payments on a loan to be taken out from the Federal Unemployment Trust Account. The Federal Stimulus plan waived interest payments for 2009-10, so this proposal eliminates that funding.

**ISSUE 2: FINANCE LETTER – DISABILITY INSURANCE AUTOMATION
PROJECT LANGUAGE.**

The approved 2009-10 budget authorized \$11,261,000 to support the development of the Disability Insurance Automation project. This amount was a best estimate because the bid has not been awarded yet. This proposal adds language to the budget to allow the Department of Finance to adjust this amount to match the final bid award with 30 day notification to the Joint Legislative Budget Committee.

ITEMS TO BE HEARD

ITEM 0510 LABOR AND WORKFORCE DEVELOPMENT AGENCY

The Labor and Workforce Development Agency was established to address important issues relating to California workers and their employers. The Agency is primarily responsible for three functions: labor law enforcement, workforce development, and benefit payment and adjudication. The Agency plays a central role in the Economic and Employment Enforcement Coalition, the purpose of which is to help legitimate businesses and California workers combat the underground economy, through a combination of enforcement and education activities.

ISSUE 1: OUTREACH/MEDIA CAMPAIGN

The Labor and Workforce Development Agency requested \$1.53 million (special fund) for the purpose of funding employer and employee education efforts related to heat illness prevention. The planned outreach program is a two year program, and would require an additional \$1.36 million in 2010-11.

Funding is coming from the Labor and Workforce Development Fund, which is funded through penalty assessments on employers, and intended for education of employers and employees regarding state labor laws. The fund balance is sufficient to handle this two year bump in expenditures.

The media outreach is planned to be through radio and television, with a target audience of adults age 18 to 54 in outdoor labor. The campaign will be statewide, with an emphasis on inland, desert, central valley, and agricultural areas in coastal regions. All components will be in English and Spanish. The Agency plans to run the ads from April through early fall, and will focus on deals with flexible placement to allow the agency to quickly respond to forecasted heat waves.

\$650,000 is planned for TV ads, \$170,000 for radio ads, \$100,000 for Spanish TV and Radio ads, \$240,000 for English and Spanish cards on buses, plus \$200,000 for signs and billboards.

COMMENTS

In recent years, the Legislature has raised concerns with heat related deaths, specifically in regards to farm workers. In response to 8 heat related deaths in July 2005, emergency heat regulations were adopted and took effect in August 2005. Permanent regulations were developed and went into effect July 2006.

In agriculture fields there were 6 confirmed heat related deaths in 2005, 4 in 2006 3 confirmed case in 2007, and 7 in 2008.

In 2008 Cal/OSHA conducted 706 heat illness seminars, on-site consultations and outreach events, compared to 284 in 2007. The Agency and Cal/OSHA are working with

growers to implement supplemental heat illness training sessions for farm labor contractors. The hope is to have growers only higher contractors who have taken the training. Letters and heat illness prevention information were sent to all employers with outdoor operations in June of 2008. The Agency and Cal/OSHA are also working with the Department of Education and their migrant education program to dispense information there.

This proposal was included in the approved 2009-10 budget, so no committee action is necessary.

ITEM 7350 DEPARTMENT OF INDUSTRIAL RELATIONS

The Department of Industrial Relations protects the workforce in California, improves working conditions, and advances opportunities for profitable employment. The Department is responsible for enforcing workers' compensation insurance laws, adjudicating workers' compensation 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.

ISSUE 1: CALOSHA – FARM WORKER SAFETY

Last year this sub-Committee raised several concerns regarding heat related deaths for farm workers. Per the item above, the Agency is working to provide education to employers and employees for the upcoming farming season.

Some concern was raised last year regarding enforcement efforts as well, and whether those were effective enough. The Department should be prepared to present information to the Committee regarding what efforts they have taken to ensure adequate enforcement of labor code laws, as well as any issues they see that the Legislature could help address.

COMMENTS

A May 2008 report from DIR stated that Cal/OSHA inspectors had a 9 percent vacancy rate, but that budget issues may increase that rate. The Committee may wish to inquire as to the current vacancy rate for inspectors.

That same report showed that California has a worker per inspector ratio of 67,000 to 1, compared to the national average of 64,000. The Committee may wish to inquire whether additional inspectors are necessary to adequately enforce labor laws to protect employees.

ISSUE 2: LABOR CODE ENFORCEMENT

This sub-Committee requested Supplemental Report Language for DIR last year regarding a Labor Code 2810 Violation Protocol. It stated:

To the extent possible, the Department shall update the Legislature at budget hearings on (a) the number of times violations of Labor Code 2810 were pursued, (b) the number of times violations of Labor Code 2810 were suspected by not pursued, (c) the justification for not pursuing potential violations, and (d) any suggested changes to the proposed protocol.

The Department was very responsive and provided such information ahead of time to allow staff to review the information prior to the hearing.

The Department stated that 37 cases were identified as suspected 2810 violations under the developed protocol. Of those, 19 cases involved agricultural employers, 2 involved garment, 11 construction, 4 janitorial, and 1 security guard.

Of the 37 cases, 15 were rejected because the employers were growers, and not contractors. Of the remaining 22 cases received the appropriate contract information for 19, and is still pursuing the final three. In 12 of those cases, the documentation showed the contract was likely sufficient. Two of the cases were determined to be exempt from section 2810. The remaining 5 cases were determined to be likely lawsuit candidates and have been referred to their legal unit. One of those cases has already resulted in a lawsuit. The legal unit is still either further investigating the cases, or awaiting administrative civil action prior to moving forward on the remaining 4 cases. The committee may wish to ask what the likely timeline is to determine if those cases will result in lawsuits.

COMMENTS

This item is to update the Committee on the issue and requires no action.

ISSUE 3: FINANCE LETTER – PUBLIC WORKS LABOR COMPLIANCE PROGRAM

The Department submitted a finance letter requesting \$1.3 million and 10 positions from the State Public Works Enforcement Fund to meet the requirements of SB 9 of the second extraordinary session (*Chapter 7, Statutes of 2009-10 Second Extraordinary Session, SB 9 X2, Padilla*). This will enable them to complete regulations, conduct an analysis of workload, perform test audits and develop a fee schedule and program structure.

With few exceptions, the law requires workers on public works projects to be paid prevailing wage (as determined by DIR's Division of Labor Statistics and Research). SB 9 X2 changed the way in which the requirement will be enforced.

Since 1989, the Legislature has provided a statutory mechanism permitting political subdivisions of the state that award public contracts (awarding bodies) to initiate and enforce their own Labor Compliance Programs (LCPs) in conjunction with the DIR and the Division of Labor Standards Enforcement (DLSE). An awarding body may also contract with a third party to initiate and enforce the LCP.

This bill proposed generally to move away from the LCP model and fund DIR directly to enforce prevailing wage requirements on public works projects as specified. Contracts that have been awarded prior to DIR's establishing a fee and specified regulations will generally be subject to the current requirements related to LCPs. However, new contracts will be subject to this new model by which DIR will assess a fee, deposit the fee into the Fund, and use the money only for enforcement of the prevailing wage law.

This proposal begins implementing that program by allocating the necessary staff and resources to develop regulations, set up the initial program structure, determine the appropriate fee level to cover program costs, and determine the expected workload.

COMMENTS

This bill passed the Assembly 71-6, and provides a more effective method for enforcing prevailing wage laws. This program will be self funded once it is up and running. Until the fee is implemented, however, there are no funds available. This proposal provides the start up funding of \$1.3 million as a loan from the General Fund (GF). The loan must be re-paid within 3 years. While these funds will be repaid in a relatively short time frame, the GF is in a cash crisis, and this will slightly decrease the cash available for up to three years. Given that the state is borrowing billions from other funds to deal with the GF cash crisis, it may not make sense to be making GF loans.

The Committee may wish to ask staff to work with the LAO and DOF to determine if a non-GF loan is available prior to making a decision on this proposal.

**ITEM 7120 CALIFORNIA WORKFORCE INVESTMENT BOARD
AND ITEM 7100 EMPLOYMENT DEVELOPMENT DEPARTMENT**

The California Workforce Investment Board assists the Governor in overseeing and continuously improving the state workforce system, with an emphasis on California's economic vitality and growth. The workforce system is comprised of state and local programs and services that prepare current and future workers to meet the ever-evolving demands of California's critical businesses and industries. These services include matching job seekers with career opportunities and jobs; supplying high-skill workers to business and industry; providing labor market and economic information necessary for state, local, and regional planning; preparing the neediest youth for advanced learning and careers; and encouraging the inclusion of special populations as critical elements of the workforce.

ISSUE 1: WORKFORCE INVESTMENT ACT

Workforce Investment Act (WIA) dollars are divided into multiple pots of funds. The Adult and Youth funds are split 85% to the local boards, and 15% for the discretionary funds allocated by the Legislature. The Dislocated Worker funds are divided 60% to the local boards, 25% to "rapid response" and 15% for the discretionary funds allocated by the Legislature.

These funds are already allocated in the approved 2009-10 budget. The funding for locals and rapid response have essentially just passed through the state, and we have only an oversight role in how those funds are spent. The 15% funds, however, can be changed based on statewide priorities. The approved break down is attached. The Legislature, however, may wish to revisit this allocation as the breakdown is significantly different than the 2008-09 breakdown including significantly less funding provided to the California Department of Corrections and Rehabilitation which has been funded at higher levels in the past.

The American Recovery and Reinvestment Act of 2009 (ARRA) also provided stimulus funds for workforce development. Over \$400 million has already been allocated through a section 28 letter. These were the Local and rapid response expenditures that have just passed through the state. Details on the 15% funds related to ARRA have not yet been submitted by the Administration.

COMMENTS

When details are submitted regarding the remaining ARRA funds, the Committee may wish to take a more detailed look at the 15% already approved in the 2009-10 budget since no review occurred before adoption. In January, pursuant to existing authority, the Governor submitted a request to shift allocations within the 15% WIA funds. Those shifts primarily moved funding out of legislative priorities, and into the Governor's "economic stimulus" line item. Additional funding was also provided to "critical shortage industries." These moves were identified as necessary to take money from line-items not being fully utilized and get the money out in items that were over-subscribed. These changes, however, raise questions about where the funds should be allocated, and the Committee may wish to review these allocations in the broader picture after the May Revise.

ISSUE 2: STATEWIDE COORDINATION

There are many state entities with some role in workforce development, employee training, etc. This influx of federal funds highlights the need for all the state's efforts to be coordinated to ensure these funds are used as efficiently and effectively as possible.

COMMENTS

Federal Guidance for ARRA workforce investment funding requires an updated workforce investment plan from the state by June 30, 2009. The Committee may wish to ask for additional information on what changes may be made to that plan, and to be provided the new plan once developed.

This sub-Committee has expressed an interest in helping find ways to improve communication and coordination among the various entities involved in workforce development. In light of the current budget situation, however, it is unrealistic to take on such a large undertaking at this point. It might be helpful, however, to have the entities present share with the Committee their existing allocations, the details of how they plan to incorporate stimulus funds into their existing programs and plans, and their thoughts on coordination of efforts. It may be appropriate for the sub-Committee to return to this issue once the current budget situation has been settled.

ITEM 7100 EMPLOYMENT DEVELOPMENT DEPARTMENT

The Employment Development Department (EDD) promotes California's economic growth by providing services to keep employers, employees, and job seekers competitive. The EDD connects employers with job seekers, administers the Unemployment Insurance, Disability Insurance, and Paid Family Leave programs, and provides employment and training programs under the federal Workforce Investment Act of 1998. Additionally, the EDD collects various employment payroll taxes including the Personal Income Tax, and collects and provides comprehensive economic, occupational, and socio-demographic labor market information concerning California's workforce.

ISSUE 1: EDD FURLOUGHS

On December 19, 2008, the Governor issued an Executive Order to furlough represented state employees and supervisors for two days a month between February 2009 and June 2010 to address the state's fiscal emergency. In effect, employee pay has been reduced by 9.2% per month and affected employees will not work 34 days during a 17 month period. These "furlough days" may be saved and taken anytime before July 1, 2012.

Costs for administering California's Unemployment Insurance (UI) program, however, are paid 100% by the federal government. Based on a federal funding formula, California gets a specified sum of money each year to pay for the operation of the program. Further, California will receive an additional \$60 million in UI modernization funds from the ARRA, which, among other uses, can be used to pay for personnel costs needed to meet increasing demands upon the state's UI system, due to the recession.

Recently, in recognition of the fiscal difficulties states are experiencing and actions they are taking to cope with diminished revenues, such as employee furloughs, the federal Department of Labor (DOL) reissued its Unemployment Insurance Program Letter (UIPL) 09-98. That guidance makes clear that since UI administration costs are 100% federally funded, state UI personnel should be exempt from furloughs or reduced hours so that UI program services are not negatively impacted. If a state chooses to apply its furlough policy to UI personnel, it must demonstrate to DOL that it can adequately address its UI program needs.

COMMENTS

While the Governor's ordered furloughs have been in effect, the state's unemployment rate has risen to 11.2%. More than 850,000 unemployed Californians are receiving UI benefits on a weekly basis. EDD's telephone system, the subject of many recent reports, has been overwhelmed with as many as 2 million attempts per day, to contact EDD offices. Lines at EDD One Stop Centers have been long, and EDD has had to add Saturday hours as well as extended weekday hours to try and cope with the increasingly heavy program workload.

EDD maintains that it can manage its personnel, despite the application of furloughs to all EDD employees, in a manner that meets all UI program needs. In addition, notwithstanding the fact that UI Branch payroll will be reduced somewhere between 4.6% and 9.2% due to furloughs, EDD will still utilize all federal funding for UI administration.

The Committee may wish to ask the Department to discuss 1) How it will continue to use all Federal dollars despite the implementation of the furloughs, and 2) How it is able to maintain service levels and meet the DOL requirements to adequately address its UI program needs despite implementation of the furloughs.

Governor's Proclamation 4-17

Last Friday the Governor proclaimed a state of emergency, and waived existing statutes and regulations so that EDD can immediately begin to increase capacity to file claims through hiring additional personnel, borrowing personnel and office space from other state departments and contracting out for call center operations and other services.

EDD indicated it will aim to increase the number of staff answering phones in call centers by 300 in the next two weeks with additional hiring in the coming months to significantly decrease call wait times. This is in addition to the 850 staff EDD is currently in the process of hiring through increased federal administrative funding.

The Committee may wish to ask for further details on how this authority will be utilized, as well as information on whether it makes sense to expand resources significantly while furloughing existing employees.

ISSUE 2: UNEMPLOYMENT INSURANCE AUTOMATION

Unemployment Insurance Modernization

In March of 2002, California received a Reed Act distribution of \$936.9 million from the federal government. Reed Act funds are for payment of unemployment benefits and administration. \$870.9 million went to pay Unemployment Insurance benefits (UI), and the remaining \$66 million was encumbered for automation projects now known as UI Modernization (UIMOD).

The UIMOD project consists of two primary projects:

1. Call Center Network Platform and Application Upgrade (CCNPAU).
Many UI claims are filed over the telephone by EDD staff located in six call centers throughout the state. The current system does not allow calls to be transferred, meaning if a claimant needs to talk to an adjudication center, they have to hang up and call back rather than be transferred. The new system will also provide new workload management tools to EDD. The Department should be prepared to indicate examples of such features.

2. Continued Claims Redesign (CCR)

Currently, every two weeks EDD must verify claimants to continue to be eligible for benefits. This process is all completed through paper forms that must be processed manually. CCR will allow UI claimants to re-certify their eligibility via the telephone or internet. CCR will also replace the benefit payment system; provide a new client database with greater flexibility for fraud detection and changes to the benefit structure. This new database will include increased data collection through a modern data warehouse architecture that will provide new tools to analyze data and improve program operations. It will also allow EDD to be much more responsive to legislative direction for changes to the system.

Despite receiving funding and authorization in 2002-03, these projects are still not complete. Less than \$12 million of the funding had been expended as of Jan. 1, 2009.

Based on original timelines, both projects should have already been completed. CCR was scheduled to be completed in June of 2008, and CCNPAU in November of 2006. Current timelines, however, project a completion date of April 2013 for CCR and February 2011 for CCNPAU. That is a 5 year delay. (See Attachment)

Many factors are cited for the cause of the delay in these projects. Several issues arose very early on regarding requirements for interagency agreements and approval of resources. It is unclear whose errors these were, but they all pertain to requirements that should have been known during the initial plan development. These issues caused 9 months of delay.

Consultants reviewing the project recommended combining the two projects into one UIMOD project, and EDD and DOF accepted that recommendation. Merging these projects required staffing changes, new analyses and new project studies (involving multiple agencies), costing an additional 13 months.

After the RFP was completed, EDD and DGS requested 14 amendments to the RFP leading to an additional 1 year delay. Changes in procurement process are cited as causes for the amendments. One of the amendments requested was to split the two projects into separate RFP's, reversing the previous decision to combine them, which delayed the project by over a year. The amendments and decision to split the RFP led to an additional 14 month delay.

The total delay came to 4.5 years, leaving EDD and California's residents with the same dysfunctional system for an addition five years.

COMMENTS:

The Committee may wish to discuss the lessons EDD learned through these issues faced thus far in the UIMOD projects, and ask how these lessons will help them better manage and successfully implement projects like that needed for ABP (discussed below).

Current Status:

The Committee may wish to ask for an update on the current status of both these projects, and how they could have helped address the current hardships being faced within EDD. With the recent spike in workload for EDD related to UI claims and phone calls, these projects are all the more relevant.

Alternative Base Period (ABP):

In March the Legislature enacted *Chapter 23, Statutes of 2009-10 Third Extraordinary Session (AB 29 X3, Coto and Garrick)* establishing an Alternative Base Period (ABP) to determine eligibility for workers to receive unemployment insurance (UI) benefits who do not qualify using a Standard Base Period (SBP).

To determine if the claimant had sufficient earnings to warrant the receipt of benefits, using the SBP, EDD looks at what a UI claimant earned in wages no sooner than two quarters, (six months) prior to the time a UI claim is submitted. Pursuant to AB 29 X3, EDD will eventually use an ABP which will use the most recently completed quarter prior to the submittal of a UI claim, when a worker does not qualify using the SBP.

Between 30,000 and 60,000 additional workers, particularly people in seasonal jobs, will qualify for UI benefits once claims are processed using an ABP. That will mean payment of up to an additional \$70 million in UI benefits. In turn, those additional benefits will generate more than \$150 million in economic activity each year, in the communities where these unemployed workers live.

EDD has stated that it cannot implement an ABP without replacing a legacy computer system the Department currently uses to maintain its UI database. They estimate this replacement project will take approximately two years to complete at a cost of \$20 million. As part of the ARRA federal stimulus funds, California will receive nearly \$60 million in UI Modernization funds to underwrite related implementation costs, such as this. The Committee may wish to inquire how EDD plans to use those funds not necessary for this particular project, and what notification/consultation with the legislature will exist for those funds.

A survey by the National Employment Law Project (NELP), of seven other states that have implemented ABP, found that only two states needed to engage outside consultants to make computer changes, and the remaining states used internal programming staff. Costs in each of these states were significantly below what EDD estimates their project will cost. NELP also found that staff training needed to process ABP claims was relatively minor and not costly. The Committee may wish to ask if the Department knows why California's experience seems to be different than those represented in this survey.

At the time AB 29 X3 was enacted, the Legislature expressed concern over the long lead time EDD claimed it needs to complete the computer conversion and begin using the ABP for processing UI claims. The Assembly expressed an interest in finding ways to assist the Department in expediting this process in any way possible. On such option may be to increase staff to assist in implementing ABP even if done manually for a time.

Governor's Proclamation 4-17

Last Friday the Governor proclaimed a state of emergency and waived existing statutes and regulations, including advertising and competitive bidding requirements, "to the extent necessary to enable EDD and CUIAB to enter into such contracts as expeditiously as possible."

Further, the Proclamation states:

State agencies including but not limited to the State Office of the Chief Information Officer (OCIO), the Department of General Services, the Department of Personnel Administration, and the Department of Finance shall expedite project, contracting, budget, and personnel action review and approval processes so as to expedite the hiring of EDD and CUIAB staff and the implementation of EDD and CUIAB information technology projects designed to expand and enhance unemployment insurance services, and personnel to support these efforts.

The Committee may wish to ask the department how it intends to utilize this authority to expedite the process to implement ABP. While moving as quickly as possible, the Department should also describe how it will ensure that mistakes aren't made in the haste to utilize the authority granted by the Governor, which could ultimately increase the time to completion for this project.

COMMENTS

The Committee may wish to receive updates from the Department regarding the \$60 million available through ARRA and how those funds are to be used. Additionally, the Department should continue to look for ways in which the Legislature can assist them in expediting the implementation of ABP and keep the Legislature informed of how the authority granted in the Governor's Proclamation is utilized.

There is no action necessary on this item.