

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

Assemblymember Juan Arambula, Chair

**Tuesday, April 28, 1:30 pm
State Capitol, Room 447**

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CONSENT ITEMS

ITEM 0855 GAMBLING CONTROL COMMISSION

ISSUE 1: FINANCE LETTER - TECHNICAL CORRECTIONS TO BUDGET BILL

This April 1 Finance Letter makes technical corrections to Provisions 2 and 3 of Item 0855-111-0367 to reflect the correct fiscal year and ratification of a recent compact.

The 2009-10 Enacted Budget includes provisional language that references the 2008-09 fiscal year and specific tribal-state compacts. This Finance Letter corrects the fiscal year references as appropriate, deletes a reference to the amended compact with the Sycuan of the Kumeyaay Nation that was never ratified, and adds reference to the compact with the Shingle Springs Band of Miwok Indians that went into effect on December 12, 2008. This proposal does not change the appropriation for this Item.

ITEM 1100 CALIFORNIA AFRICAN AMERICAN MUSEUM

ISSUE 1: FINANCE LETTER

The Administration requested an increase of \$293,000 from the Exposition Park Improvement Fund for replacement, repair and upgrades of critical infrastructure to ensure that valuable assets located within the California African American Museum (CAAM) are protected. Several factors have caused a delay in planned expansion and renovation efforts to CAAM, this delay also means the state GF contribution of \$40 million will be delayed. This delay, however, leaves several critical repairs to be made, which are funded by this request.

ITEM 8380 DEPARTMENT OF PERSONNEL ADMINISTRATION

ISSUE 1: FINANCE LETTER

DPA requested an increase of \$518,000 in Reimbursements, and 6 one-year limited-term positions to allow them to continue as an active participant in the 21st Century Project. This request should be consistent with the corresponding request made by the State Controllers Office to include \$518,000 in the 21st Century Project budget request for funding of DPA.

Approving this item means it will conform to the final action on the corresponding State Controllers Office request, not that it is being approved.

ITEMS TO BE HEARD

ITEM 0520 BUSINESS TRANSPORTATION AND HOUSING AGENCY

The Business, Transportation, and Housing Agency includes 13 departments and several economic development programs and commissions consisting of more than 44,000 employees and a budget of \$20 billion.

The 2009-10 budget includes \$20.9 million (\$5.5 million General Fund) and 65.4 positions. The majority of the agency's expenditures are within the small business loan guarantee program while there is additional general fund staff for economic development programs.

ISSUE 1: INFRASTRUCTURE BANK STAFFING

The Business Transportation and Housing Agency (BTH) is requesting 2 positions and \$211,000 from the California Infrastructure and Economic Development Fund for the California Infrastructure Bank. This funding request would be used for two new loan officers to support ongoing workload by the Department.

BACKGROUND

The purpose of the ISRF program is to provide financial assistance to local governmental entities for infrastructure projects such as roads, water systems, sewer systems, and other public facilities. More specifically, statute intends the program to fund projects that promote efficient land use and resource conservation while also providing economic development opportunities. Local governmental entities eligible for funding from the program include cities, counties, assessment districts, and redevelopment agencies.

The program provides loans to sponsors of eligible infrastructure projects at interest rate costs that are lower than financing that can otherwise be obtained from the private market. Specifically, loans are made at two-thirds of the market interest rate for an A-rated tax-exempt bond. This reduced interest rate lowers the cost of borrowing to local governments and can enable infrastructure investment to occur sooner or at greater levels than may otherwise happen.

Initially, funding for I-Bank came from a \$200 million General Fund appropriation between fiscal years 1998 and 2000. In this original appropriation, \$180 million was allocated for financial assistance and program administration while, \$20 million was set aside for infrastructure projects in the Imperial Valley.

To leverage this initial appropriation, the I-Bank proceeded to issue revenue bonds in 2004 and 2005 in order to allow the I-Bank to leverage between one and three times the initial appropriation of \$180 million. This allows the I-bank to potentially maximize their loan total to between \$360 million and \$540 million.

COMMENTS

In last year's budget, the I-bank had a similar request to increase staffing by a total of 7 positions. In their review of the 2007-08 budget, the LAO recommended that the Legislature adopt only 5 of these positions due to a lack of justifiable workload. The Legislature took this recommendation and the sub-Committee additionally had concerns that the I-Bank may not be prioritizing loans adequately on true economic development values derived from the projects.

This year, BTH is requesting funding for the two positions that were rejected by the subcommittee last year citing similar workload justifications. While staff agrees that there have been increases in loan volumes at the I-Bank, the I-Bank has only been able to fill three of the five positions approved in last year's budget due to statewide hiring freezes. Once the I-Bank is able to fill these vacancies, staff feels that it would be appropriate for the I-Bank to reassess its need for increased resources and present those findings to the Legislature.

ISSUE 2: MOTION PICTURE TAX CREDIT PROGRAM

In an April Finance Letter, BTH requested a total of \$644,000 in General Fund for 5 positions to implement the Motion Picture Tax Credit that was enacted in SB 15 X3 (*Chapter 17, Statutes of 2009-10 Third Extraordinary Session SB 15 X3, Calderon and Florez*). These positions include one office technician, a staff services analyst, a senior accounting officer, a motion picture production analyst, and a special consultant.

COMMENTS

As passed by the Legislature, this program provides \$100 million in tax credits each year, over a period of five years, to studios that have productions in California. Credits are to be awarded on a first come first serve basis with production companies submitting documentation to the Commission that they intend to film in California. Once production is completed, the Commission is responsible for verifying that the production did occur in California as intended.

There were concerns from staff with the original proposal that because the workload from this program would be concentrated on the front and back end of the process, when applicants are applying and when they are verified, there may not be adequate workload justification for all of the requested positions. Since the original proposal was developed by the Film Commission upon passage of SB 15 X3 in February, BTH and the Department of Finance have provided technical changes to the proposal to reduce their overall request by the following:

1. Reduce the funding for the database from \$75K to \$20K;
2. Eliminate the \$25,000 Feasibility Study Report;
3. Reduce Special Consultant from a one-year to a six-month period; and
4. Eliminate motion picture analyst position.

Staff feels that the revised request is appropriate but recommends two additional reductions. First, reduce 09-10 funding for the staff services analyst by half since workload begins primarily when production companies submit their receipts for verification by commission when productions are completed. This position should be funded ongoing starting in the second half of the fiscal year. Second, outreach funding for the credit should be reduced by half from \$50,000 to \$25,000 in 09-10. By the passage of the budget, the first round of credit reservations will have already have been granted and there will only be a need to ramp-up outreach for the FY 10-11 grant process. In future budget years the sub-Committee can evaluate whether an increased level of funding is needed.

ITEM 8660 PUBLIC UTILITIES COMMISSION

The CPUC regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies, in addition to authorizing video franchises.

ISSUE 1: MONITORING OF CAISO'S NEWLY DESIGNED WHOLESALE ELECTRICITY MARKET

The Governor's Budget is requesting \$174,000 and 2.0 positions (PURA) to monitor the California Independent System Operator (CALISO) market after the implementation of a new market design called the Market Redesign and Technology Upgrade (MRTU).

COMMENTS

The CPUC has a statutory mandate to analyze market data and make appropriate recommendations about the proper functioning of newly designed competitive wholesale markets both at the CAISO and in the FERC proceedings. The implementation of MRTU will fundamentally change California's wholesale electricity market, which will directly impact ratepayers in the retail market and have ramifications for the CPUC proceedings involving resource adequacy and procurement.

Scheduled for implementation in April 2008, MRTU aligns California's electricity market with wholesale market designs throughout North America. MRTU will establish an integrated forward market with day ahead trading; a full network model that identifies bottlenecks before schedules actually run; provide for location marginal pricing, which allows least cost decisions about how to fix bottlenecks; and puts new computer systems into place.

LAO COMMENTS

Originally, the state depended on the Electricity Oversight Board to provide oversight of the CAISO. The Board was eliminated in last year's budget and currently, the state relies on the CAISO to provide oversight of its own activities. This proposal would move the CPUC into the position of the only state entity to conduct oversight of the CAISO. Staff feels that the decision of who should fill the absence of the EOB and act as the state's oversight for the electricity markets is a major policy decision that should be made within the larger discussion of an energy reorganization which is currently moving through the policy committee process.

ISSUE 2: OUTSIDE LEGAL COUNSEL AND ECONOMIC CONSULTING

The CPUC is requesting \$2.5 million (PURA Funds) for 2009-2010 in order to contract outside legal counsel and economic consultants to aid the state in ongoing litigation by the CPUC before the Federal Energy Resources Commission which seeks refunds for California consumers in excess of \$1.4 billion for overcharges in long term contracts for electricity sold to the California Department of Water Resources during the 2000-01 energy crisis.

BACKGROUND

In 2002, in the wake of the 2000-2001 energy crisis, the CPUC filed a complaint at FERC challenging the unlawful rates, terms and conditions of 57 long term electricity contracts entered into by DWR. The EOB subsequently filed an identical complaint which was consolidated with the CPUC's complaint, and the EOB was represented by outside counsel.

The PUC is requesting funding for assistance by the same outside legal counsel and economic consultants as expert witnesses in this ongoing litigation before the FERC which seeks refunds for over charges during the 2000 and 2001 energy crisis. Refunds sought for ratepayers in this proceeding are estimated to be in excess of \$1.4 billion.

STAFF COMMENTS

Staff agrees with the CPUC that outside counsel is needed in order for the state to fully pursue refunds for ratepayers for these cases. This request for outside counsel will provide a continuance of expertise in these cases and provide needed levels of representation of consumer interests.

**ISSUE 3: ENERGY EFFICIENCY GOALS AND UTILITY PERFORMANCE
INCENTIVES**

The CPUC is requesting 4 positions and \$461,000 (PURA) to fund four positions to implement the CPUC's Energy Efficiency Strategic Plan and monitor and evaluate the impacts of the utilities energy efficiency programs and portfolios.

BACKGROUND

As the state entity responsible for regulating investor owned utilities, the CPUC is responsible for ensuring that ratepayer funds are spent appropriately for energy generation and transmission, as well as public interest activities such as ratepayer relief and energy efficiency. With their Statewide Energy Efficiency Strategic Plan, the CPUC intends to direct how publicly owned utilities manage their energy efficiency programs so that maximum efficiencies are achieved in both the short and long term; benefiting the ratepayer through increased supply and reduced air quality and GHG emissions from power generators.

The CPUC's *Long Term Energy Efficiency Strategic Plan (Plan)* was developed through a collaborative process involving the CPUC's regulated utilities – Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) (collectively, "IOUs") – and over 500 individuals and organizations working together over an eleven-month period.

This *Plan* sets forth a roadmap for energy efficiency in California through the year 2020 and beyond. It articulates a long-term vision and goals for each economic sector and identifies specific near-term, mid-term and long-term strategies to assist in achieving those goals. Specifically, this plan calls for utilities to expand current energy efficiency program spending into the following ten different areas: commercial; industrial; agricultural; heating/air conditioning; codes and standards; Demand Side Management coordination and integration; workforce education and training; marketing/education/outreach; research and technology; and local governments.

STAFF COMMENT

Many of the strategies identified in their Strategic Action plan, such as workforce development, marketing, and outreach will entail extensive workload as these will be new activities initiated by the CPUC. Staff feels that considering the magnitude of the reforms that the CPUC intends to enact in energy efficiency programs operated by investor owned utilities, a request of four positions is appropriate.

ISSUE 4: RENEWABLE PORTFOLIO STANDARD AND RENEWABLE TRANSMISSION

The CPUC is requesting 3 positions and \$322,000 (PURA) in order to implement the Renewable Portfolio Standard that requires that 33 percent of all energy consumed in California to be generated from renewable sources.

Two of the requested positions will be needed to concurrently address the design and implementation of issues such as: policy development; identification of; least cost renewable resources; rate impact analysis; procurement and transmission planning process.

One position will be required to handle administrative and stakeholder workload generated by this new mandated.

STAFF COMMENT

Established in 2002 under SB 1078, and accelerated in 2006 under SB 107 (Simitian), the RPS obligates investor owned utilities, energy service providers, and community choice aggregators to procure 20 percent of their electricity from renewable resources by 2010. In 2009, the Governor increased the RPS by executive order to 33 percent by 2020.

Concurrent with this proposal to implement the Governor's Executive order, the Legislature is currently in the process of reviewing legislation to place the goals of the Executive Order into statute. Staff feels that this proposal would be appropriate under either directive considering the challenges the state will face when meeting an elevated RPS goal.

ITEM 1100 CALIFORNIA SCIENCE CENTER

The Science Center, the Office of Exposition Park Management, and the California African American Museum (CAAM), are located in Exposition Park, a 160-acre tract in south Los Angeles, which is owned by the state and collectively known as the California Science Center. Its major exhibit facility opened in February 1998. The Science Center provides a series of educational exhibits and conducts educational programs focusing on science and technology. CAAM researches, collects, preserves and interprets for public enrichment, the history, art and culture of African Americans with emphasis on California and the western United States.

ISSUE 1: ADMISSION FEES

The California Science Center does not currently charge admission fees. They do, however, charge \$8 for parking, an admission fee for their IMAX Theatre, and admission fees for special exhibits as appropriate.

In 2004, the Legislative Analysts Office (LAO) recommended a reduction in General Fund (GF) support for the Science Center to be replaced by revenue from an admission fee. The Legislature rejected the proposal, but did ask for a report to provide more information on the potential impact of an admission fee.

The report showed that although the fee would generate revenue, there would also be a corresponding reduction in attendance. That reduced attendance would decrease parking revenues, concession and gifts revenue, and IMAX attendance. While the ranges of potential impact varied based on the theoretical fee (30% to 70% reduction in attendance) the report showed a clear potential for negative, rather than positive impact.

COMMENTS

Since their study in 2005, the Science Center has also observed that when they do paid exhibits, their reduced attendance is in line with the projected reduced attendance from the study.

Additionally, the Science Center has already imposed a \$2 increase on their parking rates to help address funding needs.

The Committee may wish to ask the Science Center to discuss the potential impacts of a fee increase and any changes that may have occurred since the study was completed in 2005.

ITEM 1111 DEPARTMENT OF CONSUMER AFFAIRS

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 255 professions involving approximately 2.4 million professionals. In general, the DCA's Boards and Bureaus provide exams and licensing, enforcement, complaint mediation, and education for consumers.

ISSUE 1: FINANCE LETTER – VEHICLE RETIREMENT AND REPAIR

The Administration proposed reducing the budget for the Vehicle Retirement program by \$3,975,000 and increasing the budget for the Vehicle Repair Assistance program by \$1,975,000. These programs are funded through fees collected at the time of smog checks.

COMMENTS

This request is justified by stating that it brings expenditure authority in line with actual participation in the two programs.

The Vehicle Retirement Program came in significantly under budget in the current year. The Department informed staff that the Air Resources Board (ARB) made a policy decision to not offer all consumers \$1,500 to retire their high polluting vehicles (as was authorized and budgeted for). Only low-income consumers will receive \$1,500 to retire their vehicles beginning July 1, 2009. As such, the budget was largely overstated. The Department specifies this will not impact BAR's ability meet consumer demands for the program. The Committee may wish to ask for further justification on why this decision was made.

In 2006-07 that Consumer Assistance Program repaired nearly 33,000 vehicles through the Repair Assistance Program. In 2007-08 that number increased to 44,154. Though the program was suspended for two months pursuant to the Governor's 7/31/08 Executive Order, the Department reports continued increasing demand.

This data matches up with anecdotal evidence that in hard economic times, many individuals choose to repair their vehicle rather than purchase a new one.

This increased demand supports the Departments request to transfer funds from the Retirement Program to the Repair Assistance Program. The proposal makes these changes permanent. The Committee may wish to ask if the Department plans to continue to carefully monitor this trend to ensure that these budgets are managed properly to maximize the efficiencies of the two programs.

ISSUE 2: ENHANCED FLEET MODERNIZATION PROGRAM

The Administration proposed adding \$4,127,000 (Enhanced Fleet Modernization Sub-account) and 2 positions in order to establish the Enhanced Fleet Modernization Program (pursuant to AB 118 of 2007). This program, when fully implemented, will support off-cycle vehicle retirement and retirement of light-duty and medium-duty trucks.

The proposal projects a need for \$16.4 million and 4.2 positions in 2010-11 and \$18.8 million in 2011-12 to get the Program fully operational.

All funding for this program comes from the Enhanced Fleet Modernization Sub-account, created pursuant to AB 118. This fund receives its revenue from a \$1 increase on vehicle registration fees imposed pursuant to AB 118. As such, this proposal has no General Fund impact.

COMMENTS

This program will increase the number of polluting vehicles eligible for retirement by eliminating the requirement of failing a smog inspection prior to retirement as well as expanding eligibility to include medium and heavy duty trucks. Estimates show this program will remove thousands more high polluting vehicles from the road each year.

This proposal also includes provisional language that allows the Department of Finance to augment the amount available for expenditure to pay for additional off-cycle retirements. Thirty day notification to the Legislature prior to making an augmentation would be required, and the augmentation would have to be in line with both program participation levels, and available revenues from the Enhanced Fleet Modernization Sub-account. This language will allow the program to maximize its ability to get as many high polluting vehicles off the road as quickly as possible.

ITEM 1880 STATE PERSONNEL BOARD

The State Personnel Board (SPB) was established in the California Constitution in 1934. The SPB is responsible for California's civil service system and ensures that system is free from political patronage and that employment decisions are based on merit. SPB provides a variety of recruitment, selection, classification, appellate, goal setting, training, and consultation services to state departments and local agencies.

ISSUE 1: FINANCE LETTER – COURT ORDERED PROGRAM

The Administration proposed increasing reimbursements by \$507,000 and authorizing 2 positions to establish a court ordered concurrent medical quality and disciplinary hearings unit for physicians employed by the CA Department of Corrections and Rehabilitation (CDCR). This request authorizes SPB to be reimbursed up to this amount by CDCR for administering this program for them.

SPB's Appeal Division receives appeals concerning disciplinary action taken against employees within the state civil service system. At the request of the Receiver, the court ordered SPB to develop and implement a plan for conducting "medical quality hearings." The purpose of this process is to ensure individuals knowledgeable about medical procedures would be part of the review process for CDCR physicians having disciplinary actions taken against them related to their medical services.

Upon receipt of an appeal, SPB must obtain 5 neutral, objective physicians to create a peer review panel for evaluating the medical quality issues in question. The panel of physicians will evaluate the evidence regarding quality of medical care at issue and the appropriateness for restricting privileges. There will still be an Administrative Law Judge who presides over the hearing, and issues a decision sufficiency of the evidence and other factors.

COMMENTS

While the initial request provided little detail on the costs of funding the panel of physicians, the Board has since provided a detailed breakdown of the panel costs (\$205,000 of the total request). Funds will be used to contract with a non-profit that specializes in providing peer review services for the medical industry (\$75,000) and payment of the panelists. The Board estimates there will be the need for 6 hearings. With three panelists each receiving \$1,500 per day for an estimated 7 days per hearing, the estimated cost is \$189,000.

Total estimated costs to operate the panels actually exceed the request. CDCR has agreed to cover any costs in addition to the request, though the committee may wish to ask the Department if they will have sufficient reimbursement authority to ensure CDCR covers all their costs to implement this program.

ITEM 8885 COMMISSION ON STATE MANDATES

The Commission on State Mandates (Commission) is responsible for determining whether a new statute, executive order, or regulation contains a reimbursable state mandate on local governments and determining the appropriate reimbursement to local governments from a mandate claim. This budget item appropriates the funding for the staff and operations cost of the Commission and appropriates non-Proposition-98 mandate payments for allocation to local governments by the State Controller.

The January Governor's budget proposed, and the 2009-10 Budget Act funds, expenditures of \$146.6 million (\$143.6 million General Fund) and 12.0 positions. This amount includes \$145 million (\$142 million General Fund) to pay local government reimbursement claims for the cost of implementing state-mandated local programs. The 2009-10 spending amount is \$132.2 million (\$131.0 million General Fund) more than estimated spending in the current year. This increase is due to a one-time cost savings measure in 2008-09, which, in effect, resulted in skipping a year of payment of current mandate claims. This was accomplished through budget trailer bill language that discontinued the practice of paying *estimated* claims and established the process of the State only paying *final* claims. Like last year, the budget also achieves a savings of about \$90 million in 2009-10 from deferral of payment for old (pre-2004) mandate claims – about \$900 million is outstanding, but can be repaid over time. The Governor's Budget also proposed pushing back the annual deadline for the State Controller to pay approved mandate claims from August 15 to October 15 (or 60 days after enactment of a late budget, if that date is later). The payment delay was enacted in the February budget package (*SB 8 X3, Ducheny, Chapter 4, Statutes of 2009-10 Third Extraordinary Session*).

Proposition 1A (of 2004) generally requires the Legislature to suspend any local government mandate for which it does not appropriate money in the annual Budget Act to pay valid claims that are payable at the time the budget is enacted.

ISSUE 1: MANDATE PROGRAMS AND COSTS WILL BE UPDATED IN THE MAY REVISION

The amounts appropriated for mandate reimbursement in the 2009-10 budget were the amounts proposed in the Governor's budget and were based on estimates by the Department of Finance (DOF) at the time that the budget was prepared. Subsequently, in 2009, the Commission has approved the following additional statewide cost estimates for new local government mandates that were not included in the budget:

1. Fire Safety Inspections of Care Facilities (\$631,000).
2. Racial Profiling: Law Enforcement Training (\$9,175,000).
3. Mentally Disordered Offenders: Treatment as Condition of Parole (\$4,872,000).

These three new unbudgeted mandates total \$14.7 million. It should be noted that this amount is for all mandate costs incurred over multiple years since the filing of the initial test claim through 2007-08, and the ongoing annual costs will be considerably smaller. The budget does include anticipated funding for another mandate approved in 2009—Domestic Violence Arrests and Victims Assistance. However, the cost estimate approved by the Commission (on March 27) was larger (\$11.1 million) than the amount included in the budget (\$8.24 million). The Legislative Analyst's Office (LAO) has not yet reviewed these newly-determined mandates. Under existing law, any additional mandate determinations made after March 31 are to be funded in the 2010-11 budget.

Furthermore, the State Controller's Office (SCO) will report shortly on additional local government claims for 2007-08 and earlier costs for ongoing mandates.

It is anticipated that the May Revision will add the new mandates and update the payment amounts for ongoing mandates.

COMMENTS

The Commission, DOF and LAO should update the sub-Committee on the status of mandate determinations and cost estimates for local governments and their potential General Fund impact.

ISSUE 2: ELIMINATION OF LONG-SUSPENDED MANDATES—TRAILER BILL LANGUAGE
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The Administration has proposed trailer bill language affecting a wide variety of statutory provisions in order to delete mandate requirements that have been suspended on an annual basis in the Budget Act for many years. In some cases, these mandates are obsolete or have been superseded or subsumed by other requirements. However, the codified statutory mandates remain in place, which can lead to confusion. In some instances, local governments choose to continue to perform suspended mandate activities. Generally, the proposed Trailer Bill language would make these current (inactive) mandate requirements optional, eliminating the need for annual suspension in the Budget Act.

The table below lists the long-suspended mandates that the Administration proposes to delete or make discretionary.

Mandate:	Code	Sections	First Suspended
Handicapped Voter Access Information (Chapter 494, Statute of 1979)/Partially Repealed-Made Optional	Elections	12280	1990
Deaf Teletype Equipment (Chapter 1032, Statute of 1980)	Government	23025	1990
Filipino Employee Surveys (Chapter 845, Statute of 1978)	Government	50087	1990
Adult Felony Restitution (Chapter 1123, Statute of 1977)	Penal	1203	1990
Pocket Masks (Chapter 1334, Statute of 1987)	Penal	13518.1	1990
Domestic Violence Information (Chapter 1609, Statute of 1984)	Penal	13701, 13710, 13730	1990
Local Coastal Plans (Chapter 1330, Statute of 1976)	Public Resources	30001	1993
Personal Alarm Devices (Section 3401 (c) of Title 8 of the California Code of Regulations)	Regulations	3401	1990
Structural and Wildland Firefighter Safety Clothing and Equipment (Section 3401 to 3410, Inclusive, of Title 8 of the California Code of Regulations)	Regulations	3401-3410	1990
Victims' Statements-Minors (Chapter 332, Statute of 1981)	Welfare & Institutions	656.2	1990
SIDS Autopsies (Chapter 955, Statute of 1989)	Government	27491.41	2003
Very High Fire Hazard Severity Zones (Chapter 1188, Statute of 1992)	Government	51178.5, 51179	2003
SIDS Training for Firefighters (Chapter 1111, Statute of 1989)	Health & Safety	1797.193	2003
SIDS Contacts by Local Health Officers (Chapter 268, Statute of 1991)	Health & Safety	123740	2003
Sex Crime Confidentiality (Chapter 502, Statute of 1992; Chapter 36, Statute of 1994, (First Extraordinary Session)	Penal	293	2003
Elder Abuse, Law Enforcement Training (Chapter 444, Statute of 1997)	Penal	13515	2003
Law Enforcement Sexual Harassment Training (Chapter 126, Statute of 1993)	Penal	13519.7	2003
Sex Offenders: Disclosure by Law Enforcement Officers (Chapters 908 and 909, Statute of 1996)	Penal	290.015, 290.016, 290.019	2003
Inmate AIDS Testing (Chapter 1579, Statute of 1988)	Penal	7510, 7512, 7515, 7516, 7518, 7520-7523, 7551, 7554	2003
Extended Commitment, Youth Authority (Chapter 267, Statute of 1998)	Welfare & Institutions	1800, 1801, 1801.5	2003
Prisoner Parental Rights (Chapter 820, Statute of 1991)	Penal	2625	2005
Missing Persons Report (Chapter 1456, Statute of 1988; Chapter 59, Statute of 1993)	Penal	14205-14207, 14210, 14213	2005
Grand Jury Proceedings (Chapter 1170, Statute of 1996, et al.)	Penal	914, 933, 933.05, 938.4	2005
Airport Land Use Commission Plan (Chapter 644, Statute of 1994)	Public Utilities	21670, 21670.1	2005

COMMENTS

The Administration's proposal to make these changes in a budget trailer bill would make significant changes in many different policy areas without a review by the relevant policy Committees. This is significant because mandate requirements often are not independent and self-contained, but rather are embedded within broader statutory provisions. Consequently, such changes can require detailed analysis and review in order to avoid unintended consequences. While permanent statutory change probably is preferable to annual suspension, there is no fiscal difference between the two approaches.

Restoration of Suspension Item. As an alternative to the numerous and diverse statutory changes proposed by the Administration, the sub-Committee could adopt the alternative of restoring the annual suspension item to the 2009-10 Budget Act. This action would be without prejudice to permanent statutory changes, which could be considered in policy legislation.

ISSUE 3: CSBA v. CALIFORNIA COURT DECISION

This lawsuit challenged a number of provisions enacted in AB 138 (*Chapter 72, Statutes of 2005, Committee on Budget*)—the mandates trailer bill for the 2005-06 budget. In March, the Court of Appeal published its decision in this case, which now has become final. The court's decision struck down or modified several provisions of AB 138 that had resulted in state savings. However, there are alternative approaches that the Legislature should consider in order to reduce the future fiscal impact of this decision on the state in a manner consistent with the court's decision. These issues are discussed briefly below.

Decision Narrows the AB 138 Expansion of the Reimbursement Exception for Legislation Implementing Ballot Measures

The California Constitution's mandate reimbursement provisions apply to mandates imposed on local governments by the Legislature or a state agency. Accordingly, the state is not obligated to reimburse local governments for the costs of complying with federal mandates or with mandates imposed by the voters through ballot measures. An issue addressed by AB 138 and the *CSBA* decision is the extent to which reimbursement is required for the costs of complying with legislation implementing a ballot measure.

Prior to AB 138, the Legislature had limited the ballot measure exception solely to duties "expressly included in" a ballot measure. AB 138 extended the reimbursement exception to mandates imposed in legislation if they were "necessary to implement" or "reasonably within the scope" of a ballot measure. The court limited the AB 138 extension to legislative mandates "necessary to implement" a ballot measure (striking the broader "reasonably within the scope of" language), or that involve only *de minimus* implementation costs.

Legislature May Not Require the Commission to Set Aside or Reconsider Specific Decisions

AB 138 required the Commission to set aside or reconsider its prior mandate reimbursement determinations for the following local government mandates (the decision also affects the School Accountability Report Card education mandate):

- ***Open Meetings Act (1988) and Brown Act Reform (2001)***. These mandates impose requirements on local governments (and K-14 education entities) to post agendas for meetings of their legislative body ahead of time, provide an opportunity for public testimony, and provide the public with information about closed sessions and any decisions adopted in closed sessions. AB 138 repealed these statutory provisions, directed the Commission to set aside its prior decisions, and reenacted the provisions of the Open Meetings Act and Brown Act Reform as implementing legislation for

Proposition 59, a 2004 ballot measure that created a constitutional right of public information—"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."

- ***Mandate Reimbursement Process I (1986)***. This mandate includes tasks necessary to comply with the statutory processes to prepare and submit mandate reimbursement claims. AB 138 directed the Commission to reconsider its prior decision that established the procedures and requirements as a reimbursable mandate. In a related matter, and subsequent to enactment of AB 138, the Commission received a new test claim for costs to comply with post-1986 mandate reimbursement process requirements—this claim was designated as Mandate Reimbursement Process II.

Complying with AB 138, the Commission set aside its Open Meetings Act and Brown Act Reform decisions and determined that these duties no longer required reimbursement because they now fell under the expanded exception for legislation necessary to implement or reasonably within the scope of a ballot measure. The Commission reached a similar conclusion in its reconsideration of its prior decision in Mandate Reimbursement Process I. It found that this mandate (and also the mandates in the Mandate Reimbursement Process II test claim) were necessary to implement or reasonably within the scope of Proposition 4 (1979) which imposed the constitutional mandate reimbursement requirement.

Court Decision Invalidates Actions Regarding these Mandates. The CSBA decision struck down the provisions of AB 138 requiring the Commission to set-aside its prior decisions on the Open Meetings Act and Brown Act Reform mandates and requiring the Commission to reconsider its Mandate Reimbursement Process I decision. Consequently, the prior decisions on these mandates will be reinstated. The court explicitly recognized that the Legislature could establish a general process for the Commission to revisit prior decisions in light of changes in law or circumstance, but concluded that legislation requiring the Commission to revisit specific individual decisions violates the separation of powers doctrine because the commission functions in a quasi-judicial capacity.

More than \$22 million of Annual Savings Now at Risk

As a result of AB 138 and the Commission's actions, costs to implement the Open Meetings Act and Brown Act Reform mandates have not been reimbursable since 2005, and the costs of complying with the mandate reimbursement process have not been reimbursable since 2006. Reimbursement costs in 2004-05 for the Open Meetings Act and Brown Act Reform mandates were \$15 million and were \$7 million for. Presumably, these costs would continue to grow over time and additional costs could have been added for Mandate

Reimbursement Process II. The *CSBA* decision will make the state liable for at least a significant portion of the past and ongoing costs of these mandates.

State Likely on the Hook for Past Open Meetings Costs. The state is likely to have to reimburse local governments (and schools) for their past costs of complying with the Open Meetings Act and Brown Act Reform mandates now that those mandates are effectively reinstated by the court decision (pending formal action by the Commission). The bill for these costs through 2008-09 could total more than \$60 million. However, because the Commission still needs to act, and local governments must submit claims, these bills probably won't come due until 2010-11.

Mandate Reimbursement Process Mandate Suspensions. The state's potential liability for the past costs of the Mandate Reimbursement Process I mandate is less certain. AB 138 did not revise those statutory requirements and merely required the Commission to revisit its prior decision. Pending the Commission's decision, the 2005 Budget Act suspended this mandate. Furthermore, subsequent budget acts have continued the suspension through 2008-09 (there is no suspension in the 2009-10 Budget Act). Consequently, the state may not be liable for costs of this mandate from 2005-06 through the current year. However, there was no suspension of the Mandate Reimbursement Process II "mandates" because the Commission had never determined those requirements to constitute a reimbursable mandate. Therefore, if the Commission now determines that this test claim does include reimbursable mandates, the state will be liable for reimbursement of past costs.

COMMENTS

Options for Legislative Action

The Legislature has a number of options to reduce the state's future mandate reimbursement exposure due to the *CSBA* decision.

Establish a Reconsideration Process. Consistent with the court decision, the Legislature should establish a reconsideration process for the Commission. For example, DOF and other state agencies, local governments, and possibly the Legislature could request that the Commission open a reconsideration proceeding regarding a prior decision, based on changes in relevant law or circumstances, including the passage of ballot measures (since the court affirmed the AB 138 reimbursement exception for necessary ballot measure implementation mandates).

A reconsideration process would give the Commission the ability to revisit its decisions regarding the Open Meetings Act and Brown Act Reform mandates and Mandate Reimbursement Process I to determine the extent, if any, to which those mandates are *necessary* to comply with voter-approved measures. It also

would enable the Commission to revisit its previous decision that state law establishing the Sexually Violent Predator Program is a state-reimbursable local mandate in light of the voters' passage of Jessica's Law in 2006 (this mandate currently costs about \$13 million annually). The Legislature directed the Commission to reconsider this decision in AB 1398 last year, but the CSBA decision effectively negates that action.

Make Open Meetings Mandates an Optional "Safe Harbor" for Proposition 59 Compliance. The Legislature could eliminate future reimbursement costs for the Open Meetings Act and Brown Act Reform mandates by revising those mandates to make them optional. The Legislature also could include a finding that, in the Legislature's view, local governments that follow with these procedures would meet the public access requirements of Proposition 59 with respect to meetings of their legislative bodies. In as much as local governments already are familiar with and comply with the current open meetings mandates, they would have an incentive to continue to do so voluntarily, rather than formulate new procedures on their own to comply with Proposition 59.

Continue to Suspend the Mandates Process Mandate? The suspension of this mandate could be continued, but would raise a number of difficult issues. The annual suspensions that have been in place for the last few years were overshadowed to a large degree because the Commission had determined that the mandate was no longer a reimbursable one. Consequently, suspension was not required in the absence of funding. Furthermore, local governments were challenging the Commission's reconsideration and therefore may have wanted to maintain the mandate in place. However, suspension raises the question of how the state can continue to require local government to follow the mandate claims process if the requirements of that process are suspended. An argument could be made that this mandate really is voluntary since local governments are not required to seek reimbursement. Aside from being regarded as disingenuous by local governments, this argument really addresses whether the mandate is a true mandate—if it is voluntary, then it is not a mandate (if the Commission were to determine so) and suspension is meaningless.

- The Commission, DOF, and LAO should comment on each of the options discussed above, advise the Sub-Committee as to whether they would recommend their adoption either as presented or with modifications, and also identify any additional options that they have identified.

ITEM 8940 MILITARY DEPARTMENT

The Military Department is responsible for the command, leadership and management of the California Army and Air National Guard and five other related programs. The purpose of the California National Guard is to provide military service supporting this state and the nation. The three missions of the California National Guard are to provide: (1) mission ready forces to the federal government as directed by the President, (2) emergency public safety support to civil authorities as directed by the Governor, and (3) support to the community as approved by proper authority. The Military Department is organized in accordance with federal Departments of the Army and Air Force staffing patterns. In addition to the funding that flows through the State Treasury, the Military Department also receives Federal Funding directly from the Department of Defense.

The Governor's Budget proposed expenditures of \$143.5 million (\$44.7 million General Fund) and 828.6 positions for the Military Department. Following is a three-year summary of positions and expenditures (dollars in thousands):

	Positions			Expenditures		
	2007-08	2008-09	2009-10	2007-08	2008-09	2009-10
	747.6	803.2	828.6	\$132,275	\$132,578	\$143,462

2009-10 Budget Act. The budget adopted in February for the Military Department differed from the Governor's Budget in that funding related to the following proposals (Issues 1 – 3) was removed. In addition, \$2.2 million in funding related to the Governor's proposed Emergency Response Initiative was removed.

ISSUE 1: NATIONAL GUARD EDUCATION BENEFIT PROGRAM

The Governor's budget proposed \$1.8 million General Fund in 2009-10 to establish a California National Guard (CNG) Education Benefit Program. With full implementation of the program, the annual cost would be \$3.7 million beginning in 2010-11.

COMMENTS

The CNG Education Benefit program would fund student fees and books at Universities and Colleges in California through a grant paid directly to the school. This program would be eligible to any CNG member who meets the following criteria:

- An active member of the CNG in good standing
- Has been an active member in good standing of the CNG for two years
- Maintains a 2.0 GPA or higher

If the CNG member/college student fails to complete the college course, or fails to "withdraw" from a course within the established timeframe, that individual would be responsible for paying for the college course fee(s).

The student aid commission and the Military department will administer the program with accredited education institutions within the state. Program managers will track the academic progress of students supported through this program and maintain records of course completions and diplomas granted as a result of this program.

California is one of the only states that do not provide an educational benefit to members of its National Guard. Fifty-one states and territories provide some type of state college tuition assistance to the members of their state's National Guard and 26 states/territories provide a military income tax exemption or credit to their National Guard members.

In 2003, the National Guard Assumption Program for Loans for Education (NGAPLE) was established to encourage persons to enlist in the CNG. The program became effective in 2004-05 and the Legislature subsequently authorized up to 100 NGAPLE warrants in the Student Aid Commission's budget. The NGAPLE program was allowed to sunset on July 1, 2007.

In recent years, the administration has made requests for tuition assistance funding. Similarly, the department has sponsored policy legislation to provide educational assistance in various forms. The Legislature has rejected these proposals due to a variety of concerns about the administration of the program and its failure to target assistance to those with demonstrated financial need.

ISSUE 2: SERVICE MEMBER CARE

The Governor's budget proposed \$1 million General Fund in 2009-10 and 8 positions to support mental health needs of CNG members and their families.

COMMENTS

This proposal includes 8 Service Member Care positions (4 mental health providers and 4 Chaplains) that would be split into two geographic teams providing coverage throughout the state. These positions will perform mental health prevention services, training, intervention, and reintegration assistance during pre- and post-mobilization activities. The goal is to enhance mission readiness, mitigate risk of injury or death, and ensure our commitment to the well being and fitness of service members.

Since 9-11 CNG members have responded to continued deployments within California, to other states, and overseas, including the combat zones of Iraq and Afghanistan. The Military department continues to experience demands for support that directly impacts service members and their families. Unlike peace officers and active duty service members, who have an extensive support structure to deal with stress, grief, and loss, the California Military Department has no full-time support system for service members.

The LAO recommend the Legislature reject this proposal to fund these positions with General Fund dollars and instead direct the administration to explore the use of funds from Proposition 63, the Mental Health Services Act (MHSA). According to the LAO, it appears that the staff proposed would engage in activities consistent with how Proposition 63 funding has been used in the past and the requirements of the act. Currently, over 14 different state departments use funds from Proposition 63 to fund administrative activities such as providing training and coordination of mental health services. For example, the Department of Veterans Affairs funded two staff at a cost of \$496,000 in 2007-08 to support the development of a statewide veteran mental health referral network at the county level for all entities that may become access points for veterans and their families seeking mental health assistance. Funding for state administrative costs cannot exceed 5 percent of the total annual funds available from Proposition 63; however, there is currently \$24 million available to fund additional state administrative activities.

The Administration has reported that the Department of Mental Services has raised the following concerns with the possibility of utilizing Prop 63 funds for this request, 1) The California Military Department is proposing direct funding from the MHSA to provide mental health services to member and families in conflict with the MHSA requirement that mental health services funded under the Act be delivered by counties under contract with the state, 2) It would appear that few if any of the proposed services are to be directed at either of the MHSA's primary target groups, and 3) While the MHSA allows up to 5% of the annual MHSA revenues to be spent on administrative costs, historically direct services have not been supported from this funding source.

ISSUE 3: CAPITAL OUTLAY PROPOSALS

The Governor's budget proposed \$2.8 million (\$1.2 million General Fund and \$1.6 million Federal Funds) in 2009-10 for the following Military Department capital outlay proposal:

1. Statewide Latrine Renovations (\$1.1 Federal Fund/\$730,000 General Fund)
2. Statewide Kitchen Kitchen Renovations (\$366,000 Federal Fund/\$334,000 General Fund)
3. Advanced Plans and Studies (\$125,000 Federal Fund/\$ 125,000 General Fund)

COMMENTS

Statewide Latrine Renovations. Many state-owned public facilities operated by the Military Department as armories do not meet the requirements of the Americans With Disabilities Act (ADA) of 1990. Most are over 50 years old and have never been updated. Restrooms are not ADA compliant. Armories are used by the public, which exposes the possibility of litigation to require ADA compliance. Additionally, many armories do not have women's showers.

Statewide Kitchen Renovations. Many state-owned public facilities operated by the Military Department as armories do not comply with the requirements of California Title 24 and fire code and thus cannot be used for cooking and food preparation. As mentioned above, armories are used by the public for such purposes as wedding receptions, after school programs, voting, emergency shelters, ect.).

Advanced Plans and Studies. According to the Military Department, recent experience has shown that the current process it uses to develop the scope and cost of its projects often results in underestimating costs. The department is proposing to conduct design charrettes to confirm project scope and costs.

ITEM 8950 DEPARTMENT OF VETERANS AFFAIRS

The California Department of Veterans Affairs (CDVA) promotes and delivers benefits to California veterans and their families. More specifically, the Department:

- Provides California veterans and their families with aid and assistance in presenting their claims for veterans' benefits under the laws of the United States.
- Provides California veterans with beneficial opportunities through direct low-cost loans to acquire farms and homes.
- Provides the state's aged or disabled veterans with rehabilitative, residential, and medical care and services in a home like environment at the California Veterans Homes.

This mission is based upon the philosophy that benefit programs for veterans fulfill necessary, proper, and valid public purposes by promoting patriotism, by recognizing and rewarding sacrifice and service to country, and by providing needed readjustment assistance to returning veterans and their families, whose lives were interrupted when they responded to their country's call to military service. A significant portion of the mission of the CDVA is to provide the state's aged or disabled veterans with rehabilitative, residential, and medical care and services in a home-like environment at the California Veterans Homes.

CDVA currently operates the Veterans Home of California with campuses at Yountville (Napa County), Barstow (San Bernardino County), Chula Vista (San Diego County), Lancaster (Los Angeles County) and Ventura (Ventura County). CDVA is also constructing five new veterans homes. These new homes will be constructed at West Los Angeles (Los Angeles County), Fresno (Fresno County), and Redding (Shasta County).

The Governor's Budget proposed expenditures of \$393 million (\$206.8 million General Fund) and 2,047.2 positions for the CDVA. Following is a three-year summary of positions and expenditures (dollars in thousands):

	Positions			Expenditures		
	2008-09	2009-10	2007-08	2008-09	2009-10	
2007-08	1,762.9	2,047.2	\$289,314	\$362,580	\$392,993	

ISSUE 1: GLAVC VETERANS HOMES ACTIVATION PHASE III

The 2009-10 Budget Act includes \$18.5 million General Fund and 181.6 positions to complete construction, activate business operations, and begin admitting veterans to the Veterans Home of California at Greater Los Angeles/Ventura County (VHC-GLAVC). This proposal grows to \$29.3 million General Fund and 356.7 positions in 2010-11.

COMMENTS

VHC-GLAVC has one main campus in West Los Angeles (WLA) and two satellite facilities, one in Lancaster and one in Ventura. This proposal comprises Phase III staff and budget to complete construction, pre-activation for VHC-GLAVC WLA, and activate business operations and admissions to both satellite facilities. This funding will allow for the operation of Residential Care for the Elderly (RCFE) in each of the satellite facilities, and ensure the start-up operations for the Adult Day Health Care (ADHC) and the Skilled Nursing Facility (SNF) are in compliance with relevant laws and regulations.

This proposal assumed that construction for the Ventura facility would be complete by February 2009, Construction for the Lancaster facility would be complete by March 2009, and construction for the WLA facility would be complete by March 2010. Following are summaries of the levels of care that will be provided at each of the VHC-GLAVC facilities and the corresponding opening date assumed in this proposal:

- **ADHC** – This is new to the Veterans Homes Continuum of Care options. ADHC is a therapeutically oriented out-patient day program that will provide qualified veterans with day-time health maintenance and restorative services for the purposes of maintaining the member's capacity for self-care. The ADHC level of care will be offered at the Lancaster and Ventura locations. This proposal assumed start dates of April 2010 for both locations.
- **RCFE** – This is the lowest level of licensed care in the veterans homes long-term continuum of care available to members who have a health conditions which requires medical service. RCFE care provides members with daily living services and ambulatory support from licensed non-nursing staff. The RCFE level of care will be offered at all three of the VHC-GLAVC locations. This proposal assumed start dates of May 2009 (Ventura), June 2009 (Lancaster), and June 2010 (WLA).

- **SNF** – This level of care is a setting that provides continuous skilled nursing or rehabilitation services for mental or physical conditions, including around the clock nursing observation, assessment or intervention, as well as physician, dietary, pharmaceutical, and therapeutic services. The SNF level of care will be offered the WLA location. This proposal assumed start dates of June 2010. Additionally, the WLA location will provide Memory Care services which is also referred to as SNF Demetia care. Memory Care programs include facility perimeter security and specilized staff to maximize opportunity for veterans with cognitive impairment to live in a safe, private, dignified environment.

According to the CDVA, consruction timelines have not been consistent with the timeframes assumed in this proposal. As such, the department has experienced delays in hiring phase II staff approved by the Legislature in the current year's budget (150 positions/\$11.8 million). Additionally, the CDVA reports that opening dates will be delayed.

ISSUE 2: MEMBER FEE INCREASE

The Governor's budget proposed an amendment to Military and Veterans Code related to member fees for residents of the Veterans Homes of California. The proposed amendments are projected to result in additional revenue of approximately \$2.8 million. These amendments were not included in the 2009-10 Budget Act.

COMMENTS

In 1994 a fee schedule for members was established based upon level of care. While the cost of care has steadily increased since 1994, the only change in members fees was in 2001 when the Domiciliary fee was reduced from 55 to 47.5 percent. The current fee structure is as follows:

- Domiciliary (DOM) and RCFE: 47.5 % up to a cap of \$1,200
- Intermediate Care Facility (ICF): 65% up to a cap of \$2,300
- SNF: 70% up to a cap of \$2,500

According to the CDVA, the following proposed changes to member fees will make fees more equitable based upon the level of care and services provided:

- **Remove of income caps for all levels of care.** The current structure caps the amount that each member pays. The caps, however, lead to inequities in that poorer residents pay a higher percentage of their total income. This change will impact approximately 17 percent of residents.
- **Add a separate fee structure for the RCFE level of care in which the income contribution percentage is set to 55 percent.** The RCFE is a higher level of care than DOM. Members living in RCFE are provided more services than Dom residents and less services than ICF residents. Therefore, the CDVA's proposed fee for RCFE residents is in accordance with the concept of increasing participation rates as members live in higher levels of care.
- **Require non-veteran spouses to pay fee based on the federal monthly per diem for a veteran, not to exceed 90 percent of total income.** Currently, non-veteran spouses pay the same member fees as veterans but they are not eligible for common reimbursement streams such as Federal Per Diem or Aid and Attendance. This increases the cost that the state must absorb to provide care to non-veteran members. For example, by being ineligible for federal per diem, the state does not

receive approximately \$1,032 per month in federal funds at the DOM level and \$2,233 per month at the ICF, SNF and acute levels of care.

Staff notes that, while there may be merit in addressing the current fee structure for members of California's veterans homes, the proposed changes raise the following concerns, 1) The possibility that removal of the caps would result in residents paying fees greater than the cost of care, and 2) Increased financial burden placed on current residents (particularly non-veteran spouses) who entered the homes with financial plans that were based on the current fee structure.