

The 2021-22 Budget: Department of Toxic Substances Control

SUMMARY

In this analysis, we assess the Governor’s 2021-22 proposed budget for the California Department of Toxic Substances Control (DTSC). Specifically, we make recommendations and provide issues for legislative consideration regarding the Governor’s proposals to (1) establish a Board of Environmental Safety within DTSC, (2) restructure and increase charges that support the Hazardous Waste Control Account (HWCA), (3) restructure and increase the tax that supports the Toxic Substances Control Account (TSCA), and (4) provide funding to support brownfield cleanups and investigations across the state.

While the Governor presents all four of these proposals as one interrelated package, we recommend the Legislature consider the merits of each proposal separately. In particular, we do not believe the Legislature should view the decision whether to provide General Fund to clean up brownfields as being contingent on reforming DTSC’s fiscal and governance structure. We recommend the following:

- **Board of Environmental Safety.** We recommend the Legislature authorize the establishment of a new oversight board in order to improve transparency and promote greater accountability of DTSC. However, we recommend the Governor’s proposal be modified to provide for legislative appointment of some board members, make board members subject to Senate confirmation, and require the board to report annually to the Legislature on the department’s performance.
- **Structural Shortfall of HWCA.** We recommend the Legislature approve the Governor’s proposals to (1) provide \$22.5 million in one-time General Fund to address the funding gap in the budget year, (2) restructure and increase HWCA charges, and (3) authorize the new board to set future charge levels.
- **Structural Shortfall of TSCA.** We recommend the Legislature (1) approve \$13 million in one-time General Fund to address the funding shortfall in the budget year, (2) consider a tax level and structure that reflects legislative priorities, and (3) authorize the new board to set future tax levels.
- **Brownfield Cleanups.** We recommend the Legislature consider how the proposal aligns with its priorities, including what it views as the most important objective for cleaning up brownfields—addressing serious environmental risks or remediating parcels to develop for new housing.

BUDGET OVERVIEW

DTSC is charged with protecting the people of California and the environment from the harmful effects of toxic substances by cleaning up contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically safer products.

Proposes \$597 Million for DTSC in 2021-22. As shown in **Figure 1**, the Governor’s budget proposal reflects a \$270 million (82 percent) increase compared to estimated current-year expenditures. The increase is largely attributable to a proposal to provide \$300 million on a one-time basis from the General Fund to clean up “brownfields”—properties that are underutilized due to the presence or potential presence of hazardous substances, pollutants, or contaminants—within DTSC’s Site Mitigation and Restoration Program.

Major Proposals. The Governor’s budget package includes several significant policy and funding changes, several of which are discussed in greater detail later in this analysis:

- **Brownfield Cleanups (\$300 Million).** The Governor proposes one-time General Fund spending to investigate and clean up

brownfields across the state, with a special focus on remediating sites to develop new housing.

- **Exide Residential Cleanup (\$31.4 Million).** The Governor’s budget includes a loan from the General Fund for DTSC to finish cleaning up lead contamination at the 3,200 high-risk properties identified around the former Exide Technologies facility.
- **Structural Shortfall of HWCA (\$22.5 Million).** The Governor proposes budget trailer legislation to restructure and increase HWCA charges, as well as one-time General Fund resources to keep the fund solvent in the budget year until changes are fully implemented.
- **Exide Cost Recovery (\$16.5 Million).** The Governor proposes \$2.5 million ongoing from the Lead-Acid Battery Cleanup Fund for DTSC and \$14 million in one-time General Fund resources—\$12.9 million for the Attorney General’s Office and \$1.1 million for outside bankruptcy counsel—to support cost recovery efforts related to the former Exide Technologies facility.

Figure 1

Department of Toxic Substances Control Budget Summary

(Dollars in Millions)

Fund Source	2019-20 Actual	2020-21 Estimated	2021-22 Proposed	Change From 2020-21	
				Amount	Percent
Total	\$301	\$328	\$597	\$270	82%
By Program					
Site mitigation and restoration	\$103	\$162	\$439	\$277	172%
Hazardous waste management	90	84	90	6	8
Exide Technologies Facility contamination cleanup	91	66	47	-19	-29
Safer Consumer Products	15	15	16	1	7
Board of Environmental Safety	—	—	3	3	300
State Certified Unified Program Agency	2	2	2	—	29
By Fund Source					
General Fund	\$56	\$78	\$383	\$305	389%
Special funds	215	216	179	-37	-17
Federal funds	30	33	35	2	5

- **Structural Shortfall of TSCA (\$13 Million).** The Governor’s proposal includes budget trailer legislation to restructure and increase the tax that supports TSCA, along with one-time General Fund resources to keep the fund solvent in the budget year until the changes are fully implemented.
- **Board of Environmental Safety (\$3 Million).** The Governor proposes one-time General Fund resources and budget trailer legislation to establish a Board of Environmental Safety within DTSC.

BOARD OF ENVIRONMENTAL SAFETY

Background

Independent Review Panel (IRP)

Recommended Establishing Oversight Board for DTSC. In 2015, the Legislature enacted Chapter 24 (SB 83, Committee on Budget and Fiscal Review), which established within DTSC a three-member IRP to assess the department’s performance in various areas of operations and administration, as well as to make recommendations to improve DTSC’s programs. One of the IRP’s recommendations in its final report (issued in January 2018) was to establish an oversight board or to consider other structural changes to improve the accountability and transparency of DTSC.

Both Governor and Legislature Proposed Oversight Board in 2020-21. The Governor’s 2020-21 budget included a proposal that would have established a new oversight board within DTSC. (The proposal also included fiscal reform of HWCA and TSCA.) The Legislature did not adopt this proposal in its final budget package. Additionally, in September 2020, the Legislature passed AB 995 (C. Garcia), which would have created a new governance board for the department, along with other policy changes. The Governor vetoed this legislation, citing that DTSC would be unable to deliver on the proposed changes without also implementing a full fiscal reform.

Governor’s Proposal

Establish Board of Environmental Safety. The Governor again proposes budget trailer legislation to establish a Board of Environmental Safety within DTSC, as well as \$3 million on a one-time

basis from the General Fund to staff the board in 2021-22. Administrative costs for the board would be funded from TSCA and HWCA in future years. The five-member board would be composed of a full-time chairperson and four part-time paid members. Additionally, the board would be supported by 12 staff performing a combination of technical and administrative duties. Beginning in January 2022, the board would be required to conduct no fewer than six public meetings per year.

Board Would Have Several Key Responsibilities. The Governor’s proposed budget trailer legislation specifies the board’s responsibilities, including the following functions:

- **Set Annual Charges for HWCA and TSCA Based on Budgeted Appropriations.** The board would adopt regulations to establish a schedule of charges for (1) hazardous waste facilities, generators, and handlers subject to HWCA charges and (2) entities subject to the tax that supports TSCA. The board would be authorized to update these charges annually beginning in 2023-24, based on legislative changes to appropriation levels.
- **Hear and Decide Permit Appeals.** The board would hear and decide appeals of hazardous waste facility permit decisions made by DTSC.
- **Provide Opportunities for Public Hearings.** The board would be required to hold public hearings on DTSC’s actions pertaining to individual permitted or remediation sites.
- **Provide Direction to DTSC.** The board would review and approve the director’s annual priorities—including performance metrics—

for each of DTSC's programs. The director would provide annual updates to the board on the department's progress towards meeting these priorities.

- **Develop a Multiyear Schedule for Discussion of Long-Term Goals.** The board would discuss long-term goals for various components of DTSC's operations, including improvements to (1) the efficiency of DTSC's hazardous waste facility permitting process, (2) DTSC's ability to meet its duties and responsibilities, (3) the site mitigation program and how contaminated properties are prioritized for cleanup, and (4) DTSC's implementation of its enforcement activities.
- **Provide Ombudsperson Services to the Public and Regulated Community.** The legislation would establish an Office of the Ombudsperson within the board to (1) receive complaints and suggestions from the public, (2) evaluate complaints, (3) report findings and make recommendations to the director and the board, and (4) provide assistance to the public when appropriate.
- **Annual Report to Secretary of CalEPA.** The board would be required to transmit to the Secretary of the California Environmental Protection Agency (CalEPA) an annual review of the department's performance.

Governor's Proposal Includes Several Policy Changes. The Governor's proposed budget trailer legislation also includes several policy changes for the department—many of which were not included in his 2020-21 proposal but were included in AB 995. These changes would implement the following: (1) require the department to update a state hazardous waste management plan by March 2027 and every three years thereafter; (2) accelerate time lines for the department to complete hazardous waste facility permit renewals, as well as implement other accountability measures; and (3) strengthen financial assurance requirements for entities who handle hazardous waste.

Assessment

Concept of Establishing a Board Has Merit. A board that holds regular public meetings could improve transparency around DTSC's operations

and provide the public and stakeholders with a regular venue to raise issues and discuss their concerns. The board structure could also help to promote greater accountability by requiring the DTSC director to regularly report on the department's progress towards meeting annual priorities and long-term goals.

Governor's Proposed Board Differs Somewhat From Legislature's Approach. While largely mirroring the board structure the Legislature would have established through AB 995, the board proposed by the Governor would differ from the Legislature's approach in the following ways:

- **Board Would Establish Future Charge Levels for HWCA and TSCA.** The Legislature's approach required the Secretary of CalEPA to convene a task force to review the revenue structures that support HWCA and TSCA and to report recommendations to the Legislature for future changes through the budget process. In contrast, the Governor's proposal empowers the board to make future changes based on legislative appropriation levels. (We discuss the proposed changes to these charges in greater detail later in this report, raising several issues for legislative consideration. We find that providing the board with authority to administratively adjust charges is reasonable.)
- **Board Would Be Under DTSC, Not CalEPA.** The Legislature's approach would have had the board report directly to the Secretary of CalEPA, whereas the Governor proposes having the board housed within DTSC.
- **Board Member Appointments Would Not Require Legislature's Approval.** The Governor would not require any of the five board members to be appointed by the Legislature or receive Senate confirmation, whereas the Legislature's approach would have required that three board members be subject to Senate confirmation, one member be appointed by the Senate Rules Committee, and one member be appointed by the Speaker of the Assembly.
- **Board Member Qualification Requirements Slightly Different.** The Governor would require one board member to be selected from

the general public, whereas the Legislature's approach would have required professional qualifications for all members.

- **No Annual Report to the Legislature.** Assembly Bill 995 would have required the board to transmit to the Legislature and the Secretary of CalEPA an annual review of the department's performance measured against the board's objectives, whereas the Governor's proposal only requires reporting to the Secretary of CalEPA.

Governor's Proposal Excludes Components That Could Increase Transparency and Accountability to Legislature.

Three of the AB 995 provisions that the Governor's proposal leaves out could provide opportunities to increase the proposed board's accountability and transparency to the Legislature. Specifically, the Governor's approach denies the Legislature the opportunity to (1) appoint board members, (2) vet and approve the Governor's board appointees through the Senate confirmation process, and (3) be provided a required annual report on DTSC's performance. Given that increasing oversight over DTSC has been a high priority for the Legislature, these differences contained in the Governor's proposal would limit the extent to which a new board would reflect *legislative* priorities and enable the Legislature to stay informed about DTSC's progress.

Governor's Proposal Now Reflects Some Other Legislative Priorities. The Governor's 2021-22 proposal incorporates many of the policy changes that were adopted in AB 995 that were not included in the administration's approach from last year, such as requiring DTSC to update the statewide hazardous waste management plan. The inclusion of these changes better aligns the administration's proposal with priorities that the Legislature has previously identified as being important reform measures for DTSC.

Recommendation

Approve Proposal to Establish Board, but Include Components That Increase Legislative Oversight. We recommend the Legislature establish a board in order to improve DTSC's transparency and accountability, and thereby help restore confidence in the department within the regulated community and the public. However, we recommend that the Legislature require that (1) the Senate and Assembly each have the opportunity to appoint a board member, (2) gubernatorial board members be subject to Senate confirmation, and (3) the board report annually to the Legislature on the department's performance. These changes would strengthen the Legislature's ability to oversee the board and department and ensure that the reforms being implemented are resulting in performance and outcome improvements.

STRUCTURAL SHORTFALL OF HWCA

Background

HWCA Primarily Funds DTSC's Regulatory Activities. HWCA is one of the department's two major special funds. The fund primarily supports the department's Hazardous Waste Management Program, which regulates the generation, storage, transportation, and disposal of hazardous waste through permitting, compliance monitoring, and enforcement of noncompliance.

HWCA Receives Revenues From Several Fees. HWCA currently receives revenues from various fees levied on hazardous waste generators, waste

disposal entities, and other facilities that handle hazardous waste. **Figure 2** on the next page lists the major revenue sources for HWCA and provides a brief description of each. As shown, the amounts charged ranges due to differing rate structures. For instance, the generator fee is an annual charge that is tiered based on the amount of hazardous waste an entity generates. While these charges generally are applied to the different categories of businesses displayed in the figure, in some cases exemptions apply. For example, hazardous waste generators that generate fewer than five tons of waste annually are not required to pay the generator fee. Major

revenue sources for HWCA totaled about \$47 million in 2019-20 and are anticipated to be roughly the same amount in 2020-21. Combined with revenues from other sources, such as cost recovery charges, total revenues for HWCA were roughly \$56 million in 2019-20—not including the General Fund backfills discussed below.

HWCA Faces Structural Imbalance. In recent years, the growth in expenditures from HWCA has outpaced the growth in revenues, creating a structural imbalance in the fund. The administration indicates these trends are primarily due to increasing statutory requirements and responsibilities for the department, as well as increasing operational costs that have exceeded inflationary adjustments to the fees that support HWCA. For instance, Chapter 611 of 2015 (SB 673, Lara) required DTSC to establish and implement new permitting criteria to improve enforceability, transparency, and equity in permit decisions. The total costs associated with DTSC’s activities supported by HWCA are estimated to be about \$77.5 million in 2020-21. To meet its costs and keep the fund solvent, DTSC received General Fund backfills for HWCA totaling \$27.5 million in 2019-20 and \$19.5 million in 2020-21.

Both Governor and Legislature Sought to Address HWCA Imbalance in 2020-21. The

Governor’s 2020-21 budget included a proposal to restructure and increase charges that support HWCA. The proposed HWCA reform ultimately was not included in the budget package approved by the Legislature. Assembly Bill 995 also included a HWCA reform component that would have restructured and increased charges in a way that was nearly identical to the Governor’s proposal. Assembly Bill 995 also would have required the Secretary of CalEPA to convene a task force to review the charges under HWCA and to provide recommendations to the Legislature on additional reform options for the future. As noted earlier, AB 995 was vetoed by the Governor.

Department’s Workload Analysis Indicates Resource Gaps. In January 2021, the department released a workload analysis that provided information on DTSC’s current staffing, funding, and workload, as well as a discussion of identified resource gaps for high-priority programs and activities. The analysis identified roughly \$20 million in resource gaps within the Hazardous Waste Management Program—the program primarily supported by HWCA—of which a significant portion was related to shortcomings in the department’s ability to inspect hazardous waste facilities and to pursue enforcement cases for violations. This assessment suggests that even with the recent

Figure 2

Major Revenue Sources for HWCA Under Current Law

2019-20

Fee ^a	Payer	Charge	Revenue (Millions)
Generator ^b	Generators who produce five or more tons of hazardous waste annually.	\$250 to \$100,000	\$26.8
Disposal ^b	Generators who send hazardous waste to authorized disposal facilities in the state.	\$6 per ton to \$310 per ton	6.5
EPA identification verification	Businesses with 50 or more employees that require an identification number from DTSC or U.S. EPA.	\$150 to \$250	5.7
Facility ^b	Any facility with a permit from DTSC to treat, store, or dispose of hazardous waste.	\$2,300 to \$355,000	5.6
Manifest user	Businesses that use hazardous waste manifests to track the shipment of hazardous waste.	\$3.50 per manifest to \$7.50 per manifest	2.3
Total			\$46.8

^a Certain exemptions exist for some fees.

^b Adjusted annually for inflation based on the Consumer Price Index.

HWCA = Hazardous Waste Control Account; DTSC = Department of Toxic Substances Control; and U.S. EPA = United States Environmental Protection Agency.

General Fund backfills, HWCA is not providing sufficient resources to enable DTSC to meet its statutorily required regulatory workload.

Governor’s Proposal

General Fund Transfer to Address HWCA Shortfall in 2021-22. The Governor’s budget proposes to transfer \$22.5 million from the General Fund in 2021-22 to keep HWCA solvent. This would allow the department to continue its regulatory activities at existing levels in the budget year. Short-term funding is needed since the proposal to raise HWCA charges—discussed below—would not take full effect in the budget year, resulting in a lag before sufficient new revenues materialize. With the proposed General Fund augmentation, HWCA would begin the 2021-22 fiscal year with an estimated fund balance of \$8.6 million and end the year with an estimated balance of \$1.3 million.

HWCA Charge Restructure and Increases to Take Effect in 2022-23. The Governor proposes budget trailer legislation that would make four significant changes to the existing HWCA fee structure:

- Replace the existing generator, disposal, EPA identification verification, and manifest user fees with a new generation and handling fee. The new generation and handling fee would be based on a price-per-ton model—instead of the current tiered model—and set at \$46 per ton.
- Increase the existing facility fees. The primary facility fees would more than double under the administration’s proposal.
- Eliminate various exemptions for which entities are subject to paying the charges.
- Revise the timing of payments to coincide with the fiscal year in which the Legislature appropriates the department’s funding (rather than by calendar year, which is how current payments are structured).

These changes would take effect in 2022 and provide additional revenue for 2022-23. **Figure 3** shows the additional revenues the restructured and increased charges would provide for HWCA. As shown, the administration estimates that its proposal would provide an additional \$49.6 million for HWCA starting in 2022-23, more than doubling the amount of revenue from the existing fees, enough to close the structural deficit and to accommodate new spending.

Eliminates Some Exemptions, but Continues to Exempt Smaller Generators From Paying. The Governor’s proposal would eliminate various exemptions that currently exist for both the facility and generator fees. For example, current exemptions for entities that handle used oil would be eliminated under the new generation and handling fee. However, the proposal would continue to allow entities that generate less than five tons of hazardous waste per year to be exempt from paying the generation and handling fee. This is a change from the Governor’s 2020-21 proposal, which would have removed that exemption. The department states it is proposing to retain this exemption to minimize the economic impact on small businesses that are recovering from the pandemic. Moreover, the department indicates that the administrative costs associated with collecting payments from these smaller generators would outweigh the revenues it estimates it could collect. Because the

Figure 3

Projected Revenue Increases Under Governor’s HWCA Proposal
2022-23 (In Millions)

Current ^a		Proposed	
Existing Fees	Revenue	Updated Fees	Revenue
Generator	\$26.2	Generation and handling	\$80.9
Disposal	6.4		
EPA ID verification	5.5		
Manifest	2.2		
Subtotal	(\$40.3)	Subtotal	(\$80.9)
Facility	\$5.6	Facility	\$14.6
Total	\$45.9	Total	\$95.5

^a Administration’s estimates for fee revenues if no reforms were adopted.
HCWA = Hazardous Waste Control Account and EPA ID = Environmental Protection Agency Identification.

proposal retains this exemption, the administration believes that a vote on the HWCA reform package would require a two-thirds vote of the Legislature.

Revenue Increases Address Structural Deficit and Provide for Additional Program Spending.

As shown in **Figure 4**, the administration intends to use the additional \$49.6 million in new HWCA revenues to (1) address the structural deficit in the fund (\$22.5 million), (2) provide additional funding to address resource gaps identified in the department’s workload analysis (\$22.5 million), (3) build reserve levels within the fund (\$3.1 million), and (4) provide ongoing funding for administrative costs related to the new board (\$1.5 million). The amounts intended to be used for increased programmatic expenditures and the board reflect the department’s current estimates. However, the use of these funds would need to be authorized in the 2022-23 budget based on proposals submitted to and approved by the Legislature. That is, the proposal currently before the Legislature would authorize charge increases to *generate* an additional \$22.5 million for the workload expansions but not the authority to *spend* those revenues.

New Board Would Establish Future HWCA Charge Levels According to Appropriation Authority Set by Legislature. The Governor would grant the proposed Board of Environmental Safety with authority to set charge levels for HWCA

in future years beginning in 2023-24. This would allow revenues to keep pace with growth in DTSC’s regulatory workload. Specifically, the board would set charges annually to align HWCA’s revenues with the amount of expenditures authorized by the Legislature through the annual budget act. The administration indicates that the board would hold public meetings following the release of the Governor’s January budget and May Revision to discuss how proposals would affect the level of charges, with adjustments officially being made in the fall after the budget act is passed. While the board would have the authority to set these charges annually, the administration’s proposed language sets a maximum level for each charge. These caps would be set two times higher than the rates being proposed for 2022-23. For instance, the initial rate for the generation and handling fee would be set at \$46 per ton, and the maximum charge level would be set at \$92 per ton. The caps would be adjusted annually for inflation according to the Consumer Price Index beginning in 2024-25. If in some future year the board has set charge levels at the maximum allowable amount and finds that revenues are insufficient to meet the department’s regulatory workload and legislatively authorized expenditure levels, then the Legislature would need to take additional action to authorize higher charges.

Assessment

General Fund Support Would Keep HWCA Solvent in 2021-22. The proposed one-time General Fund backfill of \$22.5 million would keep HWCA solvent in the budget year and allow DTSC to continue undertaking its existing level of activities. Because of the delay in when the restructured charges and increases go into effect, providing short-term funding for the fund likely is necessary if the Legislature wants DTSC to continue performing its regulatory function at existing levels in 2021-22.

Proposal Would Solve Existing Shortfall. The Governor’s proposal would address the structural problems within HWCA on an ongoing basis starting in 2022-23. Specifically, the proposed increases would provide sufficient new revenues for HWCA to address the fund’s current operating imbalance and cover DTSC’s existing workload on an ongoing basis, as well as build up a prudent level of operating reserves.

Figure 4
Proposed Uses of New HWCA Revenues Beginning in 2022-23
(In Millions)

Expenditures	Amounts
Address HWCA structural deficit	\$22.5
Additional program spending	22.5
Enforcement	6.0
Federal delegation requirements	4.0
Criminal investigations	4.0
Legal services	2.5
Information technology systems	2.5
Permitting	2.0
Hazardous waste management plan	1.5
Set aside for HWCA reserves	3.1
Administrative costs for new board	1.5
Total	\$49.6

HWCA = Hazardous Waste Control Account.

Incorporating Revenue Increases to Expand Programmatic Expenditures in 2022-23 Is Reasonable. We find the administration's proposal to also incorporate estimated costs for future programmatic expansions into its new charges to be justified. We find that the programmatic expenditures anticipated for 2022-23 appear reasonable based on DTSC's workload analysis of existing regulatory requirements and funding deficiencies. Additionally, the Legislature will be able to conduct further oversight over the specific proposed expenditures when the department submits budget requests next year to authorize the use of these funds in 2022-23.

Moreover, authorizing the proposed charge increases to go in effect in 2022 is reasonable because doing so would make sufficient resources available to support the new activities beginning in 2022-23. Absent such action, the board would not be able to raise charges to generate increased revenues until 2023-24, resulting in an additional year wait before DTSC would be able to increase staffing levels and commence the additional work proposed.

New Generation and Handling Fee Has Several Benefits. The proposal includes eliminating several existing fees and replacing them with a new generation and handling fee. We find that the new charge would have several advantages over the current structure. First, the new charge structure would distribute costs across hazardous waste generators more equitably when compared to current fees. For instance, the generator fee's current tiered structure allows businesses that generate different amounts of hazardous waste to pay the same annual charge. For example, an entity that currently generates 500 tons of hazardous waste would pay the same amount as one that generates 900 tons. The new generation and handling fee would correct this by charging businesses based on a price-per-ton model. Second, the new charge could encourage reductions in hazardous waste in the long run. This is because the model of placing a charge on every ton of hazardous waste generated creates an incentive for businesses to pursue innovative ways to reduce their waste and thereby lessen their regulatory costs.

Retaining Exemption for Small Generators Is Reasonable. We also find that the administration's decision to retain the exemption for generators that generate less than five tons to be reasonable. The exemption does not completely align with the "polluter pays" principle under which entities who engage in regulated activities should be responsible for paying regulatory and oversight costs. However, assessing the charge on small generators would not make fiscal sense because the administrative cost to collect from these entities would be greater than the estimated revenues generated. According to the department, there are 67,000 small generators—making up about 90 percent of generators—but which produce only 2 percent of the total hazardous waste in the state. We also find that retaining this exemption could provide some relief to smaller businesses that are struggling due to the pandemic. (However, as we discuss in more detail related to TSCA changes below, these types of exemptions are not necessarily the most effective way to provide fiscal relief to pandemic-impacted businesses.)

Allowing New Board to Adjust HWCA Charge Levels Is a Reasonable Approach. While the Governor's approach differs from AB 995, we find that allowing the new board to set future charge levels annually has some key benefits and still would allow for ample legislative involvement. First, it creates more stability for HWCA by establishing a way for revenues to annually align with expenditure levels established by the Legislature through the budget act. For instance, if revenues were to decline or grow more slowly than expenditures, the board could adjust charges—up until the maximum level—to prevent a structural deficit from occurring. Second, this approach provides the Legislature with greater confidence that it can assign necessary responsibilities to the department without placing excessive pressure on HWCA. For example, approving ongoing positions or augmentations for the department could ultimately be funded through the board's ability to increase charges. Given that HWCA is largely used for the department's regulatory responsibilities, creating this type of alignment between authorized expenditures and revenues that are collected from regulated entities is reasonable. Third, since the board will discuss charge adjustments at public meetings that align

with the budget process, the Legislature will be able to weigh prospective impacts on rates before making decisions on new expenditure proposals.

Recommendations

Approve One-Time General Fund Augmentation in 2021-22. We recommend that the Legislature approve the Governor's proposed \$22.5 million in one-time General Fund to backfill HWCA. Providing the backfill would keep HWCA solvent and allow DTSC to continue its existing programmatic workload in the budget year.

Adopt HWCA Charge Restructure and Increases. We recommend that the Legislature approve the Governor's HWCA charge restructure and increase, which would solve HWCA's structural

deficit and provide additional revenues to enable the department to address several of the resource gaps it has identified.

Approve Governor's Proposal to Grant Board With Ability to Adjust Charge Levels in Future Years. We recommend that the Legislature approve the Governor's proposal to provide the new board with the ongoing ability to adjust charge levels. Allowing the board to set charges annually would create more stability for HWCA and help ensure that revenues will be able to keep pace with legislatively approved expenditures. Additionally, because the board would discuss adjustments during the legislative budget process, the Legislature would be able to weigh the merits and associated charge impacts of proposals requesting funding from HWCA before approving them.

STRUCTURAL SHORTFALL OF TSCA

Background

TSCA Funds Several DTSC Programs. TSCA is the department's other primary special fund source. TSCA largely funds DTSC's activities related to investigating and cleaning up contaminated sites. The fund also supports the department's Safer Consumer Products program, which attempts to reduce human and environmental exposure to toxic chemicals by working with industry to develop safer alternatives.

TSCA Funded by Tax on Businesses. Major sources of revenue for TSCA include various charges, fines, and penalties. Roughly 80 percent of TSCA's revenues come from an annual tax levied on most businesses with 50 or more employees. (The remaining amount comes from cost recovery revenues, penalties, and interest.) The amount of the tax applied is scaled based on the number of employees and is adjusted annually for inflation. For example, in 2021, businesses with between 50 and 74 employees pay \$357 whereas larger businesses with between 500 and 999 employees pay \$4,985. (While the charge is generally referred to as an environmental fee, it aligns with the State Constitution's definition of a tax.) The underlying

premise for the widespread nature of the tax is that all businesses contribute to hazardous waste through the use of basic products that were either manufactured using chemical processing techniques or that become hazardous waste after they have been discarded. In 2019-20, the tax generated about \$56 million for TSCA, and is anticipated to be roughly the same amount in 2020-21.

TSCA Faces Structural Imbalance. In recent years, the growth in expenditures from TSCA has outpaced growth in its revenues, creating a structural imbalance in the fund. According to the administration, these trends are due, in part, to additional operational costs to implement expanded responsibilities the department has been assigned since 2000. For example, Chapter 559 of 2008 (SB 509, Simitian) established the Safer Consumer Products program, which is currently funded at about \$16 million annually, mostly from TSCA. Additionally, California faces increasing cost pressures related to required state contributions to federal cleanup projects, which typically are funded out of TSCA. In contrast, the tax that funds TSCA has not been increased—apart from inflationary adjustments—since 1997. Expenditures from TSCA

in 2020-21 are anticipated to total \$63.1 million. (This does not include expenditures related to the former Exide Technologies facility, which is largely supported by General Fund loans to TSCA.) To keep the fund solvent in 2020-21, the budget provided TSCA with a General Fund backfill of \$7.8 million.

Governor and Legislature Proposed

Differing Approaches for TSCA. The Governor’s 2020-21 budget included a proposal to increase the tax that supports TSCA. Like the Governor’s board and HWCA proposals, the proposed increase was also ultimately omitted from the final budget package adopted by the Legislature. In contrast to the board and HWCA—for which the Legislature and the Governor had somewhat similar proposals—AB 995 did not include a specific TSCA proposal. However, the legislation did include a requirement that the Secretary of CalEPA convene a task force to review the funding structure that supports TSCA and to provide recommendations to the Legislature on potential reform options through the budget process.

Department’s Workload Analysis Indicates

Resource Gaps. As discussed earlier in this report, the department recently released a workload analysis on DTSC’s existing staff and funding, as well as identified resource gaps for its programs and activities. In this assessment, the department identified resource gaps related to cleanup activities associated with identifying contaminated sites, site inspections and establishing initial remediation actions. The additional costs associated with these activities were estimated to be between \$43.5 million and \$138.2 million annually, depending on how many additional contaminated sites the state chooses to address.

Governor’s Proposal

General Fund Transfer to Address TSCA

Shortfall in 2021-22. The Governor’s budget proposes to transfer \$13 million from the General Fund to keep TSCA solvent while the proposed tax increase—discussed next—is being implemented. Short-term funding is needed due to a lag between when the proposed changes to the environmental fee would take effect and when the revenues will materialize. With the proposed funding, TSCA would

begin the 2021-22 fiscal year with an estimated balance of \$13.4 million and end the year with estimated reserves of \$3.1 million.

TSCA Tax Restructure and Increase to Take Effect in 2022-23.

The Governor proposes budget trailer legislation that would make the following two significant changes to the environmental fee to take effect in 2022: (1) exempt businesses with fewer than 100 employees from paying the tax (extending the existing exemption to businesses with 50 to 99 employees) and (2) increase tax rates for businesses with more than 500 employees. The Governor would maintain existing tax rates for businesses with 100 to 499 employees. Additionally, the proposal would revise the timing of payments to coincide with the fiscal year in which the Legislature appropriates the department’s funding (rather than being charged on a calendar-year basis). **Figure 5** shows how the tax increase would affect the amounts charged in each tier. The administration estimates that the resulting changes would provide an additional \$54.6 million for TSCA beginning in 2022-23.

Certain components of this proposal differ from what the Governor proposed for TSCA in 2020-21. Specifically, the previous proposal included rate increases for all businesses that currently pay the tax. The administration has indicated that the decision to exempt smaller businesses from paying the environmental fee and to maintain existing rates for midsized businesses primarily is to reduce their economic impacts as they are recovering from the effects of the pandemic.

Figure 5

Annual Environmental Fee Rate Changes Under Governor’s Proposal

2022-23

Number of Employees	Existing ^a	Proposed
50-74	\$362	—
75-99	636	—
100-249	1,261	\$1,261
250-499	2,706	2,706
500-999	5,054	16,500
1,000 or more	17,144	56,000

^a Administration’s estimate of environmental fee if no reforms were adopted.

Revenue Increases Address Structural Deficit and Provide for Additional Program Spending.

As shown in **Figure 6**, the administration intends to use the additional \$54.6 million in new TSCA revenues to (1) provide additional funding to address resource gaps identified in the department’s workload analysis (\$36.5 million), (2) address the structural deficit in the fund (\$13 million), (3) build reserve levels within the fund (\$3.6 million), and (4) provide ongoing funding for administrative costs related to the new board (\$1.5 million). The amounts intended to be used for increased programmatic expenditures would need to be authorized in the 2022-23 budget based on proposals submitted to and approved by the Legislature.

New Board Would Establish TSCA Tax According to Appropriation Authority Set by Legislature. As with HWCA, the administration would task the new Board of Environmental Safety with ongoing authority to set future tax rates for TSCA beginning in 2023-24. The board would adjust the tax annually to align TSCA’s revenues with the expenditure authority the Legislature includes in the budget act. The administration indicates that the board would hold public meetings following the release of the Governor’s January budget and May Revision to discuss how proposals would affect the environmental fee, and the board would make adjustments in the fall after the budget act is passed. The administration’s proposed language also sets a maximum level for the tax. The caps

would be set two times higher than the initial rates being proposed for 2022-23. For instance, the initial rate for businesses with more than 1,000 employees would be \$56,000 per year, but the maximum level would be set at \$112,000 per year. The cap would be adjusted annually for inflation according to the Consumer Price Index beginning in 2024-25. Once the cap is reached, the Legislature would have to take action to authorize additional tax increases to align with higher expenditure levels.

Assessment

General Fund Support Would Keep TSCA Solvent in 2021-22. The Governor’s proposed \$13 million General Fund transfer would keep TSCA solvent and allow DTSC to continue its current program expenditures as the tax increase is implemented. Providing short-term funding for the fund is necessary if the Legislature wants DTSC to continue performing its existing level of activities in 2021-22.

Proposal Would Solve Existing Shortfall. The Governor’s proposal would address the existing structural problems with TSCA. Specifically, the proposed increases would provide sufficient new revenue for TSCA to address the fund’s current operating imbalance and cover DTSC’s existing workload on an ongoing basis, as well as build up a prudent level of operating reserves.

Amount of Tax Increase Should Be Driven by Legislature’s Programmatic Priorities. We find that the department’s estimated programmatic expansions for 2022-23 seem reasonable and are based on its workload analysis. For instance, the amount provided for site cleanup staff—the majority of estimated ongoing spending beginning in 2022-23—would allow the department to conduct 50 to 150 site discoveries and 60 to 130 site initiation actions annually. However, determining the “right” level of funding needed for TSCA is somewhat more subjective than for HWCA. In contrast to HWCA—for which a strong nexus exists between charges and DTSC’s regulatory workload—TSCA is largely supported by a broad-based tax that can fund a wide variety of department activities. That is, the workload to be supported by TSCA is driven by the Legislature’s decisions for what activities it wants DTSC to perform

Figure 6	
Proposed Uses of New TSCA Revenues Beginning in 2022-23	
<i>(In Millions)</i>	
Expenditures	Amounts
Additional program spending	\$36.5
Site cleanup staff	21.5
Safer Consumer Products Program	10.0
Legal services	2.5
Information technology systems	2.5
Address TSCA structural deficit	13.0
Set aside for TSCA reserves	3.6
Administrative costs for new board	1.5
Total	\$54.6
TSCA = Toxic Substances Control Account	

with the fund, rather than by what is needed to enforce regulatory requirements. For example, the Legislature has added new responsibilities to the fund in recent years, such as the Safer Consumer Products program. Therefore, the process of establishing a new tax increase should include an assessment of which activities the Legislature believes TSCA should support, a determination of the corresponding amount of revenues needed to support these activities, and the impact on the businesses paying the environmental fee. Should the Legislature determine that the specific activities and service levels proposed by the Governor align with its priorities, then it may find the proposed level of tax increase to also be reasonable. However, should the Legislature believe that TSCA should support a different mix of activities with higher or lower associated costs, then a tax structure generating a different level of revenue might be more appropriate.

Merits of Pandemic Relief Measures Are Unclear. The administration indicates that its decision to include relief measures for smaller businesses—by exempting small business and maintaining the existing rate for midsized businesses—is related to the pandemic. We find that this approach likely is not the best way for the state to provide pandemic relief. For instance, the size of a business—the basis on which the environmental fee is assessed—does not necessarily indicate the degree to which a business has faced financial losses due to the pandemic, which is more likely to vary based on the business’ industry. We note as well that the state and federal government have provided direct fiscal relief to small businesses through a variety of other programs. Moreover, we note that the Governor’s proposal would be implemented on an ongoing basis. It is unclear why the proposal does not include any provisions to sunset these changes or to revisit them at some point in the future—for example, after the state has entered into an economic recovery—which would ensure that the tax is more evenly borne by the wide array of businesses that contribute to hazardous waste.

Allowing New Board to Adjust Tax Is a Reasonable Approach. As we discussed with regard to HWCA, we believe the administration’s

approach of allowing the new board to set the tax annually would provide some important benefits—establishing a mechanism for revenues to keep pace with annual expenditure levels set by the Legislature and providing confidence that the department can be tasked with future responsibilities without placing excessive cost pressures on TSCA. Additionally, because the board will meet to discuss tax adjustments at public meetings that align with the budget process, the Legislature will be able to understand how future TSCA expenditure proposals would affect tax rates as it deliberates their merits.

Recommendations

Approve One-Time General Fund in 2021-22.

Because it would keep TSCA solvent and allow the department to continue with its current expenditure levels, we recommend that the Legislature approve the proposed \$13 million General Fund backfill for TSCA in the budget year.

Design a TSCA Package That Reflects Legislative Priorities. As the Legislature deliberates over how it will increase taxes for TSCA, we recommend that it consider the following questions:

- ***What Programs and Activities Should TSCA Support?*** Does the Legislature want the new tax rates to cover just existing activities, or are there additional high-priority activities it wants to fund from TSCA? Do the Governor’s proposed activity expansions align with the Legislature’s priorities?
- ***How Much Funding Should Be Provided to Support These Activities?*** How much revenue needs to be raised in order to meet the Legislature’s priorities? What level of additional taxes is the Legislature comfortable requiring businesses to pay?
- ***Should Pandemic Relief Measures Be Included?*** Should the tax exemption be extended to businesses with 50 to 99 employees? Should rates be maintained for businesses with 100 to 499 employees?
- ***Should Pandemic Relief Measures Be Revisited in Future Years?*** If included, should pandemic relief measures be continued on an ongoing basis as proposed by the Governor,

or should there be some mechanism to revisit these measures in the future? For example, should there be a sunset date for tax exemptions on midsized businesses?

Adopt a Tax Package That Raises Sufficient Revenues to Pay for Desired Expenditures.

To address the ongoing structural imbalance, we recommend the Legislature adopt a tax structure for TSCA that aligns with its expenditure priorities. This could include adopting rates that are lower or higher than what the Governor is proposing, but that ultimately align with the Legislature’s spending priorities for TSCA.

Approve Governor’s Proposal to Grant Board With Ability to Adjust Tax in Future Years.

We recommend the Legislature approve the Governor’s proposal to provide the new board with the ongoing ability to adjust tax levels. Allowing the board to set the tax annually would create more stability for TSCA and help ensure that revenues will be able to keep pace with legislatively approved expenditures. Additionally, information from the board on how annual budget proposals would affect tax rates would allow the Legislature to consider whether the merits of a proposed activity justify imposing a higher tax on the business community.

BROWNFIELD CLEANUPS

Background

Likely Tens of Thousands of Brownfields Across the State. The term brownfield generally describes a property that is underutilized due to the presence or potential presence of a hazardous substance, pollutant, or contaminant. Common examples of brownfield sites are former dry cleaners, gas stations, and chemical storage facilities. According to a report from DTSC, there are roughly 15,000 known contaminated sites across California. However, these numbers likely underestimate the number of brownfields in the state given the difficulty in estimating the number of properties that are underutilized as a result of *suspected* contamination. Some research estimates that this number could be between 150,000 to 200,000 sites.

Brownfields Have Disproportionate Impact on Low-Income Communities of Color.

Studies have shown that brownfield sites are disproportionately located in neighborhoods that have lower average incomes and more people of color. Brownfields negatively impact these communities in two ways. First, brownfields can affect public health in surrounding communities if contamination is able to spread through air or water. Second, the presence or even perception of contamination at brownfield sites often hinders redevelopment because parties interested in

developing a property are concerned with its associated cleanup costs—which can reach hundreds of thousands of dollars or more—and potential liability issues. This results in these sites being underutilized—particularly in economically disadvantaged communities that already struggle to receive private investment.

DTSC Addresses Brownfields Through a Variety of Programs. DTSC administers several programs to address brownfields, some of which are supported by funding from the U.S. Environmental Protection Agency (U.S. EPA). DTSC’s major brownfield programs include the following:

- ***Site Mitigation and Restoration.*** DTSC investigates sites with known or suspected contamination and ensures removal or control when contamination is found. DTSC has the authority to issue orders to require responsible parties to cooperate with site investigations and remediation. State and federal funds are used when a site lacks a known or financially viable responsible party.
- ***Voluntary Cleanups.*** Voluntary cleanups are initiated by motivated parties, such as developers, local agencies, or nonprofit organizations, to investigate and remediate brownfield sites and reimburse DTSC’s oversight costs.

- **Grants and Loans.** DTSC offers loans and grants—largely supported by U.S. EPA funding—to assist with addressing environmental investigations and cleanups at properties throughout the state. Grants can provide up to \$200,000, while loans can provide up to \$2.5 million. Funding is generally available for local governments, tribes, nonprofit organizations, and private entities.

Governor’s Proposal

\$300 Million for Brownfield Activities and Workforce Development. The Governor’s proposal includes one-time General Fund resources to address brownfields, to be allocated in the following ways:

- **State Investigations and Brownfield Cleanups (\$220 Million).** DTSC would use these funds to investigate and clean up various projects where no financially viable responsible party can be found. The department estimates this funding would enable it to take action on 170 additional sites over the next four years.
- **Brownfield Grant Program (\$76 Million).** The Governor proposes to establish a new competitive grant program to provide funding to local governments, tribes, nonprofit organizations, and private entities primarily to investigate as well as clean up brownfield sites. The department estimates it could provide 130 grants over the next four years with this funding.
- **Workforce Development (\$4 Million).** The proposal would establish a new workforce development program. The funding would go to various organizations (such as technical schools and community-based organizations) to train individuals to perform environmental remediation work, such as site sampling technicians.

Funding Would Focus on Communities That Are Disproportionately Burdened by Contamination. The proposal indicates that funding for all three components will be targeted for “environmental justice (EJ) communities” that are burdened by multiple sources of pollution and

are disproportionately vulnerable to their effects. Because the state has not defined EJ communities in statute, DTSC indicates that it will develop a working definition for such neighborhoods for the purposes of targeting this funding, including criteria such as a community’s CalEnviroScreen score and housing needs. (CalEnviroScreen is a state screening tool that evaluates communities’ cumulative burdens associated with pollution from multiple sources and socioeconomic factors.)

Proposal Seeks to Address State’s Housing Shortage. DTSC indicates that its proposal has two primary goals—(1) to investigate and clean up contaminated sites in EJ communities and (2) to develop these sites for future housing. The latter is to help address the state’s severe shortage of affordable housing. (The Governor’s budget also includes \$500 million in one-time General Fund resources for the Infill Infrastructure Grant program administered by the California Department of Housing and Community Development [HCD]. This funding would provide grants for housing-related infrastructure projects, including environmental remediation.)

Funding Would Be Contingent on Adoption of Governance and Fiscal Reform Package. The administration has indicated that it views funding for this proposal to be contingent upon the enactment of the Governor’s governance and fiscal reform package for DTSC. That is, the Governor indicates that he will support inclusion of this \$300 million for addressing brownfields only if the Legislature also approves his proposals to add a new governing board and increase the HWCA and TSCA charges.

Assessment

Legislature Need Not Consider Proposal as Being Contingent on Reform Package. While the Governor has presented this proposal as being contingent upon the enactment of the governance and fiscal reform package for DTSC, the proposals are not fiscally linked. Because the Governor would fund this proposal using General Fund, the existing structural imbalances in HWCA and TSCA would not preclude the Legislature from appropriating funds to clean up brownfields, regardless of what it decides to do with the Governor’s proposed governance and fiscal reform package.

Additional Support for Brownfield Investigations and Cleanups in EJ Communities Has Merit.

Because they could provide multiple benefits to EJ communities, we find that the funding being proposed for state cleanup projects and the brownfield grant program have merit. For instance, cleaning up brownfield sites can reduce the health and environmental risks that stem from contamination in communities that can least afford to remediate the contamination themselves. Moreover, the cleanup *also* could help to encourage economic development in struggling areas by making more land available for housing and commercial activity. In this way, targeting funding for projects in EJ communities can help alleviate the disproportionate environmental and economic burdens that these communities experience.

Could Be Difficult to Prioritize Both Environmental and Housing Goals.

The Governor's stated dual goals of reducing health and environmental risks associated with contaminated sites and increasing the supply of housing are both worthwhile endeavors for the state. However, meeting both could be difficult, as site selection might differ depending on which goal is prioritized. For instance, sites that may have high levels of contamination might be in areas that are not zoned for or would not be feasible to build housing. For example, many sites of former dry cleaners likely are located in areas zoned for commercial, not residential, development. Conversely, prime locations for developing additional housing are not necessarily the sites of the most significant environmental risks for nearby residents and, therefore, might not be the highest priority for improving public health. It is unclear at this time on how the department plans to prioritize between these two goals when selecting state projects and when designing grant guidelines. Given the significant number of brownfield sites across the state, the proposed one-time funding would not allow the department to address all known needs in all communities. This makes understanding and having confidence in the administration's plan for how it will prioritize funding for both state investigations and the grant program all the more important.

Additional Coordination Could Assist Housing Goals.

DTSC's core mission is to protect people and the environment from the harmful effects of toxic substances by restoring contaminated resources—yet this proposal is also seeking to develop new housing. The department likely is not the most suitable agency to best achieve this second goal—at least not on its own. Selecting sites that have the best potential to be developed for housing would require significant coordination between DTSC and other state and local entities. While the current proposed budget trailer legislation requires the department to consult with HCD to develop guidelines for the grant program, it does not include language governing how HCD will be involved in selecting sites for DTSC's own cleanup and investigation actions. Clarifying how exactly DTSC and HCD will coordinate—potentially through statutory language—could provide the Legislature with greater confidence that housing goals will be met.

Grant Portion of the Proposal Might Be Duplicative of Other Housing Proposals.

As noted earlier, in addition to the proposed funding for DTSC, the Governor has proposed \$500 million for HCD to develop housing-related infrastructure, including for environmental remediation. Given that DTSC's proposed grants would also be for cleanup activities, these efforts could be somewhat duplicative. Additionally, having similar grants administered by two separate departments could cause confusion amongst departments and applicants. How these two programs would be coordinated under the Governor's proposal is still somewhat unclear.

Need for Workforce Development Program Is Unclear.

The administration has not yet provided evidence that the state is lacking a sufficient pipeline of environmental remediation workers to justify the need for this new program. Moreover, funding a workforce development program would be problematic if there are not enough ongoing job opportunities to support those who do become trained by the program. The department has indicated that workforce development funding will be distributed according to where cleanup projects will be undertaken with the proposed new funding. Given that this funding is proposed on a one-time

basis, the associated cleanup project workload will be limited-term in nature. Whether the job market could sustain newly trained workers over the long run is unclear.

Recommendations

Consider the Merits of This Proposal Independently From Reform Package. We recommend that the Legislature evaluate whether or not this proposal is worthy of adopting on its own merits and not view this proposal as being contingent on the Governor’s reform package for DTSC.

Consider Key Policy Questions When Evaluating Proposal. Overall, we believe that the Governor’s proposal has merit given the significant number of brownfields and their disproportionate impact on low-income communities of color. However, we believe there are several key questions that the Legislature should consider in designing a spending approach for these funds.

- **What Intended Goal Is the Highest Priority for Funding?** The Legislature may want to identify a clear primary goal to ensure that funding is well-targeted and aligns with its highest priorities. For example, this could include indicating whether addressing serious environmental contamination should take precedence over developing sites for new housing, or vice versa. Identifying a clear goal—such as through budget bill language—would also allow the Legislature to better track the success of the program against its expected outcomes.
- **How Will Grant Funding Complement and Support Other Proposals?** The Legislature will want to consider how the proposed grants

interact with other housing proposals in the Governor’s budget—such as funding in HCD’s budget for housing infrastructure, including environmental remediation—as well as any legislative housing initiatives. This proposal should complement and support other efforts and not create a complicated or duplicative program for departments and applicants.

Request Additional Information at Budget Hearings. We recommend the Legislature require DTSC to report at budget hearings on how the department will coordinate with the appropriate housing entities and the state’s current needs for additional workforce training. Specifically, we believe it would be beneficial for DTSC to report on the following:

- **How Would Department Ensure Housing Objectives Are Met?** If the Legislature believes that an important goal for this funding is to spur housing development at brownfield sites, it will want to ensure DTSC has developed an effective plan for how it will coordinate with the appropriate agencies to ensure that state cleanup projects are targeted at sites where housing development is most feasible. Based on the department’s responses, the Legislature could also consider adopting additional budget bill language to help guide and ensure coordination across departments.
- **Does Demonstrated Need Exist for Developing Remediation Workforce?** In deciding whether to fund this component, the Legislature will want the department to show that there will be enough ongoing jobs to employ trainees once they finish the program.

LAO PUBLICATIONS

This report was prepared by Frank Jimenez and reviewed by Rachel Ehlers and Brian Brown. The Legislative Analyst’s Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.

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