Trailer Bill Analysis Package

* Please note that all analysis contained in this packet are in **DRAFT** form.

SENATE THIRD READING
SB 70 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: Provides the necessary statutory changes in the area of education in order to enact modifications to the 2010-11 and 2011-12 Budget Acts. Specifically, this bill:

K-12 Provisions:

1) Provides a revenue limit deficit factor of 19.892 percent to reflect a $106.6 million deficit for county offices of education (COEs). Provides a revenue limit deficit factor of 19.608 percent to reflect a deficit of $7.7 billion for school districts. These statutory factors are created to establish state intent to repay the K-12 per-pupil reductions in the future, including foregone cost-of-living adjustments (COLA's).

2) Defers an additional $2.1 billion in K-12 funds from 2011-12 to 2012-13. Specifically, the bill shifts $1.3 billion in March 2012 payments and $763 million in April 2012 payments to August 2012. This schedule is shorter than the 13 month deferral proposed in the Governor's budget. With the addition of this deferral, the state now defers over $10 billion or one-fifth of Proposition 98 funding from one year to the next.

3) Extends various flexibility options to school districts for an additional two years, including categorical flexibility, instructional materials purchase and adoption requirements, routine and deferred maintenance requirements, surplus property, class size reduction, instructional minutes and local budget reserve requirements.

4) Makes statutory changes conforming to zero funding for the Emergency Repair Program in 2011-12.

5) Appropriates $80.8 million in one-time Proposition 98 funds to support mental health related services for special education students in 2010-11. Funds are appropriated on a one-time basis based upon the relative costs of services provided.

6) Extends until 2014-15, authorization for new schools, the majority of which are charter schools, to access flexible categorical program funding on par with existing schools.

7) Appropriates $5 million from the General Fund to augment the Charter School Revolving Loan Fund, which makes low-interest, start-up loans to new charter schools in order to meet the purposes of their charters.

8) Establishes a zero percent COLA for K-12 programs in 2010-11. Though the actual COLA of 1.67% is not provided, it is applied to the deficit factors established in this measure.

9) Provides $2.3 million in federal funds ($1.5 million in Title VI and $781,000 in Title II) for 2010-11 for the California Longitudinal Pupil Achievement Data System (CALPADS). Require first priority for the funds to support the transfer of knowledge from the CALPADS

contractor to staff of the California Department of Education (CDE) and any other relevant state agency. Require CDE, as a condition of receiving funds to administer CALPADS, to ensure LEAs are provided with the standardized templates and data necessary for meeting the requirements established in the School Accountability Report Card.

10) Applies an 8.9 percent reduction to categorical programs for basic aid districts in 2010-11 and 2011-12 commensurate to the revenue limit reduction rate for other school districts in 2010-11 and 2011-12. Specify the intent to restore these reductions at the same time, and in direct proportion to, restoration of revenue limit reductions. Basic aid districts are districts in which local property taxes equal or exceed the district's revenue limit. These districts keep their "excess taxes" in lieu of receiving state revenue limit funding. Since basic aid districts do not receive revenue limit funding, thus far they have not been affected by the ongoing prior year reductions to revenue limit funding.

11) Authorizes a statutory appropriation for the K-3 Class Size Reduction program for 2011-12. The statute authorizes the Superintendent of Public Instruction to certify the funding needed for the program in 2011-12 to ensure full funding for the program. This action is consistent with action taken in the 2010-11 Budget Act.

12) Reduces ongoing Proposition 98 funding for special education by about $13.1 million in 2011-12 and backfill with one-time Proposition 98 savings from various programs to cover 2010-11 program adjustments.

13) Suspends the statutory division of Proposition 98 funding among K-12 educational agencies, community colleges, and other state agencies, and instead conform the division of funding based upon actual budget appropriations in 2011-12.

14) Requires the state to adjust the Proposition 98 calculation so that any shift in local property taxes previously received by redevelopment agencies has no effect on the Proposition 98 minimum guarantee in 2011-12.

<u>Child Care and Development:</u>

1) Lowers the maximum allowable income to receive subsidized child care to 70 percent of State Median Income (SMI) from 75 percent effective July 1, 2011. The reduction applies to all child care services, including preschool.

2) Deprioritizes child care services for 11- to 12-year olds, with the exception of children who are in child protective services, at risk of abuse or neglect, homeless, disabled, or in non-traditional hours of care, effective July 1, 2011. Prioritize 11- to 12-year olds who lost child care for the waitlists or any open spaces in before and after school programs, and allows those 11- and 12- year olds to attend a before and after school program at a school other than their own within their districts.

3) Reduces the reimbursement rate for license-exempt providers from 80 percent to 60 percent of the regional market rate, effective July 1, 2011.

4) Increases family fee schedule by 10 percent, but continue existing policy that the family fees cannot exceed 10 percent of the family's total income, effective July 1, 2011.

5) Provides $60 million from one-time funds for the April through June 2011 period to fund CalWORKs Stage 3.

Higher Education:

1) Requires the University of California and California State University to provide a preliminary report by June 1, 2011 on how the segments will address their respective $500 million budget reductions, taking into account input provided by stakeholders. The final report that details the implementation of all budget solutions will be required by September 1, 2012.
2) Requires the University of California to enroll 209,977 students during the 2011-12 academic year, which is the same number UC was required to enroll during the 2010-11 academic year. Requires the California State University to enroll 331,716 students during the 2011-12 academic year, which is 8,157 fewer students than the university was required to enroll during the 2010-11 academic year, as they did not meet their enrollment target.
3) Increases the community college student fee from $26 per unit to $36 per unit.
4) Defers an additional $129 million of community college apportionment payments from January through May to October 2012, and provide hardship exemption for districts that do not have sufficient cash resources to sustain the deferral.
5) Extends the community college categorical flexibility to 2014-15 to be consistent with K-12 categorical flexibility.
6) Amends existing student information privacy statute to allow California Community Colleges to share student data as permitted in the federal Family Educational Right and Privacy Act of 1974 (FERPA).
7) Requires that all returning Cal Grant recipients have their income and assets information verified as currently required for new recipients.
8) Requires the California Student Aid Commission to certify by October 1 of each year all participating higher education institutions' latest Three-Year Cohort Default Rate as most recently reported by the United States Department of Education.
9) Requires all institutions of higher education, with more than 40 percent undergraduate students borrowing federal student loans, to maintain their Three-Year Cohort Default Rate below 24.6 percent for the 2011-12 academic year, in order to continue meeting eligibility to participate in the Cal Grant Program for initial and renewal awards. For 2012-13 academic year, and every academic year thereafter, institutions are to maintain their Three-Year Cohort Default Rate below 30 percent.
10) Reduces by 20 percent the maximum renewal Cal Grant A or Cal Grant B awards, if an institution becomes ineligible due to their Three-Year Cohort Default Rate exceeding the established threshold, and recipients choose to renew their Cal Grant awards at the ineligible institution.

11) Requires the Legislative Analyst's Office to review this policy and potential alternatives by January 1, 2013, and report to the policy and fiscal committees of the Legislature with recommendations.

12) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

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FN:

SENATE THIRD READING
SB 71 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: This is the Resources Trailer Bill for the Budget Act of 2011. It makes various changes necessary to implement the Budget Act of 2011. Specifically, this bill:

1) Ensures the continuing cleanup of Santa Susanna Field Laboratory (per existing statute) and allows for the CEQA process in the new agreements with the federal agencies to occur while prohibiting the transfer of toxic lands to the state.

2) Requires the California Public Utilities Commission to report by January 10 of every year on its interactions with a newly established foundation, the "CPUC Foundation." including any endorsements, funding, and actual and proposed expenditures by the commission, its officers or its staff with the CPUC Foundation.

3) Authorizes the State Water Board and the regional water quality control boards to include the regulatory and programmatic costs for the development of water quality control plans ("basin plans") as recoverable costs.

4) Requires the Governor to submit a zero-based fiscal year budget and programmatic review for 2012-13 for all state agency programs that implement water and ecosystem restoration activities in the Sacramento-San Joaquin Delta (Delta), including those related to the CALFED Bay-Delta Program.

5) Eliminates state support for the California Network of Fairs including the annual transfer from the General Fund. Repeals provisions related to the fairs including reporting, auditing, and program management, as well as technical changes necessary to remove state support for the program.

6) Provides for a monthly transfer from the Motor Vehicle Fuel Account to the General Fund in order to implement a reduction to the Off-Highway Vehicle program.

7) Provides criteria for determining which units of the State Park System will be closed in order to implement the approved State Parks reduction. Provides liability assurances for parks that are closed, partially closed and those with service reductions.

8) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

FISCAL EFFECT: Enactment of this bill results in over $65 million in General Fund solutions, as assumed in the 2011-12 Budget Bill.

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FN:

SENATE THIRD READING
SB 72 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: Makes statutory changes necessary to implement Human Services-related portions of the 2011-12 budget. Specifically, this bill:

1) Adoptions:

   a) Delays, for one additional year, to July 1, 2012, implementation of provisions enacted by AB 2488 (Chapter 386, Statutes of 2006) related to disclosure of personal information between adoptees and their biological siblings. Declares intent for implementation to continue in the interim to the extent possible.

2) Child Support Services:

   a) Suspends, for one year, the county share of child support funds that are recovered by the government in cases where the custodial family has received cash assistance. Those funds will instead be retained by the state. This change results in $24 million GF savings in the 2011-12 fiscal year.

3) California Work Opportunities and Responsibility to Kids (CalWORKs) Program:

   a) Effective June 1, 2011 or 90 days after enactment of this legislation, whichever is later, reduces the number of months parents or caregiver relatives can receive aid from 60 to 48. This change is anticipated to result in $156 million ongoing, annual General Fund (GF) savings. Also makes related changes, including deletion of self-sufficiency reviews and revised time limit and sanction policies that would otherwise take effect on July 1, 2011 as enacted by AB X4 8 (Chapter 8, Statutes of 2009-10 Fourth Extraordinary Session);

   b) Effective June 1, 2011 or 90 days after enactment of this legislation, whichever is later, reduces the Maximum Aid Payment in effect on July 1, 2009 by an additional 8 percent. As a result, maximum grants for a family of three in a high-cost county would be lowered from $694 to $638 per month. This change is anticipated to result in $304 million ongoing, annual GF savings;

   c) Effective June 1, 2011 or 90 days after enactment of this legislation, whichever is later, further reduces, by 5 percent increments (for a maximum total reduction of 15 percent), grants for children in cases without an aided adult who have received assistance for more than 60, 72, and 84 months, respectively. This change is anticipated to result in $100 million ongoing, annual GF savings;

   d) Lowers funding for these purposes in the counties' "single allocation" by $427 million GF in the 2011-12 fiscal year. Correspondingly, extends and expands upon exemptions from welfare-to-work requirements for parents of very young children (i.e., one child up

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to the age of 35 months or two children under the age of six years). Also grants counties flexibility to redirect between and among specified funding for employment assistance, substance abuse treatment, or mental health services during that same year;

e) Suspends for one year the case management services and sanctions otherwise available under the CalLearn program for pregnant and parenting teenagers. These teenagers would instead be eligible for regular welfare-to-work services that are available in their counties. They would also continue to be eligible for supplements or bonuses related to progress in school, as specified. These changes are anticipated to result in $45 million GF savings in the 2011-12 fiscal year;

f) Amends the state's current policy of disregarding the first $225 of earned income and 50 percent of each dollar earned beyond $225 when calculating a family's monthly grant. Instead disregards the first $112 of earned income and then 50 percent of all other relevant earnings. As a result, some families who currently have qualifying earnings would have their grants reduced. This change is anticipated to result in $95 million ongoing, annual GF savings;

g) Makes cost-neutral changes to expand the state's participation in an existing subsidized employment program and align the program more closely with operation of a related program that existed under the federal American Recovery and Reinvestment Act of 2009's (Public Law 111-5) Emergency Contingency Fund. As a result, the state would participate in half of the costs of the subsidized employment participant's wages, up to the amount that the state would instead have paid for the family's assistance grant; and,

h) Delays to April 1, 2014 (from April 1, 2013), the date by which the Work Incentive Nutritional Supplement (WINS) program shall be fully implemented. Delays to October 1, 2014 (from October 1, 2011), the date by which the Temporary Assistance Program (TAP) must begin. Further, delays statewide implementation of a CalWORKs county peer review process to no later than July 1, 2014.

4) In-Home Supportive Services (IHSS):

a) Requires applicants for and recipients of IHSS to obtain certification from a licensed health care professional, as specified, declaring that the applicant or recipient is unable to perform one or more activities of daily living independently, and that without one or more IHSS services, the applicant or recipient is at risk of placement in out-of-home care. This change is anticipated to result in $120 million ongoing, annual GF savings;

b) Requires the Department of Health Care Services to assess and determine whether it would be cost-efficient for the state to exercise the Community First Choice Option made available under section 1915(k) of the federal Social Security Act (42 U.S.C. Sec. 1396n(k). This new state plan option becomes available October 1, 2011. States that take up the option receive a six percentage point increase in federal matching payments for costs associated with the covered home and community-based services programs. This change is anticipated to result in $128 million ongoing, annual GF savings; and,

c) Authorizes counties to establish IHSS Advisory Committees that submit recommendations to the county board of supervisors on the preferred mode or modes of service to be utilized in the county. Under existing law, these Advisory Committees are instead required. This change is anticipated to result in $1.4 million ongoing, annual GF savings.

5) Medication Dispensing Pilot Project & Related Triggers:

   a) Requires the Department of Health Care Services to identify individuals who receive Medi-Cal benefits on a fee-for-service basis and who are at high risk of not taking their medications as prescribed. To the extent necessary, also requires the Department to procure automated medication dispensing machines to be installed in participants' homes and monitored as indicated. Further requires the Department to report on and evaluate the pilot project. Also allows the Department to terminate the pilot project under specified circumstances. These changes are anticipated to result in $140 million ongoing, annual GF savings; and,

   b) If the Department of Finance determines that data reported regarding the pilot project does not demonstrate the ability to achieve annualized net savings of $140 million GF (after offsetting administrative costs), the director shall notify the Legislature by April 10, 2012, and request the passage of legislation by July 1, 2012 that provides alternative options for achieving any additional savings needed to reach this target. If the pilot and any subsequent legislation requested by the Department of Finance are not anticipated to result in $140 million annualized GF savings, requires the Department of Social Services to implement an across-the-board reduction in IHSS services beginning October 1, 2012, with specified exceptions.

6) Long-Term Care Ombudsman Program:

   a) Includes costs associated with the Long-Term Care Ombudsman Program among the authorized uses of funds in the State Health Facilities Citation Penalties Account.

7) Supplemental Security Income/State Supplementary Payment (SSI/SSP) Program:

   a) Effective June 1, 2011 or 90 days after enactment of this legislation, whichever is later, reduces to the minimum amount required by federal maintenance of effort requirements, as specified, the SSP portion of grants for individuals. As a result, the maximum combined SSI/SSP grant for most individuals would be reduced from $845 to $830. This change is anticipated to result in $177 million ongoing, annual GF savings.

8) Urgency:

   a) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

FISCAL EFFECT: Makes statutory changes to achieve a total of over $1.7 billion in savings assumed in the 2011-12 Budget Act.

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FN:

SENATE THIRD READING
SB 73 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 Vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: Contains necessary statutory changes to amend appropriations contained in the 2011 Budget Act for the Department of Developmental Services (DDS), Department of Health Care Services (DHCS), and the Managed Risk Medical Insurance Board (MRMIB). Specifically, this bill:

1) DHCS Proposals

   a) Emergency Services Funding. This bill discontinues one of two existing options for counties to assess fines on criminal offenses, relating to alcoholic beverages and violations of the vehicle code, for the collection of revenue to support emergency departments, emergency physicians, and county emergency services. These funds are often referred to as "Maddy Funds" and this bill specifically addresses the second optional assessment added to state law through 2006 legislation authored by Senator Alarcón. Specific to these fines, this bill ends the county option and instead requires all counties to assess these fines and deposit them into a newly established state fund to support Medi-Cal services. The bill preserves funding for counties for pediatric trauma care. This bill extends the existing sunset from 2014 to 2016.

   b) Extension of Medi-Cal Managed Care Gross Premium Tax. As proposed by the Governor, AB 1422 (Bass), Chapter 157, Statutes of 2009 extended the gross premium tax on insurers to Medi-Cal Managed Care Plans for the purpose of raising additional revenue for the State's Healthy Families Program. Current law includes a sunset of July 1, 2011 and this bill extends that sunset to January 1, 2014.

   c) 250% Disabled Program. As proposed by the Governor, this bill temporarily rescinds a monthly premium increase in the 250% Working Disabled Program as it would violate the existing maintenance of effort requirement under the federal American Recovery and Reinvestment Act (ARRA), thereby subjecting the state to substantial penalties.

   d) Roger's Amendment Sunset Extension. As proposed by the Governor, this bill extends the sunset for one year on the state statute that implements the federal "Roger's Amendment." Enacted as part of the Deficit Reduction Act of 2005, the Roger's Amendment sets a limit on the amount that a Medicaid (Medi-Cal) managed care plan can reimburse a non-contracted hospital that provides emergency services to one of the plan's members. It requires hospitals to accept, as payment in full, no more than the amounts that it could collect under the fee-for-service Medicaid program. In 2008, California enacted Welfare & Institutions Code § 14091.3, which sets the rate methodology for non-contracted emergency inpatient services and non-contracted post-stabilization services, thereby implementing the federal Roger's Amendment. Current statute requires the Department of Health Care Services to report to the Legislature on the implementation of these rates by August 1, 2010 and the statute sunsets on January 1, 2012.

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e) Provider Rate Reductions. As proposed by the Governor, this bill implements a 10% rate reduction to Medi-Cal providers. These reductions vary by provider type, due to the varying statuses of prior provider payment reductions, some of which have been enjoined by various Court actions and some partially restored. As such, the budget enacts an additional percentage reduction that varies depending on this history, but when combined results in a 10% reduction. These reductions affect most Medi-Cal providers, including, but not limited to: physicians, optometrists, hearing aid dispensers, emergency and nonemergency medical transportation providers, home health providers, and pharmacies.

The State is undergoing a rate study to determine the impact that this and the following two rate reductions would have on network adequacy. This bill gives the Department the authority to implement a rate reduction of less than 10% should the rate study results not support a full 10% reduction.

f) Hospital Rate Reductions. As proposed by the Governor, and consistent with the provider rate reductions, this bill implements a 10% rate reduction for seventeen non-contract hospitals for which the prior rate reduction was enjoined by a court ruling. Once implemented, these seventeen hospitals will experience a rate reduction equal to that already in place for other hospitals.

g) Long-Term Care Rate Reductions. As proposed by the Governor, and consistent with the rate reductions for providers and hospitals, long-term care facilities would receive rate reductions of up to 10%. Long-term care facilities that would experience rate reductions as a result of the budget act include, but are not limited to: stand-alone skilled nursing facilities (aka: "1629 facilities"), nursing facilities level A, Distinct Part Nursing Facilities level B, Distinct Part Pediatric Subacute, and Intermediate Care Facilities-Developmentally Disabled (ICF-DD). 1629 facilities will receive an approximately 2.4% increase in 2011-12 prior to the 10% reduction, thereby resulting in a net reduction of 7.6%.

h) Managed Care Drug Rebates. As proposed by the Governor, this bill requires the state to collect rebates from pharmaceutical companies for drugs dispensed through Medi-Cal Managed Care Plans, as recently permitted under federal health care reform.

i) Maximum Annual Dollar Cap on Hearing Aids. As proposed by the Governor, this bill places a maximum annual dollar cap of $1,510 on hearing aids for adult Medi-Cal beneficiaries.

j) Soft Cap on Physician and Clinic Visits. This bill institutes a "soft cap" on the number of physician office and clinic visits for physician services provided by a physician, or under the direction of a physician, to seven visits per year. This cap does not apply to: pregnancy care, mental health care, children, and long-term care in a skilled nursing facility or ICF-DD. Physician and clinic visits exceeding seven per year must be certified by the physician attesting that the care met at least one of the following: 1) will prevent the need for emergency department care; 2) will prevent the need for inpatient hospital care; 3) will avoid disruption to ongoing medical therapy; or, 4) constitutes a diagnostic work-up in progress that would prevent the need for hospital care. This bill requires physicians to maintain such certifications in the physician's office or clinic, subject to audit and inspections by the Department of Health Care Services. This soft cap applies to both managed care and fee-for-service Medi-Cal.

k) Elimination of Coverage of Cough & Cold Products. As proposed by the Governor, this bill eliminates Medi-Cal coverage of over-the-counter cough and cold products for adults.

l) Elimination of Coverage of Oral Enteral Nutrition Products. As proposed by the Governor, this bill eliminates Medi-Cal coverage of over-the-counter enteral nutrition products that are consumed orally, for adults. Medi-Cal would still cover these products for adults who must be tube-fed. This bill authorizes the Department of Health Care Services to provide exemptions for patients for whom these products prevent serious disability or death.

m) Medi-Cal Mandatory Co-payments. As proposed by the Governor, this bill, dependent on approval of a federal waiver, institutes mandatory co-payments for all Medi-Cal enrollees, including children, people in long-term care facilities, and pregnant women, as follows:

i) Physician & Clinic Visits:	$5
ii) Pharmacy:	$5 (brand-name), $3 (generic)
iii) Hospital Emergency Rooms:	$50 (emergencies and non-emergencies)
iv) Hospital Inpatient Care:	$100 per day ($200 maximum per admission)
v) Dental Care:	$5

n) Suspension of County COLA. This bill suspends the COLA for the 2011-12 budget year for counties for their administration of eligibility functions for the Medi-Cal Program.

o) Elimination and Reform of Adult Day Health Care. As proposed by the Governor, this bill eliminates Adult Day Health Care (ADHC) as a Medi-Cal optional benefit. This bill also establishes guidelines for the Department to make funds included in the budget act available to assist with transitioning ADHC beneficiaries to other services and for more narrowly-defined services to be provided under a new program, Keeping Adults Free from Institutions (KAFI).

p) Pharmacy Reimbursement Rates. This bill establishes legislative intent to enact legislation by August 1, 2011 that provides for the development of a new reimbursement methodology using a pricing benchmark that reflects actual acquisition costs.

2) DDS Proposals

a) Lanterman Developmental Center Closure Transitions. Makes the necessary changes to allow for consumers transitioning from the Lanterman Developmental Center, to receive Medi-Cal managed care health plan services from any plan operating in the various counties, if the consumer chooses to enroll, and requires that plans be paid by a full-risk capitation payment.

3) MRMIB Proposals

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a) Healthy Families Program Premium Increases. As proposed by the Governor, this bill increases family monthly premiums in the Healthy Families Program. These increases will be implemented only upon receipt of federal approval and the bill authorizes the MRMIB Board to issue emergency regulations to implement these changes. The new premiums are as follows:

i) 150-200% federal poverty level (FPL):

(1) $30 per child, $90 family maximum; or

(2) $27 per child, $81 family maximum (Family Value Pack).

ii) 200-250% FPL:

(1) $42 per child, $126 family maximum; or

(2) $39 per child, $117 family maximum (Family Value Pack).

b) Healthy Families Program Co-payment Increases. As proposed by the Governor, this bill increases mandatory co-payments on hospital services. The co-payments will increase from $15 to $50 for emergency room visits (and waived if the beneficiary is hospitalized), and from $0 to $100 per day (with a maximum of $200) for hospital inpatient services. These increases do not change the existing maximum annual co-payment of $250 per family. These co-payment increases are dependent on:

i) being consistent with co-payments implemented in the Medi-Cal program for children; and,

ii) the State receiving federal approval for these changes to both programs. The bill authorizes the MRMIB Board to issue emergency regulations to implement these changes.

c) Healthy Families Program Vision Services Reduction. The bill authorizes the MRMIB Board to issue emergency regulations, between March 1, 2011 and June 30, 2012, to modify vision benefits, including, but not limited to, restrictions on providers, benefits, or products and materials, in order to achieve savings adopted in the 2011 Budget Act.

4) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

URGENCY: This bill contains an urgency clause in order to make the necessary statutory changes to implement the Budget Act of 2011 at the earliest possible time.

FISCAL EFFECT: This bill implements policy changes to achieve approximately $1.8 billion in General Fund savings, as contained in the 2011-12 Budget package.

Analysis Prepared by: Andrea Margolis / BUDGET / (916) 319-2099

FN:

SENATE THIRD READING
SB 74 (Budget and Fiscal Review Committee)
As Amended March 10, 2011
2/3 vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: Contains necessary statutory and technical changes to implement changes to the Budget Act of 2011. Specifically, this bill:

1) Outlines the process and parameters for the Department of Developmental Services (DDS) to develop purchase of service best practices. The best practices developed shall not endanger the health and safety of consumers or compromise the State's ability to meet its commitment for federal funding and must be submitted in a report by no later than May 15, 2011 for Legislative approval.

2) Increases Regional Center accountability and transparency through several measures.

   a) Requires Regional Center Boards to adopt written policies to review and approve contracts of $250,000 or more, before entering into the contract.

   b) Adopts the federal requirement, which declares certain individuals or entities ineligible to be Regional Center vendors if convicted of prescribed crimes or have been found liable for fraud or abuse in any civil proceeding within the previous 10 years.

   c) Requires Regional Centers to maintain and post on its Internet Web site information such as request for proposals and contract awards, service provider rates, negotiated rates, audits and their IRS form 990.

   d) Requires the Department of Social Services and Department of Public Health to notify the DDS of any administrative action initiated against a licensee serving consumers with developmental disabilities.

   e) Restricts for the 2011-12 fiscal year and subsequent years, Regional Center audits to be conducted by the same accounting firm more than five times in every 10-year period. Additionally, it specifies that an entity receiving payments in more than or equal to $250,000 but less than $500,000 from one or more Regional Centers shall contract with an independent accounting firm for an audit or review of its financial statements. When the amount exceeds $500,000 the entity shall obtain an independent audit.

   f) Provides the DDS and Regional Centers the authority to institute legal proceedings against a Third Party payer, as a result of an injury in which the Third Party payer is liable. Recovery of reasonable value for services provided is similar to Third Party payer language contained within the Medi-Cal Program administered by Department of Health Care Services. Lastly, the language establishes procedures for the enforcement of a lien by the DDS or Regional Center upon a judgment or award in favor of a consumer for a Third Party injury. This change effectively underscores that DDS and Regional Centers are the payers of last resort when Third Party payment is liable.

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g) Requires the Department to adopt emergency and other regulations to establish standard conflict-of-interest reporting requirements regarding Regional Center board members, directors, and identified employees. Each Regional Center must submit a conflict-of-interest policy to the Department by July 1, 2011 and post the policy online by August 1, 2011.

h) Requires all Regional Center contracts or agreements with service providers in which rates are determined through negotiations between the Regional Center and the Service Provider, to expressly require that not more than 15% of Regional Center funds be spend on administrative cost. It also specifies that direct service expenditures are those costs immediately associated with the services to consumers being offered by the provider. Similarly, it requires that all contracts between the Department and Regional Centers spend no more than 15% of all funds appropriated through the Regional Center's operations budget on administrative costs.

3) Makes the appropriate date changes to extend the 4.25% reduction to Regional Center Operations and Purchase of Service Payments. The bill also extends the dates for measures adopted to allow for provider relief such as the suspension of staffing ratios and expertise; modification of personnel requirements, functions, qualifications, staff training requirements; and prescribed annual reviews and reporting requirements. As in prior years, temporary modifications may not affect the health and safety of a consumer, impact the availability of federal funds, or violate licensing or labor laws or other provisions of Title 17. These changes are applicable until June 30, 2012.

4) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

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FN:

SENATE THIRD READING
SB 75 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 Vote

SENATE VOTE: Vote not relevant

SUMMARY: Contains necessary statutory changes to amend appropriations contained in the 2011 Budget Act for the Department of Health Care Services (DHCS). Specifically, this bill:

1) Shift of Proposition 10 Funds to Medi-Cal. This bill implements a shift of $1 billion in Proposition 10 reserves to the Medi-Cal program to support medical services for children 0 – 5 years of age. The bill specifies that, of this $1 billion, $50 million is to come from the State Children and Families Commission reserves and $950 million is to come from County First 5 Commissions, by way of each county commission transferring 50% of its reserves to the State by no later than June 30, 2012. The bill exempts the state's smallest, rural counties (those with less than $600,000 in annual Proposition 10 revenue). This bill also makes findings and declarations establishing the fact that this action does not in any way violate the existing Proposition 10 statute, particularly as it pertains to the non-supplantation requirement, in light of the state's fiscal emergency and inability to maintain funding for core medical services for young children at this time.

2) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

FISCAL EFFECT: This bill implements the necessary policy changes to achieve $1 billion in General Fund savings, as contained in the 2011-12 Budget package.

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FN:

SENATE THIRD READING
SB 76 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: Contains necessary statutory changes to amend appropriations contained in the 2011 Budget Act for the Department of Mental Health (DMH). Specifically, this bill:

1) Proposition 63 Fund Shift. This bill implements a shift of $862 million in Proposition 63/MHSA (Mental Health Services Act) reserves to the State for support of the following mental health programs administered by the DMH:

   a) $183.6 million for the Mental Health Managed Care (MHMC) program, beginning July 1, 2011, based on a formula to be determined by the State in consultation with the California Mental Health Directors Association (CMHDA);

   b) $98.6 million for mental health services for special education students, as required by "AB 3632" (for 2011-12 costs), upon completion of the distribution of funds for MHMC;

   c) $579 million for the Early Periodic Screening Testing & Treatment Program (to be allocated to counties on a quarterly basis, upon completion of the distribution of the first 50% of funding for County MHSA services).

2) MHSA State Administration Reductions. This bill reduces the State Administration cap on MHSA funds from 5 to 3.5% and makes numerous reductions in state staff, eliminates the review of County MHSA Plans by both the DMH and the Oversight & Accountability Commission, and makes other changes to the program to achieve savings at the state level.

3) MHSA County Allocations. The bill specifies that MHSA funding for counties will be distributed as follows: 1) the first 50% of the funding (up to $488 million) upon completion of the distribution of funds for AB 3632 services, beginning August 1, 2011; and 2) the second 50% on a monthly basis by April 30, 2012.

4) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

URGENCY: This bill contains an urgency clause in order to make the necessary statutory changes to implement the Budget Act of 2011 at the earliest possible time.

FISCAL EFFECT: This bill implements the policy changes necessary to achieve $862 million in General Fund savings, as contained in the 2011-12 Budget package.

Analysis Prepared by: Andrea Margolis / BUDGET / (916) 319-2099

FN:

16

SENATE THIRD READING
SB 77 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: Makes various changes to state laws to implement provisions relating to redevelopment in the 2010-11 Budget Agreement. Specifically, this bill:

Addresses the elimination of redevelopment agencies (RDAs); establishment and duties Successor Agencies; establishment and duties of Oversight Boards; use of property tax revenues that would otherwise have gone to RDAs; and other matters as described more fully below.

Redevelopment Agencies:

Redevelopment Agencies would no longer exist under the provisions of the bill as of July 1, 2011. In addition, as of the effective date of the adoption of the legislation, activities of RDAs would be curtailed and an orderly "wind-down" process initiated. Specifically:

1) As part of the process of reducing RDAs activity prior to their elimination, the bill would, among other restrictions, prohibit an RDA from:

   a) issuing new or expanded debt of any type (except emergency refunding bonds, under certain conditions);

   b) making loans or advances or grants or entering into agreements to provide funds or financial assistance;

   c) executing new or additional contracts, obligations or commitments;

   d) amending existing agreements or commitments;

   e) selling or otherwise disposing of existing assets;

   f) acquiring real property for any purpose by any means;

   g) transferring or assigning any assets, rights or powers to any entity;

   h) accepting financial assistance from any public or private source that is conditioned on the issuance of debt;

   i) adopting or amending redevelopment plans or making new findings with respect to blight;

   j) entering into new partnerships, imposing new assessments, or increasing staff or compensation; and,

   k) other actions that would result in ongoing commitments.

2) Requires RDAs to continue to make all scheduled payments for enforceable obligations (generally obligations with the force of law, defined further below), perform obligations established pursuant to enforceable obligations, set aside required reserves, preserve assets, cooperate with Successor Agencies (agencies established to take over certain RDA duties, defined further below), and to take all measures to avoid triggering a default under an enforceable obligation. Would also require the RDAs to prepare a preliminary enforceable obligation payments schedule, containing all payments obligated to be made through December 2011, and provide this to the county auditor-controller within 60 days of the effective date of this bill. This schedule would be reviewed by the county auditor-controller, the State Controller and the Department of Finance. The bill would require that unencumbered RDA funds be conveyed to the county auditor-controller for distribution to the taxing entities in the county, including cities, counties, a city and a county, school districts and specified special districts.

3) Extends the time period allowed for challenges to the validity of an RDA's bonds or other obligations or to agency and legislative body determinations and findings issued or adopted after January 1, 2011. These challenges could be brought two years following approval of the action, as opposed to the current 60 day and 90 day review periods.

4) Requires the county auditor-controller to complete a financial audit of each RDA in the county by November 1, 2011 in order to establish each agency's assets, liabilities, pass-through payment obligations to other taxing entities, the amount and terms of indebtedness, and to certify the initial Recognized Obligation Payment Schedule (defined below). The audits are to be submitted to the State Controller by November 15, 2011.

Successor Agencies:

Successor Agencies would be established under the bill as of July 1, 2011, and would typically be the city, county, or city and county that established the RDA. Each Successor Agency would be responsible for maintaining payments on enforceable obligations and could, under certain and specific circumstances, continue or complete certain projects. Specifically:

1) Establishes Successor Agencies to the RDAs effective July 1, 2011 that would, except in certain situations, such as those involving an RDA based on a joint powers authority, be the entity that created the redevelopment agency. If no local agency elects to be the Successor Agency, a designated local authority would be formed, whose three members would be appointed by the Governor.

2) Requires Successor Agencies to make payments on legally enforceable obligations using property tax revenues when no other funding source is available or when payment from property tax revenues is required by an enforceable obligation. Successor Agencies would be responsible for preparing on a semi-annual basis the Recognized Obligation Payment Schedule that would set forth a schedule of obligated payments including the date, amount, and source of funds for each payment.

3) Requires the Successor Agencies' Recognized Obligation Payment Schedule to be certified by an external auditor approved by the county auditor-controller, and approved by the Oversight Board (as described below), the State Controller and the Department of Finance. The first Recognized Obligation Payment Schedule would be submitted by December 15,

2011. The Recognized Obligation Payment Schedule would be established pursuant to the identification of enforceable obligations, which are obligations that were entered into by the RDA and are legally enforceable.

4) Defines enforceable obligations for Successor Agencies to include, but not limited to:

   a) bonds, including debt service, reserves, or other required payments;

   b) loans borrowed by the agency for a lawful purpose including loans from the Low and Moderate Income Housing Fund;

   c) payments required by the federal government;

   d) pre-existing obligations to the state or obligations imposed by state law;

   e) legally enforceable payments to agencies' employees, including pension obligations and other obligations conferred through a collective bargaining agreement;

   f) judgments and settlements entered into by a court or arbitration, retaining appeal rights;

   g) legally binding contracts that do not violate the debt limit or public policy; and,

   h) contracts necessary for administration of the agency, such as for office space, equipment and supplies, to the extent permitted.

   Enforceable obligations would not include any agreements, contracts, or arrangements between the city, county, or city and county that created the RDA and the former RDA.

5) Requires Successor Agencies to take control of all assets, properties, contracts, books and records, buildings and equipment of the RDAs on July 1, 2011. Successor Agencies are to dispose of RDAs' assets as directed by the Oversight Board with the proceeds transferred to the county auditor-controller for distribution to taxing agencies within the county. Governmental facilities, such as roads, school buildings, and fire or police stations would be conveyed to the appropriate public jurisdiction. The bill would require the Successor Agencies to compensate the taxing agencies for the value of property and assets retained by the Successor Agencies in an amount proportional to the taxing agencies' share of the property tax. The value of any assets retained by the Successor Agencies would be at market value as determined by the county assessor for the 2011 property tax lien date, unless some other agreement is reached between the parties.

6) Authorizes Successor Agencies to:

   a) Complete <u>approved development projects</u>, constituting projects where construction, site remediation, environmental assessment, or property acquisition is required pursuant to an <u>enforceable obligation</u> between the former RDA and parties other than the entity that created the RDA and either (1) substantial performance under the agreement has taken place prior to July 1, 2011 or (2) the Oversight Board, and two of three of (i) Department of Finance; (ii) State Treasurer; (iii) State Controller, determine that it would be beneficial to continue the project even if there had not been substantial performance, based on benefits to the taxing agencies, special or unique circumstances, or for the completion of multiphase projects.

b) Continue retained development projects, constituting other projects not involving or related to an enforceable obligation. These would consist of projects planned by the former RDA prior to its dissolution that the Successor Agency (city, county or city and county) wishes to continue by using its own funds. Such projects would, in general, constitute projects that the Oversight Board would otherwise direct the Successor Agency to terminate because the project does not qualify as an approved development project.

7) Allows Successor Agencies, to the extent necessary to fulfill an enforceable obligation of a former RDA to provide financing for an approved development project, to pledge property tax revenue or enter into an agreement with other taxing agencies in the RDA territory for the repayment of financing provided by a state conduit issuer that is authorized to provide such outside financing. These actions would be subject to prior written approval by the Oversight Board, and two of three of (i) Department of Finance; (ii) State Treasurer; (iii) State Controller.

8) Authorizes the Successor Agencies to prepare for the Oversight Board a proposed administrative budget that includes estimated administrative expenses, proposed sources of payment and proposals for services to be provided, but does not include funding for the retained development projects, which must be funded from a Successor Agency's own budget. The administrative budget for the Successor Agency would be funded from a continued tax increment equal to the greater of $250,000 or 5% of the property tax allocated to the Successor Agency for the 2011-12 fiscal year. This would decline to 3% for each fiscal year thereafter. The Successor Agency can employ staff and officers of the RDA provided the total compensation does not exceed the amount paid in 2010 unless approved by the Oversight Board.

Oversight Boards:

Oversight Boards established under the bill would be required to approve various actions by the Successor Agencies, including the Recognized Obligation Payment Schedule, various approved or retained development projects, and any pledge of property taxes. Specifically:

1) Establishes a seven-member Oversight Board for each Successor Agency that would generally consist of the following representatives: (i) one member appointed by the County Board of Supervisors; (ii) one member appointed by the mayor of the city that formed the RDA; (iii) one member appointed by the largest special district; (iv) one member appointed by the county superintendent of education; (v) one member appointed by the Chancellor of the California Community Colleges; (vi) one member of the public appointed by the county board of supervisors; (vii) one member appointed by the mayor or the chair of the board of supervisors from the largest representative employee organization of the former RDA. Special appointment rules would apply if a county, county and city, or joint powers authority formed the RDA. Beginning July 1, 2016, one Oversight Board will be formed in each county.

2) Requires Oversight Boards to approve the following actions of the Successor Agencies:

a) establishment of new repayment terms for outstanding loans where such terms have not been established prior to July 1, 2011;

b) issuance of refunding bonds;

c) set-aside of reserves as required by bond indentures;

d) merger of project areas,

e) acceptance of federal or state grants that are conditioned upon the provision of matching funds in an amount greater than 5%;

f) approval to have projects deemed to be approved or retained development projects;

g) establishment of the Recognized Obligation Payment Schedule;

h) requests to hold portions of moneys in the housing fund in order to pay recognized obligations related to housing; and,

i) requests to pledge or enter into an agreement for the pledge of property tax revenues to provide financing for an approved development project.

3) Requires that the Oversight Boards direct the Successor Agencies to:

a) dispose of all assets and properties except those deemed to be part of approved development plan expeditiously and in a manner aimed at maximizing value;

b) cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations;

c) transfer housing obligations and low and moderate set-aside funds to the applicable entity;

d) negotiate compensation agreements with taxing agencies for retained development projects;

e) terminate any agreement between the former RDA and any public entity in the county which obligates the former RDA to provide funding for debt service or other payments if in the best interest of the taxing entities;

f) determine whether any contract, payments or agreements between the former RDA and private parties should be dissolved or renegotiated based on taxing entities best interests; and,

g) submit repayment schedules for repayment of amounts borrowed from the housing fund.

4) Establishes that all Oversight Board actions are subject to review by the Department of Finance. The Department of Finance will notify the Oversight Board within 72 hours of the action that it wishes to review the decision. In the event the Department of Finance decides to

review the action, it will have 10 days to either approve the action or return it to the Oversight Board for reconsideration.

Property Tax Revenues:

Property Tax Revenues that went to former RDAs would be used for the other following purposes: continue pass-through payments to schools and local governments; provide $1.7 billion in resources for program realignment in 2011-12; fund outstanding former RDA debt and other enforceable obligations; provide for Successor Agencies' administrative costs; and provide funding for education and local governments of about $200 million in the budget year and $1.9 billion annually thereafter. Specifically:

1) Creates the Public Health and Safety Fund, the Redevelopment Property Tax Retirement Fund, and the Redevelopment Property Tax Trust Fund. Property tax revenues associated with each former RDA in each county will be deposited in the Redevelopment Property Tax Trust Fund which will be administered by the county auditor-controller. Estimates of the amounts to be allocated and distributed from this account will be provided to the Department of Finance semi-annually.

2) Requires the county auditor-controller to determine the amount of property tax increment that would have been allocated to each RDA and to deposit that amount in a Redevelopment Property Tax Trust Fund. The county auditor-controller is charged with administering this fund for the benefit of holders of agency debt, the taxing agencies that receive pass-through payments, and the beneficiaries of the Public Health and Safety Fund.

3) Requires the county auditor-controller to allocate funds from the Redevelopment Property Tax Fund in the following order:

   a) Local agencies, school districts and community college districts in the amount that would have been received by such agencies as their share of the property tax base and that would have been paid pursuant to statutory and contractual pass-through agreements;

   b) During Fiscal Year 2011-12 only, to the Public Health and Safety Fund an amount not to exceed $1.7 billion dollars on an aggregate basis statewide. Proportional funding of deposits to the Public health and Safety Fund from each Successor Agency is required for (i) continuation of an approved development project where there has not been substantial performance or (ii) new debt financing;

   c) Successor Agencies for payments listed in the Recognized Obligation Payment Schedule;

   d) Successor Agencies approved administrative costs required to be paid from former RDA tax increment revenue; and,

   e) Cities, the county, schools, community college districts, and non-enterprise special districts.

Other Matters:

Other matters addressed in this bill include legislative intent regarding future local economic development activities, hardship borrowing by Successor Agencies, consideration of existing labor contracts, continuation of housing activities, and treatment of additional funding for K-12 education. Specifically:

1) Allows for the continuation of housing activities by Successor Agencies, which would be permitted to assume responsibility for housing obligations and to use the existing balance in the low and moderate income housing fund set-aside for these purposes. If a Successor Agency chooses not to assume the housing activity responsibilities, the funds would be transferred to the local housing authority or to the Department of Housing and Community Development.

2) Authorizes a city or a county or a city and a county that formerly had an RDA, to borrow available funds up to 2 percent of the total tax increment received by the former RDA, in order to avert bankruptcy, mitigate the impacts of potential reduction in core services (such as police and fire), or to meet an urgent need to fund a current project. Such borrowing may occur upon application to the county auditor-controller and is subject to various terms mutually agreed upon.

3) Expresses the intent of the Legislature to provide local governments with the means and tools to further economic development and employment opportunities in economically distressed areas. In particular, efforts would focus on areas with significant constraints on development, such as brownfields and former military bases, and endeavor to foster green technology, alternative technology, and low and moderate income housing.

4) Provides that that the terms of existing memoranda of understanding with employee organizations representing former RDA employees would remain in force until June 30, 2011 unless a new agreement is reached. The Successor Agency will become the employer of all employees of the former RDA upon its dissolution and will assume all obligations under any existing memoranda of understanding then in force.

5) Specifies that beginning for fiscal years 2012-13, the amounts of additional property tax received by school districts, county offices of education, charter schools and community college districts, as a result of the elimination of RDAs, would be in addition to the Prop 98 minimum funding guarantee. These amounts (as well as amounts going to other taxing agencies) would increase over time as enforceable obligations expire. Expands the use of pass-through revenues that can be used for educational facilities to also include expenditures for land acquisition, facility construction, remodeling, maintenance or deferred maintenance.

Urgency Clause:

1) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

FISCAL EFFECT: This legislation will result in $1.7 billion in additional funding as part of the 2011-12 budget.

Analysis Prepared by: Mark Ibele / BUDGET / (916) 319-2099

FN:

SENATE THIRD READING
SB 78 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: The Public Safety trailer bill contains necessary statutory and technical changes to implement changes to the Budget Act of 2011. Specifically, this bill:

1) Requires the Administrative Office of the Courts (AOC) to retain an independent consultant to review the California Case Management System and provide a copy of the assessment to the Legislature. Additionally, the AOC would be required to ensure that any flaws, defects, or risks identified by the independent assessment be remedied during the warranty period.

2) Provides that all Public Contract Code (PCC) provisions related to state agencies or departments apply to the state judiciary, beginning Oct. 1, 2011, but does not subject the branch to oversight by the Department of General Services or any other state entity. Additionally the PCC:

   a) exempts trial court construction from PCC requirements;

   b) requires the Judicial Council to report to the Legislature on all contracts, amendments and vendors;

   c) requires adoption of a contracting manual, by January 1, 2012, that uses the same policies and procedures as the State Administrative Manual and the State Contracting Manual;

   d) requires the Legislative Analyst's Office to conduct an analysis of costs and delivery methods used in the construction of trial courts as compared to other similar state projects; and,

   e) requires the Auditor to assess compliance with these new judiciary PCC provisions.

3) Removes the Inspector General and other employees of his or her office as peace officers, except for those employees whose primary duties are conducting investigations of the Department of Corrections and Rehabilitation, Division of Juvenile Justice, or Board of Parole Hearings.

4) Repeals the Trial Court Conservatorship program.

5) Maintains the court security fee at $40, on every conviction for a criminal offense, until July 1, 2013 at which time the fee would be reduced to $30.

6) Allows the Department of Justice to charge General Fund clients for legal services.

7) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

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FN:

SENATE THIRD READING
SB 79 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote.

SENATE VOTE: Vote not relevant

SUMMARY: Makes various changes to state laws to implement revenue provisions of the 2011-12 Budget Agreement. Specifically, this bill:

1) Establishes mandatory Single Sales Factor income apportionment for purposes of California's corporation tax and changes the manner in which the location of sales of services and intangibles are assigned for purposes of the corporation tax, as described below:

   a) Corporations that have income attributable to sources both inside and outside of California must divide or apportion this income to California and other jurisdictions based on prescribed formulas. California has two principal methods of apportioning income for corporation tax purposes:

      i) Single Sales Factor apportionment requires that a corporation compute its California income by multiplying its total income everywhere by the proportion California sales are of total sales; and,

      ii) Four Factor apportionment requires a corporation to compute the proportion California sales, property and payroll are of total sales, property and payroll, respectively. The arithmetic average of the factors (with the sales factor weighted twice) is then multiplied by the corporation's total income to arrive at California income (certain corporations with most of their business receipts from agricultural, extractive, savings and loan, banking and financial activities must use a Three Factor formula based on sales [weighted once], property and payroll).

   Under current law, for tax years beginning January 1, 2011, apportioning corporations (except for the specific industries noted above) are allowed to annually elect Single Sales Factor apportionment or, alternatively, remain on the Four Factor formula. The statutory change in this bill would eliminate the option of remaining on the Four Factor Formula and require all corporations (except for those specific industries noted above) to use Single Sales Factor apportionment for tax years beginning on and after January 1, 2011.

   b) Apportioning corporations are required to assign sales to California and to other jurisdictions based on certain criteria. Under current law, corporations which do not elect or are not eligible to elect Single Sales Factor under the corporation tax for purposes of income apportionment, assign sales of services and intangibles based on cost of performance. Thus, under current law, corporations which remain on the Three Factor formula or Four Factor formula would assign sales of other than tangible personal property to California if the income-producing activity is performed in this state or, in cases where the income-producing activity occurs both in and outside of California, if a greater proportion of the income producing activity is produced in California than in any other state, based on cost of performance. This bill would remove the cost of performance criterion for the assignment of sales. Instead, these sales would be assigned to California based on the following market-based criteria:

i) Sales of services would be assigned to California if the benefits of the service were received in this state;

ii) Sales of intangible property would be assigned to California if the property were used in this state;

iii) Sales of the sale, lease, rental or licensing of real property would be assigned to California if the real property were located in this state, and

iv) Sales from the rental, lease or licensing of tangible personal property would be assigned to California if the property were located in this state.

The mandatory Single Sales Factor provision and the change in the rules for the assignment of sales are estimated to generate additional revenues of $468 million in 2010-11 and $942 million in 2011-12.

2) Repeals all tax credits and other income tax incentives available for certain types of expenditures in designated areas through both the personal income tax and the corporation tax. California currently provides an array of tax incentives to businesses and their employees located in designated Enterprise Zones (EZs), Targeted Tax Areas (TTAs), Manufacturing Enhancement Areas (MEAs), and Local Agency Military Base Recovery Areas (LAMBRAs) as outlined below:

   a) For EZs, available incentives include: tax credit for sales and use tax paid on qualified machinery and equipment; tax credit for wages paid to qualified employees working in the zone; employee tax credit for wages received in the zone; deduction for net interest income on loans made to businesses located in the zone; expensing of all or part of qualified property; 15-year, 100% net operating loss (NOL) carryover to offset zone income;

   b) For TTAs, available incentives include: tax credit for sales and use tax paid on qualified machinery and equipment; tax credit for wages paid to qualified employees working in the area; expensing of all or part of qualified property; 15-year, 100% NOL carryover to offset area income;

   c) For MEAs, the available incentive is tax credit for wages paid to qualified employees working in the area; and,

   d) For LAMBRA, available incentives include: tax credit for sales and use tax paid on qualified machinery and equipment; tax credit for wages paid to qualified employees working in the area; expensing of all or part of qualified property; 15-year, 100% NOL carryover to offset area income.

The tax incentives are available for the 15 year life of the EZ, TTA or MEA and for the 8 year life of LAMBRA. This bill would eliminate these incentives for tax years beginning on and after January 1, 2011. Under the proposal, these tax benefits would be eliminated for newly earned credits and deductions and for credits that had been earned in prior years and carried-forward because of the inability to deduct from current income. This provision of the bill is estimated to generate revenues of $343 million in 2010-11 and $581 million in 2011-12.

3) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

FISCAL EFFECT: The total combined fiscal impact of all the provisions noted above would result in estimated additional revenues of $811 million in 2010-11 and $1,523 million in 2011-12.

Analysis Prepared by: Mark Ibele / BUDGET / 916-319-2099

FN:

SENATE THIRD READING
SB 80 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: Contains necessary statutory and technical changes to implement changes to the Budget Act of 2011. Specifically, this bill:

1) Deletes the statutory provision that requires the California Board of Accountancy to set renewal fee levels so that the reserve balance in the Board's contingent fund is equal to approximately nine months of annual authorized expenditures. Outstanding loans to the General Fund can be repaid as necessary for Board operations, so a lesser reserve can be maintained without a need to increase fees.

2) Reverts $20 million General Fund from the Small Business Expansion Fund, upon receipt of new federal funds in excess of $84.4 million, anticipated under the federal Small Business Jobs Act of 2010 (15 U.S.C. Sec. 631 et seq.). The $20 million General Fund to be reverted was provided to the program by AB 1632, which was a budget trailer bill to the 2010 Budget Act. That legislation was enacted prior to notification from the federal government that an $84.4 million grant is available for the same purpose. The program provides loan guarantees to assist small businesses obtain loans from private lenders.

3) Adds a provision that specifies a loan to the General Fund that reduces the balance of the Oil Spill Response Trust Fund below a statutory threshold, does not obligate the administrator to resume collection of the oil spill response fee. Outstanding loans to the General Fund can be repaid as necessary to repay the Oil Spill Response Trust Fund, so a lesser reserve can be maintained without a need to resume fees.

4) Deletes the statutory appropriation of $10 million from the General Fund for Williamson Act open space subventions to counties in 2010-11. Repeals the alternative Williamson Act program which was added by AB 2530, and modified by SB 863, both statutes of 2010. The changes added by AB 2530 and SB 863 would have allowed counties to enter into shorter contracts, 9 years instead of 10, or 19 years instead of 20, as applicable. With the shorter contracts, the property tax loss to the county is reduced.

5) Provides that CalPERs shall negotiate with carriers of health benefit plans to add a core health plan option to the existing portfolio or implement other measures to achieve ongoing cost savings beginning in 2012-13, or both. The core health plan option would provide for essential coverage at lower rates than existing plans.

6) Adds more-recent budgetary loans to the language in statute that defines conditions and reporting for budgetary loans made in 2001-02, 2002-03, and 2003-04. The loans primarily involve special fund transfers to the General Fund. Among the conditions are a requirement that the loans be repaid if the originating fund is in need of repayment, and the requirement that the loans be repaid if no longer needed for the receiving fund. Broadens the existing reporting language to include all outstanding budgetary loans, and not just those from 2001-

02, 2002-03, and 2003-04, and clarifies that the August 1 and February1 reports on outstanding loans be based on updated information.

7) Directs $101 million annually in 2011-12 through 2015-16 to the General fund from a specified portion of tribal-gaming revenues. Similar shifts have been approved in the annual budgets since 2008-09. Existing law directs these tribal-gaming revenues to transportation special funds as an alternative repayment method for loans from transportation special funds to the General Fund in 2001-02 and 2002-03. The existing statute associated with this revenue includes provisions that the stream of revenue could be securitized for early repayment of the transportation-fund loans; however, litigation and other factors delayed such securitization and it is no longer being pursued.

8) Extends the timeframe for county reporting requirements, on a one-time basis, in order to allow for the distribution of Indian Gaming Mitigation grants previously approved by the Legislature.

9) Requires the Board to provide notice to the chairpersons of the committees in each house of the Legislature that consider appropriations and the annual budget act, and the chairperson of the Joint Legislative Budget Committee, within a specified period of time prior to allowing either the use of a current year appropriation to pay claims for prior year costs of $500,000 or more, or claims from a single provider of goods or services with respect to a single department that exceed five hundred thousand dollars $500,000 within one year.

10) Adjusts any item of appropriation for Departmental Support in the Budget Act of 2010-11 fiscal year to reflect reductions in the rental rates charged to a state entity by the Department of General Services for the cost of office space in buildings owned or operated by the Department.

11) Adopts the three-year look-back statutory changes related to determination of state eligibility for FedEd extended unemployment benefits.

12) Reestablishes the Consolidated Work Program Fund in statute and establishing this fund in the State Treasury, to contain moneys deposited pursuant to the federal Workforce Investment Act, and shall be available upon appropriation of the Legislature.

13) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

<u>Analysis Prepared by</u>: Daisy Gonzales / BUDGET / (916) 319-2099

FN:

SENATE THIRD READING
SB 81 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: This is the transportation budget trailer bill for the 2011-12 budget. It contains provisions necessary to modify the 2010-11 budget and implement the 2011 Budget Act. Specifically, this bill:

1) Provides General Fund relief of $1.7 billion through the use of truck weight fees and other transportation revenues for bond debt service and loans to the General Fund. Provides protection to safeguard billions of dollars of transportation revenues by re-enacting the fuel tax swap.

2) Re-enacts the fuel tax swap, which was originally enacted in early 2010 by AB X8 6 and SB 70. The 2010 tax swap was revenue neutral overall, but increased some taxes and reduced others. Proposition 26 on the November 2010 ballot was approved by voters, and amended the Constitution to require a two-thirds vote for such tax neutral measures. Prop 26 voids any conflicting measure enacted after January 1, 2010, effective 12 months after the election. Since AB X8 6 and SB 70 were enacted after January 1, 2010, with a simple majority vote, this bill would re-enact these provisions with a two-thirds vote to ensure the fuel tax swap meets the new constitutional requirements. The re-enacted fuel tax swap includes four main tax adjustments:

   a) Exempts gasoline from the State 6.0 percent sales tax on July 1, 2010;

   b) Increases the excise tax on gasoline by 17.3 cents per gallon, to a total of 35.3 cents per gallon, on July 1, 2010;

   c) Increases the sales tax applied to diesel fuel by 1.87 percent on July 1, 2011; and,

   d) Decreases the excise tax on diesel by 6.2 cents per gallon, to 13 cents per gallon on July 1, 2011.

The re-enacted swap is similar to last year's swap, but some of the diesel rates have changed a small amount to address the requirements of Proposition 22, which was also approved by voters on the November 2010 ballot, and to address changes in the forecast of quantity and price of diesel fuel. As before, the tax swap is revenue neutral and an out-year adjustment is made each July 1, to maintain the tax-neutrality.

The re-enacted swap excludes off-road users, such as railroads, farm equipment, and aviation gasoline from the certain provisions of the swap to maintain the tax neutrality for those users that already enjoy certain exemptions.

The tax swap was not enacted to increase revenue, but rather to allow the use of more existing transportation revenue for highway purposes, including General Obligation bond debt service (GO bond debt), where that debt service was related to transportation projects. Prop 22 placed new restrictions on the use of fuel excise taxes for bond debt, but this fuel tax revenue in this bill would backfill the other highway funds used to reimburse bond debt.

This bill specifies that the fuel tax swap would have no negative effect upon the amounts that would otherwise be calculated under Test 1 of the Proposition 98 minimum education funding guarantee.

3) Directs truck weight fee revenue, which totals approximately $900 million per year, to fund GO bond debt for transportation-related bonds and for loans to the General Fund. Over 2010-11 and 2011-12, total General Fund relief is $1.6 billion. Truck weight fees are paid by the owners of heavy vehicles and compensate the state for the damage large trucks do to roadways. This new use of truck weight fees is related to prohibitions placed on gasoline excise revenues by Proposition 22, approved by voters in November 2010. Under Prop 22, gasoline excise revenues can no longer be used for loans to the General Fund, and the use of these revenues for GO debt is more limited. However, truck weight fees can be used for these purposes. The applicable gasoline excise revenue is instead directed into the State Highway Account to hold harmless transportation programs that would otherwise receive the weight fee revenue.

4) Provides General Fund relief of $78 million by directing non-Article XIX revenue to the payment of transportation-related GO bond debt. Each year, the Department of Transportation receives about $78 million in revenue from the sale of state property, as well as rental revenue and other miscellaneous revenues. These revenues are not restricted in use by Article XIX of Constitution and are more flexible in expenditure.

5) Maintains annual ongoing funding for local transit operations at approximately $350 million. The 2010 fuel tax swap package of legislation, specifically AB X8 9, included the restoration of state funding for local transit operations. Proposition 22 placed new restrictions on the *base* diesel sales tax that resulted in a loss of funding for transit operations. This bill would shift all of the *new* sales tax on diesel revenue to transit operations to maintain funding levels near the level planned in last year's fuel tax swap.

6) Defers payment of a $135 million loan made from the State Highway Account to the General Fund in the 2009 Budget Act. The loan will be repaid in 2012-13 instead of in 2011-12. Specifies that this 2009-10 loan was made from truck weight fee revenue. Specifies that a $328 million loan from the fuel excise revenues to the General Fund in the 2010 Budget Act be held in reverse for future appropriation by the Legislature when repaid in 2012-13.

7) Requires the California Transportation Commission (CTC) to report to the Legislature semiannually on the expenditure of Transportation Corridor Improvement Funds (TCIF) for railroad projects. Additionally, requires the CTC to report and provide a copy of any memorandum of understanding executed between a railroad company and any state or local transportation agency where TCIF funds are a funding source for the project.

8) Extends, for recipients of Prop 1B bond funds for regional public waterborne transit, the expenditure period from three years to four years for any funds allocated prior to June 30, 2011. Proposition 1B provides $250 million to Regional public waterborne transit agencies. The funds are available to build ferry terminals, among other uses.

9) Provides cities and counties a one-year extension to expend Proposition 1B Local Streets and Roads funds for any year in which Highway Users Tax Account (HUTA) funds for local transportation projects are borrowed, deferred, or shifted.

10) Extends the sunset from June 30, 2011 to June 30, 2014, for cashflow borrowing among transportation special funds. The transportation special funds that are eligible for cashflow borrowing are the State Highway Account, and the Traffic Congestion Relief Fund.

11) Authorizes the Governor to appoint six management level exempt positions to the High Speed Rail Authority (HSRA) upon the recommendation of the executive director. Compensation for these positions shall not exceed the highest comparable compensation for a position of that type, as established through a salary survey, and shall require approval of the Department of Personnel Administration.

12) Requires the HSRA to report by February 14, 2011, on the following: community outreach; the HSRA strategic plan as required by the State Administrative Manual; the performance of the program-manager contractor; and actions of the HSRA related to the Bureau of State Audits report. Requires the HSRA to report by October 14, 2011, on a complete legal analysis of the revenue guarantee and the updated financial plan for the project. In both cases, for each applicable fiscal year, twenty-five percent of the budgeted funding for the HSRA is contingent on completion of the reporting requirements.

13) Requires the Department of Transportation (Caltrans) to report annually to the Legislature with supplemental information on the Capital Outlay Support budget request, including anticipated and realized project costs and schedules for the Capital Outlay Support Program.

14) Provides additional clarification that local governments are not subject to the same maintenance-of-effort and other requirements under Proposition 42 when they are apportioned fuel excise tax revenues.

15) Requires the Department of Motor Vehicles (DMV) to update application forms to provide a space for an applicant to indicate whether they served in the armed forces. Data collected from willing veterans will be shared with the Department of Veteran's affairs in order to identify if they are eligible for federal benefits.

16) Authorizes the DMV to make changes to its procedures related to car registration for a limited period ending January 1, 2012. The new authority is related to an anticipated vote of the people in June 2011, on the question of whether the tax rates for the Vehicle License Fee (VLF) should be maintained at current levels for a five-year period. Depending on the outcome of the election, the VLF rates may, or may not, change on July 1, 2011. To avoid erroneous billing, multiple billing, or other confusion, this bill would allow DMV to reduce the time between the mailing of the car registration bill, and the due date of that bill. However, in no case would the bill be due less than 30-days from when the notice is mailed by DMV.

17) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

FISCAL EFFECT: Enactment of this bill results in over $1 billion in General Fund solutions, as assumed in the 2011-12 Budget Bill.

Analysis Prepared by: Christian Griffith / BUDGET / (916) 319-2099

FN:

SENATE THIRD READING
SB 82 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote.

SENATE VOTE: Vote not relevant

SUMMARY: Makes various changes to state laws in the area of cash management and cash deferrals in order to ensure adequate cash availability during 2011-12. Specifically, this bill:

1) Authorizes deferrals in General Fund payments starting in July 2011, October 2011, and March 2012, except as specified below. The deferrals can be made for each of these dates no more than 60 days, 90 days, and 60 days, respectively. These deferrals may be triggered off or repaid early in whole or in part if the State Treasurer, State Controller, and Director of Finance determine sufficient cash reserves are available. The deferrals can be moved forward to the prior month or delayed to the subsequent month; however, the Joint Legislative Budget Committee must be notified before changes can be made. In addition to the deferral criteria outlined above, certain General Fund payments are subject additional payment-specific criteria listed below:

   a) Permits up to three deferrals of payments to the federal government for Supplementary Security Income/State Supplementary Payments (SSI/SSP) benefits.

   b) Permits deferral of social services and other payments to cities, counties, and local governments not to exceed $1 billion. Deferrals of Mental Health Services Act payments are not counted towards the $1 billion. This may include deferral of CalWORKs assistance payments and other social services costs. The Administration has stated that it does not anticipate resulting delays to beneficiaries' receipt of assistance payments. Payments to counties or cities with a population less than 50,000 shall not be deferred.

2) Authorizes the following specific deferral plan for K-12 education payments:

   a) Both the July 2011, and August 2011 payments of $1.4 billion shall be deferred.

   b) The October 2011 payment of $2.4 billion shall be deferred.

   c) In September 2011, $700 million of the July deferral shall be paid.

   d) In January 2012, $4.5 billion from the remaining July, August, and October deferrals shall be paid.

   e) In March 2012, $1.4 billion shall be deferred and paid in April 2012.

3) Includes a hardship waiver process for Local Education Agencies (LEAs) who might not be able to meet financial obligations if payments are deferred. In order to be eligible for a hardship waiver, LEAs would need to qualify for an emergency apportionment. Expenditure obligations required for payments of tax and revenue anticipation notes (TRANs) or other short-term debt issued for cash flow purposes in 2010-11 are also to be considered for qualification of hardship.

4) Modifies higher-education payments to smooth payment over the fiscal year, specifically:

   a) For University of California, authorizes the State to pay only one-twelfth (1/12) of the UC's annual appropriation each month between July 2011 and April 2012. After April 2012, there are no limitations on payments within the UC's appropriations limit.

   b) For California State University, authorizes the State to pay only one-twelfth (1/12) of the CSU's annual appropriation each month between July 2011 and April 2012. After April 2011, there are no limitations on payments within the CSU's appropriations limit.

5) Includes specific changes to other deferrals and adjustments, specifically:

   a) For transportation, due to the approval of Proposition 22 on the November 2010 ballot, repeals the section that authorizes the deferral of apportionments to local governments for the Highway Users Tax Account (HUTA) revenues. Deferrals of the local share of gasoline excise tax revenue are now prohibited by the Constitution.

   b) For California State University, in addition to the payment smoothing authorizes deferral of a $250 million payment to the CSU with repayment mandated in April 2012.

   c) For California Community Colleges, authorizes the deferral of a $200 million payment from July 2011 to October 2011, and the deferral of a $100 million payment from March 2012 to May 2012. Includes a hardship clause to exempt those community college districts that cannot raise funds to cover their necessary expenses during those time periods.

6) Authorizes borrowing from additional special funds for cashflow needs. This bill adds four new special funds to those eligible for cashflow borrowing. Most special funds are already eligible for cashflow borrowing, except where prohibited by the Constitution. The new funds are the Education Protection Account, the Local Revenue Fund 2011, the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, and the Hospital Quality Assurance Revenue Fund.

7) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

<u>Analysis Prepared by:</u> Mark Ibele / BUDGET / 916-319-2099

FN:

SENATE THIRD READING
SB 83 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: Calls a special statewide election to be held on June 7th, 2011 and waives necessary statutory deadlines to allow the Legislature to place measures ACA 2 or SCA 1, of the 2011-12 First Extraordinary sessions on the ballot to be heard by the voters. Specifically, this bill:

1) Calls for a special election to be held June 7, 2011 to allow Legislative measures ACA 2 or SCA 1, of the 2011-12 First Extraordinary sessions to be heard by the voters and shall be designated as Proposition 28.

2) Requires that the Budget Act of 2011 include funding to pay the claims of local agencies for costs of conducting the election.

3) Stipulates that this act addresses the fiscal emergency declared by the Governor by proclamation on January 20, 2011.

4) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

Analysis Prepared by: Christina Guzmán / BUDGET/ (916) 319-2099

SENATE THIRD READING
SB 84 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: This bill makes various changes to state laws to facilitate certain loans and transfers in the 2011-12 fiscal year. Specifically, this bill:

1) Amends the 2010 Budget Act to allow for budgetary loans and transfers to be made during the 2010-11 fiscal year. Under the provisions of the bill, there would be added budget language to allow for additional budgetary loans and transfers to be made from special funds to the General Fund. The total amount of additional borrowing that could occur during the 2010-11 fiscal year is $544.7, which amounts would need to be repaid as necessary to support the activities related to each of the affected funds. The funds affected by the loans and transfers are:

Special Fund Loans and Transfers	Amount in millions
State Emergency Telephone Number Account	$28.0
Alcoholic Beverage Control Appeals Fund	0.5
School Facilities Fee Assistance Fund*	0.9
Housing Rehabilitation Loan Fund	18.0
State Highway Account	147.1
Renewable Resource Trust Fund	20.0
California Used Oil Recycling Fund	2.5
Electronic Waste Recovery and Recycling Account	27.0
Oil Spill Response Trust Fund	40.0
Harbors and Watercraft Revolving Fund	17.0
Off-Highway Vehicle Trust Fund	21.0
Environmental Protection Trust Fund*	1.2
State Water Pollution Control Revolving Fund Small Community Grant Fund	3.0
Hazardous Waste Control Account	13.0
Site Remediation Account	1.0
Illegal Drug Lab Cleanup Account	1.0
Cleanup Loans and Environmental Assistance to Neighborhoods Account	0.5
Foster Family Home and Small Family Home Insurance Fund*	3.0
California High-Cost Fund-B Administrative Committee Fund	100.0
California Advanced Services Fund	75.0
Public Utilities Commission Utilities Reimbursement Account	25.0
TOTAL	**$544.7**

* Indicates transfer.

The loans and transfers were proposed by the Governor to replace the funding that was lost due to the cancellation of the sale/lease-back of 11 major state office buildings. The sale/lease-back was proposed by the previous administration as a budget solution for the 2010-11 fiscal year, and was designed to free-up the state's equity in the buildings to provide one-time revenue for addressing the current budgetary shortfall. This action would have resulted in ongoing lease costs and carried with it a higher implied interest rate than the internal borrowing provided under this bill. The implied interest rate for the state under the building sale/lease-back is approximately 10 percent, whereas the internal borrowing rate is roughly 2 percent. The bill also includes language to allow for additional funding, as needed, for the Secretary of State's Office to cover costs of a special election.

2) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

Analysis prepared by: Mark Ibele / BUDGET / 916-319-2099

FN:

SENATE THIRD READING
SB 85 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: This is the 2011 Public Safety Realignment bill containing necessary statutory and technical changes to implement changes to the Budget Act of 2011. Specifically, this bill:

1) Alternative Custody/Credits

   a) Expands the authority of local correctional administrators to use alternative custody methods and establishes day for day credit for offenders serving time in a jail facility.

2) Post-Release Supervision

   a) Specifies the population to be released onto post-release supervision (non-violent/serious, no third strike conviction, no high risk sex offenders);

   b) Requires the Local Corrections Community partnership to create an implementation plan for post release supervision of offenders and establishes an executive committee within the partnership to make recommendations to county board of supervisors;

   c) Requires the county board of supervisors to designate a county agency to be responsible for post-release supervision,

   d) Requires notification by California Department of Corrections and Rehabilitation (CDCR) to counties regarding who is being released into post release supervision;

   e) Requires offenders to enter into a post-release community supervision agreement, which includes terms and conditions;

   f) Requires the court to establish a process to determine violations of conditions of post-release supervision and revocations; and,

   g) Sets parameters for time offenders can be on post-release supervision and provides authority for release.

3) State Parole

   a) Specifies who remains on state parole (violent/serious conviction, third strike conviction, high risk sex offenders);

   b) Specifies that only lifers can be returned to state prison for a parole violation,

   c) Specifies CDCR's jurisdiction over all offenders currently on parole; and,

   d) Adds the courts as the authority for determining revocations.

4) Low Level Offenders

   a) Redefines a felony to include imprisonment in a county jail for more than a year;

   b) Changes all enumerated penalty code sections to include the phrase "pursuant to subdivision (h) of Penal Code Section (PC) 1170;"

   c) Amends PC Section 1170 to include (h), which provides 16 months, 2, or 3 years if the punishment is specified to be served in county jail unless the person has a prior violent, serious, or sex offense (in which case they serve time in state prison); and,

   d) Provides that counties can contract with the state to house felony offenders.

5) Division of Juvenile Justice

   a) Stops state intake and allows local agencies to contract with CDCR for housing juvenile offenders.

6) Contingent Upon Appropriation of Revenues

   a) Stipulates that this act will become operative only upon creation of a community corrections grant program and upon an appropriation to fund the grant program.

7) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

Analysis Prepared by: Joe Stephenshaw/ BUDGET / (916)319-2099

FN:

SENATE THIRD READING
SB 86 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: Makes various changes to state laws regarding tax compliance and tax programs in order to implement provisions of the 2011-12 Budget Agreement. Specifically, this bill:

1) Provides that persons who are required to report and remit the use tax on the purchase of tangible personal property may use a 'Look-Up' table, which provides an estimated amount due based on income level. Under existing law, use tax is owed on purchases made out-of-state, or through means such as mail-order or internet, when the tax is not collected by a retailer. Currently, individuals who owe the use tax may pay such tax directly to the Board of Equalization or declare and pay the tax through the income tax return by using the use tax line included on the return. For single nonbusiness purchases of $1,000 or less, this bill would allow the person to report on the use tax line on the income tax return either (i) the actual amount of use tax due, or (ii) the amount shown on Look-Up table prepared by Board of Equalization and included in the income tax return instructions. The Board of Equalization, which has authority over the collection of the use tax, would prepare the Look-Up table, which would indicate an estimate of the amount of use tax due based on the person's adjusted gross income. The Board of Equalization would then provide the Franchise Tax Board, which is responsible for administering income taxes, the necessary instructions and information to include in the Look-Up table as part of the income tax return information. This provision is estimated to result in additional revenues of $10 million annually, $6.5 million of which is General Fund.

2) Eliminates the refundable component of the Child and Dependent Care Expense Tax Credit available under the personal income tax. Under the program, taxpayers are granted a credit against taxes up to a maximum amount for expenses related to child and dependent care expenses. Qualified expenses are limited to $3,000 for one child and 6,000 for two or more, with the actual credit amount equal to a percentage of a parallel federal credit program. The amount of the credit declines as income increases and is not available to taxpayers with incomes in excess of $100,000. Under the current program, if the amount of the credit exceeds the tax liability, the credit is "refundable" and the excess is refunded to the taxpayer. This refundable provision can result in a tax refund for taxpayers with little or no personal income tax liability. This bill would eliminate the refundable part of the tax credit for tax years beginning January 1, 2011 and after, while retaining the core elements of the program. This provision is estimated to result in additional revenues of $70 million in 2011-12 and similar amounts annually thereafter.

3) Directs the Franchise Tax Board to establish a Voluntary Compliance Initiative (VCI) for those taxpayers that either utilized an abusive tax avoidance transaction (ATAT) or have unreported income from the use of an off-shore financial arrangement. This narrowly-constructed amnesty program would extend for a 91-day period, beginning August 1, 2011 through October 31, 2011 and would apply to taxpayers subject to the state's personal income tax laws and corporation tax laws. The VCI is designed to collect taxes previously unpaid but otherwise due to the state's General Fund and would result in both new and

accelerated revenues. California and the federal government generally deny claimed tax benefits of an ATAT if the transaction that gives rise to such benefits lacks economic substance independent of income tax considerations. The VCI would provide a mechanism for qualifying individuals and businesses to remit back taxes with reduced penalties and avoid criminal prosecution. It would apply to tax years beginning prior to January 1, 2011. The program would be available to personal income tax and corporation taxpayers who have the following:

a) ATATs currently under audit;

b) ATAT cases in protest;

c) Unknown ATATs; and,

d) Unreported income from the use of an offshore financial arrangement.

Under the VCI bill, all penalties other than the Large Corporate Understatement Penalty (LCUP) and the Amnesty Penalty would be waived. In addition, there would be protection from any criminal action against any qualified VCI participant who is not the subject of an existing criminal complaint or investigation.

VCI participants would be required to file amended returns and pay all unpaid tax and interest resulting from an ATAT. Furthermore, tax bills that are addressed in the VCI would be closed and would have no appeal rights. The bill would make the following changes in law to further discourage the use of ATATs in the future:

a) Increases from 8 to 12 years the statute of limitations for the Franchise Tax Board to issue a tax assessment for ATAT activity;

b) Enacts a uniform definition of an ATAT to simplify administration and avoid confusion;

c) Establishes a 50 percent penalty for the filing of an amended return after being contacted by Franchise Tax Board but prior to Franchise Tax Board issuing a deficiency notice. Under current law a taxpayer can avoid the penalty completely if they file an amended return after being contacted, but prior to the Franchise Tax Board issuing a deficiency notice; and,

d) Amends the California non-economic substance transaction (NEST) penalty to include any transaction determined by the IRS to lack economic substance.

This proposal is expected to generate additional revenues of $270 million in 2010-11 and a revenue reduction of $50 million in 2011-12 due to acceleration.

4) Requires the Franchise Tax Board, in coordination with financial institutions in the state, to operate a Financial Institutions Records Match (FIRM), which would provide a means to match delinquent tax debtor records with customer records provided by financial institutions. FIRM would permit Franchise Tax Board to identify previously unknown non-interest bearing deposit accounts held by delinquent income tax debtors and collect outstanding income tax debts. The Franchise Tax Board would use the match information to collect

delinquent state income tax debts using existing authority and collection methods, including orders to withhold. The proposed data match is similar to one used by the existing Financial Institution Data Match program mandated by federal law for the collection of delinquent child support payments. The proposal would require financial institutions doing business in California to conduct record matches on delinquent taxpayers and would compensate such institutions for their costs of compliance with these requirements. This provision is estimated to generate additional revenues of $10 million in 2010-11 and $30 million in 2011-12.

5) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

FISCAL EFFECT: The total combined fiscal impact of all the provisions noted above would result in additional revenues of $290 million in 2010-11 and $60 million in 2011-12.

Analysis Prepared by: Mark Ibele / BUDGET / (916) 319-2099

FN:

SENATE THIRD READING
SB 87 (Budget and Fiscal Review Committee)
As Amended December 25, 2011
2/3 Vote. Urgency

SENATE VOTE: Vote not relevant

SUMMARY: Contains necessary statutory and technical changes to implement changes to the Budget Act of 2011 and makes the following changes that will make it easier for locals to access jail construction funding. Adding jail capacity will help mitigate the impact of increased public safety responsibilities at the local level. Specifically, this bill:

1) Moves Uncommitted jail construction funding, AB 900 (Solorio), Chapter 7, Statutes of 2007, from phase I to phase II.

2) Removes reentry siting requirements for accessing phase II funding.

3) Removes benchmark requirements for accessing phase II funding.

4) Adds preference for counties that committed the largest percentage of inmates to state custody in relation to the total state inmate population in 2010.

5) Stipulates this act becomes operative if Senate Bill 85 or Assembly Bill 109 (Public Safety Realignment) is enacted.

6) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

Analysis Prepared by: Joe Stephenshaw / BUDGET / (916)319-2099.

FN:

ASSEMBLY THIRD READING
ACA 2 X1 (Budget Committee)
As Amended December 25, 2011
2/3 vote. Urgency

SUMMARY: This Constitutional Amendment, which would be called the "School and Local Public Safety Protection Act of 2011," transfers responsibility for various state public safety programs to counties and devotes revenue from the extension of current Sales and Use Tax and Vehicle License Fee rates for an additional five years to local governments to operate these programs. This transfer of responsibility is colloquially referred to as the Governor's "Public Sector Realignment" proposal. In addition, the measure dedicates the extension of the Personal Income Tax rates and the dependent care reductions levels from 2010 for the next five years, dedicating that revenue towards public education. The measure also guarantees local governments ongoing funding for realigned public safety costs beyond the five-year period of the tax extensions and provides protections to counties against increased costs from future state and federal actions. Specifically, this Amendment:

1) Defines a number of public safety programs as local responsibilities. These programs are:

   a) Employing and training public safety officials, including law enforcement personnel, attorneys assigned to criminal proceedings and court security staff;

   b) Managing local jails and providing housing, treatment, and services for, and supervision of, juvenile and adult offenders;

   c) Providing fire protection and support services;

   d) Managing local jails and providing housing, treatment, and services for and supervision of juvenile and adult offenders;

   e) Preventing child abuse, neglect, or exploitation, providing service to children who are abused, neglected, or exploited or who are at risk of abuse, neglect, or exploitation, and their families, providing adoption services, providing transitional housing and other services to emancipated foster youth, and providing adult protective services;

   f) Providing community mental health services and mental health services and institutional placement to children and adults to reduce the failure in school, harm to themselves and others, homelessness, and preventable incarceration; and,

   g) Preventing, treating, and providing recovery services for substance abuse.

2) Dedicates extension of 2010-11 tax rates for five additional fiscal years to support public safety programs realigned to counties. These taxes:

   a) Continue the one percent of the state sales and use tax rate, resulting in approximately $4.5 billion in revenues in 2011-12; and,

   b) Continue the 0.5 percent of the state Vehicle License Fee, resulting in approximately $1.4 billion in revenue in 2011-12.

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3) Dedicates extension of 2010-11 tax rates for five additional fiscal years to support public education. These taxes:

   a) Continue the 0.25 percent Personal Income Tax, resulting in approximately $2.1 billion in revenue in 2011-12; and,

   b) Maintain the Dependent Care Credit at $99, resulting in approximately $1.2 billion in revenue in 2011-12.

4) Guarantees that the state will provide ongoing funding to counties for public safety realignment once the five-year extension of tax rates expire. The amount of funding guaranteed to counties will equal the amount that would have been provided if the sales and use taxes and vehicle license fee had been continued. Priority for this new constitutional funding guarantee would follow general obligation debt and education funding as a funding priority.

5) Provides protections to counties from future financial liability for program costs associated by:

   a) Adoption of new state legislation, state regulations, executive orders, or administrative directives that increases the cost of the programs that are shifted to counties by this measure. Local agencies are not required to provide programs or levels of services required by new legislation beyond the level of funding provided;

   b) Requests for federal waivers or state plans that increase the county share of costs for the programs shifted to counties by this measure, unless the state provides the funding for the cost increase;

   c) Changes to federal matching fund levels. The State will provide 50 percent of the increased non-federal costs resulting from a future reduction in federal matching fund levels for programs shifted to counties in this measure; and,

   d) Settlement of a judicial of administrative order that imposes costs on counties for the programs shifted in this measure. The State will provide 50 percent of the non-federal share of the costs, unless the settlement is a result of negligence or a failure to perform a ministerial duty on the part of the county.

6) Provides a legislative framework for defining and transitioning programs and fiscal responsibilities from the state to the counties envisioned in public safety realignment through legislation specified as "2011 Realignment Legislation." "2011 Realignment Legislation" is exempted from the cost and mandates protections otherwise provided for in this measure. The legislation is intended to provide maximum flexibility to counties to run these programs and will also promote transparency and improved outcome. All "2011 Realignment Legislation" must be enacted by October 9, 2011.

7) Requires that funding provided in this measure not be used to supplant existing county funding for public safety services. The measure also stipulates the funds should be spent to

maintain the State's eligibility for federal matching funds and to meet federal standards for service delivery.

8) Directs that the Controller may audit the expenditures of the funding provided in this measure to ensure that those funds are used and accounted for in a manner consistent with the measure's requirements.

9) Adds an urgency clause allowing this bill to take effect immediately upon enactment.

FISCAL IMPACT: Adoption of this measure is necessary to achieve $11 billion of solutions assumed in the March 2011 budget package. The $5.9 billion of dedicated revenue provided to counties in 2011-12 is projected to increase to $7.2 billion by 2014-15, allowing for funding to cover increase program costs for programs transferred to counties by this measure.

COMMENT: The Balanced Budget Act of 2011 is the centerpiece of the 2011 budget package. This budget provides $27.7 billion in overall solutions to solve a $26.6 billion deficit. This measure is also a profound shift of governmental responsibilities and decisions closer to the people of California, by moving state public safety functions to counties.

This bill does not stipulate details regarding the timing, funding structure, allocation, or design of the specific programs identified for realignment. Subsequent legislation will be needed to operationalize the shift of programs and funding.

Analysis Prepared by: Christian Griffith / BUDGET / (916) 319-2099

FN: