

Generally, two fiscal years elapse between the time when housing code violations are reported and when the additional tax revenues generated by these violations are distributed to local governments. Table 1 presents information on program activity between 1981-82 and 1984-85.

Table 1
Substandard Housing Program Activity
1982-83 through 1984-85

	1982-83	1983-84	1984-85	Percent Change
Number of noncompliance notices received	470	685	747	9.1%
Number of local agencies submitting notices	16	13	16	23.1
Revenue collected	\$138,000	\$142,186	\$160,531	12.9

Source: Franchise Tax Board.

ANALYSIS AND RECOMMENDATIONS

We recommend approval.

The budget proposes that \$120,000 be transferred from the General Fund to the LACERF in 1985-86 under the Substandard Housing Program. This amount represents the actual revenues generated through the disallowance of deductions during the 1984-85 fiscal year, minus FTB's projected costs (\$40,000) for administering the program. The request is justified, and we recommend that this item be approved as budgeted.

PAYMENT OF INTEREST ON GENERAL FUND LOANS

Item 9620 from the General
Fund

Budget p. GG 174

Requested 1986-87	\$1
Estimated 1985-86	0
Actual 1984-85	0
Requested increase—None	
Total recommended reduction	None

GENERAL PROGRAM STATEMENT

Whenever cumulative cash disbursements exceed cumulative incoming revenues, the General Fund must borrow monies to cover these disbursements. This borrowing, which is done on a short-term basis, often requires the payment of interest.

To meet the General Fund's short-term cash needs, the state may borrow either internally, from the unexpended balances in its various funds, or externally, through the issuance of short-term borrowing instruments. External borrowing is preferable because the state can lend money at a higher interest rate than the rate at which it must borrow. This is because when the General Fund borrows externally, it does so at *tax-exempt* interest rates, whereas when it borrows internally, it does so, in effect, at *taxable* interest rates—since most of the funds borrowed would otherwise

PAYMENT OF INTEREST ON GENERAL FUND LOANS—Continued

be invested in taxable securities. The Legislature has expressed its intent that the state use external, rather than internal, borrowing whenever it is economically advantageous to the state.

The interest paid on external loans is funded by a continuous appropriation in the Government Code, not out of the appropriation made in this item.

ANALYSIS AND RECOMMENDATIONS*We recommend approval.*

The budget requests \$1 for payment of interest on loans made to the General Fund from *internal* sources in 1986–87. Although \$1 obviously would not be sufficient were the General Fund forced to borrow from internal sources, something must be appropriated in order to maintain this item in the budget, and thereby allow a deficiency appropriation in the event that an emergency requires extensive internal borrowing.

Our analysis indicates that the state is not likely to borrow internally in order to meet its short-term cash needs in the budget year. Nevertheless, it would be prudent to maintain this option. Accordingly, we recommend that the item be approved as submitted.

HEALTH BENEFITS FOR ANNUITANTS

Item 9650 from the General
Fund

Budget p. GG 182

Requested 1986–87	\$126,541,000
Estimated 1985–86.....	109,306,000
Actual 1984–85	102,664,000
Requested increase \$17,235,000 (+15.8 percent)	
Total recommended reduction	8,419,000

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONS

Analysis
page

1. *Health Premium Rate Increases. Reduce Item 9650-001-001 by \$8,419,000.* Recommend deletion of funds to correct for overbudgeted expenditures.

GENERAL PROGRAM STATEMENT

This appropriation provides the state's contribution toward monthly health and dental insurance premiums for annuitants of retirement systems to which the state contributes as an employer. These systems are the Judges', Legislators', Public Employees', and State Teachers' Retirement Systems. For the latter two systems, the health insurance premium contribution is made only on behalf of retired *state* employees.

This program offers a degree of post-retirement security for employees and their dependents by contributing toward the cost of state-approved health insurance plans. Government Code Section 22825.1 expresses legislative intent that the state pay an average of 100 percent of *health* insur-

ance costs for active employees and annuitants, and 90 percent of health insurance costs for the dependents of employees.

This appropriation also provides the state's contribution toward dental insurance premiums for annuitants of the Judges', Public Employees', and State Teachers' Retirement Systems. The State Employees' Dental Care Act (Government Code Section 22952) does not stipulate the same intent with regard to the state's contribution toward premium costs as that set forth in Section 22825.1. Currently, the state is paying 100 percent of dental premium costs, with the exception of one "family" plan under which the state pays 95 percent of the premium cost.

OVERVIEW OF THE BUDGET REQUEST

The budget proposes an appropriation of \$126,541,000 from the General Fund for payment of health and dental insurance premiums in 1986-87. This is \$17,235,000, or 15.8 percent, more than estimated current-year expenditures. The increase is attributed to the projected growth in both the number of annuitants and projected premium rate changes.

The budget proposes expenditures of \$110,966,000 for the payment of health insurance premiums. This is \$16,925,000, or 18 percent, more than estimated 1985-86 expenditures. Proposed expenditures for dental insurance premiums are \$15,575,000, which is \$310,000, or 2 percent, more than estimated current-year expenditures.

Table 1
Health Benefits
Annuitants and Costs
(dollars in thousands)

	<i>Number of Annuitants</i>			<i>State Costs</i>			<i>Percent Change From</i>
	<i>Actual</i>	<i>Est.</i>	<i>Prop.</i>	<i>Actual</i>	<i>Est.</i>	<i>Prop.</i>	
	<i>1984-85</i>	<i>1985-86</i>	<i>1986-87</i>	<i>1984-85</i>	<i>1985-86</i>	<i>1986-87</i>	<i>1985-86</i>
<i>Retirement System</i>							
Judges'	510	541	568	\$852	\$884	\$1,013	14.6%
Legislators'	91	91	91	151	148	162	9.5
Public Employees'	59,304	63,476	67,304	90,191	92,561	109,287	18.1
State Teachers'	303	315	325	440	448	504	12.5
Totals	60,208	64,423	68,288	\$91,634	\$94,041	\$110,966	18.0%

Table 2
Dental Benefits
Annuitants and Costs
(dollars in thousands)

	<i>Number of Annuitants</i>			<i>State Costs</i>			<i>Percent Change From</i>
	<i>Actual</i>	<i>Est.</i>	<i>Prop.</i>	<i>Actual</i>	<i>Est.</i>	<i>Prop.</i>	
	<i>1984-85</i>	<i>1985-86</i>	<i>1986-87</i>	<i>1984-85</i>	<i>1985-86</i>	<i>1986-87</i>	<i>1985-86</i>
<i>Retirement System</i>							
Judges'	400	438	475	\$108	\$136	\$161	18.4%
Public Employees'	42,247	46,264	50,200	10,895	15,096	15,376	1.9
State Teachers'	108	115	121	27	33	38	15.2
Totals	42,755	46,817	50,796	\$11,030	\$15,265	\$15,575	2.0%

HEALTH BENEFITS FOR ANNUITANTS—Continued

The state contributions for these programs are paid initially from the General Fund. Special fund agencies are assessed pro rata charges for these costs, which are then credited to the General Fund. Approximately one-third of the state's contribution is recovered from special fund agencies.

The increases in the number of annuitants and state costs for the health and dental care programs are shown in Table 1 and Table 2, respectively.

ANALYSIS AND RECOMMENDATIONS

Funds Budgeted for Premium Increases Unneeded at This Time

We recommend that the Legislature reduce the amount budgeted from the General Fund by \$8,419,000 in order to correct for overbudgeting of health benefit rate increases.

The budget proposes \$8,419,000 in this item to cover a projected 9 percent increase in the cost of providing annuitant health care in 1986–87. These costs will be adjusted in the same way as the health care expenses of active state employees. Yet, in budget instructions to state departments, the Department of Finance (DOF) directed the departments *not* to budget any increase in premium costs for employee health benefits.

We know of no reason why annuitants' health care should be funded for premium rate increases, when the budget presumes that augmentations for such increases will not be needed by state agencies.

Staff of the Public Employees' Retirement System (PERS) are negotiating the actual 1986–87 premium rates with health plan providers. The PERS board will not adopt new rates until April, after which the Legislature will include the rates in the 1986 Budget Act. If, at that time, additional funds are needed to cover increased rates, the DOF can request an augmentation for *both* active employees' and annuitants' health care costs. Traditionally, this is the way in which rate increases have been funded.

Since there is no need to budget for premium increases at this time, we recommend that the Legislature delete \$8,419,000 requested for these increases.

**CONSTRUCTION AND REPAIR OF LOCAL
STREETS AND ROADS**

Items 9675 and 9675-495 from
various funds

Budget p. GG 185

Requested 1986–87	(\$125,000,000)
Estimated 1985–86	0
Total recommended reduction	(\$125,000,000)

1986–87 FUNDING BY ITEM AND SOURCE

Item—Description	Fund	Amount
9675-101-042—Local assistance	State Highway Account	(\$125,000,000)
9675-495—Reversion	Federal Trust	

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONSAnalysis
page

1. *Assistance for Local Streets and Roads. Delete Item 9675-101-042.* Recommend deletion because a \$125 million loan from the State Highway Account could create a deficit in the account during 1986-87. 1703
2. *Reappropriate Federal Funds. Add Item 9675-490, and delete Item 9675-495.* Recommend reappropriation of \$125 million in federal escrow funds for local streets and roads, consistent with legislative intent. 1703

ANALYSIS AND RECOMMENDATIONS**Loans for Local Streets and Roads**

We recommend that Item 9675-101-042 be deleted, because a \$125 million loan from the State Highway Account could create a deficit in the account during 1986-87. (Delete Item 9675-101-042.)

The 1985 Budget Act appropriated to the State Controller \$125 million in federal escrow funds that the state expects to receive pursuant to Section 8(g) of the Outer Continental Shelf Lands Act. These funds are to be allocated to local governments for the reconstruction of streets and roads. Thus far, no "8(g)" funds have been received.

The budget proposes a \$125 million loan from the State Highway Account in 1986-87 to local governments for the same purpose as the 1985 appropriation. The State Highway Account would be repaid using federal funds when the state receives them.

Our review of the State Highway Account indicates that if federal "8(g)" money is not received during 1986-87, the account could incur a deficit. (Please see our analysis of Item 2660—Department of Transportation.) Since there is no assurance that the state will receive the escrow funds, we do not think the Legislature would be prudent in making a loan from the State Highway Account during the budget year. Accordingly, we recommend that the Legislature delete Item 9675-101-042.

Reappropriate Federal Escrow Funds

We recommend that the Legislature reappropriate \$125 million in federal escrow funds originally appropriated by the 1985 Budget Act for reconstruction of local streets and roads. (Delete Item 9675-495, and add Item 9675-490.)

The 1985 Budget Act appropriated \$125 million in federal escrow funds ("8(g)" money) for reconstruction of local streets and roads. Because the state has not received these funds, no allocations to local governments have been made in 1985-86.

The budget proposes to (1) revert any escrow funds to the federal trust fund, and (2) transfer the reverted and any future escrow funds received, up to \$125 million, to the State Highway Account. In the analysis of Item 2660, we recommend against the proposed transfer.

Instead of loaning state funds to local governments for their streets and roads program, we recommend that the Legislature reappropriate the federal escrow funds in 1986-87. This can be accomplished by (1) adding Item 9675-490 reappropriating any unallocated federal escrow funds, up to \$125 million, which were originally appropriated by Item 9675-101-890

**CONSTRUCTION AND REPAIR OF LOCAL
STREETS AND ROADS—Continued**

of the 1985 Budget Act, for local streets and roads and (2) deleting Item 9675-495.

**AUGMENTATION FOR EMPLOYEE COMPENSATION, CIVIL
SERVICE, EXEMPT AND STATUTORY EMPLOYEES**

Item 9800 from the General
Fund and various other funds

Budget p. GG 187

Requested 1986-87 (\$305,605,000)

1986-87 FUNDING BY ITEM AND SOURCE

Item—Description	Fund	Amount
9800-001-001—Compensation increase	General	(\$172,224,000)
9800-001-494—Compensation increase	Special	(78,707,000)
9800-001-988—Compensation increase	Nongovernmental Cost	(54,674,000)
Total		(\$305,605,000)

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONS

Analysis
page

1. 1986-87 Employee Compensation Increases. Recommend that the Department of Finance report, prior to budget hearings, on how it determined the aggregate increases in expenditures for employee compensation in 1986-87. 1705

OVERVIEW OF THE BUDGET REQUEST

In past years, the funds for compensation increases granted to civil service employees were appropriated in this item. However, because the state negotiated *two-year* agreements for all 20 collective bargaining units in 1985-86, the budget proposes to treat the cost of employee compensation increases differently in 1986-87. All such costs are reflected in the individual *departmental* budgets. The Governor's Budget includes the total amount of these costs in this item for informational purposes only.

The budget proposes \$305,605,000 for compensation increases for all state employees, excluding those in higher education. The General Fund would provide \$172,224,000, or 57 percent, of the total.

The \$306 million includes the costs of salary and benefit enhancements for both *represented* employees, who are represented through the collective bargaining process, and *nonrepresented* employees, such as managerial, confidential and legislative employees. It also includes funding proposed for health and dental benefit premium increases for annuitants in 1986-87 (please see Item 9650).

The \$306 million does *not* include compensation increases proposed for employees of the University of California (UC), the California State University (CSU) and Hastings College of the Law. The Governor's Budget for 1986-87 includes funds for these increases in the support budgets of the individual segments or colleges (please see our analysis of Items 6440, 6610

and 6600, respectively, for a description of the higher education employee compensation packages).

ANALYSIS AND RECOMMENDATIONS

A Review of the Two-Year Compensation Program

Under the State Employer-Employee Relations Act (SEERA), the Legislature has the responsibility to approve all provisions of negotiated agreements (called memoranda of understanding or MOUs) which require either (1) the expenditure of funds or (2) a change in law, before the provisions of an MOU can be implemented. The Legislature passed four bills in 1985—Chapters 236 (SB 578), 266 (AB 1252), 921 (SB 1203) and 922 (AB 1199)—which approved the MOUs of the 20 employee bargaining units, thereby ratifying the changes agreed to between labor and management for 1985–86 through 1986–87.

1985–86 Provisions. The Legislature appropriated \$385.6 million from all funds (\$196.6 million from the General Fund) in the 1985 Budget Act to finance employee compensation increases in 1985–86. The major provisions funded by this appropriation are:

- A 6 percent salary increase effective July 1, 1985;
- Various special salary adjustments, such as an additional 2.5 percent salary increase, effective January 1, 1986, for clerical workers;
- Maintenance of health and dental benefits; and
- A new vision care benefit for *unrepresented* employees effective February 1, 1986.

1986–87 Provisions. The budget proposes to fund the following 1986–87 employee compensation provisions:

- A 5 percent salary increase effective July 1, 1986;
- Maintenance of health and dental benefits; and
- A new vision care benefit for *represented* employees effective July 1, 1986.

Department of Finance Should Report on 1986–87 Employee Compensation Calculation

We recommend that the Department of Finance report to the Legislature prior to budget hearings on how it calculated the aggregate increase in expenditures for 1986–87 employee compensation.

The Department of Finance arrived at the \$306 million shown in the budget for increased compensation costs by summing the amounts budgeted by individual departments. This amount, however, may be *more than* what is actually necessary to cover additional employee compensation costs in 1986–87. The budget appears to provide a total compensation package equal to 5.9 percent of wages and benefits, although the MOU package imposes costs of only about 5.3 percent.

In order to reconcile this difference, we recommend that the Department of Finance report prior to budget hearings on: (1) the precise method it used to determine the total increase in employee compensation, by fund; and (2) whether the departmental estimates used in this calculation are an accurate measure of the actual amounts needed in 1986–87 for employee compensation increases.

AUGMENTATION FOR EMPLOYEE COMPENSATION, CIVIL SERVICE, EXEMPT AND STATUTORY EMPLOYEES—Continued**Historical Comparison of Salary Increases**

Table 1 compares the annual salary increases received by employees in private business, superior court judges, state civil service employees, state statutory officers (those officials whose salaries are specified by statute) and state legislators, during the period 1967–68 through 1986–87. For comparative purposes, the table also shows the percentage changes in the Gross National Product Personal Consumption Deflator (price index) for those same years.

Effects of the Fair Labor Standards Amendments of 1985

On April 15, 1985, the United States Supreme Court's decision in the case of *Garcia v. San Antonio Metropolitan Transit Authority* became final, effectively extending the provisions of the federal Fair Labor Standards Act (FLSA) to state and local employees. A primary provision of this statute requires employers to pay time-and-a-half *monetary* compensation, rather than compensating time off (CTO), for overtime worked by all employees covered by the FLSA.

In June 1985, the United States Department of Labor issued regulations requiring state and local governments to comply with the FLSA, effective April 15, 1985. The Department of Personnel Administration directed state departments to begin paying cash for overtime as of that date. In November, however, the President signed into law the Fair Labor Standards Amendments of 1985, which *allow* the state and local governments to grant CTO in lieu of cash for overtime, *provided* they do so on a time-and-one-half basis (that is, 3 hours of CTO for every 2 hours of overtime worked). The Act also *postponed* the state's obligation to comply with the overtime provisions of the FLSA until April 15, 1986.

Since the state had already begun paying cash for overtime, in accordance with the June regulations, the Governor decided in December to continue this policy until April 1, 1986, in order to maintain consistent treatment of state employees. As a result, departments with employees covered by the FLSA will incur significant deficiencies in 1985–86. The largest of these are: \$6,923,000 (General Fund) for the Department of Corrections; \$3,493,000 (General Fund) for the Department of Developmental Services; and \$2,040,000 (special funds) for the Department of Transportation.

At the time this analysis was written, departments affected by the 1985 FLSA amendments were still considering revisions to their overtime policy for 1986–87. For example, the Department of Corrections *may* choose to pay cash to some correctional officers for overtime hours, in order to avoid the *higher* cost of hiring and training additional officers to replace those using accrued CTO. Since the Department of Finance did not allow departments to budget for FLSA-related costs in 1986–87, departments contemplating this kind of overtime policy change may incur deficiencies in the budget year. These potential costs cannot be determined at this time.

Table 1
Annual Salary Increases Received by
Employees in Private Business, Judges, State Civil Service Employees,
Statutory Officers and State Legislators
1967-68 Through 1986-87

	<i>Private Employment,^a Average Increase Per Employee</i>	<i>Superior Court Judges</i>		<i>Civil Service Percent Increase</i>		<i>Statutory Officers: Percent Increase</i>	<i>State Legislators</i>		<i>GNP Personal Consumption Deflator</i>	
		<i>Salary</i>	<i>Increase</i>	<i>Total Payroll</i>	<i>Average Increase per Employee</i>		<i>Salary</i>	<i>Percent Increase</i>	<i>Level</i>	<i>Percent Increase</i>
1967-68.....	4.8%	\$25,000	—	4.9%	5.1%	—	\$16,000	—	82.9	—
1968-69.....	6.7	30,752	22.3%	5.3	5.7	5.0%	16,000	—	86.4	4.2%
1969-70.....	4.7	31,816	4.1	5.6	5.6	11.5	16,000	—	90.5	4.7
1970-71.....	6.6	33,407	5.0	5.0	5.2	—	19,200	20.0%	94.5	4.4
1971-72.....	6.3	35,080	5.0	—	—	—	19,200	—	98.3	4.0
1972-73.....	3.5	36,393	3.7	8.3	9.0	5.0	19,200	—	102.3	4.1
1973-74.....	5.2	37,615	3.4	12.9	11.7	12.5	19,200	—	110.6	8.1
1974-75.....	8.2	40,322	7.4	5.3	5.0	5.0	21,120	10.0	121.3	9.7
1975-76.....	5.4	45,299	12.3	7.1 ^b	6.7	—	21,120	—	128.6	6.0
1976-77.....	6.8	49,166	8.5	6.6	— ^c	1.9	23,232	10.0	135.4	5.3
1977-78.....	7.0	49,166	—	7.5	7.1	7.5	23,232	—	143.7	6.1
1978-79.....	7.5	51,624	5.0	—	—	—	25,555	10.0	155.4	8.1
1979-80.....	9.5	54,205	5.0	15.0	14.5	15.0	25,555	—	170.5	9.7
1980-81.....	10.0	59,686	10.1	10.0	10.0	9.8	28,111	10.0	187.0	9.7
1981-82.....	9.0	63,267	6.0	6.5	6.5	6.0	28,111	—	200.8	7.4
1982-83.....	6.8	63,267	—	—	—	—	28,111	—	210.2	4.7
1983-84.....	4.9	67,063	6.0	6.0	6.0	6.0	28,111	—	217.0	3.2
1984-85.....	4.6 ^d	72,763	8.5	8.9	8.9	8.5	33,732	20.0	223.8	3.1
1985-86.....	4.5 ^d	77,129	6.0 ^e	6.0 ^e	6.0 ^e	6.0 ^e	33,732	—	230.2	2.9
1986-87.....	5.2 ^d	80,985	5.0	5.0	5.0	5.0	37,105 ^f	10.0	237.8	3.3

^a Based on changes in average weekly wages for the whole fiscal year, as reported by the Employment Development Department. Prior to 1972-73, data is based on salaries in effect each March, as surveyed by the State Personnel Board.

^b Does not include one-time bonus of \$400 paid to employees having a maximum salary of \$753 or less on July 15, 1975.

^c Not calculated because of flat salary increases.

^d Forecast.

^e Salary increase effective January 1, 1984.

^f Salary increase effective December 1, 1986.

In addition, major questions about the implementation of the amendments remain. For instance, it is not clear if the amendments give discretion to *employees* as to whether to accept CTO in lieu of cash compensation for overtime. Presumably, the United States Department of Labor regulations covering the new FLSA provisions, which are due to be issued by April 15, 1986, will clarify this and other ambiguities in the law.

PAYMENT OF SPECIFIED ATTORNEY FEES

Item 9810 from the General
Fund and various funds

Budget p. GG 189

Requested 1986-87	\$800,000
Estimated 1985-86.....	773,000
Actual 1984-85	262,000
Requested increase \$27,000 (+3.5 percent)	
Total recommended reduction	None

1986-87 FUNDING BY ITEM AND SOURCE

Item—Description	Fund	Amount
9810-001-001—Attorney Fees, state courts	General	\$300,000
9810-001-494—Attorney Fees, state courts	Special	100,000
9810-001-988—Attorney Fees, state courts	Nongovernmental Cost	100,000
9810-010-001—Attorney Fees, federal courts	General	100,000
9810-010-494—Attorney Fees, federal courts	Special	100,000
9810-010-988—Attorney Fees, federal courts	Nongovernmental Cost	100,000
Totals		<u>\$800,000</u>

GENERAL PROGRAM STATEMENT

This item, included for the first time in the 1982 Budget Act, provides funds for the payment of attorney fee claims, settlements, and judgments against the state arising from actions in either state or federal courts.

The funds may be used to pay claims authorized pursuant to the United States Civil Rights Attorneys' Fees Award Act and other federal laws awarding attorney fees, the Code of Civil Procedure Section 1021.5, or the judicially created theories of the "private attorney general" and "substantial benefit" doctrine. (Section 1021.5 provides that a court may award attorney fees to a successful party in any legal action which has brought about the enforcement of an important right and has resulted in a significant benefit to the public.)

The language in this item specifies that for claims related to actions arising in state courts (1) individual payments from the item shall not exceed a maximum hourly rate of \$90, (2) notwithstanding the hourly rate provision, no payment for a single action shall exceed \$100,000, and (3) a payment made from this item constitutes full satisfaction for the claim. Other provisions express legislative intent that it would be appropriate for federal courts to be guided by the same provisions limiting payments for attorney fee awards arising from actions in state courts.

OVERVIEW OF THE BUDGET REQUEST

The budget proposes an appropriation of \$800,000 from various funds for payment of court-awarded attorney fees in 1986-87.

This is \$27,000, or 3.5 percent, more than estimated current-year expenditures. The appropriation, however, is \$400,000, or 100 percent, more than the \$400,000 appropriated from various funds in the 1985 Budget Act. Because of an increased volume of attorney fee claims during the current year, the Director of Finance has allocated an additional \$373,000 to this item, using funds appropriated for contingencies and emergencies. This amount consists of \$280,000 from the General Fund and \$93,000 from non-governmental cost funds. Thus, estimated expenditures in 1985-86 are \$773,000—93 percent above the budgeted level.

ANALYSIS AND RECOMMENDATIONS*We recommend approval.*

The budget proposes two significant policy changes in this item.

Fees Resulting from State Court Actions Pursuant to Federal Law. The administration proposes to amend provisions of Item 9810 to control attorney fee payments arising from actions in *state* courts where attorney fees are awarded pursuant to the United States Civil Rights Attorneys' Fees Award Act (42 U.S.C. Section 1988). The budget proposes a General Fund increase of \$100,000 to pay for the additional claims that will be filed under that act.

Currently, Item 9810 controls the payment of attorney fees only for awards made pursuant to Section 1021.5 of the California Code of Civil Procedure, the "private Attorney General" theory, or the "substantial benefit" doctrine. Many of the claims that are covered by those provisions, however, can also be pursued in federal court under the United States Civil Rights Attorneys' Fees Award Act.

In November 1984, a *state* appellate court ruled in *Green v. Obledo* that the plaintiff's attorneys qualified for attorney fees pursuant to the federal civil rights act, even though (1) the case was filed in *state* court and (2) plaintiffs did not cite, nor argue, the appropriate federal sections at the trial level. The Attorney General's office has appealed this ruling to the United States Supreme Court. *If* this precedent stands, however, attorneys will be able to circumvent the Legislature's controls on the payment of Section 1021.5 attorney fees and still file their cases in the state courts.

Our analysis indicates that the budget proposal merely preserves the efficacy of Legislature's current policy by eliminating the loophole which allows attorneys to avoid the legislative controls over the payment of attorney fees. Accordingly, we recommend approval of this change.

Fees Resulting from Federal Court Actions. The budget also proposes three new items appropriating a total of \$300,000 for payment of attorney fees awarded by the *federal* courts.

Last year, the Legislature enacted Control Section 5.20 to prohibit the use of funds appropriated in the Budget Act or any other statute to pay attorney fees awarded by federal courts unless payment was specifically authorized in the Budget Act. In addition, the Legislature expressed its intent in Control Section 5.20 to limit payments of attorney fees awarded by federal courts to a maximum hourly rate of \$90 and a maximum of \$100,000 for any single action. However, no specific appropriation or authority to pay those awards was included in the act.

PAYMENT OF SPECIFIED ATTORNEY FEES—Continued

The budget proposes to specifically appropriate \$300,000 to pay these claims, and includes language expressing legislative intent that the federal courts follow the limits imposed by the Legislature on payment of attorney fees arising from state court actions.

Our analysis indicates that the proposal will provide a means for the prompt and orderly payment of attorney fee claims awarded by federal courts. In addition, the proposal appears to be consistent with legislative intent. Accordingly, we recommend approval of this change.

RESERVE FOR CONTINGENCIES OR EMERGENCIES

Item 9840 from the General
Fund, special funds and non-
governmental cost funds

Budget p. GG 191

Requested 1986-87	\$4,500,000
Amount Appropriated by the 1985 Budget Act	4,500,000
Total recommended reduction	None
Recommendation pending	4,500,000

1986-87 FUNDING BY ITEM AND SOURCE

Item—Description	Fund	Amount
9840-001-001—Reserve for Contingencies or Emergencies	General	\$1,500,000
9840-001-494—Reserve for Contingencies or Emergencies	Special	1,500,000
9840-001-988—Reserve for Contingencies or Emergencies	Nongovernmental Cost	1,500,000
9840-011-001—Reserve for Contingencies or Emergencies (Loans)	General	(2,500,000)
Total		\$4,500,000
9840-490—Reappropriation	—	—

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONS

- | | |
|---|------------------------------|
| 1. Deficiencies. Withhold recommendation on item, pending further legislative review of the administration's use of the deficiency process. | <i>Analysis page</i>
1714 |
|---|------------------------------|

ANALYSIS AND RECOMMENDATIONS

The budget proposes three appropriations totaling \$4,500,000 for allocation by the Department of Finance to state agencies in 1986-87. These funds may be allocated for expenses resulting from unforeseen contingencies and emergencies not covered by specific appropriations. The appropriations consist of \$1,500,000 each from the General Fund, special funds and nongovernmental cost funds.

Item 9840-011-001 appropriates an additional \$2,500,000 to provide for temporary loans to state agencies whose operations are in danger of being curtailed because of a delay in the receipt of reimbursements or revenue.

The loans made under this item must be repaid by the end of the fiscal year in which they are made.

The amounts requested for 1986-87 are the same as what was provided in the 1985 Budget Act.

General Fund Deficiencies

The amount appropriated for contingencies and emergencies in the Budget Act is not intended to cover all unforeseen needs that will arise during the fiscal year. In recent years, the Legislature has appropriated only a nominal amount in this item, primarily to cover minor emergencies that arise during the first part of the fiscal year. The vast majority of the money needed to cover deficiency spending resulting from contingencies and emergencies is provided by an annual deficiency bill, which appropriates funds in augmentation of this reserve item. This bill usually is enacted near the end of the fiscal year.

Table 1 displays the amounts appropriated and allocated to agencies from the General Fund for contingencies or emergencies, as well as the year-end unexpended balances, for each fiscal year since 1971-72. The table shows that the Department of Finance anticipates the need for a General Fund deficiency appropriation of \$200.1 million in the current year. This amount would supplement the \$1.5 million appropriated from the General Fund for contingencies and emergencies in the 1985 Budget Act, bringing the total amount available in the current year to \$201.6 million. As of January 1986, the department anticipated General Fund allocations to state agencies totaling approximately \$200.1 million in 1985-86, leaving \$1.5 million available for unforeseen contingencies and emergencies during the remainder of the fiscal year.

Table 1
Reserve for Contingencies or Emergencies
Appropriations and Allocations from the General Fund
1971-72 through 1986-87
(in thousands)

	<i>Appropriated in Budget Act</i>	<i>Omnibus Deficiency Appropriation</i>	<i>Allocated to Agencies</i>	<i>Unexpended Balance</i>
1971-72	\$1,000	\$4,918	\$4,994	\$924
1972-73	1,000	7,500	8,077	423
1973-74	1,500	10,900	5,645	6,755
1974-75	1,500	14,700	15,112	1,088
1975-76	1,500	30,520	24,919	7,101
1976-77	1,500	11,550	11,200	1,850
1977-78	1,500	17,500	18,970	30
1978-79	1,500	11,000	12,193	307
1979-80	1,500	25,646	26,208	939
1980-81	1,500	18,600	19,005	1,095
1981-82	1,500	25,000	25,545	955
1982-83	1,500	431,500	332,101	100,899
1983-84	1,500	118,460	109,531	10,429
1984-85	1,500	423,850	417,017	6,833
1985-86	1,500	200,131 ^a	200,131 ^a	1,500 ^b
1986-87	1,500 ^b	—	—	—

^a Total amount of 1985-86 allocations anticipated by the Department of Finance as of January 1986.

^b Proposed.

RESERVE FOR CONTINGENCIES OR EMERGENCIES—Continued

The major General Fund deficiency allocations anticipated by the Department of Finance in 1985–86 are:

Health and Welfare

- \$20.2 million to fund the SSI/SSP program, resulting from (1) a lower federal COLA offset and (2) higher caseload; and
- \$32.4 million to fund abortions, pursuant to a State Supreme Court ruling.

Corrections and Youth Authority

- \$70.4 million to provide for (1) a larger inmate population, (2) special workload needs, and (3) collective bargaining agreements;
- \$5.2 million for compliance with the *Toussaint v. McCarthy* Permanent Injunction; and
- \$9.9 million in state reimbursements for local parolee-detention costs (please see Item 5240 for a lengthy discussion of these deficiencies).

Department of Forestry

- \$22.9 million for fire suppression costs.

Statewide

- \$14.4 million to meet Fair Labor Standards Act requirements.

In addition, the Department of Finance has already allocated \$320,000 from this item (General Fund) to Cal Expo to meet its short-term operating needs. In the 1985 Budget Act the Legislature provided funds adequate to support Cal Expo only through December 31, 1985, but later sent the Governor legislation (AB 1376) providing funding for the second half of the fiscal year. The bill also made changes in the composition of Cal Expo's governing board. The Governor vetoed AB 1376, objecting to the board changes. Then, he used the "emergency" authority provided in this item to allocate the \$320,000 to Cal Expo, even though it was his veto which created the "emergency" situation in the first place.

Deficiencies in Special Funds and Nongovernmental Cost Funds

Tables 2 and 3 show deficiencies in special and nongovernmental cost funds, respectively, since 1978–79, the first year in which there was legislative control and oversight of these funds.

Table 2
Reserve for Contingencies or Emergencies
Appropriations and Allocations from Special Funds
1978–79 to 1986–87
(in thousands)

	<i>Appropriated in Budget Act</i>	<i>Deficiency Appropriation</i>	<i>Allocated to Agencies</i>	<i>Unexpended Balance</i>
1978–79	\$1,500	—	\$254	\$1,246
1979–80	1,500	—	821	679
1980–81	1,500	\$1,000	1,859	641
1981–82	1,500	5,000	5,121	1,379
1982–83	1,500	4,500	3,115	2,885
1983–84	1,500	20,652	21,365	787
1984–85	1,500	22,303	21,049	1,254
1985–86	1,500	25,805 ^a	25,805 ^a	1,500 ^b
1986–87	1,500 ^b	—	—	—

^a Total amount of 1985–86 allocations anticipated by the Department of Finance as of January 1986.

^b Proposed.

In 1985-86, special fund deficiency allocations are estimated at 25.8 million, which is \$4.8 million more than \$21 million allocated in 1984-85. The major special fund allocations proposed for 1985-86 are: (1) \$4 million from the Motor Vehicle Account and \$2.2 million from the Motor Vehicle License Fee Account to meet increased workload in the Department of Motor Vehicles; (2) \$3.2 million from the Energy Resources Program Account to the "Energy Commission" for evaluation of power plant siting applications, and (3) \$3.5 million from the Hospital Building Account for inspection of health facilities.

Table 3
Reserve for Contingencies or Emergencies
Appropriations and Allocations from Nongovernmental Cost Funds
1978-79 through 1986-87
(in thousands)

	<i>Appropriated in Budget Act</i>	<i>Deficiency Appropriation</i>	<i>Allocated to Agencies</i>	<i>Unexpended Balance</i>
1978-79	\$1,500	—	\$676	\$824
1979-80	1,500	\$5,300	6,271	528
1980-81	1,500	—	610	890
1981-82	1,500	—	279	1,221
1982-83	1,500	351,250	275,682	77,068
1983-84	1,500	3,639	3,639	1,500
1984-85	1,500	3,435	3,438	1,497
1985-86	1,500	5,602 ^a	5,602 ^a	1,500 ^b
1986-87	1,500 ^b	—	—	—

^a Total amount of 1985-86 allocations anticipated by the Department of Finance as of January 1986.

^b Proposed

The budget proposes \$5.6 million in deficiency allocations from nongovernmental cost funds—about \$2.2 million more than the \$3.4 million approved in 1984-85. The major allocations include \$2.3 million from the Uninsured Employer's Fund for workers' compensation claims, and \$652,000 from the Architecture Revolving Fund to the Department of General Services (DGS) for design and engineering work on state capital outlay projects. The DGS allocation was authorized as an *emergency* deficiency expenditure in August 1985, in order to restore positions to the DGS' Office of State Architect (OSA). The Legislature, in an attempt to improve the state's capital outlay project delivery system, had moved positions from OSA to the Department of Finance (DOF) in the 1985 Budget Act. The Governor vetoed the DOF positions. Instead of securing legislative approval for reestablishing the positions in DGS, he circumvented the legislative process and accomplished his objective by declaring an "emergency." Again, the "emergency" was of the Governor's own making.

RESERVE FOR CONTINGENCIES OR EMERGENCIES—Continued

Deficiency Process Needs To Be Tightened Up

We withhold recommendation on the amounts and language proposed in this item, pending further review of how the administration has used the deficiency process.

As noted above, there have been several recent cases where the administration's use of the deficiency process—through this item and Section 27.00 of the annual Budget Act—has been, at best, suspect and, at worst, indefensible. The deficiency requests for the Departments of Corrections, General Services and Cal Expo are three of the more prominent examples of how authority which the Legislature has delegated to the Department of Finance has been misused.

Alarmed over these examples, the Joint Legislative Budget Committee (JLBC) met in January to examine the problem. The committee currently is exploring ways of restricting the department's discretion in this area (for example, by tightening the definition of "emergency"). Pending the completion of the JLBC's review, we withhold recommendation on this entire item.

Reappropriation—Item 9840-490

We recommend approval.

This item reverts any unexpended balances from the appropriations made in the 1985 Budget Act to the Reserve for Contingencies or Emergencies (Items 9840-001-001, 9840-001-494, and 9840-001-988), to the unappropriated surplus of the General Fund, special funds, and nongovernmental cost funds, respectively, effective June 30, 1986.

The amounts reverted on June 30, 1986, are reappropriated by this item to the Reserve for Contingencies or Emergencies (Items 9840-001-001, 9840-001-494, and 9840-001-988), effective July 1, 1986. The reappropriated funds thus would be made available during the budget year for allocation by the Director of Finance to cover any additional costs associated with any 1985-86 deficiencies discovered after the fiscal year ends.

UNALLOCATED CAPITAL OUTLAY

Item 9860-301-036 from the General Fund, Special Account for Capital Outlay Budget p. GG 199

Requested 1986-87	\$300,000
Recommended approval	300,000

ANALYSIS AND RECOMMENDATIONS

Project Planning

We recommend that the Legislature approve the \$300,000 requested under Item 9860-301-036 for statewide project planning.

The budget provides \$300,000 to finance the development of cost estimates for new projects which the Department of Finance anticipates will be included in the budget for 1987-88. The request is \$200,000, or 40

percent, less than estimated 1985-86 expenditures for this purpose. These funds would be allocated by the Department of Finance.

Funds for statewide planning of new capital outlay proposals traditionally are included in the Budget Bill to ensure that the Legislature will have the information it needs when considering capital outlay requests for the following year. The department anticipates that the need for planning funds will be less in 1986-87 than it was in the two previous years because the budget packages prepared for projects which were excluded from the 1986-87 budget can be updated at minimal cost for inclusion in the Governor's Budget for 1987-88.

The department's request for planning funds is reasonable, and we recommend that the requested amount be approved.

STATEWIDE CAPITAL OUTLAY—MATCHING FUNDS FOR ENERGY GRANTS

Item 9860-301-146 from the
Capital Outlay Fund for Pub-
lic Higher Education

Budget p. GG 199

Requested 1986-87	\$500,000
Recommended approval	500,000

ANALYSIS AND RECOMMENDATIONS

Matching Funds for Federal Schools and Hospitals Grant Program

We recommend that the Legislature approve the \$500,000 requested under Item 9860-301-146.

We further recommend that the Legislature amend the Budget Bill to limit the availability of these funds to the budget year.

The budget includes \$500,000 for working drawings and construction of energy conservation projects that are expected to be partially funded through federal grants for energy conservation. These funds would be allocated by the Department of Finance (DOF) as state matching funds for the highest-priority projects identified by the University of California, the California State University, the California Maritime Academy, and the California Community Colleges. The DOF would be required to report proposed allocations to the Legislature at least 30 days prior to when the allocations actually are made. The funds would be available for allocation during the 1986-87 and 1987-88 fiscal years.

This lump-sum appropriation would ensure that the state realizes the greatest return on its investment under the federal grant program by funding the highest-priority projects statewide. The Legislature provided \$500,000 for this purpose in the 1985 Budget Act. We recommend approval of the request to continue this program.

Funds Should Not Be Available for Two Years. The Budget Bill specifies that these funds are available for allocation by the DOF in 1986-87 and 1987-88.

STATEWIDE CAPITAL OUTLAY—MATCHING FUNDS FOR ENERGY GRANTS—Continued

It is not necessary to make these funds available for more than one fiscal year. If the DOF does not authorize expenditures in the amount of \$500,000, the balance should revert to the Capital Outlay Fund for Public Higher Education where it would be available for appropriation by the Legislature. Additional funding for this purpose in 1987-88 should be considered separately, in the course of legislative deliberation on the 1987 Budget Bill.

Moreover, the California Energy Commission indicates that projects subject to this appropriation will be identified by the federal government prior to the start of the budget year. Thus, it will not be necessary to make these funds available in 1987-88. Consequently, we recommend that the Budget Bill language be modified to indicate that the funds are available for the 1986-87 fiscal year only.

STATEWIDE CAPITAL OUTLAY—STATE BUILDING ASBESTOS ABATEMENT

Item 9860-311 from the General

Fund, Special Account for
Capital Outlay

Budget p. GG 199

Requested 1986-87	\$3,000,000
Recommendation pending	3,000,000

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONS

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1. Asbestos Planning. Withhold recommendation on request for \$3 million, pending receipt of (1) a plan for implementing asbestos abatement, and (2) a priority list of proposed projects. 1717
2. Asbestos Planning. Recommend that, prior to budget hearings, the Department of Finance provide to the Legislature (1) proposed maintenance, monitoring and control/abatement procedures, (2) criteria for establishing priorities and determining the appropriate control/abatement procedures, (3) a list of proposed projects and costs, and (4) a plan for scheduling, funding and completing the necessary asbestos control work. 1718
3. Potential Recovery of Costs. Recommend that, prior to budget hearings, the Department of Finance advise the Legislature of (1) the status of recovering asbestos abatement costs from a current bankruptcy case, and (2) the administration's plan to recover these costs from other potential proceedings. 1718

ANALYSIS AND RECOMMENDATIONS

Asbestos Abatement Program Requires Projects, Plan, and Policy

We withhold recommendation on Item 9860-311-036, \$3 million for asbestos abatement in state-owned buildings, pending receipt of (1) a plan for implementing an asbestos abatement program, including criteria for removing asbestos hazards in priority sequence, and (2) a priority list of proposed projects.

The budget proposes \$3 million from the General Fund, Special Account for Capital Outlay, to fund a statewide program to remove asbestos from state-owned buildings. The funds would be allocated by the Department of Finance (DOF) to the Director of the Department of General Services (DGS). Prior to the expenditure of funds under this item, the DOF would develop criteria for allocating these funds and submit the criteria to the Joint Legislative Budget Committee for review. The budget document indicates that this year is the first of a multi-year asbestos abatement program.

Background

Construction materials containing asbestos have been used extensively in schools and other buildings in the last 40 years. Some examples of asbestos-containing materials are: surfacing materials, thermal insulating products, textiles, roofing and siding shingles, pipe, and corrugated paper products. The presence of asbestos may not pose a health hazard to building occupants if the material is in good condition and is not disturbed. If, however, the material is damaged or friable, asbestos material may be a hazard to building occupants.

Because of the health risk posed by asbestos, the Environmental Protection Agency (EPA) issued regulations concerning asbestos in 1973.

The EPA recommends the following guidelines for use in controlling/abating asbestos materials in buildings:

- **Perform a survey** to determine the presence and condition of asbestos material.
- **Establish a special operations and maintenance program** to clean up asbestos fibers previously released, prevent future releases by minimizing disturbance or damage, and monitor the condition of the asbestos material.
- **Assess the material to determine whether further action is necessary.**
- **Conduct abatement work** to remove, repair, enclose, or encapsulate the asbestos material.

A statewide asbestos control program should take the approach set forth in the EPA's guidelines.

The Request

The budget includes \$3 million for unspecified asbestos abatement work. The Department of Finance indicates that these funds would be used for the first year of a multi-year program. The department, however, has provided no information detailing (1) the extent of the statewide problem, (2) the total estimated cost of abatement activities, (3) proposed maintenance, monitoring or abatement plans, (4) the criteria for spending the proposed funds, or (5) the projects to be undertaken using the proposed 1986-87 funds. In short, the department is asking for a \$3 million

STATEWIDE CAPITAL OUTLAY—STATE BUILDING ASBESTOS ABATEMENT—Continued

lump-sum appropriation without presenting to the Legislature any information on how the funds will be spent other than to indicate that they are for "asbestos abatement."

In addition, the DOF has not indicated to the Legislature what its plans are for recovering the cost of asbestos control/abatement work from manufacturers of asbestos-containing materials other than the Johns-Manville Corporation.

Under the circumstances, we withhold recommendation on the requested amount. We recommend that, prior to budget hearings, the DOF submit to the Legislature (1) proposed maintenance, monitoring and control/abatement procedures, (2) criteria for establishing priorities and for determining the appropriate control procedure, (3) a list of proposed projects and associated costs for each of the multi-year programs, and (4) a plan for scheduling, funding, and completing the necessary asbestos control work. Until the administration has provided this data, the Legislature does not have sufficient information to assess the administration's proposal for asbestos control/abatement.

Court Proceedings Against Manufacturers

We recommend that, prior to budget hearings, the Department of Finance advise the Legislature of (1) the status of its efforts to recover asbestos abatement costs from a current bankruptcy case and (2) the administration's plan for recovering these costs from other potential proceedings.

The State of California currently is a participant in the Johns-Manville Corporation's bankruptcy proceedings. This may allow the state to secure funding from the corporation for asbestos control, and thus may have a bearing on the need for state funds to finance asbestos abatement. Accordingly, we recommend that the Department of Finance advise the Legislature on (1) status of the Johns-Manville bankruptcy case and (2) the administration's plan to recover the cost of asbestos control from other asbestos material manufacturers.

STATEWIDE CAPITAL OUTLAY—UNDERGROUND STORAGE TANK COMPLIANCE

Item 9860-321 from the General
Fund, Special Account for
Capital Outlay

Budget p. GG 199

Requested 1986-87	\$8,000,000
Recommendation pending	8,000,000

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONS

Analysis
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1. Statewide Underground Tank Proposal. Withhold recommendation on the \$8 million requested under Item 9860-321-036, pending receipt of (1) a program plan and (2) an explanation of how these funds are to be spent.

1719

2. The 1985-86 Program. Recommend that, prior to budget hearings, the Department of Finance explain to the Legislature (1) why there have been delays in this program and (2) what steps will be taken to correct this problem and improve the direction of the program. 1719
3. Alternatives to Tank Replacement. Recommend that, prior to budget hearings, the Department of Finance provide the Legislature with an evaluation of alternatives to tank replacement. 1721

GENERAL PROGRAM STATEMENT

Chapter 1046, Statutes of 1983, specifies that underground tanks must meet certain standards of testing, maintenance, and monitoring. In addition, existing law and regulations require that certain procedures be followed in removing, replacing, and cleaning up underground tanks.

The budget for 1985-86 requested \$12 million for the Department of General Services to use in funding state-owned underground tank testing, monitoring, permitting, and replacement. The department, however, was unable to (1) describe how the program would be implemented or (2) substantiate the need for \$12 million in 1985-86. As a result, the Legislature included \$4 million in the 1985 Budget Act (Item 9860-321-036) for compliance activities related to state-owned underground storage tanks. These funds were made available for allocation by the Department of Finance (DOF) to the Director of the Department of General Services (DGS) with the proviso that the DOF develop criteria for allocating these funds. In addition, no more than \$338,000 of the funds provided under this item could be spent for positions and associated overhead costs.

ANALYSIS AND RECOMMENDATIONS

What Will Be Accomplished in 1986-87?

We withhold recommendation on the Item 9860-321-036, \$8 million for underground storage tank compliance, pending receipt of (1) a program plan, and (2) an explanation of how these funds are to be spent.

The budget requests a lump-sum appropriation of \$8 million from the General Fund, Special Account for Capital Outlay, for unspecified underground tank compliance activities related to state-owned tanks. This \$8 million would be available for allocation by the Department of Finance, over a three-year period, without further review or approval by the Legislature. Again this year, the department has not indicated how it intends to implement the program or how these funds are to be spent.

Under these circumstances, we withhold recommendation on this request, pending receipt of (1) a program plan, and (2) an explanation of how the funds would be expended.

Delays/Misdirection in the 1985-86 Program

We recommend that, prior to budget hearings, the Department of Finance explain to the Legislature (1) why there have been delays in the underground storage tank compliance program, (2) what steps are being taken to ensure that further delays do not occur, and (3) how the department will modify the planned procedures to assure that the Legislature is provided appropriate, timely information and that all tanks are identified and then addressed in a priority sequence.

STATEWIDE CAPITAL OUTLAY—UNDERGROUND STORAGE TANK COMPLIANCE—Continued

In August 1985, the Director of Finance submitted its criteria for allocating the \$4 million. The program elements outlined by the Director include:

- **Sampling.** Includes tank testing and soil sampling activities of a stratified, random sample of state-owned tanks in order to draw inferences about all state-owned tanks.
- **Testing and monitoring.** Includes precision testing of tank integrity and the installation of tank monitoring equipment.
- **Tank replacement.** Replace tanks identified from the sampling and testing/monitoring component of this program.
- **Underground cleanup.** Includes cleanup of leaking tanks identified in the sampling and testing/monitoring program components.

The Director indicated in his letter that the Office of State Architect (OSA) would (1) be allocated \$338,000 to provide staff support and services to coordinate the statewide program, and (2) develop details for each program element of the allocation.

On February 6, 1986, the Director of Finance advised the Legislature of the OSA's plan to spend an additional \$3,661,000 of the \$4 million appropriation. The plan includes assumptions on:

- the percentage of leaking tanks (40 percent of all tanks);
- the age of state-owned tanks (64 percent under 17 years of age);
- the number of nonleakers which should be replaced (50 percent of nonleakers under 17 years of age); and
- the cost of various program components.

The DOF indicated its intention to allocate the funds on the basis of the OSA's plan.

Given time constraints, we were unable to analyze thoroughly the OSA's plan prior to preparing the analysis of this item. Based on our preliminary review, however, the OSA's plan appears to have several shortcomings. For example, the OSA's plan:

- Contains no basis for the assumptions on which future program activities will be based.
- Does not set priorities for remedial action, and therefore will not identify which tanks should be addressed first.
- Does not describe how tanks will be selected for the testing/monitoring component of this program. Thus, problematic leakers may be ignored under this program.

In addition, our preliminary review suggests that the OSA's plan provides for activities which may not yield useful information.

Sampling of Tanks Is Ill-Advised

The OSA plan assumes a stratified, random sample of the state-owned tanks will help it to develop an effective compliance program, multi-year funding information, and program scope. The OSA reasons that the scope and cost of a statewide program can be derived from the characteristics and estimated cost of remedial action drawn from a representative sample of underground tanks. This reasoning, however, overlooks several shortcomings to this approach.

First, there are approximately 2,200 state-owned tanks of various sizes, ages, contents, and locations. In order to create a *representative* sample of underground tanks, OSA needs specific information on the characteris-

tics of the total population. If the sample is not representative of the population as a whole, the results derived from the sampling may not be meaningful. For example, if the sample contains a disproportionate share of tanks located in highly acidic soil, then the results of the sample would tend to *overstate* the degree of tank leakage. Thus, we question whether the proposed sampling will yield meaningful information about all state-owned tanks.

Second, the information provided from the sampling, even if statistically valid, will not help set priorities. The sampling may provide data on the overall scope and cost of leaking underground tanks, *but it will not disclose which tanks are leaking or which tanks should be treated first*. The OSA has indicated that *its* priorities for replacement and cleanup will not be set until 1986-87. Thus, the sampling activities will only build a budget estimate for future years and *will not help the Legislature* appropriate funds for tanks which require immediate attention.

Third, to the extent that the department's proposal will not establish priorities for tank replacement and cleanup, it sets back the underground tank program one year. Existing law specifies that underground storage tanks must have a permit or an interim permit to own or operate the tank by March 1, 1986. Thus, based on the department's schedule, *state-owned tanks will not comply with state law regarding underground storage tanks*. At the time this analysis was prepared, the department had not tested, monitored, or permitted any state-owned tanks.

Department Should Begin Testing and Monitoring Immediately

As part of the permit process, tank owners and operators are required to test the integrity of existing tanks. Monitoring equipment must be installed on all new tanks and existing tanks not found to be leaking. The department could begin testing and monitoring *all* state-owned tanks immediately, based on information provided to the OSA by state agencies. The OSA could:

- compile a list of problem tanks, based on the survey questionnaire sent to state agencies in November 1985;
- *immediately* discontinue the use of known leaking tanks;
- begin testing the tanks which are suspected of leaking and monitor, if necessary, according to (a) the risk of leakage and (b) the potential damage from leaking;
- complete testing and monitoring of all remaining tanks;
- establish priorities for tank removal and cleanup; and
- submit a proposal to the Legislature for funding removal and cleanup activities in priority sequence.

In view of the above, we recommend that the Department of Finance explain to the Legislature, prior to budget hearings, (1) why there have been delays in the program, (2) what steps are being taken to ensure that further delays do not occur, and (3) how the department plans to modify OSA's plans to ensure that the Legislature is provided appropriate, timely information and that all tanks are identified and then addressed in a priority sequence.

Tank Replacement—Alternatives Should Be Considered

We recommend that, prior to budget hearings, the Department of Finance provide to the Legislature an evaluation of alternatives to tank replacement.

STATEWIDE CAPITAL OUTLAY—UNDERGROUND STORAGE TANK COMPLIANCE—Continued

The DOF indicates that tank replacement will occur as leaking tanks are identified during sampling, testing, and monitoring. There are, however, several alternatives to tank replacement which the administration should consider before replacing most state-owned tanks.

- **Purchase gas from private gas stations.** Instead of replacing existing tanks, departments could purchase gas at private stations. In this way, the state could avoid the periodic capital outlay costs associated with double-walled underground tanks and monitoring equipment, plus the ongoing costs of inventory control and monitoring.
- **Operate state-owned gas depots.** The administration could require that all new tank facilities serve several agencies. In this way, the tank facilities and operations costs could be spread among several departments and the overall risk of future leakage from tanks would be reduced.
- **Contract with private operators for depot operations.** The state could sign contracts with private firms to set up depot operations serving various state agencies. The contractor would be responsible for complying with state law and the departments would have an assured supply of fuel.

These alternatives to tank replacement might yield savings to the state, relative to the alternative of replacing all tanks. Consequently, we recommend that the Department of Finance provide to the Legislature, prior to budget hearings, an evaluation of each of these options in terms of (1) the potential savings to the state, and (2) the reduced risk of underground tank leakage. The assessment will provide the information that the Legislature needs as it considers the 1986-87 budget request.

PETROLEUM VIOLATION ESCROW ACCOUNT PROGRAM

Item 9895 from the Petroleum
Violation Escrow Account,
Special Deposit Fund

Budget p. GG 205

Requested 1986-87	\$206,500,000
Estimated 1985-86.....	-
Actual 1984-85	-
Total recommended reduction	206,500,000

1986-87 FUNDING BY ITEM AND SOURCE

Item—Description	Fund	Amount
9895-001-942—Support	Petroleum Violation Escrow Account, Special Deposit	\$206,500,000

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONS*Analysis*
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1. *PVEA Proposal. Delete Item 9895-001-942.* Recommend that \$206.5 million requested from the Petroleum Violation Escrow Account (PVEA), Special Deposit Fund, be deleted because (1) the requested appropriation does not allow for legislative control of expenditures, (2) the administration has not provided any documentation to justify the proposed expenditures, and (3) the permissible uses of these funds have not been determined by the Department of Energy or the courts.

GENERAL PROGRAM STATEMENT

The Petroleum Violation Escrow Account (PVEA) is an escrow account maintained by the federal government. Revenues in the account are derived from negotiated settlements, administrative rulings, and court judgments against oil companies that overcharged customers during the period in which federal oil-price controls were in effect (September 1973–January 1981). When the federal government or the courts have not been able to attribute damages from overcharges to specific victims, funds in the account have been distributed to the states so that they can provide restitution to the public. To date, California has received \$25.5 million from resolved oil overcharge cases. The Legislature appropriated these funds in prior years, primarily for various energy-related programs.

An additional \$210.4 million currently is available to the state from PVEA cases that have been settled. Of this amount, \$206.5 million has not been appropriated. The \$210.4 million available to the state consists of judgments from (1) seven “small” cases totaling \$7.4 million, and (2) the Exxon Corporation case that would provide the state approximately \$203 million (estimated principal and interest as of July 1, 1986). Guidelines for the use of the Exxon case funds are not finalized as yet.

Chapter 1604, Statutes of 1985 (SB 724), appropriated \$3.9 million of the “small” case funds. The appropriation consisted of \$3 million to the Department of Transportation for local traffic signal synchronization programs and \$900,000 to the Office of Planning and Research for fuel conservation assistance to low-income fishermen. The Governor has submitted the required expenditure plan for these programs to the federal Department of Energy (DOE), and the DOE expects to approve the plan by the end of February 1986. The remaining \$3.5 million from these cases is available to the state pending submission to, and approval by, DOE of an expenditure plan. Use of funds from the seven “small” cases is limited to programs that benefit users of gasoline and diesel fuels.

OVERVIEW OF THE BUDGET REQUEST

The budget requests an appropriation of \$206.5 million in 1986–87 from the PVEA, to the State Controller for transfer to various unidentified departments, according to an allocation plan to be determined by the Director of Finance. The Director’s plan would be subject to whatever general limitations the courts, Congress, and the DOE impose on the use of PVEA funds.

Although, the \$206.5 million appropriation proposed in the Budget Bill is not scheduled for any programs or projects, the budget document provides a list of proposed expenditures. This list is shown in Table 1.

PETROLEUM VIOLATION ESCROW ACCOUNT PROGRAM—Continued

Table 1
Governor's Budget
Proposed Uses of PVEA Funds
1986-87
(in thousands)

<i>Program Proposal and Department</i>	<i>Amount</i>
1. Low-income weatherization assistance, Department of Economic Opportunity	\$10,000
2. Low-income energy assistance, Department of Economic Opportunity	10,000
3. Schools and hospitals energy conservation grants, Energy Commission	10,000
4. State Energy Conservation Plan (SECP), Energy Commission	
a. Agricultural energy conservation technical assistance (revolving loan fund)	10,000
b. Energy projects in state-owned facilities	20,000
c. Local government energy conservation assistance	10,000
d. Energy efficiency improvements for the University of California and the California State University	18,000
e. Purchase 1300 new school buses for school districts ^a	100,000
f. Traffic signal synchronization grants ^b	6,500
5. Energy Extension Service, Office of Planning and Research	
a. Energy conservation on Indian lands	3,000
b. Technical assistance to small businesses	4,000
c. Energy management and education for K-12 schools	5,000
Total	\$206,500

^a The Department of Education would function as the administrative and fiscal agent over the funds, and the California Highway Patrol would provide technical assistance.

^b Consists of \$3.5 million from "small" PVEA cases and \$3 million from the Exxon case. The grants would be administered by Caltrans.

ANALYSIS AND RECOMMENDATIONS

It appears likely that California will receive the \$206.5 million of available PVEA funds. There are questions remaining, however, about how the state can use the money and whether the budget proposals will be consistent with the final guidelines governing these expenditures.

Current Status of PVEA Funds

On January 27, 1986, the U.S. Supreme Court refused to hear Exxon's appeal of a \$2.1 billion judgment against it handed down by the U.S. District Court of the District of Columbia for price-control violations. According to the DOE, California's share of the funds should be available by the end of March 1986. Limitations on how the Exxon PVEA funds may be used will be established by the court.

Most observers believe that Exxon funds will be distributed pursuant to the "Warner Amendment," which Congress enacted in 1982 to govern the previous major allocation of PVEA funds to the states. Under the Warner Amendment, PVEA funds may be used only to augment other funds available for the following five federal energy conservation or assistance programs:

Low-Income Weatherization. Energy conservation improvements to low-income dwelling units, particularly those where elderly or handicapped persons reside (administered in California by the Department of Economic Opportunity).

Low-Income Home Energy Assistance Program (LIHEAP). Provides cash grants to help pay the utility bills of qualified low-income persons (administered in California by the Department of Economic Opportunity).

State Energy Conservation Plan (SECP). A catch-all program that can include a wide variety of activities related to energy conservation (administered in California by the Energy Commission).

Schools and Hospitals Energy Conservation Grants. Grants for energy conservation improvements to public and nonprofit school and hospital buildings (administered in California by the Energy Commission).

Energy Extension Service. Oversees and manages various energy conservation and education programs for government agencies and the private sector (administered in California by the Office of Planning and Research).

Congress also specified that the PVEA funds cannot be used for any administrative expenses. Regular federal program funds, however, can be shifted, to a limited extent, to cover the cost of administering the PVEA funds.

Pending State PVEA Legislation

The Legislature currently is considering seven bills that appropriate a total of \$294.3 million of PVEA funds (to the extent available). Table 2 summarizes these bills below.

Table 2
Pending Legislation Appropriating PVEA Funds
As of February 10, 1986
(dollars in thousands)

<i>Bill No.</i>	<i>Description</i>	<i>Amount</i>
AB 694 (Hauser)	<ul style="list-style-type: none"> • Energy conservation education in driver training • Energy conservation loans to small businesses • Production of liquid biomass fuels • Local government energy conservation grants • Low-Income Home Energy Assistance Program (LIHEAP) 	\$850 17,500 7,500 15,000 75,000
AB 2494 (Costa)	<ul style="list-style-type: none"> • Rail passenger service development 	5,700
SB 880 (L. Greene)	<ul style="list-style-type: none"> • Financial assistance for local government energy conservation • Financial assistance for local transportation energy conservation 	25,000 7,300
SB 1144 (Rosenthal)	<ul style="list-style-type: none"> • LIHEAP 	75,000
SB 1145 (Mello)	<ul style="list-style-type: none"> • Energy technology development grants • Energy conservation assistance to farmers 	5,000 5,000
SB 1146 (McCorquodale)	<ul style="list-style-type: none"> • Energy conservation assistance to small business 	30,000
SB 1147 (Presley)	<ul style="list-style-type: none"> • Demonstration of methanol in heavy-duty diesel engines • Purchase methanol buses • Purchase flexible-fuel vehicles • Provide peak gas turbines for municipal utilities • Subsidies for biomass liquid fuels production 	3,000 6,300 3,000 1,000 7,500
Total.....		\$289,650

PETROLEUM VIOLATION ESCROW ACCOUNT PROGRAM—Continued**Tear Up The Blank Check**

We recommend that the Legislature delete Item 9895-001-942 because (1) the requested appropriation does not give the Legislature meaningful control over how appropriated funds would be used, (2) the administration has not provided any documentation to justify the proposed expenditures, and (3) it is not clear that the Department of Energy or the courts will allow California to use the funds as proposed in this item.

If ever the Legislature has been asked to buy a "pig in a poke," this is it!

Although the budget document provides a list of proposed uses for the PVEA funds, Item 9895-001-942 schedules no specific expenditures. Instead, it makes a blanket appropriation of the entire \$206.5 million to the State Controller who would then transfer the funds "to various state agencies according to the allocation plan determined by the Director of Finance . . ." Quite simply, this provision would allow the administration to spend the \$206.5 million in any way it chooses, provided the federal government goes along, without any subsequent legislative approval. The expenditure list provided in the budget would not in any way limit the director's discretion in using the funds.

While this approach does an admirable job of providing administrative flexibility, it falls more than a little short in providing for meaningful legislative control over expenditures. In sum, the item provides a blank check to the administration for \$206.5 million.

No Information Provided. As of February 12, 1986, the administration had not provided us with any information regarding the spending proposals listed in the budget document. Consequently, we do not have any basis for evaluating the items on the administration's project list.

\$100 Million for School Bus Replacement May Not be Permitted. The DOE and the court have not yet established final guidelines governing the use of the funds from the Exxon case. Consequently, there is no assurance that the items on the list in the budget document would be approved by DOE or the court.

Our analysis indicates that federal approval of some of the proposed expenditures is questionable. For example, DOE or the court may not approve the largest proposal—\$100 million to purchase school buses. A spokesman for the DOE has indicated to us that PVEA funds probably could be used to purchase school buses only under special circumstances. For example, the bus purchases might be allowed if the buses were part of a limited, controlled, and well-documented test of an experimental fuel efficiency technology. The school bus proposal set forth in the budget document does not appear to meet this criterion.

It is possible that the final guidelines governing the use of PVEA funds would allow California to allocate this money in ways not now anticipated. In any event, the requested Budget Bill item would leave any decisions regarding revisions in programs *entirely* up to the administration.

Conclusion. For these reasons, we recommend that the Legislature delete Item 9895-001-942. The Legislature should instead decide how these funds should be used in connection with pending legislation, once the permissible uses are known. If the administration wishes to use PVEA funds for specific purposes, it should propose specific appropriations that are backed up by the information needed by the Legislature to evaluate these proposals.
