

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 02/20)

3Fiscal Year 2021/22	Business Unit 7350	Department Industrial Relations	Priority No. 1
Budget Request Name 7350-009-BCP-2021-GB		Program 6100 –Division of Occupational Safety and Health	Subprogram 6100010 - Compliance

Budget Request Description
 Restoration and Enhancement of Occupational Safety and Health Program

Budget Request Summary
 This proposal requests Budget Bill Language that will authorize up to 70.0 positions in the 2021-22 fiscal year and up to \$14.4 million (\$13.3 million ongoing) from the Occupational Safety and Health Fund to address a critical staff shortage of Industrial Hygienists and Safety Engineers.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date

For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), and the approval date.

Project No. _____ **Project Approval Document:** _____
Approval Date: _____

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Cora Gherga	Date 1/8/2021	Reviewed By Greg Edwards	Date 1/8/2021
Department Director Katrina Hagen	Date 1/8/2021	Agency Secretary Julie A. Su	Date 1/8/2021

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

PPBA Danielle Brandon	Date submitted to the Legislature 1/10/2021
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Analysis of Problem

A. Budget Request Summary

This proposal requests Budget Bill Language that will authorize a total of up to 70.0 positions and \$14.4 million from the Occupational Safety and Health Fund (OSHF) in the 2021/22 fiscal year and \$13.3 million ongoing if those positions are authorized, to address a critical staff shortage of Industrial Hygienists and Safety Engineers.

An independent study identified a potential need for as many as 258 additional positions. The Administration is taking these study results under advisement, and additional positions will be requested as needed in future years.

B. Background/History

In 1973, California received initial approval of a state plan to assume responsibility for developing and enforcing occupational safety and health laws in lieu of federal OSHA performing those functions in California. Continued approval and funding of California's State Plan by the federal Occupational Safety and Health Administration (OSHA) is contingent on DIR performing in a manner that is "at least as effective as" the federal program. (See 29 US Code § 667.) California has enacted both a statutory and regulatory framework necessary to meet this minimum requirement (e.g., the California Occupational Safety and Health Act of 1973). The statutes are codified in part at sections 6300-6719 of the California Labor Code ("LC"). Proposition 97, codified at LC 50.7, requires the Governor to create a budget that includes amounts sufficient to carry out the State Plan. It also requires the Governor and DIR to seek maximum federal funding for the State Plan and to take all steps necessary to prevent withdrawal of approval for the State Plan.

OSHA has long criticized low staffing levels in the Division of Occupational Safety and Health (DOSH). In a recent evaluation report, OSHA found that California is delayed in issuing citations after a workplace has been inspected; understaffing is the cause for this problem, and for other enforcement shortcomings. As a matter of fact, California's state plan failure to reach the benchmark established by OSHA for the minimum number of health and safety inspectors is preventing it from receiving the final state plan approval and status.

Thus, the Enforcement Branch of DOSH is mandated by statute and required by OSHA to have and maintain the staffing capability to receive and act upon complaints, accidents and referrals of health hazards in the workplace. Furthermore, the California Labor Code and OSHA grant requires DOSH to utilize as health inspectors, personnel with the competence, knowledge, and experience with industrial hygiene practices to recognize, evaluate, determine, and control health hazards in many different types of workplaces for the purpose of administering and enforcing the California Code of Regulations Title 8 Health and Safety Orders and related Health legislation. Health inspections must be conducted by inspectors qualified to recognize and evaluate health hazards of the working environment and to suggest general abatement procedures. Industrial Hygienists (IHs) are qualified Health specialists as defined by section 1960.2(s) of the Occupational Safety and Health Act.

A 2014/15 BCP provided funding for 26.0 positions within enforcement (13.0 of which were inspector positions), which had become unfunded over time due to inflation and annual salary increases. In 2015/16, 44.0 enforcement positions (18.0 of which were inspector positions) were approved in a BCP, but neither of these previous proposals increased the number of IH positions or provided additional resources for administrative staff to support

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operations or sufficient legal staff to address associated litigation and citation appeal-related workload.

After evaluating the division's current operations, it has been determined that DOSH enforcement has a critical need for analytical work, rather than just administrative support, to be performed in the district offices. This is to provide the report generation and data analysis required to maximize the impact and efficacy of the type and level of inspections that the IHS and Safety Engineers (SEs) are expected to conduct.

Resource History (Dollars in thousands)

Program Budget	2015-16*	2016-17	2017-18	2018-19	2019-20**	2020-21***
Authorized Expenditures	\$82,644	\$77,940	\$80,699	\$85,413	\$89,154	\$99,949
Actual Expenditures	\$77,196	\$72,570	\$74,197	\$78,128		
Authorized Positions	359.0	353.0	352.0	351.0	351.0	352.0
Filled Positions	322.7	316.9	313.5	303.3	278.0	271.0
Vacancies	36.3	36.1	38.5	47.7	73.0	81.0

*includes Process Safety Management Unit.

**Fiscal Year 2019-20 Actual Expenditures data is currently unavailable.

***Filled and Vacancy numbers as of 12-8-20.

C. State Level Consideration

This proposal does not negatively impact any other department, but it will equip DOSH to better respond to mission requests from the Office of Emergency Services, and meet other statewide demands for service as described below.

D. Justification

Several recent events, including the COVID-19 pandemic, silica exposures among kitchen countertop fabricators, severe heat waves exposing workers to indoor and outdoor heat hazards, and large-scale worker exposures to wildfire smoke and toxic waste after wildfire cleanups have highlighted a serious deficiency in DOSH's capacity that is putting California workers at risk of occupational illness and death. That deficiency is DOSH's lack of staff with sufficient expertise to address health hazards in California workplaces, including hazards that are becoming increasingly prevalent.

With the unprecedented COVID-19 pandemic, DOSH is being called upon for emergency response efforts fielding complaints of COVID-19 related hazards at almost 9,100 workplaces and providing compliance assistance to over 12,800 employers regarding COVID-19 hazards (as of mid-December 2020), while investigating over 600 serious illnesses and fatalities, with the number of investigations growing each day.

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DOSH's lack of technical capacity in the field of industrial hygiene has frustrated the speed and scope of their response to the pandemic. Additional safety training is being provided to staff on an ongoing basis so they can assist without being exposed to the virus, but qualified staff are limited, and statutory mandates are not being met.

The need to address health hazards has grown beyond DOSH's current capacity to address and will continue to grow. Some of the health hazards are currently regulated under standards adopted or amended during the past decade or will be regulated under upcoming new or amended standards. However, the enforcement of these regulations has been minimal to non-existent due to the lack of occupational health inspectors. As a result, workers in California continue to be exposed to COVID-related and other health hazards, and sustain serious illnesses and injuries, including death.

To quantitatively and qualitatively assess the adequacy of its staffing in both disciplines, DOSH entered into an agreement with CPS HR Consulting (CPS HR) in March 2020 to conduct an independent workload and staffing analysis of the IH and SE classification groups. The result of this analysis is contained in a report that can be viewed on the department's website at: <https://www.dir.ca.gov/dosh/reports/workload-study.pdf>.

The report presents the development of time expectancies and the required staffing to meet the mission-critical and mandated work of the DOSH staff, including but not limited to COVID inspections, in the two classification groups. This includes a characterization of completed workload requirements, staffing gaps identified by unmet work requirements and work backlog, and the identification of trends and new future work that may impact future workload.

The study undertook a rigorous, historic data-based, in-depth analysis of enforcement activities conducted by the inspecting staff in 2018/19. It concluded historical work volumes and corresponding trends more a reflection of staff capabilities given current staffing levels rather than a reflection of current work requirements. However, it was determined that the historical work volumes could be utilized to establish a conservative baseline volume, from which the identified unmet work requirements and trends were then applied to consecutively project out work requirements for three years from 2020/21 to 2022/23. The augmentation need per the study is described under the two headings below: 1) Industrial Hygienists (IH); and 2) Safety Engineers (SE) followed by a description of implementing the program expansion.

Analysis of Problem

1) Industrial Hygienists

The study identified a total need of 140.64 IH positions based on three components: 1) health-related work done in 2018/19; 2) annual unmet work requirements; and 3) additional work requirements based on anticipated trends.

The analysis of the IH-related work indicated that a full time equivalent (FTE) of 31.98 positions worth of health-related work had been completed in 2018/19 by mostly non-IH staff (in lieu of other work). This work was largely completed by SE staff due to the current staffing composition (there were only 4 authorized IH staff in 2018/19) but could be completed by IH positions in the future. In addition to the completed work, the study identified IH-related work that was not completed in 2018/19 equal to a FTE of 66.87 positions. The uncompleted work was specific to the demand as described below:

- Additional responsibility of inspecting CDPH referred lead notifications, requiring sampling and monitoring;
- Additional workplace sampling and monitoring for 60 percent of health inspections;
- Conducting follow-up verifications on 10 percent non-serious and 20 percent of serious satisfactory complaint investigation letter responses to ensure compliance;
- Conversion of 10 percent of letter complaint investigations to on-site inspections;
- Added Asbestos notifications inspections to reach 3 per month per district office;
- Added Lead notification inspections to reach 2 per month per district office;
- Conducting follow-up inspections on 20 percent of health inspections resulting in serious violations.
- Conducting office-based required activities such as equipment calibration and maintenance, which are currently performed by District Managers.

In total, for the 2018/19 fiscal year, the workload demand was for 98.85 IH positions. The study also looked forward to current and emerging trends and identified that the total workload for 2022/23 and forward would be a total of 140.64 IH positions to conduct the health-focused inspections and work. This additional 41.79 positions (above the 2018/19 workload demand) is due to the following anticipated trends:

- Projected addition of workplace sampling and monitoring for 60 percent of Health Inspections (excluding Follow-up and CDPH referred Lead inspections);
- Projected 20 percent increase in accident and fatality inspections due to the increase in pandemic response, indoor heat-related, and wildfire smoke-related illnesses;
- Projected additional 100 health complaints related to COVID-19 per month for at least the next few years;
- Projected increase in program planned inspections to incorporate asbestos and lead notifications; and
- An increase in follow-up, and programmed- and unprogrammed-related inspections aligning with the increase in overall health inspections.

2) Safety Engineers

In addition to the IH positions, the study identified a need for an additional 43.97 SEs for a grand total of 187.46 SE positions based on three components: 1) safety-related work done in 2018/19; 2) annual unmet work requirements; and 3) additional work requirements based on anticipated trends. These resources and the balance of the resource needs to meet the emerging IH workload will be addressed in the future as appropriate.

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In summary, the study concluded that the total unmet and projected needs for health and safety related work would require an additional 108.66 IH's and 43.97 SEs.

Implementation

To address the workload needs of the division, DOSH plans to build a robust industrial hygiene program adding new positions in the IH series as well as necessary operational support and legal staff based on established ratios over the next few years. Given the significant number of positions identified per the study, DOSH plans to submit in phases to allow for the recruitment and hiring, onboarding and training of staff in these positions.

Furthermore, this "first phase single year approach" will allow for an ongoing evaluation of economic and other conditions before additional phases of the expansion are proposed and funded. Therefore, this proposal only requests the authority to add up to 70.0 positions in 2021/22.

The purpose of the budget language is to also allow DIR additional time to overcome its current hurdles before additional resources are provided. On top of a statewide emergency, DIR is currently navigating through an absence of delegated hiring authority and higher than normal vacancy rates. DOSH's vacancy rate, as of December 8, 2020, was 21 percent and the enforcement unit's vacancy rate was 24 percent. DIR and new leadership are putting substantial effort towards reducing the vacancy rate to normal levels.

To assist with the recruitment and retention of existing and proposed positions, DIR and DOSH will be working with the California Department of Human Resources (CalHR) to examine and effectively address any classification revisions needed to ensure a broad and inclusive candidate pool and any pay disparity between the current salary range for IH's and the other non-state entities (federal, local, private sector) that might prevent attracting and retaining qualified IH staff.

Additionally, DIR and DOSH will work with educational institutions to increase the number of future workers in the pipeline to successfully meet this critical job need, by exploring the potential to expand opportunities for student and/or apprenticeship employment to meet the critical and growing need for IH jobs.

To accelerate the increase to IH staff, this proposal also contemplates a temporary redirection of existing vacant SE positions to IH positions, coupled with the authority to increase positions and the eventual "right sizing" of the staff complement of IHs and SEs over time.

In summary, this budget bill language will allow the Administration and Legislature to take a deliberate approach to augmenting DOSH, evaluating the changing conditions within the department and California as a whole before granting the additional resources.

E. Outcomes and Accountability

- The department will update Department of Finance not less than quarterly on the hiring status of all vacant positions.
- Recruitment and hiring of staff consistent with the Implementation Plan of this proposal;
- Incremental progress toward the goal of an additional (projected) increase in workplace sampling and monitoring for 20 percent of Health Inspections (excluding Follow-up and CDPH referred Lead inspections);

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- Incremental progress toward the goals of increasing follow-up verifications on 10% non-serious and 20% of serious satisfactory complaint investigation letter responses to ensure compliance.

F. Analysis of All Feasible Alternatives¹

Alternative # 1 – Do Nothing

Pro: No increase to cost

Con: The current critical health and safety needs identified in this proposal will remain unmet. The health risk to California workers cannot be accurately estimated at this time.

Alternative # 2 – Implement a redirection strategy to increase the number of IH staff and restore the historical ratio of IH to SE staff over time, working concurrently with CalHR to address the IH pay disparity to increase hiring and retention.

Pro: No immediate increase to cost.

Con: This alternative increases IH staff at the expense of the division's ability to complete its mandated and necessary safety inspections. As identified by the workload analysis and overall study, this approach is not just sub-optimal, it would only change the composition of the unmet workload (from IH to SE), rather than provide a remedy to the joint problem of a lack of both health and safety inspectors. In addition, if pay parity for IH staff is achieved as designed, there will be no net cost savings.

Alternative # 3 - Notwithstanding current vacancy levels, approve a three-year phase in of staff now, and then reevaluate additional staffing needs at that time.

Pro: This approach could have advantages from a planning standpoint as it would allow the department to move forward over the next three years with a degree of certainty.

Con: Other than the potential loss of certainty from a year-to-year standpoint, this option presents little value over the year-by-year approach proposed by the Administration. Moreover, this approach reduces the Legislature's control over the extent and pace of expansion in future budget years.

Alternative # 4 – Approve this request

Pro: This approach will grant DIR the resources necessary to begin to address the acute and chronic workload challenges it faces, both from the COVID-19 pandemic and long-term increased responsibilities. Further, as mentioned above, requesting resources for only a part of program expansion allows both the Administration and the Legislature an opportunity to evaluate progress and economic conditions before approving additional resources, both with respect to the extent and pace (i.e. another single year or multi-year phase in) of any subsequent augmentation. This is a more conservative approach than approving a multi-year (three years or longer) expansion at this time.

¹ Please note that all alternatives include the strategy of working with CalHR and LWDA on strategies to increase the number of future workers in the pipeline to meet the critical and growing need for more educated and trained Industrial Hygienist staff working for DIR/DOSH.

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G. Implementation Plan

The current state of emergency, economic uncertainty, absence of delegated hiring authority, and existing vacancy rates present unique challenges beyond those that would exist in a normal fiscal year. In accordance with the proposed Provisional Budget Bill Language, the department will submit a request for augmentation to the Department of Finance when appropriate.

H. Supplemental Information

N/A

I. Recommendation

Approve this request for Budget Bill Language authorizing up to 70.0 positions and \$14.4 million (\$13.3 million ongoing if authorized) from the OSHF, beginning in the 2021/22 fiscal year and ongoing, to address a critical staff shortage of Industrial Hygienists and Safety Engineers.

BCP Fiscal Detail Sheet

BCP Title: Restoration and Enhancement of Occupational Safety and Health Program

BR Name: 7350-009-BCP-2021-GB

Budget Request Summary

Fund Summary

Fund Source

Fund Source	FY21 Current Year	FY21 Budget Year	FY21 BY+1	FY21 BY+2	FY21 BY+3	FY21 BY+4
Total State Operations Expenditures	\$0	\$0	\$0	\$0	\$0	\$0

Program Summary

Program Funding

Program Funding	FY21 Current Year	FY21 Budget Year	FY21 BY+1	FY21 BY+2	FY21 BY+3	FY21 BY+4
Total All Programs	\$0	\$0	\$0	\$0	\$0	\$0