Senate Budget and Fiscal Review—Wesley Chesbro, Chair

SUBCOMMITTEE NO. 2 Agenda

Byron Sher, Chair
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10:00 am
Room 112

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8550 California Horse Racing Board

The seven-member California Horse Racing Board (CHRB) supervises all race meetings in the state where pari-mutuel wagering is conducted. Principal activities of the CHRB include: protecting the betting public; licensing of racing associations; sanctioning of every person who participates in any phase of horseracing; designating racing days and charity days; acting as a quasi-judicial body in matters pertaining to horse racing meets; collecting the state's lawful share of revenue derived from horse racing meets; and enforcing laws, rules, and regulations pertaining to horse racing in California. The state's revenue from horseracing is principally derived from fees based upon a percentage of the pari-mutuel wagering pools, breakage (the odds cents not paid to winning ticket holders), and unclaimed tickets. Additional revenue is derived from licenses issued to horse owners, trainers, jockeys, grooms and others, and from fines.

Budget Request: The budget proposes $8.4 million from special funds, an increase of $4,000, or less than 0.1 percent from the estimated current year expenditures. Pursuant to Control Section 4.10, the CHRB was reduced by 6 positions and $275,000 in the current year and the budget year.

***Staff Recommendation*:** No issues have been raised with respect to the CHRB budget. This budget is funded entirely from special funds. Staff recommends approval as budgeted.

0855 California Gambling Control Commission

The California Gambling Control Commission (GCC) was established by Chapter 867, Statues of 1997 (SB 8, Lockyer). The five-member commission is appointed by the Governor subject to Senate confirmation. The GCC is responsible for setting policy, issuing licenses, administering, adjudicating, and regulating all matters related to controlled gambling in California.

In addition, pursuant to the Tribal Gaming Compacts and Executive Order D-31-02, the GCC is responsible for (1) administering the gaming license process, (2) controlling, collecting and accounting for all gaming device license fees, (3) making findings of suitability regarding key employees of tribal gaming operations, and (4) ensuring the allocation of gaming devices among California's tribes does not exceed the allowable number in the compacts. Included with this responsibility is serving as Trustee for the Revenue Sharing Trust Fund and Administrator of the Special Distribution Fund.

Budget Request. The budget proposes total expenditures of $52 million from special funds, which is a decrease of $75.1 million, or 59 percent from estimated current year expenditures. Of this amount, $6 million ($3.8 million Special Distribution Fund and $2.2 million Gambling Control Fund) is for state operations and $46 million is for distribution from the Revenue Sharing Trust Fund to non-gaming tribes as specified in the compacts.

Current Year Appropriations. The reason for the budget year decrease is due to two bills that appropriated funds from the Special Distribution Fund (SDF) in the current year. Chapter 210, Statutes of 2003 (AB 673, Horton), transferred $50.5 million from the SDF to the Revenue Sharing Trust Fund for distribution to non-gaming tribes as specified in the tribal-state compacts. In addition, Chapter 858, Statutes of 2003 (SB 621, Battin), appropriated $25 million from the SDF for distribution to local government agencies impacted by tribal gaming. The budget projects a $137 million reserve for the SDF at the end of 2004-05.

California Gambling Control Commission – Source of Funding

	Expenditures *(dollars in thousands)*				***Percent***
Fund	**2002-03**	**2003-04**	**2004-05**	**Change**	**Change**
Indian Gaming Revenue Sharing Trust Fund	$29,942	$96,569	$46,000	-$50,569	-52.4%
Indian Gaming Special Distribution Fund	2,662	28,542	3,805	-24,737	-86.7%
Gambling Control Fund	1,666	1,946	2,195	249	12.8%
Totals, Programs	$34,270	$127,057	$52,000	-$75,057	-59.1%
Authorized Positions	**34.8**	**43.2**	**45.6**	**2.4**	**5.5%**

Major Budget Adjustments

- A reduction of $91,000 (Gambling Control Fund) and 1.5 positions pursuant to Control Section 4.10.
- An augmentation of $103,000 ($72,000 Special Distribution Fund, $31,000 Gambling Control Fund) and one position to address ongoing licensing, legislation/administrative issues, and regulation workload.
- An augmentation of $199,000 ($139,000 Special Distribution Fund, $60,000 Gambling Control Fund) and 2.5 positions on a two-year limited-term basis, to address workload related to Third Party Provider Proposition Services.

ISSUES

1. Informational Issue. Budget Assumes $500 million in New Revenues from Renegotiated Revenue Sharing Compacts.

Background. As a result of the passage of Proposition 1A in March 2000, Class III gambling (such as slot machines and banked or percentage card games) became legal on California Indian land for those tribes that enter into a tribal-state compact approved by the Legislature, the Governor, and the federal government. These compacts lay out the legal relationship between the tribes and the state with respect to Indian gambling. According to the GCC, there are currently 107 federally recognized tribes in California, and 64 of these tribes have tribal-state gaming compacts that last until 2020. Of those 64 tribes, 51 are currently operating casinos in California.

Negotiations Last Year. In March 2003, the prior administration entered renegotiations with the gaming tribes in an effort to generate $680 million in new General Fund revenues. No tribes with existing compacts agreed to renegotiated arrangements. The prior administration, however, did come to new agreements with three tribes. The Legislature approved these agreements last year. Unlike the prior compacts, the new compacts require the payments of up to 5 percent of the tribes' winnings to the General Fund.

Currently, pursuant to all but the three most recent compacts, tribes pay more than $130 million annually to the state for the right to offer Class III gambling. These revenues are not deposited into the General Fund. Instead, the revenues are deposited into the Indian Gaming Revenue Sharing Trust Fund and the Indian Gaming Special Distribution Fund. The Revenue Sharing Trust Fund includes $46 million annually in licensing fees to operate gaming machines. These funds are distributed to tribes with no gaming or those operating less than 350 slot machines. The Special Distribution Fund includes $86 million in fees, based on the average net win of machines in operation as of September 1, 1999.

Issue. The Governor proposes to again enter compact negotiations and renegotiations with the tribes. The Governor proposes securing $500 million in annual General Fund revenues (beginning in 2004-05) as the result of these negotiations. Because these negotiations are currently occurring, it is unknown what amount of revenue, if any, will result from the negotiations.

Analyst's Comments. The LAO indicates that it is unlikely that the Governor will secure $500 million in budget-year revenues for the following reasons:

- Under federal law, the Governor cannot impose a tax on the tribes, therefore, the tribes must agree to pay any additional monies.
- The $500 million proposed is almost four times what tribes currently pay.
- The budget proposes that the collected revenues go directly to the General Fund, as opposed to the current policy, in which the revenues are used largely in a manner related to the tribes or gambling.
- Since the renegotiated compacts also need to be approved by the federal government, it may be difficult to implement any changes to revenue payments to ensure full-year revenues in the budget year.

The LAO further notes that the compacts are voluntary agreements, and that some tribes could choose to continue to operate under the existing agreements for nearly two more decades. As such, the LAO believes that the administration will likely have to negotiate away items of significant value to secure any sizable increases in revenue. For instance, some existing compact tribes have already expressed interest in an expansion of their gaming. To the extent that any compacts are renegotiated, the Legislature would have to ratify the renegotiated compact.

Staff Comments. The GCC has indicated that it does not have a direct role in the negotiations. The Department of Finance still anticipates that the negotiations will still generate an estimated $500 million in new revenues.

Informational Issue.

2. Payment for Negotiations Made from The Special Distribution Fund.

Background. Revenues to the Special Distribution Fund (SDF) are dependent on the number of slot machines in operation as of September 1, 1999. Tribes contribute revenues each quarter to the fund, up to 13 percent of the average daily net win from these machines, based on the number of slot machines. The GCC is responsible for collecting the appropriate amount of payments into this fund. The budget estimates that the tribes will contribute $86 million to the SDF in the budget year.

Pursuant to the compacts, the monies in the SDF are subject to legislative appropriation for the following statewide purposes:

- Reimbursement for state regulatory costs associated with implementation of the compacts.
- Grants for gambling addiction programs.
- Grants to state and local agencies affected by tribal government gaming.
- Payment of shortfalls that may occur in the Revenue Sharing Trust Fund.
- Any other purpose specified by the Legislature.

Issue. At a meeting on February 5, 2004, the GCC approved a consulting contract for $235,000 out of the Special Distribution Fund to pay for the Governor's Office negotiator for the compact renegotiations and to negotiate new compacts for Class III gaming. No appropriation by the Legislature was made for this purpose. The GCC has indicated that it does not have a specific role with respect to the negotiations.

Is An Appropriation for this Purpose Necessary? In 2002-03 the Legislature appropriated $750,000 from the General Fund to the Office of Planning & Research (OPR) for compact renegotiations (Chapter 3x, Statutes of 2002). Any unused portion of those funds would have reverted at the end of last year. No similar appropriation was made in this case, rather GCC used part of its operating expenses budget for this purpose.

Are Special Distribution Funds Appropriate for this Purpose? At least one of the tribal councils has raised objections about the use of SDF for this purpose. The SDF is permitted for compensation of regulatory costs incurred by the GCC as well as the DOJ in connection with the implementation and administration of tribal-state gaming compacts. Is negotiation of a compact considered a regulatory cost?

DOF Position. The DOF indicates that the negotiator contract is a regulatory-related cost because it is intended to result in improvements and/or clarifications in the language of the existing compacts. The DOF indicates that the Commission, as part of the Executive Branch, is contracting with the negotiator on behalf of the Governor.

The Table on the following page shows the consulting budget for the GCC. The GCC reports that the past year contract was for an expert to assist in validating the audit program that the GCC had developed. In the current year, the contracts include $235,000 for the negotiator and the remainder will likely be used to contact with an expert on some regulatory issues related to card rooms.

Proposed Budget Year Contract Expenditures. The GCC reports that for the budget year the $559,000 is made up of $100,000 is fir Commissioner Advisory Contingencies, $100,000 is for other contingencies, $125,000 is for legal contingencies and alternative dispute resolution. The GCC reports that the remaining $234,000 is an amount that was previously budgeted for this item, but that was adjusted to pay for certain personal services costs such as retirement costs. The GCC indicates that these funds may be used for such personal services expenditures in the budget year.

Total External Consulting Budget for GCC (dollars in thousands)			
Expenditure Classification	Actual Expenditures Past Year	Estimated Expenditures Current Year	Proposed Expenditures Budget Year
External Consulting and Professional Services	120	265	559

Staff Recommendation. The consulting budget is proposed to more than double over estimated current year expenditures. Additionally, the GCC has indicated that the $234,000 proposed for consulting services may likely be used for other types of expenses. For these reasons, staff recommends reducing the consulting budget by $234,000.

Action

3. Special Distribution Fund

As previously indicated, pursuant to the compacts, the monies in the SDF are subject to legislative appropriation for the following statewide purposes:

- Reimbursement for state regulatory costs associated with implementation of the compacts.
- Grants for gambling addiction programs.
- Grants to state and local agencies affected by tribal government gaming.
- Payment of shortfalls that may occur in the Revenue Sharing Trust Fund.
- Any other purpose specified by the Legislature.

In the case *Coyote Valley Band of Pomo Indians v. The State of California* a federal district court ruled on the possible uses of the SDF, and in particular, "the other purposes specified by the Legislature." The opinion states that:

> "The Court thus construes the "other purposes" listed in Section 5.2(e) of the proposed compact to be limited to other purposes that, like the first four enumerated purposes, are directly related to gaming."

Expenditure of SDF monies in the current year. The Legislature appropriated $94 million from the Special Distribution Fund in 2003-04 as follows:

- About $15 million was spent on gambling regulatory activities.
- Chapter 210, Statutes of 2003 (AB 673, Horton), transferred $51 million on a one-time basis from the Special Distribution Fund to the Revenue Sharing Trust Fund to ensure that eligible Indian tribes received the maximum payments allowed ($1.1 million).
- Chapter 210 also established the Office of Problem and Pathological Gambling in the Department of Alcohol and Drug Programs (DADP) to develop a problem gambling prevention program. The DADP was provided $3 million for the program. The administration proposes trailer bill language to repeal

Chapter 210 and eliminate a scheduled $3 million appropriation for the same purpose in the budget year.

- Chapter 858, Statutes of 2003 (SB 621, Battin), appropriated $25 million from the Special Distribution Fund to local government agencies affected by tribal gaming.

Chapter 858 specifies that priority for funding from SDF is in the following descending order:

a) An appropriation for any shortfalls that may occur in the Revenue Sharing Trust Fund
b) An appropriation for problem gambling prevention programs in the Office of Problem and Pathological Gambling within the State Department of Alcohol and Drug Programs;
c) The amount appropriated in the annual Budget Act for allocation between the Division of Gambling Control and the California Gambling Control Commission (CGCC) for regulatory functions that are directly related to Indian gaming; and,
d) An appropriation for the support of local government agencies impacted by tribal gaming.

Chapter 210 requires the CGCC to report to the Legislature the amount of funding from the SDF necessary to make up the difference between the $1.1 million maximum and the actual amount paid to each eligible tribe from the Revenue Share Trust Fund. Chapter 858 requires the Department of Finance, in consultation with the CGCC, to calculate the total revenue in the SDF that will be available for local government agencies impacted by tribal gaming. The information is to be included in the May Revision.

Issue. Total resources in the SDF in 2004-05 will be roughly $150 million ($86 million in payments from tribes and revenues from past years). The budget proposes expenditures of $13 million for Indian gaming regulatory activities. The administration, however, does not propose expenditures for the remaining $137 million in the fund.

Analyst's Recommendation. In reviewing the options for spending the fund balance, the LAO indicates that there are many possible uses. The LAO notes that the impacts of gambling are widespread, even in communities without casinos. The LAO suggests that costs related to public safety, road maintenance, and gambling addiction, for instance, affect many cities, counties, and the state.

Given the budget situation and broad parameters of the fund, the LAO recommends using the $137 million for spending which both meets the requirements of the fund and helps the budget situation. For instance, funds currently spent by the General Fund on gambling-related expenses could be replaced with SDF revenues—generating General Fund savings. Below, the LAO identifies two such possible uses for the fund revenues as illustrative examples:

- ***Public Safety Demands.*** The LAO notes that gambling activities increase the needs for law enforcement services throughout the state. The LAO believes that the SDF could appropriately be used to address these public safety demands. In total, cities and counties spend billions of dollars annually on public safety. The LAO notes that the state contributes a small amount of this total annually ($100 million from the General Fund) though the Citizens' Option for Public Safety (COPS) program. If the Legislature continues to fund the COPS program, the LAO suggests that a portion of the funding could be directed from the SDF. Given the large amounts of money being spent, the LAO believes that it is reasonable to assume that such a small COPS-related portion of total public safety expenditures is already spent on gambling-related activities.

- ***Treat Gambling Addiction.*** The LAO notes that there are currently many individuals with gambling problems. The LAO suggests that it is reasonable to assume that some individuals that suffer from this problem seek mental health services. Currently, several hundreds of millions in General Fund dollars are allocated to counties to provide mental health services at the local level.

As with the public safety example above, the LAO believes that a portion of these General Fund expenditures could be replaced with Special Distribution revenues.

Staff Comments. The following three Bills have been introduced regarding the Special Distribution Fund:

- AB 2162, Oropeza
- AB 2579 La Suer
- SB 1586 Murray

Staff Recommendation. Staff recommends holding this issue open.

Action.

4. Informational Issue. License Approval Process

Background. The Gambling Control Act makes the GCC responsible for licensing and imposing fines on persons involved in controlled gambling activities, such as card rooms. With respect to Indian gaming, the GCC is charged with reviewing licenses and permits to make findings of suitability to tribal gaming authorities to help assure that no unqualified or disqualified person is issued or allowed to hold a license. Individuals who must apply for gambling licenses include: (1) those who have a financial interest in the gambling establishment; (2) key employees of the gambling establishment, primarily management and those who handle money; (3) other employees of the gambling establishment; and (4) suppliers of gambling equipment and resources. The Division of Gambling within the Department of Justice (DOJ) is responsible for performing the background check on individuals.

Issue. Two years ago, the LAO raised an issue with respect to the DOJ's Division of Gambling and the license approval process. According to estimates at that time from the DOJ, there were as many as 12,000 to 15,000 individuals designated as "key" employees from tribal gaming establishments who would have gambling licenses for review by the GCC for findings of suitability. In addition to this number, there was an unknown number of those with a financial interest and certain suppliers of gaming equipment whose licenses are also to be reviewed by the GCC in order to make findings of suitability.

Last year, during Subcommittee meetings the GCC indicated that the Division of Gaming at the DOJ had forwarded a total of approximately 300 applications to the GCC which the GCC had reviewed and forwarded findings of suitability to tribal gaming authorities.

Updated Numbers. The GCC reports that to-date, it has received 942 applications with completed background checks for "key" employees from the DOJ and has forwarded 890 findings of suitability to tribal authorities. The GCC reports that the remaining 52 are currently being processed. The GCC has approved or is in the process of approving all of the applications forwarded by the DOJ. The GCC indicates that it typically takes one month for it to review, schedule and act upon an application once the application has been received from DOJ.

Staff Comments. In the two years since the LAO raised the issue, less than 1,000 findings of suitability have been forwarded to tribal gaming authorities. The Subcommittee may wish to ask whether the GCC thinks that the speed at which this process is moving is a problem. This is an issue that can be further discussed when the Department of Justice budget is before the Subcommittee. The Subcommittee may wish to get additional information from the GCC on whether DOJ has shared a timeline regarding plans to process the number of outstanding applications with the GCC.

5. License Information System.

The 2002 Budget Act appropriated $73,000 ($58,000 from the SDF and $15,000 from the Gambling Control Fund) for the GCC and $1.3 million ($1.1 million SDF and $263,000 Gambling Control Fund) for the DOJ to provide equipment and software for a database management system that will aid the DOJ's Division of Gambling and the GCC to track gaming license information.

Last year, the Legislature reappropriated these funds for this project. The current timeline for the project estimates that the RFP will be released the week of March 15, with a contract award for August 23, implementation of the software in September, and system implementation 180 days later.

Staff Comments. This project is now at least one year behind schedule and the appropriation has been reappropriated once. The GCC reports that the contract award is now estimated for August. As such, the GCC will need to reappropriate the funds for this project. The Administration has not yet requested a reappropriation, but the Subcommittee may wish to get an updated project timeline and updated estimated costs for the project prior to approving a reappropriation.

Informational Issue.

6. Other Budget Requests

Staff Recommendation. Staff recommends approval as budgeted.

Action.

8140 State Public Defender

The Office of the State Public Defender (OSPD) was established in 1976 to provide indigent representation. Chapter 869, Statutes of 1997, revised the mission of the State Public Defender. The OSPD is now required to concentrate on post-conviction proceedings following a judgment of death. Specifically, the OSPD is limited to representing capital appellants only for the purpose of the direct appeal for all cases to which the OSPD was appointed after January 1, 1998.

State Public Defender -- Program Expenditures

Program	*Expenditures (dollars in thousands)* 2002-03	2003-04	2004-05	Change	*Percent* Change
TOTAL, State Public Defender	**$10,925**	**$11,176**	**$11,176**	**$0**	**0.0%**
Total Positions	**96.9**	**82.3**	**82.3**	**0**	**0.0%**

Budget Request. The budget proposes $11.2 million from the General Fund, which is the same as anticipated current year expenditures.

Control Section 4.10
Current year estimates and the budget proposal includes a reduction of $457,000 and 12.2 positions related to performing administrative and legal support functions. The OSPD reports that 5.2 of these positions were vacant, 5 employees transferred to other positions within the state, 2 employees retired, and one employee was laid off.

Previous Reductions. For 2002-03 the OSPD had a mid year reduction of $182,000 and 1.5 positions as well as savings related to two vacant attorney positions.

Staff Recommendation. The Subcommittee may wish to ask OSPD about the programmatic implications of a 5 percent and a 10 percent cut. Staff recommends holding this budget open.

Action.

8120 Commission on Peace Officer Standards and Training (POST)

The Commission on Peace Officer Standards and Training (POST) is responsible for raising the competency level of law enforcement officers by establishing minimum selection and training standards, improving management practices, and assisting local law enforcement agencies in providing necessary training and career development programs.

Budget Request. The budget proposes a total of $54.2 million, which is an increase of $3.4 million, or 6.7 percent from the current year budget. This increase is due primarily to an increase of $3.3 for the local assistance program that reimburses local law enforcement agencies for certain training costs – total expenditures of $25.9 million are proposed for the program.

Funding within POST supports law enforcement training needs such as developing and certifying courses that meet identified training needs, quality control of POST-certified courses, management and leadership training, and identifying emerging training needs. The budget proposes expenditures of $52.9 million from the Peace Officer's Training Fund (POTF).

POST Funding Sources

Funding Source	(dollars in thousands) 2002-03	2003-04	2004-05	Change	Percent Change
General Fund	–$1	$1	$1	$0	0.0%
Peace Officers' Training Fund	51,011	49,535	52,923	3,388	6.8%
Reimbursements	1,041	1,259	1,259	0	0.0%
Totals, All Funds	**$52,052**	**$50,795**	**$54,183**	**$3,387**	**6.7%**

The table below shows the proposed program expenditures for the POST.

POST Program Expenditures

Program	*Expenditures* (dollars in thousands) 2002-03	2003-04	2004-05	Change	*Percent* Change
Standards	$5,246	$6,643	$6,663	$20	0.3%
Training	25,379	21,542	21,575	33	0.2%
Peace Officer Training	21,427	22,609	25,944	3,335	14.8%
Administration	4,680	4,968	5,021	53	1.1%
Distributed Administration	-4,680	-4,968	-5,021	-53	1.1%
State-Mandated Local Programs	0	1	1	0	0.0%
Totals, Programs	**$52,052**	**$50,795**	**$54,183**	**$3,388**	**6.7%**
Total Authorized Positions	**119.1**	**108.6**	**108.6**	**0**	**0.0%**

Major Budget Adjustment

- A reduction of $644,000 and 12.8 positions pursuant to Control Section 4.10. All the reduced positions were vacant positions

Budget Issues

1. Peace Officer Training Fund (POTF)

Peace Officers' Training Fund – Fund Condition

			Expenditures *(dollars in thousands)*		
	2000-01	**2001-02**	**2002-03**	**2003-04**	**2004-05**
Prior Year Balance After Adjustments	$29,617	$24,654	-$2,232	$483	$1,887
Revenues	$39,536	38,853	35,409	36,956	37,229
Transfers from Driver Training Penalty Assessment Fund	*14,000*	*0*	*18,706*	*14,000*	*14,000*
Total Resources	*83,153*	*63,507*	*51,883*	*51,439*	*53,116*
State Operations Expenditures	*36,937*	*32,016*	*29,698*	*26,926*	*26,979*
Local Assistance Expenditures	*23,811*	*28,723*	*21,313*	*22,609*	*25,944*
Other Expenditures	*0*	*5,000*	*0*	*0*	*0*
Total Expenditures	*60,748*	*65,739*	*51,400*	*49,552*	*52,923*
Reserve	**$22,405**	**-$2,232**	**$483**	**$1,887**	**$193**

Expenditures from POTF Higher Than Revenues. The POTF receives monies from the State Penalty Assessment Fund, which in turn receives monies from penalty assessments on criminal and traffic fines. Since 1997-98, the amount derived from these assessments has been between $33 million and $40 million annually. Since 2000-01 expenditures have varied from $49.6 to $65.7 million. Thus, for a number of years the POTF has depended on transfers of $14 million annually from the Driver Training Penalty Assessment Fund through Control Section 24.10 of the Budget Act. In 2001-02, the funds from the Driver Training Penalty Assessment Fund were transferred to the General Fund rather than the POTF.

Current Year Expenditure Adjustments. Local Assistance expenditures were reduced from $25.9 million in the approved budget for 2003-4 to an estimated $22.6 million due to insufficient funds in the POTF. New projections for the POTF in the current year and the budget year will be available at the time of the May Revise.

What Are Local Assistance Expenditures? POST regulations require satisfactory completion of at least 24 hours of Continuing Professional Training every two years. Local Assistance expenditures pay for per diem, travel, tuition, and overtime backfill for officers participating in POST-certified training courses. The budget propose local assistance expenditures of $25.9 million.

What Are State Operations Expenditures? State Operations expenditures include $6.7 million for the development of training standards and $21.6 million for training programs which includes contracts for instructors to provide training courses.

Staff Recommendation. The Subcommittee may wish to consider what the state's role should be in assisting local law enforcement agencies and the training of local law enforcement staff. Last year, a similar program which provided reimbursements for training of local correctional personnel was eliminated. The local assistance portion of this training program was originally also proposed for deletion in last year's budget, but was restored in the May Revise. The Subcommittee may wish to request the LAO to look at this program more closely to consider how the state prioritizes state training resources and the role that local governments play in determining and financing training priorities. Staff recommends holding this issue open.

2. Mandate Repeals

Budget request. The administration has proposed trailer bill language to repeal the following mandates:

- Elder Abuse Law Enforcement Training (Chapter 444, Statutes of 1997).
- Law Enforcement Sexual Harassment Training (Chapter 126, Statutes of 1993).

These mandates were suspended for the current year.
The LAO recommends repeal of these mandates. The LAO notes that the statutory dates for completion of the training for these mandates have passed (January 1999 for Elder Abuse Training and January 1997 for Sexual Harassment Training). The LAO also notes that such training is likely to continue in the absence of the mandate because it has become part of the ongoing training of peace officers.

Staff Comments. Legislation repealing these and other mandates recommended for repeal is going through the regular policy committee process.

Staff Recommendation. Pending separate legislation repealing these mandates, staff recommends suspending these mandates. Later legislation to repeal the mandates would supercede this action.

The budget proposes to continue to defer the following mandate: Domestic Violence Arrest Policies and Standards (Chapter 246, Statutes of 1995).

Staff Recommendation. Staff recommends approving the deferral of the Domestic Violence Arrest Policies and Standards mandate.

Action.

3. Other Budget Requests

Staff Recommendation. Staff recommends approval as budgeted.

Action.

Control Section 5.25 – Payments for Litigation

Control Section 5.25 provides that payments for any attorney fee claims, settlements, or judgments arising from actions in state court against a state agency or officer shall be paid from appropriations in the Budget Act that support the affected agency.

The proposed language is identical to the language approved in previous years. Last year, Subcommittee No. 2 approved this item as budgeted.

Staff Recommendation. No issues have been raised by LAO or other Legislative staff. Staff recommends approval as budgeted.

Action

Control Section 24.10 – Driver Training Fund Transfers

Background. The Driver Training Penalty Assessment Fund receives funds from a portion of the State Penalty Assessment Fund. Historically, using Control Section 24.10, specified portions of the Driver Training Penalty Assessment Fund have been transferred to the Victim/Witness Assistance Fund, the Peace Officers' Training Fund, and the Corrections Training Fund, with the remaining balance going to the General Fund. The Budget Act of 2001 directed the Controller to transfer $38.3 million to the General Fund. In the current year, the budget estimates that $14 million will be transferred to the Peace Officer Training Fund, 4.1 million to Victim Witness Assistance Fund, and $19.5 million to the General Fund.

Proposed Language. Proposed budget bill language would transfer up to $14 million to the Peace Officer Training Fund, up to $4.1 million to the Victim Witness Assistance Fund, and an estimated $19.8 million to the General Fund.

Staff Recommendation. Staff recommends holding this item open.

8180 Payments to Counties for the Costs of Homicide Trials

It is state policy that (1) the uniform administration of justice throughout the state is a matter of statewide interest, (2) that the prosecution of trials of persons accused of homicide should not be hampered or delayed by any lack of funds available to the county for such purposes, and (3) that the cost of homicide trials should not seriously impair the finances of a county. Government Code Sections 15200 through 15204 implement these policies by allowing a county to apply to the Controller for reimbursement of specified costs of homicide trials and hearings. The reimbursement formulas vary by population of the county and provide for reimbursement of a specified percentage of one percent of the full value of property assessed within the county. Reimbursed costs include costs incurred by the county above normal salaries and expenses for district attorney investigation and prosecution, sheriff department investigation, public defender or court-appointed counsel investigation and defense, and other costs such as witness fees and expenses, and reporter fees.

Budget Request. The budget proposes total expenditures of $5 million from the General Fund. This is the same as proposed for the current year.

Historical Expenditures for Budget Item 8180, Payments to Counties for Homicide Trials

Counties	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	Total
Calaveras	$3,461,711						$3,461,711
Imperial			$77,774				77,774
Lake	1,270,651	$629,216	433,778	$8,500	$132,739	$3,974	2,478,858
Lassen		54,711					54,711
Mariposa			211,128	1,655,984	3,047,733		4,914,845
Mendocino	205,358	71,161	187,985	192,863	324,169	428,487	1,410,023
Placer				1,353,871	624,715		1,978,586
Plumas		717,030					717,030
San Luis Obispo				2,779,431	24,272		2,803,703
Shasta		1,127,200	500,270	1,451,003	1,463,573	285,866	4,827,912
Sierra		124,500					124,500
Trinity				58,348			58,348
Yuba	64,158	11,173					75,331
Totals	$5,001,878	$2,734,991	$1,410,935	$7,500,000	$5,617,201	$718,327	$22,983,332

Staff Comments. The budget for this item has historically been difficult to predict. For the current year the Controller has sent out a total of $718,000. However, DOF indicates that the following counties have trials for which they anticipate submitting claims:
Shasta County – 12 trials; Mendocino County – 15 active cases; Stanislaus – 1 trial; Tehama – 2 trials

Budget Bill Language. The Administration's proposal includes the following budget bill language:

> Notwithstanding any other provision of law, funds appropriated in this item shall be available for reimbursement of 100 percent of the costs incurred by the County of Tehama for the homicide trial of the *People v. Andrew Hampton McCrae a.k.a. Andrew Hampton Mickel.*
>
> Notwithstanding any other provision of law, funds appropriated in this item shall be available for reimbursement of 100 percent of the costs incurred by the County of

Stanislaus and the City of Modesto in connection with the investigation and prosecution of the homicide trial of the *People v. Scott Peterson.*

How the Reimbursement Formula Works. The reimbursement formulas work such that the county pays for the extraordinary costs of trial(s) up to a certain threshold, based on a percentage of the full value of property assessed within the county. The state pays for 80 percent to 90 percent of the extraordinary costs above the threshold depending on the population of the county. The threshold is base on .00625 of 1 percent of the full value of the property assessed in the county. For example, based on the net total assessed valuation in 2001-02, estimates of the threshold would be about $13.3 million for San Diego County, $4.3 million for Sacramento County, $1.4 million for Stanislaus County, $377,000 for Mendocino County, $179,000 for Tehama County, and $26,000 for Sierra County.

Change to The Formula. In previous years, language has been added to the budget bill providing specific counties with 100 percent reimbursement for the total costs for specific homicide trials. As a way to eliminate the need for exemptions and ensure that expensive trials are provided adequate reimbursement, in 2000 the Legislature approved the creation of a second threshold for very expensive trials, which allows for 100 percent reimbursement for the actual costs above the second threshold. As can be seen in the Table below, between 1996 and 2000 exemption language was provided for a total of 12 trials and that between 2000 and 2004 language has been provided for 3 trials.

Budget Acts Containing Exemption Language Reimbursing the County For 100 Percent of Costs of Specified Trials

Budget Act	County	Trial
Budget Act of 1996 & 1997	Sonoma	People v. Davis
Budget Act of 1996, 1997, 1998 & 1999	Siskiyou	People v. Bowcutt
Budget Act of 1997[1] & 1998	Mendocino	People v. Lincoln
Budget Act of 1997[1] & 1998	Mendocino	People v. Lester
Budget Act of 1997[1] & 1998	Mendocino	People v. Diaz
Budget Act of 1998	Yuba	People v. Petersen
Budget Act of 1998[2]	Lake	People v. Craft
Budget Act of 1998[2]	Lake	People v. Featherman
Budget Act of 1998[2]	Lake	People v. Statler
Budget Act of 1998[2]	Lake	People v. Jensen
Budget Act of 1998[2]	Lake	People v. Frank Burrows
Budget Act of 1998[2]	Lake	People v. Josh Burrows
Budget Act of 2000	None	
Budget Act of 2001	Shasta	People v. Williams
Budget Act of 2001	San Luis Obispo	People v. Kreps
Budget Act of 2001	Placer	People v. Suarez
Budget Act of 2002	None	
Budget Act of 2003	None[3]	

[1] Language specified that reimbursable costs include costs incurred during 1996-97 and 1997-98.
[2] Language specified that reimbursable costs include costs incurred during 1996-97, 1997-98, and 1998-99.
[3] Language vetoed from the Budget Bill.

No Precedent for Reimbursing Cities. The proposed budget bill language would reimburse the City of Modesto for costs incurred in the Peterson investigation. Previously, reimbursements have only gone to counties for their costs, even in cases such as People v. Davis where the City of Petaluma also incurred costs in the Polly Klass case. Questions to consider. Given the distinction that counties are agents of the state and as such have less discretion over law enforcement expenditures than does a city, and the required role of counties in relation to homicide trials, is it appropriate to also fund cities for this purpose? What precedent will reimbursing a city have for future reimbursements? What criteria should be used for

determining which cities should be given reimbursements? Should a threshold similar for the threshold for counties by implemented for cities?

Language Vetoed Last Year. After conference committee, budget bill language reimbursing Stanislaus County for 100 percent of the costs related to the Peterson trial was inserted. The language was vetoed by the prior administration with the following rationale:

> There is an existing procedure by which counties can procure reimbursements for costly homicide trials. Stanislaus County can apply for funds for this trial through that procedure; therefor the language is unnecessary.

Staff Notes. The Subcommittee has not approved 100 percent reimbursement language since the formula was changed in 2000. Language in the Budget Act of 2001 was amended on the Assembly floor and the vetoed language from last year was added after conference committee.

Administration Position. DOF indicates that the language was proposed because these are two high profile cases that merit reimbursement. DOF indicates that the City of Modesto language was proposed so as not to impose a hardship on the city.

Staff Comments. The Subcommittee may wish to consider:

- Whether the current reimbursement process meets the state's policy goals of uniform administration of justice, ensuring trials are not hampered or delayed by lack of funds, and the county finances are not seriously impaired. How does the 100 percent reimbursement language exempting some trials further those goals?
- The factors that distinguish these two cases as meritorious of 100 percent state reimbursement rather than any other homicide cases tried in the state.
- The precedent of reimbursing city costs of homicide trials.
- With no additional funding being added to this item, will the 100 percent reimbursement language delay or crowd out reimbursement to other counties for the costs of trials?

Staff Recommendation. Staff recommends deleting the budget bill language related to 100 percent reimbursement and allowing these counties to apply for funds through the existing procedure. Staff further recommends that the policy issue of providing reimbursements to cities for the costs of homicide trials should be handled through the regular bill process.

8700 California Victim Compensation and Government Claims Board

The California Victim Compensation and Government Claims Board, formerly known as the Board of Control, consists of three members, the Director of General Services who serves as the chair, the State Controller, and a public member appointed by the Governor. The primary functions of the Board of Control are to: (1) compensate victims of violent crime and eligible family members for certain crime-related financial losses, (2) consider and settle all civil claims against the state, (3) provide equitable travel allowances to certain government officials, (4) respond to bid protests against the state alleging improper or unfair acts of agencies in the procurement of supplies and equipment, and (5) provide reimbursement of counties' expenditures for special elections.

Budget Request. The budget proposes $141.3 million ($112.3 million from the Restitution Fund and $28.1 million federal funds), which is an increase of $2.8 million, or 2.1 percent from anticipated current year expenditures. Of the total proposed expenditures, $132.3 million is proposed for the Citizens Indemnification Program, which indemnifies those citizens who are injured and suffer financial hardship as a direct result of a violent crime. This represents an increase of $2.8 million for this program from estimated current year expenditures.

California Victim Compensation and Government Claims Board -- Program Expenditures

	Expenditures (dollars in thousands)				*Percent*
Program	**2002-03**	**2003-04**	**2004-05**	**Change**	**Change**
Citizens Indemnification	$155,200	$129,563	$132,331	$2,768	2.1%
Quality Assurance & Revenue Recovery	7,117	8,002	8,081	$79	1.0%
Disaster Relief Claim Program	16	19	19	$0	0.0%
Civil Claims Against the State	779	807	809	$2	0.2%
Citizens Benefiting the Public (Good Samaritans)	20	20	20	$0	0.0%
Administration	6,039	7,749	7,749	$0	0.0%
Distributed Administration	-6,039	-7,749	-7,749	$0	0.0%
Counties' Special Election Reimbursements	589	0	0	$0	0.0%
Totals, Programs	**$163,721**	**$138,411**	**$141,260**	**$2,849**	**2.1%**
Total Authorized Positions	**310.0**	**301.1**	**301.1**	**0**	**0.0%**

California Victim Compensation and Government Claims Board – Source of Funding

	Expenditures (dollars in thousands)				*Percent*
Fund	**2002-03**	**2003-04**	**2004-05**	**Change**	**Change**
General Fund	$1,355	$807	$0	-$807	-100.0%
Restitution Fund	110,942	119,201	112,323	-6,878	-5.8%
Federal Trust Fund	51,395	18,384	28,109	9,725	52.9%
Reimbursements	29	19	828	809	4257.9%
Totals, Programs	**$163,721**	**$138,411**	**$141,260**	**$2,849**	**2.1%**

Major Budget Adjustments

- Pursuant to Control Section 4.10, a reduction of $1.1 million from the Restitution Fund, $22,000 from the General Fund, and 19.5 positions.

Budget Change Proposals		
	Issue	**Dollars**
1	**Victim Compensation Claims Management System**. Requests funding for the budget year for a new claims management IT system.	$420,000
2	**Convert Funding Source for Programs.** Requests to convert the funding source for the Government Claims Program from General Fund to a combination of claimant filing fees and state agency reimbursements, and for the State Employees' Charitable Campaign Program from General Fund to fees. (Requires Trailer Bill Language).	$809,000
3	**Custodian of Records – Redirection of Positions**. Request to redirect two positions to the Quality Assurance and Revenue Recovery Division.	$0

1. Informational Item -- Restitution Fund Update

Background. In January 2003, the board estimated that by 2004-05 the Restitution Fund would have a negative balance. This was primarily due to large increases in expenditures (increasing from $83 million in 1998-99 to $141.1 million in 2001-02), while revenues remained relatively constant (increasing from $102 million in 1999-00 to $110 million in 2001-02).

In July 2002, the board took the following actions to reduce expenditures:

- Adopted the Medicare fee schedule for medical expenses.
- Adopted the Denticare fee schedule for dental expenditures.
- Adopted mental health treatment reimbursement rates of $70 for master's degree level therapists and $90 for psychiatrists and psychologists.
- Implemented several administrative cost reduction strategies, including elimination of 19 vacant positions ($712,000), freezing 24 vacant positions at Joint Power county agencies ($1.1 million), reducing contract staff, and restricting non-essential training and travel.

Given an estimated 36 percent increase in payments in the 2002-03, the board estimated that these reductions would not be sufficient to close the gap between revenues and expenditures. As a result, the board took the following actions in January 2003:

- To avoid potential cash flow problems, the board directed that if insufficient funds are available for payment of all expenses and eligible claims, that payment are to be prioritized as follows:
    1. Payroll and operating expenses
    2. Victim payments
    3. Provider payments
- The following service limitations for mental health counseling:
    1. For a child victim, 40 sessions
    2. For an adult victim, 30 sessions
    3. For a family member when the victim has been killed, 30 sessions
    4. For a family member in all other cases, 15 sessions
    5. Extension of mental health treatment may be extended in cases requiring additional treatment or in dire or exceptional cases.
- The board adopted the Medicare Fee Schedule minus 20 percent for reimbursement of medical expenses.
- The board adopted guidelines regarding the following criteria for reimbursement of domestic violence relocation:
    1. The $2,000 relocation benefit limited to the move of a household and not each eligible member of the household
    2. The victim must submit a copy of a formal lease agreement or a statement from the landlord

3. Directed the Executive Officer to develop a checklist for law enforcement and/or mental health providers to complete to substantiate the statutory basis for the relocation benefit
4. If the relocation is necessary for the victim's emotional well being, the victim must be receiving supportive counseling services from a licensed mental health therapist or intern, or a domestic violence or sexual assault program

Increased Collections From Inmate Trust Accounts. The budget assumes $6 million in additional revenues into the Restitution Fund in the current year from an increasing the amount that CDC collects from Inmate Trust Accounts from 20 percent to 30 percent. The budget assumes an additional $10 million due to increasing the collection rate to 50 percent in the budget year.

Further Research By the Board. Due to changes in the fund condition for the Restitution Fund, the board is examining the programmatic impacts that adopting the Medicare fee schedule minus 20 percent for medical expense reimbursement and the Denticare fee schedule has had. The board also indicates that it is researching the impact that reducing the number of reimbursable mental health sessions has had.

Informational Issue

2. Convert Funding Source for the Government Claims Program and the State Employees' Charitable Campaign.

Budget Request. The budget proposes to convert the Government Claims Program from a General Fund supported program to one that is funded from a combination of claimant filing fees and reimbursements from state agencies, based on the cost of handling the workload associated with the claims filed against them in the preceding fiscal year. This proposal requires trailer bill language.

Government Claims Program. Under this proposal, the board would charge an up front filing fee of $25, with a mechanism for waiving the fee for claimants unable to pay. The remainder of the program would be funded through a surcharge paid as a percentage of the approved claim by the affected state agencies (up to 15 percent). The budget assumes revenues of $225,000 from the filing fees and $539,000 from the surcharge.

State Employees' Charitable Campaign. The Administration proposes to amend Government Code Section 13923 to allow the board to recover actual costs for administering the State Employees' Charitable Campaign from the agency receiving the charitable contributions. The board estimates these administrative costs as approximately $50,000.

Comments. The board reports that some small organizations may object to the Charitable Campaign fee and may choose not to apply. Additionally, the administrative fees charged to approved charities will result in fewer dollars being provided to the ultimate recipients of the donations.

Staff Recommendation. Staff recommends approving the proposed General Fund reduction of $809,000, and approving the proposed trailer bill language.

Action.

3. State Operations Expenditures

California Victim Compensation and Government Claims Board – Total Expenditures (Claim Payments and Administrative Expenses)

	Expenditures (dollars in thousands)						*Estimated*	
Type of Expenditure	**1999-00**	**Percent**	**2000-01**	**Percent**	**2001-02**	**Percent**	**2002-03**	**Percent**
Administrative Expense	$35,012	29%	$41,339	32%	$45,879	27%	$53,078	25%
Claim Payment	85,687	71%	88,253	68%	123,952	73%	158,679	75%
Totals, Programs	**$120,699**	**100%**	**$129,592**	**100%**	**$169,831**	**100%**	**$211,757**	**100%**

Due to the projected fiscal problems in the Restitution Fund, last year the Subcommittee requested the LAO to review the budget proposal for the Victims of Crime (VOC) Program and to make any recommendations to reduce expenditures and enhance revenues for the VOC Program, as well as review the program's administrative expenditures.

LAO Findings. Regarding VOC administrative expenses, the LAO found that the program's administrative expenses are relatively high compared to other states. Given the relatively high administrative costs, the LAO recommended that the Legislature consider reducing the board's administrative expenses by eliminating the Criminal Restitution Compacts (CRCs) with the counties because the LAO's analysis indicated that the costs were not justified. This would have generated $2.3 million in savings in the current year.

The LAO's review showed that the administrative expenditures for the VOC Program was $41.5 million or 23 percent of the VOC Program's total budget. The Table below compares administrative costs with victim programs in other states. The LAO indicates that these states were selected because their programs offer similar benefits to those in California and, in the case of Florida and Texas, are among the largest states with victim compensation programs.

The board indicates that for some of these agencies from other states, the total does not include some overhead administrative costs such as human resources, legal, and budget staff.

Victim Compensation Program Administrative Expenses In a Selected Sample of States[1]

State	Administrative Expenses[2]
Texas[3]	10%
Utah[3]	10%
Colorado[3]	14%
Washington	17%
Florida[3]	19%
California	**23%**
Oregon[3]	24%

[1] With the exception of California, administrative expenses are for 2001-02.
[2] Administrative expenses represent the percent of total program budget.
[3] Also administer victim assistance programs.

The following table shows administrative costs of several other California state programs as compared to the VOC program. The LAO compared VOC to these programs because they had similar administrative functions, including outreach and education, application processing, and claims payments.

Victim Compensation Program Administrative Expenses Compared with Selected California Programs[1]	
Program	Administrative Expenses[2]
Healthy Families	1%
Unemployment Insurance	7%
Medi-Cal	8%
State Workers' Compensation Program	13%
VOC Program	**23%**

[1] With the exception of Medi-Cal (2002-03) and the State Workers' Compensation Program (2001-02), expenses are for 2003-04.
[2] Administrative expenses represent the percent of total program budget.

The LAO notes that due to variation in the administration of state victim programs, and different economies of scale in other programs, these are not perfect comparisons. For example, for the Healthy Families program, much of the administration is performed by contractors. However, the LAO also notes that the comparisons do suggest that California could effectively administer the VOC program at a lower cost.

Criminal Restitution Compacts (CRCs). The board supports county staff through 25 CRCs with local law enforcement agencies. The main responsibility of these state-funded county positions is to encourage judges to impose restitution orders on offenders whose victims have filed claims with the board. As such, the LAO notes that these positions should help increase revenue to the Restitution Fund.

As can be seen in the following Table, the LAO finding show that the state spends more to fund the CRC positions than the amount of revenue collected related to these positions.

Criminal Restitution Compact Expenditures And Related Revenue					
1997-98 Through 2001-02 (In Thousands)	**1997-98**	**1998-99**	**1999-00**	**2000-01**	**2001-02**
Expenditures	$1,018	$1,279	$1,579	$1,833	$2,208
Related Revenue	241	249	353	566	838
Totals, Programs	**-$777**	**-$1,030**	**-$1,226**	**-$1,267**	**-$1,370**

Each year there was a net cost to the state associated with the CRCs has ranged from $777,000 to $1.4 million. The CRC revenue ranged from about 20 percent of program costs in 1998-99 to about 38 percent in 2001-02. The LAO notes that despite the poor returns, the board has spent increasing amounts to support this component of the program.

The board indicates that in addition to revenues going to the Restitution Fund, that CRCs generate additional Restitution orders for victims.

LAO Recommendation. The LAO recommended that the Legislature consider eliminating the CRCs with the counties, which would provide about $2.3 million in the budget year that could be used to pay victim claims.

Staff Recommendation. Staff recommends holding this issue open pending receipt of additional information from the board related to how this program works and potential other benefits of the program.

Action.

4. Other Budget Requests

Staff Recommendation. Staff recommends approval as budgeted.

Action.

9670 Government Claims Board and Settlements and Judgments by the Department of Justice

The budget for this item reflects: (1) statewide expenditures for certain equity claims against the state approved for payment by the California Victim Compensation and Government Claims Board and referred to the Legislature in the omnibus claims bills for payment, (2) certain settlements and judgments against the state paid through judgment and settlement bills sponsored by the Department of Justice, and (3) administration and payment of tort and liability claims.

Background. The Department of Justice (DOJ) currently has the delegated authority to approve and pay General Fund tort claims against the State that do not exceed $35,000. In previous years, Item 9670-001-0001 has provided up to $1.2 million General Fund for this purpose. The approved claims were paid from this appropriation and the remainder of the $1.2 million would revert back to the General Fund.

Budget Request. Similar to last year, the budget does not propose any General Fund appropriation for this purpose. Claims under $35,000 from General Fund agencies would be paid from the base budget of affected agency. Special Fund departments (such as the Department of Transportation) would also have the authority under this item to pay claims up to $35,000 with DOF approval. To enable these departments to continue to pay special fund claims pursuant to this authority, the DOF is proposing to leave Item 9670 in the Budget Bill, with the provisional language addressing special funds, minus the General Fund appropriation.

The proposed language is identical to the language that was approved by the Legislature last year.

Staff Recommendation. Staff recommends approval as budgeted.

Action.