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The 2023-24 Budget:

Governor's Proposals for the Department of General Services

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SUMMARY

In this brief, we provide an overview of the total amount of funding in the Governor's proposed 2023-24 budget for the Department of General Services (DGS), as well as assess and make recommendations on several specific budget proposals.

Recommend Withholding Action on Proposal for Direct Digital Control Upgrades and Directing DGS to Report on Prioritization. The Governor's budget proposes $11.8 million annually from the General Fund for three years—a total of $35.4 million—to upgrade direct digital control systems in eight buildings to improve operations and energy efficiency. Of the eight projects, a private firm assessed four as low priority. Accordingly, it is unclear if these systems need replacement. Additionally, the Governor's budget proposes to revert $92.5 million General Fund for deferred maintenance and direct digital control projects provided in past budgets, including for direct digital control projects assessed as high priority. This calls into question DGS' prioritization methodology. Given this, we recommend the Legislature withhold action on the proposed funding for direct digital control projects and the reversion of funding related to high-priority direct digital control projects and require DGS to report at spring budget hearings on its prioritization methodology.

Recommend Requiring DGS Develop a Plan for Adjusting Rental Rates to Address Deferred Maintenance Backlog and Reflect Actual Building Costs. The Governor proposes $20.4 million one time from the General Fund in 2023-24 for deferred maintenance projects to replace fire, life, and safety systems because they are at or nearing the end of their useful life. While the state has previously provided General Fund for deferred maintenance, the state currently is experiencing a budget problem and rental rates paid by DGS tenants are normally intended to cover maintenance costs. Moreover, despite these repeated General Fund augmentations, DGS deferred maintenance needs continue to grow. Given the immediate need for the fire, life, and safety system projects, we recommend the Legislature approve them. However, we recommend requiring DGS to provide a plan on how it will adjust rental rates going forward to incorporate building maintenance and needs, including its deferred maintenance backlog.

Consider Funding Electric Vehicle Service Equipment Infrastructure Through Zero-Emissions Vehicle (ZEV) Package. The Governor proposes $35 million from the General Fund to perform installations of electric vehicle service equipment infrastructure at state facilities in order to help the state transition its fleet to ZEVs. Separately, the previous two budgets committed significant funding across five years for a ZEV package to promote the purchase and use of ZEVs more broadly, such as by paying for privately owned vehicles and charging stations. While the intent of the Governor's proposal has merit, it would commit the state to new discretionary General Fund spending. Given the General Fund condition and the fact that overseeing the state fleet is a core state responsibility, the Legislature may want to consider prioritizing funding for electric vehicle service equipment infrastructure at state facilities within the ZEV package over proposals to pay for activities that are not core responsibilities, such as for paying for privately owned vehicles and charging stations.

OVERVIEW

Roles and Responsibilities. DGS provides a variety of services to state departments, such as procurement, management of state-owned and leased real estate, management of the state's vehicle fleet, printing, administrative hearings, legal and fiscal services, development of building standards, and oversight over school construction. The department generally funds its operations through fees charged to client departments.

Governor's Proposed Budget. The Governor's budget proposes a total of about $1.7 billion from various funds to support DGS in 2023-24. This amount reflects an increase of $210 million (about 14 percent) from the revised 2022-23 level. This net increase reflects the net effects of the expiration of one-time funding provided in previous years and augmentations this year, some of which are described below. This brief provides our analysis of several of the Governor's major proposals related to DGS.

DEFERRED MAINTENANCE AND DIRECT DIGITAL CONTROL UPGRADES

Background

DGS Owns and Maintains Buildings Across the State. DGS is responsible for managing approximately 36.5 million square feet of space that supports a variety of state programs and functions. Of this amount, 13.2 million net usable square feet is attributable to 59 DGS-managed state office buildings; 2.4 million gross square feet related to 23 other state-owned buildings, including warehouses, storage, and parking structures; and 20.9 million net usable square feet is associated with DGS-managed commercial leases of all space types. DGS buildings are located across the state, with a significant presence in the Sacramento region, as well as other major metropolitan areas such as the San Francisco Bay Area and Greater Los Angeles Area.

DGS Funds Building Operating and Maintenance Costs Through Charging Rental Rates. DGS funds building maintenance costs, in addition to other costs associated with operating buildings, such as custodial and groundskeeping services, by charging monthly rental rates to the state departments that are tenants in these facilities. Building rental rates are determined individually for each building based on the building's condition and the region in which the building is located. They are set such that operating costs, including overhead, are recovered on an annual basis. In 2022-23, DGS rental rates for office space generally ranged from $1.49 to $8.35 per square foot per month. Tenants in DGS-managed buildings include a variety of state departments, some with budgets entirely supported by the General Fund and others with budgets supported from special funds (or a combination thereof). Tenants use the funding in their budgets to make rental payments to DGS, which are then deposited into the Service Revolving Fund.

Previous Budgets Have Provided Significant General Fund Support for DGS Deferred Maintenance Needs. When routine maintenance activities are delayed or do not occur, we refer to this as deferred maintenance. In 2022-23, DGS identified a deferred maintenance backlog of $581.5 million. Past budgets have repeatedly provided General Fund on a one-time basis to support DGS deferred maintenance needs. Specifically, from 2020-21 to 2022-23, the state provided a total of $216.6 million General Fund to help DGS address its backlog, including projects for elevators and fire, life, and safety systems.

Governor's Proposal

Funding for Fire, Life, and Safety System Deferred Maintenance. The Governor proposes $20.4 million one time from the General Fund in 2023-24 to replace fire, life, and safety systems in eight buildings because they are at or nearing the end of their useful life.

Funding for Direct Digital Control Upgrades and Associated Positions. The Governor's budget proposes $11.8 million annually from the General Fund for three years—a total of $35.4 million—to upgrade direct digital control systems in eight buildings to improve operations and energy efficiency. Direct digital control systems offer a high level of control for building mechanical and electrical systems and can allow managers to monitor trends in their building's mechanical and electrical performance, thus increasing operational and energy efficiency. In addition, the Governor proposes four positions and $972,000 from the Service Revolving Fund for three years to establish a Statewide Energy Management Program for building management and controls.

Reversion of $92.5 Million General Fund From Deferred Maintenance and Direct Digital Control Projects Approved in Prior Budgets. The Governor's 2023-24 budget proposes to revert $92.5 million General Fund for deferred maintenance and direct digital control projects included in the 2021-22 and 2022-23 budgets. (We note this is about 61 percent of the total funding provided in those years.) DGS indicated that the department reduced spending on these projects given the deterioration in the state's budget condition.

Assessment

Proposed Fire, Life, and Safety Projects Appear Necessary. Fire, life, and safety systems typically have a life span of 10 to 15 years. With the exception of one fire, life, and safety system that is 14 years old, all of the other projects requested in the Governor's proposal are older than 15 years. Accordingly, it appears necessary to replace these systems.

Unclear if All Proposed Direct Digital Control Upgrades Should Be Prioritized. DGS hired a firm to assess existing direct digital control systems throughout the state. The firm issued its report in September 2020, which assigned a low-, medium-, and high-priority system replacement rating to state buildings. Of the eight projects in the Governor's proposal, the report identified two—the Elihu M. Harris Building and the Van Nuys State Building—as high-priority system replacement; one as medium to high; one as medium; and four as low. In fact, three of the low-priority replacements were identified as "up-to-date," which the report defines as the system components are currently manufactured and supported and that these are essentially "new" systems where replacement does not make economic sense. In addition, the report simply states that the building assigned as a medium-priority system replacement has a proprietary system and is "somewhat outdated," and that the building assigned as medium- to high-priority system replacement has a proprietary system and is approximately 20 years old. Accordingly, it is unclear from the report if the systems rated as lower than high-priority replacement need immediate replacement or any replacement for that matter.

Proposed Reversions Raise Further Questions About DGS Prioritization of Direct Digital Control Projects. As part of the proposed $92.5 million reversion, DGS is proposing to revert $20.9 million for direct digital control projects that are potentially in greater need of replacement than the ones that would be funded by the Governor's proposal. For example, funding for three of the projects being reverted—California Tower, Governor Edmund G. "Pat" Brown Building, and Ronald Reagan State Building—are identified as high-priority replacements in the firm's report. In fact, the Ronald Reagan State Building is described as possibly being the "most outdated" system in the DGS portfolio. Given that the Governor's proposal would be funding several direct digital control projects identified as low-priority replacement, it calls into question why DGS is prioritizing replacing those systems and if their proposal is truly addressing the highest-priority needs.

Actual Costs of Direct Digital Control Projects Could Be Lower Than Proposed. DGS notes that the proposed costs to replace the direct digital control systems assume that all systems will be replaced in their entirety. However, DGS reports that the actual scope will be developed on a project-by-project basis, and any functional system components that can be reused and integrated into the new system will be considered. Accordingly, the amount requested in the Governor's budget could exceed the actual costs to replace the systems. Moreover, the firm's report that assessed buildings' direct digital control systems estimated lower costs than what the Governor proposes in some cases. We recognize that the report is dated September 2020 and inflation could account for some differences in cost, but the differences are significant. For example, the firm's report estimated that replacing the system at the Elihu M. Harris Building would cost \$3 million to \$5 million, while the Governor's proposal requests \$11.2 million for this specific replacement. The report also estimated \$950,000 to replace the system at the Van Nuys State Building, while the Governor proposes \$2.2 million for this project. It is not clear whether this difference is because the firm envisioned a less comprehensive replacement than DGS or whether the differences are due to other factors, such as poor cost estimation. Regardless, this suggests that there is uncertainty about the estimated cost of each proposed project and it is possible that there could be significant unspent funds. This is notable because, if approved as proposed, DGS could end up having unspent funds that it could redirect to other lower priorities with no legislative oversight.

General Fund Not an Appropriate Funding Source to Support DGS Buildings on Regular Basis. Building rates are intended to reflect the cost of operating and maintaining buildings. While the state has on occasion provided some General Fund support in the past for building maintenance, the state currently is experiencing a budget problem, where General Fund revenues already are insufficient to fund existing commitments. As a result, additional spending proposed from the General Fund comes at the cost of already funded legislative priorities. Moreover, we find that it is not appropriate for DGS to rely on General Fund augmentations on a long-term basis to fund its deferred maintenance needs for two additional key reasons:

- First, this funding approach disconnects the rental rates paid by each tenant department from the costs of operating and maintaining buildings, which reduces DGS' incentive to be a good steward of its buildings.
- Second, this approach places a disproportionate share of costs on the General Fund, rather than allocating some costs to the special funds that support some DGS tenants and therefore should bear some of these costs. For example, one of these proposals requests \$11.2 million to upgrade the direct digital control system in the Elihu M. Harris Building in Oakland, California. The Department of Real Estate, which is almost entirely funded by its special fund, the Real Estate Fund, has a district office and examination site in the building. Accordingly, if DGS was budgeting for these upgrades as part of its rental rates, the Real Estate Fund—and not the General Fund—would be paying for the department's respective share of the upgrade.

DGS Deferred Maintenance Backlog Continues to Grow. Despite the repeated augmentations from the General Fund to support DGS deferred maintenance needs over the years, DGS deferred maintenance projects grew from \$316 million in 2021-22 to \$581 million in 2022-23. We recognize that DGS has recently taken steps to prioritize and categorize its deferred maintenance projects and that this increase may be a consequence of a change in how the department identifies and catalogues its deferred maintenance needs. However, whatever the cause, this increase is problematic. This is because the increase suggests that DGS building rental rates are not set at the appropriate amount as they do not appear to be high enough to cover routine maintenance costs, resulting in growth in the number of deferred maintenance projects. Moreover, when repairs to key building and infrastructure components are put off, facilities can eventually require more expensive investments, such as emergency repairs (when systems break down), capital improvements (such as major rehabilitation), or replacement.

Recommendations

Approve Proposed Funding for Fire, Life, and Safety Systems. Ideally, DGS would have set rental rates such that the Service Revolving Fund, rather than the General Fund, could support the projects proposed to replace fire, life, and safety systems. However, given (1) the immediate need for these projects (as they are at or nearing the end of their useful life) and (2) the amount of time it would take for rental payments to generate sufficient revenue to pay for the projects, this is not a feasible option. Accordingly, we recommend that the Legislature approve the proposed funding for the fire, life, and safety systems.

Approve Portion of Proposed Reversion. We recommend the Legislature approve $71.6 million of the $92.5 million proposed for reversion. This would revert all the proposed funds except those associated with the high-priority direct digital control projects for the California Tower, Governor Edmund G. "Pat" Brown Building, and Ronald Reagan State Building. As discussed next, we recommend that the Legislature weigh whether these projects are of greater priority than some of the direct digital control projects proposed for funding.

Withhold Action on Proposal for Direct Digital Control Upgrades, Direct DGS to Report on Prioritization. We recommend that the Legislature withhold action on the proposed funding and positions for direct digital control upgrades and require DGS to report at spring budget hearings on those projects that are in critical need of replacement. This is important given that DGS is proposing to revert funding for some projects that have been identified as high-priority replacement, while proposing funding for others identified as low priority. This information would help the Legislature determine which projects are the most critical, urgent projects and thus merit approval for 2023-24. Less urgent projects should generally be planned for in advance and funded over a period of time through DGS' rates structure. This approach would more fairly apportion building costs across various funds and also create better incentives for DGS to be a good steward of its buildings.

Adopt Provisional Language to Limit Use of Funding to Specific Projects. It is reasonable to think that the proposed direct digital control projects could cost less than estimated by DGS, such as if some project costs are closer to the firm's lower estimate in its report. Accordingly, we recommend that the Legislature adopt provisional language that limits the use of any funding it chooses to provide to the specific facilities and projects it chooses to approve. This will ensure that, if the specific projects that the Legislature approves are ultimately less costly than proposed, the unused funds would return to the General Fund rather than allowing DGS to use the funds on other projects that may be of less urgency.

Require DGS to Develop a Plan for Adjusting Rates to Address Deferred Maintenance Backlog and Reflect Actual Costs. We recommend requiring DGS to provide a plan to the Legislature by January 10, 2024 on how it will adjust rental rates going forward to incorporate building maintenance and needs. As part of this plan, DGS should propose how to address the existing backlog of deferred maintenance projects. The Legislature can then consider how to move DGS toward more appropriately funding its maintenance needs through rental rates while addressing its considerable deferred maintenance backlog.

ELECTRIC VEHICLE SERVICE EQUIPMENT INFRASTRUCTURE ASSESSMENT AND FACILITY DEVELOPMENT

Background

State Has Set Goals for Transitioning Fleet to ZEVs. Chapter 628 of 2017 (SB 498, Skinner) requires DGS to ensure that at least 50 percent of the light-duty vehicles purchased for the state fleet each fiscal year are ZEVs (such as electric vehicles). Further, the Governor issued an executive order setting statewide goals for phasing out gasoline-powered cars and trucks sold in California by 2035 and medium- and heavy-duty trucks by 2045, where feasible. In response, DGS plans to issue a statewide policy to require state agencies to purchase 100 percent of their light-duty vehicles as zero emission by 2030.

Office of Sustainability Works With State Agencies to Manage Electric Vehicle Charging Infrastructure Installation. The Office of Sustainability within DGS supports state agencies in sustainability initiatives, including policies, strategies, programs, and projects for state buildings. For example, the Office of Sustainability supports state agencies in installing electric vehicle service infrastructure to charge both fleet and workplace electric vehicles, including initial site assessment, design, construction management, and technical support for electric vehicle infrastructure policy development.

2021-22 and 2022-23 Budget Acts Included $9.9 Billion for ZEV Package. The previous two budgets committed significant funding for programs intended to promote the purchase and use of ZEVs, such as funding for privately owned vehicles and charging stations. Funding for this ZEV package is spread across five years, including $6.5 billion already provided, and $2.1 billion intended for 2023-24. The majority of this funding is from the General Fund ($6.3 billion), but also includes $1.6 billion from Proposition 98 General Fund (for school buses), $1.3 billion from the Greenhouse Gas Reduction Fund or GGRF (cap-and-trade auction revenues), $307 million from federal funds, and $366 million from other special funds. Most of the funding is for continuing or expanding existing programs, such as rebates for purchasing vehicles and incentive payments for developing charging infrastructure.

Governor's Proposal

Provides Funding for Installing Electric Vehicle Service Infrastructure at State Facilities. The Governor proposes $35 million from the General Fund over three years ($11.7 million in 2023-24, $11.7 million in 2024-25, and $11.6 million in 2025-26) to perform installations of electric vehicle service equipment infrastructure at state-owned and leased facilities. We note this funding is being proposed separately from the ZEV package discussed above.

Reduces General Fund Spending on ZEV Package and Backfills with Other Funds. The Governor proposes to reduce General Fund spending on the ZEV package by a total of $2.5 billion, including $1.5 billion in 2023-24, and proposes to backfill some of these reductions by using $1.4 billion from discretionary GGRF revenues across three years, among other things. (For more on this proposal, please see the "Zero-Emission Vehicles" section of our report, *The 2023-24 Budget: Crafting Climate, Resources, and Environmental Budget Solutions*.)

Assessment

Proposal Seeks to Advance the State Towards ZEV Goals, but Creates General Fund Cost Pressure. The state has set ambitious goals for transitioning the state fleet to ZEVs. This proposal has merit because it would install additional charging infrastructure at state facilities as agencies are adding more electric vehicles to their fleet. However, the Governor's proposal would commit the state to $35 million in discretionary General Fund expenditures, as the state could choose to install fewer chargers than proposed; delay funding for a year; and/or rely on existing state-owned, public, or private charging infrastructure in the near term. Importantly, the state currently is experiencing a budget problem, where General Fund revenues already are insufficient to fund existing commitments. In this context, every dollar of new spending comes at the expense of a commitment the Legislature deemed a priority and approved funding for, as it requires finding a commensurate level of solution somewhere within the budget. The Governor "makes room" for this (and other) proposed new spending by making reductions to funds committed for other programs. We therefore think the Legislature likely will want to apply a higher bar to its review of new General Fund spending proposals such as this proposal than it might in a year in which the General Fund had more capacity to support new commitments. In our view, this proposal does not meet that higher bar for new General Fund expenditures, especially as other funding options might exist, as discussed below.

Could Make Sense to Add Proposal to ZEV Package. Given the General Fund condition and the fact that overseeing the state fleet is a core state responsibility, the Legislature may want to consider whether it should prioritize funding for this activity within the ZEV package over the proposals to pay for activities that are not core responsibilities included in the package, such as paying for privately owned vehicles and charging stations. Making room for this activity within the existing ZEV package would necessitate making deeper reductions to the programs currently funded in the package if the Legislature wants to avoid an additional $35 million net General Fund cost. However, we think such action could be justified to enable the state to comply with ZEV fleet requirements and given budget constraints, as we discuss in greater detail in *The 2023-24 Budget: Crafting Climate, Resources, and Environmental Budget Solutions*.

Recommendations

Consider Funding Through ZEV Package. In light of the fiscal climate, we recommend that the Legislature consider funding the costs for this proposal within the existing ZEV package rather than as a new additional General Fund expenditure—though this could come at the expense of other intended ZEV expenditures. (Our recommendations related to the overall ZEV package can be found in *The 2023-24 Budget: Crafting Climate, Resources, and Environmental Budget Solutions*.)

OFFICE OF ADMINISTRATIVE HEARINGS (OAH) WORKLOAD

Background

OAH Provides Administrative Hearings for State and Local Entities. OAH, within DGS, provides administrative law judges to hear administrative disputes for over 2,500 state and local agencies. These judges conduct adjudicatory hearings, prehearing and settlement conferences, and mediations. Statute requires that all OAH costs be recovered from the agencies it serves. Accordingly, OAH charges fees to state and local agencies for the services it provides. In 2022-23, OAH charged state and local agencies an hourly rate of $355. This rate will increase to $369 in 2023-24. In addition, OAH charges in-person or virtual filing fees, as well as fees for electronic evidence and recording, among others. The *2022-23 Budget Act* includes $53 million—largely from the Service Revolving Fund, which receives the revenue from the various fees charged—for operation of OAH.

OAH Provides Administrative Hearings for Peace Officer Decertification Cases. Chapter 409 of 2021 (SB 2, Bradford and Atkins) established a process for the Commission on Peace Officer Standards and Training (POST) to suspend or revoke a peace officer's basic certificate or proof of eligibility for serious misconduct, such as dishonesty related to an investigation or abuse of power by intimidating witnesses. (For more on peace officers' basic certificate or proof of eligibility, see the nearby box.) This decertification temporarily (in cases of suspension) or permanently (in cases of revocation) makes a person ineligible to be a peace officer in California.

POST reviews allegations of serious misconduct to determine whether decertification is warranted. Starting January 1, 2023, all agencies employing peace officers must report to POST allegations of serious misconduct when they occur. Similarly, by July 1, 2023, such agencies must report to POST any allegations of serious misconduct that occurred from January 1, 2020 to January 1, 2023. In addition, beginning January 1, 2023, members of the public can report allegations of serious misconduct directly to POST, including misconduct that occurred prior to January 1, 2023.

The Peace Officer Standards and Accountability Division reviews all allegations of serious misconduct to determine whether decertification is warranted. For cases in which the division recommends decertification and the officer agrees with the recommendation, the case ends and the officer's certificate or proof of eligibility is suspended or revoked. If the officer contests a decertification recommendation, the case is referred to the Peace Officer Standards Accountability Advisory Board. If the board determines decertification is warranted, the case is referred to the POST commission, who will then vote whether to decertify the officer. If the POST commission votes for decertification, the case is referred to an administrative law judge at OAH who will render the final decision.

OAH Provides Administrative Hearings for Cannabis-Related Cases. The Department of Cannabis Control (DCC) licenses and regulates commercial cannabis activity, including the cultivation, manufacture, sale, and transportation of cannabis goods. DCC issues annual licenses to applicants who have fulfilled all license requirements, including a completed application, local permitting, and California Environmental Quality Act (CEQA) compliance. DCC also issues provisional licenses to certain applicants if they have submitted a completed license application and were in the process of completing local permitting processes and CEQA requirements. Under current law, DCC is authorized to issue and renew certain provisional licenses, with a gradual phase out until January 1, 2026, after which DCC can only issue annual licenses and annual renewals going forward. As of February 6, 2023, DCC reported issuing 5,163 active annual licenses and 6,838 active provisional licenses.

OAH is responsible for hearing four primary types of cannabis-related cases: (1) an individual appeal of a denial of an initial annual license or a renewal license, (2) discipline of an annual licensee, (3) citations for unlawful activity by an annual licensee, and (4) administrative citations and civil penalty actions for unlicensed activity. State law limits the ability of those who do not hold an annual license from appealing DCC decisions. For example, those denied a provisional license are not entitled to a hearing before OAH. The *2018-19 Budget Act* included 26 permanent positions and $11.5 million from the

Peace Officer Certification and Proof of Eligibility

Existing state law requires peace officers (excluding certain classifications like correctional officers) to receive a basic certificate from the Commission on Peace Officer Standards and Training (POST). This certificate is issued by POST when officers have met all minimum standards and requirements, such as completing required training, passing background checks, and completing a probationary term of employment with their law enforcement agency (typically lasting 18 to 24 months after the date of hire). In addition, peace officers who do not have a basic certificate (typically officers completing their probationary terms and certain reserve officers) are required to obtain proof of eligibility (pre-certification) from POST.

Service Revolving Fund on a two-year basis for cannabis workload at OAH. The *2020-21 Budget Act* extended the $11.5 million from the Service Revolving Fund for three years. OAH reports that it spent approximately $364,000 on cannabis workload in 2021-22 and estimates it will spend $386,000 in 2022-23.

Governor's Proposal

Funding for Peace Officer Decertification Workload. The Governor's budget for 2023-24 proposes $650,000 annually from the Service Revolving Fund and five permanent positions for workload associated with peace officer decertification hearings. (The Governor also proposes funding for POST to pay for peace officer decertification cases filed with OAH. As OAH charges POST for its services, the proposed funds will be deposited into the Service Revolving Fund. For our analysis of this proposal, please see *The 2023-24 Budget: Commission on Peace Officer Standards and Training—Office of Administrative Hearing Costs*.)

Provisional Language Authorizing Increase in Budget for Peace Officer Decertification and Cannabis-Related Workload. The Governor also proposes provisional budget language authorizing the Director of the Department of Finance (DOF) to increase OAH's budget authority by up to $11.5 million from the Service Revolving Fund for three years for increased workload in OAH, including peace officer decertification hearings and cannabis administrative hearings. OAH indicates that it is difficult to predict when the workload for these hearings might materialize, so the provisional language would allow OAH to staff and scale its capacity, as needed.

Assessment

Number of Decertification Cases That Will Be Referred to OAH Is Uncertain. POST took several steps to estimate the number of cases that will reach OAH, including reviewing the number of complaints received by the California Department of Justice on peace officer misconduct and surveying law enforcement agencies to estimate the number of investigations that might rise to the level of misconduct. Based on this research, POST estimated that 3,500 serious misconduct cases may rise to the level of decertification annually, with approximately 300 to 350 being contested and a hearing set with OAH. Further, POST estimates that there could be a higher caseload in the first year given that law enforcement agencies are initially required to report allegations of serious misconduct that have occurred since January 1, 2020. By the end of January 2023, POST reported receiving approximately 1,200 cases from law enforcement agencies and 6 public complaints. The Peace Officer Standards and Accountability Division was in the process of reviewing these cases, prioritizing them based on public safety considerations, and processing them for serious misconduct actions.

Several factors make it difficult to predict how many cases will actually reach OAH because there are multiple points in the decertification process where a case may not proceed. For example, the officer may choose to voluntarily surrender their certificate when the Peace Officer Standards Accountability Division finds that their case rises to the level of revocation or suspension. Further, in the event that the officer requests a hearing, either the Peace Officer Standards Accountability Advisory Board or the POST commission could decide to reject the division's decertification decision after reviewing the facts and circumstances of the case.

In addition, it is difficult to predict what the trends in cases will be over time, especially in the early years. POST's expectation of an influx of cases in the first year because law enforcement agencies are required to report serious misconduct cases that have occurred since January 1, 2020 is reasonable, but it is difficult to estimate how large this influx will be. Conversely, it is reasonable to expect that POST could observe a reduction in cases over time if suspensions and revocations through the decertification process change behavior in peace officers and thus reduce the number of serious misconduct cases. Again, however, the precise size of the reduction is also difficult to estimate.

POST Is Still Building Its Capacity to Process Cases. The *2022-23 Budget Act* roughly doubled POST's staffing to implement SB 2, and POST is still in the process of filling many of the positions responsible for reviewing and investigating misconduct cases. As of January 2023, POST had filled roughly one-third of its 16 positions in the Intake and Disposition bureau, which is responsible for analyzing and evaluating complaints received from the public and serious misconduct allegations received from law enforcement agencies. Further, as of January 2023, POST had filled nearly half of the 51 positions across its four Decertification Unit bureaus that are responsible for conducting the decertification investigations, prosecutions, and administrative proceedings against peace officers. Given this, POST's limited staffing could initially reduce the number of cases reaching OAH until POST fills more of its positions.

Additional Workload May Materialize for Cannabis-Related Hearings. It is reasonable to expect that OAH workload related to DCC will increase as more provisional licenses are transitioned into annual licenses, as annual licensees have the ability to appeal DCC decisions to OAH. In addition, workload for cannabis administrative hearings could increase based on the outcome of litigation currently filed in the trial courts. Specifically, OAH indicates there is currently a court case that is challenging the alleged lack of due process afforded those who are denied a provisional license as they currently have no right to appeal this denial. If this case is decided in favor of those denied a provisional license, more people would have standing at OAH, which could result in additional workload.

Provisional Language Does Not Include Notification to Legislature. The proposed provisional language allows the Director of DOF to increase OAH's budget to fund increased workload but does not require notification be provided to the Legislature before these augmentations take place. This is problematic as it limits legislative oversight of OAH expenditures, the POST's peace officer decertification process, and DCC's decisions.

Recommendations

Approve Positions and Funding on a Limited-Term Basis for Peace Officer Decertification Hearings. We recommend that the Legislature approve the five positions and $650,000 from the Service Revolving Fund for these positions on a three-year basis (rather than on an ongoing basis as proposed by the Governor). Given the recent implementation of the decertification process and POST's ongoing efforts to build its staffing capacity, this will give POST and OAH more time to process cases and track actual caseload data that can better inform future funding decisions. The administration can then submit a request for ongoing funding for legislative consideration as part of the 2026-27 budget process. Providing these resources on a limited-term basis would also make them expire at the same time as the provisional language proposed by the administration allowing augmentations for peace officer decertification hearing workload. This would allow the Legislature to simultaneously reconsider the total level of funding necessary for this workload at that time.

Require Legislative Notification of Augmentations for Peace Officer Decertification and Cannabis-Related Hearings. We recommend that the Legislature modify the proposed provisional language to require the Director of DOF to notify the Joint Legislative Budget Committee (JLBC) no later than 30 days before any funds are allocated to OAH under the language. We recognize that the intent of this provisional language is to offer the administration flexibility given the uncertain POST and cannabis administrative hearing workload. However, requiring notification to the JLBC will allow the Legislature to remain up to date on the augmentations of OAH's budget and exercise greater legislative oversight of OAH, POST, and DCC.

PROCUREMENT DIVISION DISPARITY STUDY

Background

DGS Oversees Statewide Procurement. DGS sets state procurement policies and promotes small and disabled veteran business participation in state contracting through outreach, certification, and education. Businesses that meet certain eligibility requirements, such as being a manufacturer with fewer than 100 employees, can be certified as a small business. In addition, businesses that meet certain eligibility requirements, such as 51 percent of ownership belonging to a disabled veteran, can be certified as disabled veteran business enterprises.

Chapter 730 of 2022 (AB 2019, Petrie-Norris) Requires DGS to Conduct a Disparity Study. Assembly Bill 2019 requires DGS to contract for a statewide procurement and contracting disparity study in order to guide outreach strategies, state government program development, and improvements to contracting policies. The legislation also requires the department to post a report with the results of the study and implementation actions taken in response to it by January 1, 2025.

Governor's Proposal

Funding for Statewide Procurement Disparity Study. The Governor's budget proposes $4.1 million one-time General Fund in 2023-24 for DGS to conduct a statewide procurement disparity study as required by AB 2019. The department indicates that this funding would be used for contracting services dedicated to conduct a statewide procurement and contracting disparity study and an analysis of total dollars of state-funded contracts received by women and minority-owned businesses.

Funding and Positions for Policy Development, Outreach, and Application Processing. The Governor's budget also proposes $425,000 from the Service Revolving Fund (decreasing to $162,000 annually in 2025-26) to support one permanent position, one position for two years, and a one-time retired annuitant. These positions would develop procurement policy and training materials, expand outreach efforts to certain small businesses and disabled veteran business enterprises, and process additional certification applications.

Assessment

Actual Costs Are Unknown, but Proposed Funding Appears Notably High. To determine the level of funding requested in the Governor's budget for the disparity study, DGS reported reviewing costs of disparity studies conducted by the California Department of Transportation and other states. The department estimated that the statewide disparity study called for in AB 2019 would cost significantly more than the studies reviewed because it includes a larger contracting and procurement universe and statewide pool of vendors. The department also noted that California having a much larger economy than other states also factored into the cost difference. While a comparative analysis can be helpful in determining estimated costs, it is reasonable to assume that some costs are fixed and may not proportionally scale with increases in the contracting and procurement universe, the number of statewide vendors, and California's economy. Further, at the time AB 2019 was being considered by the Legislature, the fiscal estimate of the bill indicated that it had an unknown fiscal impact ranging in the hundreds of thousands of dollars for DGS to comply with the bill, including conducting the disparity study. For the above reasons, the $4.1 million proposed in the Governor's budget for the study appears notably high. Appropriating more money to DGS than actually needed would make it possible for the department to redirect funds not needed for the contract to other activities that may not be a priority for the Legislature. However, the actual costs of the study will not be known until DGS receives bids from contractors.

Proposed Policy Development, Outreach, and Application Processing Activities Appear Reasonable. The proposed activities to develop policies and training materials, expand outreach, and increase capacity to process small business and disabled veteran business enterprise applications appear reasonable to implement the requirements in AB 2019.

Recommendations

Approve Proposal but Include Provisional Language to Revert Unspent Funds. Conducting a procurement and contracting disparity study is in line with the Legislature's expectations expressed in AB 2019. Accordingly, we do not raise concerns with the proposed funding. However, given that the actual costs are not yet known and that the proposed level of funding appears notably high, we recommend that the Legislature adopt provisional language specifying that the $4.1 million shall only be used to conduct the disparity study and that any unspent funds shall revert to the General Fund and be available for other state priorities.

OFFICE OF STATE PUBLISHING (OSP) NEW WAREHOUSE LEASE AND OPERATIONS

Background

OSP Provides Printing, Communication, and Document Management Services. OSP provides printing, marketing, and document management services to state agencies, cities, counties, and schools. For example, state agencies can request mass printing and mailing of outreach items, such as letters and postcards. To fulfill its printing service requirements, OSP purchases and maintains a stock of paper and related printing supplies.

OSP Started a Lease for a New Warehouse in July 2022 Prior to Requesting Budget Authority. Starting in July 2022, OSP leased approximately 82,000 square feet of warehouse space in West Sacramento to store additional paper commodities and related materials, such as pallets of paper and ink. Previously, OSP operated under a "just-in-time" ordering model whereby OSP received most paper deliveries directly from the supplier within two to four weeks from ordering. However, over the past few years, OSP reports that paper supply industry consolidations, COVID-19 pandemic supply chain issues, and geopolitical events increased lead times for placing orders with suppliers. As a result, OSP began making advanced supply orders to ensure adequate paper and printing materials were available for printing services, which required additional warehouse space for storage.

Governor's Proposal

Funding for Lease and Operation of New Warehouse Facility. The Governor's budget for 2023-24 proposes $1.3 million annually from the Service Revolving Fund for OSP to lease ($1.1 million) and operate ($164,000) its new warehouse facility located in West Sacramento.

Assessment

Ongoing Need for Lease Is Uncertain. The lease for the new warehouse facility began on July 1, 2022, with the option to continue or terminate the lease after 2025-26. According to OSP, paper suppliers estimate that ongoing market disruptions will continue for at least the next two to three years. However, it is unclear if paper supply chain issues will continue after this time and therefore if there will be a continued need for this additional warehouse space. OSP plans to monitor the paper supply market, and if OSP determines that returning to a just-in-time ordering model is sustainable by the end of the lease term, then OSP indicates it will terminate the remainder of the lease and vacate the facility.

DGS Did Not Notify Legislature Prior to Entering Into Lease. Under existing state law, DGS is required to notify the JLBC at least 30 days before entering into a lease agreement between the state and another public or private entity if a state agency will be the occupant and the proposed lease would require an increase in a department or agency's support budget. We are not aware of DGS providing any such notification to the JLBC prior to entering the lease for the new warehouse on July 1, 2022. This significantly limits the Legislature's discretion, particularly since the lease agreement that DGS entered into now requires an increase in OSP's budget.

Recommendations

Approve Funding on a Limited-Term Basis. We recommend that the Legislature approve the funding on a three-year basis (rather than on an ongoing basis as proposed by the Governor). The ongoing need to store an increased supply of printing materials is uncertain and OSP has the option to terminate the lease after 2025-26. The administration can reassess the ongoing need for the warehouse space at that time and submit a request for resources for legislative consideration as part of the 2026-27 budget process, if needed. We also recommend the Legislature require DGS report at spring budget hearings on why notification was not provided to the JLBC prior to the department entering into the lease for the new warehouse. Going forward, it is important for the department to adhere to this statutory requirement to ensure sufficient legislative oversight.

LAO PUBLICATIONS

This report was prepared by Jared Sippel, and reviewed by Drew Soderborg and Anthony Simbol. 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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