

June 5, 2015

# Department of Toxic Substances Control: Overview of Conference Issues Issue 3960, Page 35

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L E G I S L A T I V E   A N A L Y S T ' S   O F F I C E

Presented to:  
Budget Conference Committee  
Hon. Mark Leno, Chair



## Governor's January Budget Proposals

June 5, 2015  
Page 1

- The Governor's January budget proposal for the Department of Toxic Substances Control (DTSC) included a total of \$2.5 million and 22 limited-term positions associated with the following items.

Governor's Proposal	Senate Action	Assembly Action
<b>Hazardous Waste Reduction.</b> \$840,000 from the Toxic Substances Control Account and six two-year, limited-term positions to support up to three pilot-scale projects to reduce hazardous wastes that are generated in California to help achieve the administration's waste reduction goal of 50 percent.	Reject	Approve as Budgeted
<b>Permitting Coordination and Backlog Support.</b> \$1.6 million from the Hazardous Waste Control Account and 16 two-year, limited-term positions to address increased workloads in order to (1) reduce the department's inventory of backlogged continued hazardous waste facility permit applications, and (2) streamline and enhance protections in the enforcement and permitting processes.	Approve with permanent, rather than limited-term, positions. Also add supplemental reporting language regarding the status of permitting coordination and backlog reduction.	Approve as Budgeted

## Governor’s May Revision Proposals

June 5, 2015  
Page 2

- The May Revision included a total of \$6.6 million and 46 positions, including 28 new limited-term positions and redirection of 18 existing permanent positions, associated with the following items.

Governor’s Proposal	Senate Action	Assembly Action
<b>Enhanced Enforcement.</b> \$2.1 million (\$222,000 Hazardous Waste Control Account and \$1.9 million Toxic Substances Control Account [TSCA]) and 11 limited-term positions to implement and evaluate approaches to address environmental violations in vulnerable communities. The proposal would focus inspection and enforcement resources on the metal recycling industry and the hazardous waste transportation industry. Includes trailer bill language allowing the use of TSCA for these purposes.	Reject	Approve as Budgeted
<b>Improving Enforcement Performance.</b> \$1.4 million (TSCA) and 11 limited-term positions to conduct a review of the Department of Toxic Substances Control’s hazardous waste management enforcement program. Specifically, the department proposed an assessment of its enforcement program including evaluation of workload, inspections, investigations, policies and statutory mandates. Includes TBL allowing the use of TSCA for these purposes.	Reject	Approve as Budgeted
<b>Safer Consumer Products.</b> \$643,000 (TSCA) and six limited-term positions to allow the department to expand research capabilities and accelerate the rate in which consumer products containing toxic chemicals can be evaluated and identified for inclusion in the Safer Consumer Products Program.	Reject	Approve as Budgeted
<b>Position Realignment.</b> Shift \$2.4 million from federal funds to TSCA, and shift 18 positions to the Site Mitigation and Brownfields Reuse Program. The funding and positions were shifted previously to support state response and oversight of the National Priority List site cleanup. This program requires the state to oversee active site cleanup programs, including federal military sites. The department anticipated federal funding for military site cleanup that has not materialized.	Reject	Approve as Budgeted

## Senate Added Language to Reduce DTSC Budget If Required Reports Not Provided

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June 5, 2015  
Page 3

- ☑ The Senate approved placeholder budget bill language that would reduce the department's overall budget by 50 percent should the following supplemental reports not be submitted by April 1, 2016:
  - A report relating to the Permit and Enforcement Backlog Reduction proposal on (1) the status of permits completed compared to commitments made in the *Budget Act of 2014-15*; (2) number and status of permit modifications, emergency permits, and new permits; (3) use of EnviroStor for compliance measures (including those prior to 2008); and (4) implementation of staff training, quality control and data inspection, and reporting of enforcement actions prior to 2008.
  - A report relating to the Exide Enforcement Order proposal (approved by both houses) on: (1) the status of the implementation plan referenced in the 2015-16 budget proposal; (2) the time and cost to implement the Stipulation and Order; (3) status of the onsite investigation and cleanup efforts; and (4) measures taken to increase community involvement.

## Senate Added Language to Establish an Independent Review Panel

June 5, 2015  
Page 4

- ☑ The Senate approved placeholder trailer bill language that would require the following:
  - Establishment of three-person, independent review panel, to oversee the department's activities. The Assembly Speaker, Senate Rules, and the Governor would each appoint one panel member. The panel would include a community representative, a person with scientific expertise related to toxic materials, and a local government management expert. The panel would be provided two internal staff, per diem, and reimbursement for travel and reasonable business expenses, up to \$50,000.
  - The panel would report to the Legislature and Governor every 90 days on the department's performance, specifically related to permitting and enforcement backlog reductions and meeting legislative mandates. The panel would also monitor the department's compliance with Health and Safety Code 57007 (which requires the department to report to the Governor and Legislature on the extent to which it has attained its performance objectives and on its continuous quality improvement efforts) through the department's establishment of an Office of Performance, Accountability and Transparency no later than December 31, 2015. The office would provide internal auditing and ombudsman functions. It would also ensure that all programs are fully evaluated and, where appropriate, recommend additional measures be implemented to address uncertainties or gaps in the protectiveness of the decision-making process.
  - The department would be required to submit, as part of its January 2016-17 budget, a proposal implementing the panel's recommendations.
  - The panel would be required to review reports and make suggestions on DTSC's reporting obligations, and make recommendations for program improvements.

## LAO Compromise

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June 5, 2015  
Page 5

- Approve Department's Budget Requests.*** We find that the department's requests are reasonable, and the proposed resources would address documented workload needs. The additional funding and positions would assist the department in continuing to make needed improvements and carrying out its Fixing the Foundation initiative.
  
- Consider Making Certain Positions Permanent to Provide Stability.*** We recommend that the Permitting Coordination and Backlog Support proposal be approved as permanent, same as the Senate action. These resources address ongoing workload and are supported by ongoing funding sources. Making the positions permanent would enable the department to better recruit and retain staff as well as provide stability to the program. In addition, the Legislature might wish to consider whether the Enhanced Enforcement proposal should be ongoing for the same reasons.
  
- Adopt Senate's Supplemental Reporting Language and the Trailer Bill Language to Establish Oversight Entity.*** We find that the Senate's adopted language requiring reporting and the establishment of a review panel would provide the Legislature with more information and improve legislative oversight of the department. However, the budget bill language adopted by the Senate to reduce the department's budget by 50 percent should it not deliver required reports would be difficult to implement and could affect the department's ability to carry out its mission. We note that the reports are due during the 2016-17 budgeting cycle, and the Legislature could hold the department accountable through hearings at that time and make changes to the department's 2016-17 budget based on its findings, as well as those of the independent review panel.