



**STATE OF CALIFORNIA
EMPLOYMENT TRAINING PANEL MEETING**

Employment Training Panel Central Office
Sequoia Conference Room, 5th Floor
1100 J Street
Sacramento, CA 95814
August 11, 2009

PANEL MEMBERS

Barry Broad
Acting Chair

Greg Campbell
Member

Barton Florence
Member

Scott Gordon
Member

Brian McGowan
Member

Janine Montoya
Member

Edward Rendon
Member

Janice Roberts
Acting Vice-Chair

Executive Staff

Brian McMahon
Executive Director

Maureen Reilly
General Counsel

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I. PUBLIC PANEL MEETING CALL TO ORDER

Barry Broad, Chairman, called the public Panel meeting to order at 10:12 a.m.

II. ROLL CALL

Members Present

Barry Broad
Bart Florence
Scott Gordon
Janine Montoya
Edward Rendon
Janice Roberts

Members Absent

Greg Campbell
Brian McGowan

Executive Staff Present

Brian McMahon, Executive Director
Maureen Reilly, General Counsel

III. APPROVAL OF AGENDA

ACTION: Mr. Rendon moved and Ms. Roberts seconded the motion that the Panel approves the Agenda.

Motion carried, 6 – 0.

IV. APPROVAL OF MINUTES

ACTION: Ms. Montoya moved and Ms. Roberts seconded the motion that the Panel approves the Minutes from the May 11 meeting.

Motion carried, 6 – 0.

V. REPORT OF THE EXECUTIVE DIRECTOR

Brian McMahon, Executive Director, referred to the Fund Status Report in the Panel Packet. He said the Employment Training Fund amount, is the original estimate prepared in September 2008 by the Employment Development Department (EDD). He said the amount provided on the preliminary report will be approximately \$11 million less than stated. He said as shown under ETF Appropriations, \$20 million now goes to the Department of Social Services; the Department of Industrial Relations receives \$3,287 for the apprenticeship program; and the Tax Collections Branch is receiving \$5,326. These amounts are transferred from the Employment Training Fund to EDD, which results in a \$56.1 million appropriation. He said \$10 million in disencumbered funds is estimated during the 2009-10 fiscal year. Mr. McMahon said this shows \$66.1 million available for the program, but in reality, it is \$11 million less at \$55 million.

Mr. Broad said most of the Legislature agrees that budget negotiations are not over. He said contractors should be aware that if their proposals are approved with the possibility of returning to the Panel for an additional 50% of funds, that they should not assume that ETP funds will still be available at that time. Mr. Broad summarized the state of the economy and predicted that the recession will not turn around in California until 2011. He said many individuals collecting unemployment are approaching their year cut-off and California is not paying enough into the unemployment system; therefore, tax revenue is very low.

Mr. McMahon said staff has prepared a revised Panel Meeting schedule for FY 2009-10. He said after the September and October Panel meetings, the meetings will be held every other month. He said the September meeting will likely include a large number of proposals for review, as there is a backlog of projects since we have not held a regularly scheduled Panel meeting since March.

Mr. McMahon referred Panel members to the Legislative Update Memo in their Panel Packets. He said bill ABX 4 12 (Evans) requires the Panel to establish the Partnership for Workforce Recovery Training (PWRT) for the purpose of supporting and implementing the workforce development goals set forth in the federal American Recovery and Reinvestment Act (ARRA) of 2009. The bill allows the ETP to receive funds from a non Employment Training Tax source and allows the Panel to establish the structure that gives ETP the ability to go forward and develop guidelines and bring proposals to the Panel through the funds we are receiving from the Energy Commission and the Labor & Workforce Development Agency.

Mr. McMahon referenced AB 816 (Hagman) and thanked Assembly Member Hagman for his valiant effort of attempting to pull the language that creates the statutory authority that allows the transfer of funds to the Department of Social Services. Unfortunately, the bill did not pass through policy committee in its house of origin, but we thank Assembly Member Hagman for his efforts.

AB 1567 (Committee on Veterans Affairs) is a bill that is set for hearing in the Senate Committee on Appropriations. This is a revival of last year's bill, AB 3066, which the Governor vetoed on 9/30/08 as being unnecessary. AB 1567 would additionally require that

the plan include a statement describing the training goals, objectives, and strategies that may be implemented to support target populations in need of employment training, including Veterans. Mr. McMahon said this bill faces a potential veto based on the fact that ETP addresses Veterans' training issues through the current strategic planning process and that ETP has implemented a Veterans Pilot Program.

AB 380 (De La Torre) is in the Assembly Appropriations Committee and scheduled for a second hearing. The bill would have required ETP's participation in the development and distribution of a Clean Energy Curriculum and training initiative.

VII. REPORT OF GENERAL COUNSEL

Request Delegation Order for Proposals \$75,000/Action

Maureen Reilly, General Counsel, stated that the proposed Delegation Order would allow the Panel to delegate to the Executive Director the authority to approve funding for proposals at or below \$75,000 in consultation with the Chairperson (or Acting Chairperson). She said staff intends to batch the smaller proposals, also called small business and fast-track proposals, and present them to Chairman Broad with staff recommendations. This process would likely occur several times per month. As a consequence, the small business proposals would no longer require approval via Consent Calendar at Panel meetings; they could instead be approved in a timely manner via the Delegation Order method despite the modified Panel meeting calendar. She said this new process would no longer necessitate a monthly deadline for submittal of small business and fast-track proposals at or below \$75,000. The Delegation Order process would be posted on the ETP website.

Ms. Reilly said the Delegation Order proposal requires a vote from the Panel on whether or not to approve. Mr. Broad said he is not comfortable with voting in favor of the Delegation Order; however, since Panel meetings have moved to a modified schedule and will only be held every other month, it would not otherwise be possible to approve the small business and fast-track proposals in a timely manner. Mr. Broad said he intends to rescind the Delegation Order and return to the process of approving small business and fast-track proposals under Consent Calendar, once the Panel returns to a monthly Panel meeting schedule. He said there is a need to disburse the funds to small employers, as well as large employers, in order to move training forward, which will also assist in improving the economy. Mr. Broad said while this is not the ideal solution, these are extraordinary times, so he is reluctantly supporting the Delegation Order.

Mr. Broad stated his concern that other Panel members may have comments or concerns about the proposals at or under \$75,000. Ms. Reilly said in relation to the Open Meeting Act, that a Panel member who has a concern about a particular proposal could discuss it with Mr. Broad one-on-one, but that the Panel as a whole could not act on it. Mr. Broad asked if the small business and fast-track proposals will be posted on the ETP website. Ms. Reilly said staff will continue to perform an analysis of each proposal and prepare the ETP 130 Memorandum that would normally go before the full Panel. She said proposals will continue to go through Executive Unit for review and will be presented to Mr. Broad by the Executive

Director once staff has reviewed the proposals. She said Mr. Broad would have an opportunity to review the analytical Memoranda and could request that a proposal return to staff for further review. Ms. Reilly said by the Chairperson's and Executive Director's signatures, proposals will be approved per the Delegation Order, and those proposals will be published on the ETP website. It is anticipated that the proposals will be either posted immediately upon approval per the Delegation Order or, in the alternative, presented to the Panel as part of the next regularly scheduled Panel meeting. Even if the proposals are posted immediately, staff would continue to include them in the Panel Packets, so that the full Panel could review what proposals have been approved per the Delegation Order in the prior month.

Mr. McMahon said these are projects that would typically be included under the Consent Calendar; that there would be a special designation in the Panel Packet for the projects that were approved based on the Delegation Order; and that company name and the amount approved would be listed. Mr. Broad asked if it would be possible to post the proposals on the website before his review under the Delegation Order. Mr. Broad said the purpose for this would be that if a member of the Panel or the public had a comment on a proposal, they could write to staff with their comments. Mr. Broad reiterated that he was not overly comfortable with the Delegation Order. Mr. McMahon asked if there was a possibility of sending the projects to the Panel members for review a week before he was scheduled to meet with Mr. Broad without conflicting with Open Meeting issues. Ms. Reilly said, no, that scenario would tread too closely on secret meeting problems as it may cause meetings to occur by email among Panel members. Ms. Reilly said that once projects are sent out to Panel members for advance review, a vote of the Panel as a whole is not appropriate because there has been no Open Meeting notice and no opportunity for public participation. She said she would hesitate to process that and that other than the consultant or the representative for the company, the Panel does not typically invite open comment before the vote occurs on the proposed proposal. Mr. Broad disagreed, and said the Panel does invite comment before voting and that if there is a Consent Calendar item, a Panel member could remove it from Consent. He said a member of the public could write to the Panel requesting to remove the proposal from the Consent Calendar, and that anybody could say anything they wanted to before there is a vote. Mr. Broad asked if there was no process by which, if there is an embargo on the Panel from discussing it with each other, individuals could post their comments publicly or e-mail questions to staff. Ms. Roberts said there could be an instance where the company history was questionable. Mr. Broad agreed and was concerned about a local paper publishing that a company had been indicted unbeknownst to ETP. Ms. Reilly said the Panel could direct staff to post the proposals via a link from the home page of the website, and projects could be posted on a continual basis. She said it is true the proposals are public records, but she would stop and leave it there. Mr. Broad asked about the ability to post comments on ETP's website. Ms. Reilly said comments could be posted on a link from "What's New" on the home page or under the Panel meeting tab. She said comments could be posted in an area where the public would have ready access, with a link to where one could e-mail a comment. Mr. McMahon said after the projects have been posted for approximately five days on the website, he would review the proposals with Mr. Broad. Mr. Broad said that whether or not any comments are received from a member of the public or Panel, it is important to give all an opportunity to comment. Mr. McMahon said the

standard small business write-up will continue to be developed for projects \$75,000 or less. Mr. Broad said he would be more comfortable with the Delegation of Authority if the projects could be posted for comment prior to his meeting with Mr. McMahon. Ms. Roberts asked if the proposals could be entitled fast-track proposals, since the Delegation of Authority could cause some confusion. Ms. Reilly said the proposals are currently entitled small business or \$75,000 or less. She said staff could enlarge the words "Delegation Order" and place them at the top of the ETP 130 form. Ms. Roberts said that would be helpful to the Panel in distinguishing between the projects. Ms. Reilly said, I will take that as direction to have staff make the appropriate changes.

ACTION: Ms. Roberts moved and Mr. Rendon seconded the Delegation of Limited Authority to Executive Director.

Motion carried, 6 – 0.

VIII. PROPOSED RATESETTING & REGULATORY ACTIONS

Maureen Reilly, General Counsel, provided an update on the status of the GoTrain litigation. She said approximately a year ago, the Panel voted to adopt a proposed ruling on an appeal heard by Mr. Broad, acting as the Hearing Officer. She said the ruling was a default ruling because the Appellant failed to appear, and its Motion for Continuance had been denied. The case was about whether or not an overpayment should be returned to ETP in the amount of approximately \$1.2 million with interest. Go Train, which received these funds, appealed to the Panel's default ruling to Los Angeles Superior Court under a special process called Writ of Administrative Mandate, and ETP recently received a ruling in its favor from that Court on July 20. The Court upheld the Panel's default ruling; we are waiting for the final Entry of Judgment and anticipate that will happen soon. She said there remains a possibility that GoTrain may appeal the Court's ruling, but she is hopeful the matter will proceed with no appeal. ETP will be pursuing collection of the \$1.2 million, with interest. Ms. Roberts asked if the \$1.2 million would be returned to the ETP fund. Ms. Reilly said yes; if collected, the monies would be returned deposited in our fund. She thanked the Audit staff for all of their work. She stated that the overpayment was identified during an audit, and the reason for demanding recovery of the \$1.2 million was based on faulty records and recordkeeping by the company. She said there were serious discrepancies with the rosters and other records of delivery of training.

Ms. Reilly said ABX 4 12 (Evans) is a bill adopted by the Legislature that was part of the Budget Act Revise package of bills, which enacted new Unemployment Insurance Code Section 10214.6. She said it is a brief section of statute, but authorizes the Panel to disburse Federal funds as ETP receives them under the American Recovery and Reinvestment Act (ARRA). She said this new section of statute is accessible on the ETP website under the ETP rules tab.

Ms. Reilly referred the Panel to the Regulation Actions tab in the Panel Packet and said there are six proposed rulemaking actions and one ratesetting action. She said they are all designed to implement the concept behind the Panel's Economic Stimulus Initiative. The

Initiative itself was not voted on, but was proposed to the Panel at an earlier meeting. She said the Initiative is a matter of making it easy for the Panel to fund new-hire training and bring people out of unemployment.

Ms. Reilly said the first recommendation in this package is Ratesetting, which does not go to the Office of Administrative Law and is exempt from rulemaking. It is within the authority of the Panel to set its rates, and staff is recommending an increase in the new-hire training reimbursement rate as an incentive to bring in more new-hire training proposals, recognizing the risk behind new-hire training and job placement in this economy. She said staff recommends raising the training reimbursement rate from \$17 to \$20 per hour. She said that is built into the recommendation at the end of this particular package. Mr. Broad asked if the Ratesetting New Hire rate increase would require a separate voting action. Ms. Reilly said the Panel does not need to take a separate vote but to be aware that if the Panel approves that recommendation, it will go into effect immediately.

Ms. Reilly said the Regulations are proposed for the Panel's approval to go forward into notice-and-comment rulemaking, the first step in a rather lengthy process. She said if ETP receives public comment, staff will bring that back to the Panel for consideration.

The first proposed Rulemaking action is to amend the new-hire cost cap, which is a two-step process. She said currently ETP has a regulation that sets a dollar limitation on the average cost-per-trainee for new-hire training, based on prior year averages. She said this regulation was amended three years ago in July 2006; however, in those three years, experience has shown that mathematical formula degrades over time. She said that the formula is based on prior years' averages, which has the effect of degrading the dollar limitation over time. She said any new-hire training project where trainees did not receive training bring the new-hire cost averages down and skew the whole formula; therefore, staff is recommending deleting that language. The new-hire regulation addresses some other issues and is not only about the cost cap. Staff is recommending deletion of the mathematical calculation and is considering a cap on the number of hours, which would be parallel to the way ETP caps retraining. She said the retraining tab itself is in policy; so staff's proposal is to amend that regulation, Section Title 22 California Code of Regulations Section 4406, eliminate that mathematical formula, and study an hour cap as a method of capping new-hire costs, the same as ETP does for retraining. What staff is proposing here, is to test-run a number. The rules now cap retraining at 200 hours, but it is unknown that new-hire training costs more and requires more hours. New-hire training typically requires more training hours because you are reskilling people who have been out of work for some time, or perhaps never had the skills needed to enter the job market, and you are reaching a hard-to-serve population. After various calculations, somewhat based on the existing dollar cost cap, staff is proposing to run, as a policy matter, a cap at 260 hours, which would, in fact, bring us to a little over what would have been the dollar cap for this year, and would allow staff to test-run using hours. She said after staff has modeled this theory for a while, staff would return with an amendment to the regulation Section 4406 that would impose an hour cap. At the same time, staff will present a new regulation, or perhaps even revise this one, to include the retraining cost tab and include it in the regulations.

Mr. McMahon said in order to support the policy-based level of hours; a study is being conducted through ETP's Planning & Research unit that examines new-hire training in a number of different models under the Workforce Investment Act. He said the study reviews some of the training that is occurring from a curriculum-content standpoint, trying to arrive at a median for a number of hours that are typically required to go through remediation and vocation or job-specific type of training. He said that will help staff determine a recommended number for the maximum number of hours.

Ms. Reilly said the other reason staff strongly recommends this approach is in order to make use of an increase in the new-hire reimbursement rate. She said flexibility with the cap is needed; the program will get no incentive from the new-hire rate increase, if the cap remains at its existing level based on prior year costs. Whereas a 260-hour cap, at the new rate, would translate into approximately a \$5,200 average cost-per-trainee which is a little better than status quo (the existing rate/cap). Ms. Reilly said staff recommends 260 hours for a testing period to see how an hourly cap is, or is not, useful in maintaining costs given the incentive goal. She said staff will be studying these outcomes before returning to the Panel for further rulemaking action. Mr. Broad asked if the Panel is to vote on these actions as one. Ms. Reilly said yes and that the Panel members have been provided with the regulatory actions in detail in the Memorandum in their Panel Packets. She said the recommendation is to repeal the current mathematical cost cap and test the hourly cost cap.

Ms. Reilly said the action to amend the regulation on "Criteria for Critical Proposal" is basically a clean-up because currently Title 22 CCR Section 4402.2 requires coordination with various entities that are basically built into the process. So we are clarifying that the critical proposal designation is made in the first instance by the Executive Director based on four factors, along with other clarifying revisions. She said it does not change the substance of the regulation.

Ms. Reilly said the next regulation amendment is to expand the Special Employment Training (SET) wage modification process. SET specifically removes the out-of-state competition requirement, and this is its main feature, allowing the Panel to reach priority industries that do not have out-of-state competition - building trades is one of them, healthcare is another. However, even though SET removes the out-of-state competition requirement, it adds a high wage requirement, because the current regulation requires a post-retention wage at the statewide average hourly wage (\$23.64 per hour). She said this is substantially higher than the ETP Minimum Wage county-by-county. The statute that authorizes SET does not mandate any particular hourly wage, only that the Panel target the statewide average hourly wage as a goal. She said ETP took the regulation one step further than was necessary when this regulation was first adopted. The proposed amendment would continue targeting that statewide hourly wage in a meaningful manner, but would allow for the Panel to consider wage modifications case-by-case. Currently, the Panel can make a wage modification for SET proposals when there are trainees with multiple barriers or trainees in the High Unemployment Area (HUA). Staff is proposing to clarify the Panel's authority to make wage modifications from SET proposals using two basic criteria. The proposed amendment establishes a parameter for how low the wage modification can go; up to 25% below the SET wage. She said the proposal establishes that these wage modifications would be limited to

training in a priority industry sector or a Critical Proposal. She said, of course, there is the case-by-case analysis, so each one of these would be considered on its own merits.

Ms. Reilly said the language in the proposed amendment, where it says that this is limited to training in a priority industry sector, is designated by the Panel pursuant to its authority at 10200(d). This is the priority industry roster in the Strategic Plan. The Panel does identify priority industries each year in the Strategic Plan, and staff is not recommending going below that as far as the priority industries. However, she said we cannot reference the annual Strategic Plan in a regulation because one cannot reference a document that changes each year. She said that a prospective document cannot be referenced, so a reference must be made to a particular document. As it is not practical to always reference the 2009-10 Strategic Plan, the concept in regulations are the priority industries identified by the Panel.

Mr. McMahon said one of the expected outcomes from the regulation amendments would be to allow the Panel to fund projects in the healthcare sector, including allied healthcare and more technical occupations. He said this would also allow the Panel to move forward with projects associated with some of the stimulus-based Public Works projects that may or may not qualify under one of the other areas.

Ms. Reilly referred to the regulation text under the Regulation Actions tab in the Panel Packet. She said the new text of Section 4409 is underlined and clarifies the Panel's authority to make these wage modifications. She said the proposed amendment is consistent with the underlying statute, there is a reference to the Strategic Plan by way of further information, and it depends on what the Panel identifies each year as its funding priorities.

Mr. Florence asked if the majority of Public Works projects are subject to the prevailing wage rate and already meet existing criteria without lowering the wage base. Mr. McMahon said probably most would, but we are considering only moving down to 25% below \$23.64, so that equates to approximately \$17.70 or \$17.80 per hour, which is not a significant drop. He said staff did an analysis of many of the Los Angeles healthcare occupations and many of the technical jobs fell within that hourly range. Ms. Reilly said the prevailing wage is required for Public Works projects. She said ETP would be training pre-apprenticeship or journey-level individuals who are not necessarily attached to a particular project at the time they are going through the training.

Moving on to the next proposed amendments, Ms. Reilly explained the reasoning behind the recommendation to revise the method of capping literacy training and safety training. Literacy Training is at Title 22 CCR 4420 and Safety Training is at Title 22 CCR 4420.5 and currently, the cap applies to vocational training hours. Ms. Reilly said the current cap is overly complicated and staff is proposing to have the cap be applied to total training hours, which makes it much easier to calculate and anticipate. She said the ratio remains the same; literacy training is 45%. The proposed amendment would make it a percentage of total training hours. Safety training remains at 10%, and the regulation change makes it that percentage of total training hours. She said in literacy training, staff is proposing to delete the needs assessment requirement which is not currently being done. In Safety Training, the

amendment clarifies where the general safety guidelines are published, such as the Cal OSHA regulations.

Ms. Reilly said the last regulation change is to Update Training Agency Standards, since the Bureau of Private Post-Secondary Vocational Education (BPPVE) is now defunct. Staff is removing the BPPVE reference from this regulation and instead clarifying that the Panel has the authority to require certification or approval by a third party. The private schools must be approved or certified by an independent third-party whose review standards are satisfactory to the Panel, as determined case-by-case. She said in each instance the Panel will see the certification or review authority in the ETP 130 analysis.

Ms. Reilly said the attachments to the Memorandum in the Panel Packets reflect the proposed revisions in the strike-out-and-underline manner, and the next step is to move these forward into the public comment period. If there are any comments, she said, staff would return to the Panel for further consideration.

Mr. Broad asked if there were any public comments relating to the regulatory actions. There were no questions.

Mr. Gordon asked, what is ETP's definition of pre-apprenticeship? Mr. Gordon said his definition of a pre-apprenticeship is a high school student. Ms. Reilly said ETP does not have a specific definition of pre-apprenticeship. Mr. McMahon said ETP does not limit the pre-apprenticeship definition to a high school student. Mr. Gordon said the majority of pre-apprenticeship participants he partners with are high school students in vocational programs. He said this is not a classification of work or recognized under Public Works. Mr. McMahon said some of the participants of the pre-apprenticeship program could be individuals that have barriers, such as high-school dropouts or they may be unemployed. He said a pre-apprenticeship program is the first step to begin building the remediation that would allow them to ultimately move into an apprenticeship program. Mr. Gordon said, but they are not on the job, they are not an apprentice or journeyman. Ms. Reilly said they are not in an apprenticeship contract, no. She said typically, a pre-apprenticeship trainee population is designated in a training plan by a JATC. She said they are identified as a pre-apprentice, but are not yet in an apprentice program. Mr. Gordon said he refers to that as an apprenticeship prep program, not as a classification of worker. Ms. Reilly said that is the same concept; to get them ready to take the apprenticeship exam. Mr. McMahon said staff does not bring to the Panel, projects that are a sponsored apprenticeship program.

ACTION: Ms. Roberts moved and Mr. Gordon seconded the staff recommendation that the Panel adopt the increase in the new-hire training rate from \$17 to \$20 per hour, and also the staff recommendations that the Panel approve the proposed amendments of Title 22, CCR Sections 4402.2, 4406, 4409, 4420 and 4426 for notice-and-comment rulemaking, as set forth herein.

Motion carried, 6 – 0.

IX. REPORT ON NEW FUNDING SOURCES

Mr. McMahon said we are funding ETP administration at the same level as last year. He said the Employment Development Department's support is funded through a Memorandum of Understanding for a range of human resource, fiscal, and administration support services they provide the program. Marketing and research is the amount encumbered for our external marketing agreements with California Manufacturers Technology Association, California Labor Federation and the California Workforce Association. Those agreements for this year were reduced by 15% pursuant to an Executive Order issued by the Governor. Prior year contract liabilities have increased substantially, which is largely a function of the funds that we had to offset through the reduced collections through the 2008-09 year. Mr. Broad asked if the Prior Year Contract Liabilities amount of \$30 million is accurate. Mr. McMahon said it is accurate, and could increase slightly. He said if it goes in any direction, it would increase. Mr. McMahon said there is \$25 million in training funds available that must be adjusted based on the more accurate estimate of collections in the fund. This will move the amount of training funds available down to approximately \$14.8 million available for new project funding in the 2009-10 fiscal year based on estimates thus far.

Mr. McMahon said additional funds are "proposed" from external sources. These give ETP the ability to begin diversifying from complete reliance on a funding source that seems to be declining based on business activity as well as being subject to transfer from the Legislature. He said there is \$4.5 million available for projects from the Energy Commission through the State Energy Program. He said it is expected that we will have additional money under the annual collections through the AB 118 process. Collections in that program will exist through 2016. He said we are allowed to charge 10% for administrative costs associated with administration and management of those funding sources and also expect to receive \$2.8 million from stimulus monies that move through the workforce system. He said the \$2.8 million of the Governor's discretionary money resulted from a one-time ARRA appropriation. Those funds will be targeted toward nursing and skills development through non-profit hospitals, a sector that is currently not eligible for funding under the program.

Mr. McMahon said funds available to ETP will be through an inter-agency agreement with the California Energy Commission. We are currently in the final stages of working on an inter-agency agreement with the Energy Commission that would define the scope of work for these funds. He said the funds will require a Section 28 and likely a Section 28.5 process to give us the ability to increase our appropriation and spend the funds in the 2009-10 fiscal year. He said guidelines outlining basics of the program, will be developed and will be posted on the ETP website for those interested in developing projects under this funding source.

Program Funding Outline CA Energy Commission/ETP Clean Energy Workforce Training Program

Project Funding Cap: Staff is not proposing a cap as we are with the standard program. For these funds it is proposed to the Panel that project size be determined on a case-by-case basis. With only \$5 million available under this program, we would not bring excessively large projects to the Panel for review.

Training Wages: In terms of eligible wages, we are going to go with out standard retrainee wage and we would also allow the HUA waiver option. We would not impose a SET standard on projects. The approval process would be similar to our standard development phase. We would write these projects up using the standard 130 form that you all see when reviewing projects and we will specifically identify for you, the projects that are being funded under this program. The contract will essentially be the same, but for the fact we have some overlay of contract provisions coming from the Energy Commission as well as from ARRA. There is a significant level of contract reporting data that ARRA is imposing which will most likely translate into some level of new provisions in our contract. So those of you that will be proposing grants under this program, expect to see a contract document that is slightly different than what you are used to with a standard ETP 100 form.

Project Approval Process: New projects would be developed and presented to Panel using slightly modified standard 130 form. Panel approval would be required for all projects.

ETP Contract Content (Form 100): Retain existing core, but eliminate unnecessary provisions, and include required provisions from CEC, U.S. Department of Energy and ARRA.

Turnover Rate: Target 20% turnover as desired upper limit. Panel should apply flexibility in case-by-case review for higher levels. No penalty for failure to meet turnover target.

Training Hours Cap: No firm cap. Case-by-case, no excessive hours.

Retention Period: Explore alternatives to traditional retention, particularly in occupations now impacted by high levels of dislocation.

Eligible Employer: No requirement for paying ETT. Allow non-profits in addition to for-profit entities.

New-Hire Placement: Can occur with any employer; all levels of Government included.

Productive Lab (On-the-Job): Allow this type of training but limit to no more than 40% of overall curriculum.

Mr. McMahon said the program will follow ETP existing standards in the following areas: reimbursement rate for training hours; support costs for MEC contractors; variable reimbursement on range of training hours; literacy training skills % in curriculum; trainer/trainee ratios; project description write up; and default to standard program in other areas.

Ms. Roberts asked if these projects will be identified on the contract as California Energy Commission (CEC) projects so the Panel can apply the proper guidelines. Mr. McMahon said the 130 will specify it is a CEC project and we will not include any of these projects under the Delegation Order or on a Consent Calendar so the Panel will have the opportunity to have each of these projects heard and review them. Ms. Roberts asked what will occur once the \$4.5 million funds are exhausted. Mr. McMahon said after the funds are exhausted, the Panel would not fund any CEC projects for the remainder of the fiscal year. He said it is possible that all of the fund sources may continue beyond a single year but we will encumber these projects at 100% since we do not have any certainty around the issue as to whether the funding will continue. Mr. McMahon said we will clearly distinguish these projects from the others.

Program Funding Outline Non-Profit Nursing Skills Training

Mr. McMahon said the second area of funding is related to the \$2.8 million that we will receive from the Labor & Workforce Development Agency as part of the Governor's 15% discretionary Workforce Investment Act funds. This is part of approximately \$65 million that the state received in discretionary monies this year and the goal is to target a population that has been unserved by ETP thus far. The goal is to fund nursing skill development in ideally rural or urban hospitals that are non-profit and not paying the Employment Training Tax. Since there is only \$2.8 million available in this program, we are proposing to cap the projects at \$500,000 per employer. It would be possible for a single-employer to bring us multiple projects as long as they stayed under the \$500,000 total cap per employer. The approval process will be identical to what we were proposing with the CEC. In the 130 write-up, we will make it clear to the Panel what funding source is funding that particular project.

Project Funding Cap: Due to limited funding and the need to encumber at 100%, a \$500,000 cap per employer will be put in place for the first year program. Demand for funds is expected to be high.

Employer Eligibility: Non-profits to be included; no hospitals owned by local governments will be eligible in the first round.

Trainee Wages: All trainees would be subject to standard re-trainee and new-hire wages with HUA wage waiver option.

Project Structure: Projects would be developed under existing Medical Skills Training (MST) framework.

Project Approval Process: New projects would be developed and presented to Panel using slightly modified standard 130 form. Panel approval would be required for all projects.

ETP Contract Content (Form 100): Retain existing core, but eliminate unnecessary provisions, and include required provisions from U.S. DOL and ARRA.

Turnover Rate: Target 20% turnover as desired upper limit. Panel should apply flexibility in case-by-case review for higher levels. No penalty for failure to meet turnover target.

Training Hours Cap: No firm cap; case-by-case, no excessive hours.

Retention Period: Standard retention; case-by-case flexibility as justified.

Eligible Employer: Allow non-profits but no units of local, state, or federal government.

New-Hire Placement: Can occur with any employer.

Mr. McMahon said the program will follow ETP existing standards in the following areas: reimbursement rate for training hours; support costs for MEC contractors; variable reimbursement on range of training hours; literacy training skills % in curriculum; trainer/trainee ratios; project description write up; and default to standard program in other areas.

The ETP 100 will be subject to ARRA provisions we are required to include within our agreement. These funds, along with the CEC monies, must go through the Section 28 process to grant the appropriation authority. We will not need to develop an Inter-Agency Agreement to receive these monies, but a Memorandum of Understanding with EDD or another type of relationship will be developed. It is not expected that the Panel will receive monies or projects from either one of the two programs until the October Panel meeting. He said the guidelines will be issued to our field office analysts and to the contractor community in order to begin developing projects, and have these projects slated to bring to the Panel as soon as funding is available through the Section 28 process.

Ms. Roberts asked, if a contractor does not use all of the training funds under one contract and the money returns to the ETP fund, if returned funds would require funding a similar program or if it would go back into the general fund. Mr. McMahon said staff has not addressed that question, but he believed it would retain its identity.

Mr. Broad asked why the Panel would give no penalty for failure to meet turnover target and asked about ETP's policy for waiving a penalty for turnover. Mr. McMahon said this will be a topic for discussion in the Strategic Plan. He said as more employers are impacted by the economic condition in California, we are beginning to see higher turnover rates than what had previously existed. He said the concept the companies targeted under this program are those that are related to the emerging green sector, and there could likely be greater levels of instability in terms of employee levels as these companies mature and grow.

Mr. Broad said he was concerned about maintaining the quality of projects with the various waivers. He said we do not want to fund green technology training to a company that soon lays off its employees. Mr. McMahon said an alternative, is to recognize there could be volatility in the workforce of these companies and accept greater waiver figures or trigger rates for imposing a penalty. On a case-by-case basis we would bring a project to the Panel

with an explanation as to why the company may have experienced a high turnover rate, why they could foreseeably see instability in their workforce, and propose a turnover of 30% before withholding final payment in these agreements. Mr. Broad said he realizes the need to move these funds expeditiously but had concerns. Mr. McMahon said the alternative to no penalty is a penalty, and the question then becomes how we would, and when would we, impose a penalty. Mr. Broad said it is something that should be discussed and said applying flexibility seems to make sense if there is a good reason for it and the Panel has the ability to do that now. He said the Panel can currently waive the 20% requirement if there is a valid explanation and they do waive it from time-to-time, but at times there is no good explanation. He said questions we should be asking are, are further company layoffs anticipated and are we training people that are not going to be able to utilize the training. He said companies should be asked a series of questions before granting funds and asked for other Panel member input.

Ms. Roberts said there could be integrity issues in the future if a company is given \$500,000 to train their employees, knowing they are planning to lay off 50% of their employees in the next two months. She said we will have given them all the money and the other 50% of employees are out the door. Mr. Broad said he was reminded of the contractor with the recycling tire factory which appeared to be a great project, that didn't pan out in the end. Mr. Broad said the Panel needs to proceed cautiously in dispersing green technology funds. Mr. McMahon said staff would like to convey to the Panel that we proceed with a flexible approach in terms of considering turnover rate and to conceivably understand that we may be bringing the Panel more projects where we are proposing a trigger rate of 24% to 25% and the standard 20%, because there is more volatility. Mr. Broad said often times we do get those turnover rates where they have gone through the period of layoffs and they are stabilized and starting to rebuild. He said he did not have a problem in waiving in that type of a situation, but he is concerned with a company that is not stable and is headed towards further financial problems. He said there are integrity issues, as the Vice Chair Roberts mentioned, and we cannot relax our approach in reviewing these proposals with a critical eye. He said it is more than just the turnover; he is concerned that "moving the money" may be problematic. Mr. McMahon said the monies have been received by the CEC with exactly that mandate, to "move the money", and they are reaching out and trying to identify partners. He said this is a partnership that the CEC is very enthusiastic about because they see ETP as an established program with established marketing channels, and an established program infrastructure. He said this gives them the chance to develop high quality projects but at the same time recognizing that we may be seeing companies that are fairly new and do not have the track record of established employee stability. He said there very well could be a greater level of inherent risk with company turnover; staff will describe those issues associated with employee stability, and return to the Panel with that type of flexibility associated with a trigger rate we might impose on these projects. He said he would e-mail the guidelines out to the Panel for their review. Mr. Broad said it is more than only being concerned with the problem projects because he is beginning to see newspaper articles regarding use of stimulus funds. Now that the heat is off the money they threw away in the last administration, those guys are starting to ask questions about the new administration. That is what we are going to get; we are spending new money here and I just want us not to relax our vigorous critical eye. We

need to move this money but not hand it over to someone that does not deserve it and will squander it. He said I understand the risk, but we must proceed cautiously.

Ms. Montoya said, since we are giving more flexibility than normal at 20%, why is it necessary to have the phrase “no penalty for failure”. She said that is similar to saying it is a “free ride” and it is okay to fail. Ms. Montoya said the phrase seems too lenient and believes that the Panel could maintain high standards even if we are flexible. Mr. McMahon said from a staff standpoint we are going to agree to that point and we are going to keep the standard program penalty, but be flexible when a penalty kicks in. He said the Panel may see higher trigger rates than we would have proposed, before there would be a penalty applied.

Ms. Roberts asked if companies could take advantage of both programs. For instance, if a company has \$1 million of training available, could they receive \$500,000 in one program and another \$500,000 in the other program? Mr. McMahon said yes, if they were valid projects that the Panel wished to fund, that it should be an option available to them. He said it is not something staff discussed, but no concern would immediately come to mind.

Mr. McMahon said staff has not developed guidelines for another funding source because it is still in the design phase. He said the funding is from AB 118 monies based on the statute enacted in 2006. This is a reoccurring source of funds that extends through 2016. The Energy Commission has the authority to dedicate a portion of their funds for workforce development. He said they are allocating \$13 million toward workforce development and proposing to allocate \$5 million to the Panel. He said the concept still must go before a policy committee of the State Energy Commission and then ultimately to the full Energy Commission for approval. The funds would not be that different from the State Energy program funds, but would have an emphasis on renewable fuel development associated with new vehicle development. Green projects would continue to be targeted, but geared more toward fuels such as alternative fuels or bio fuels and considering projects that involve advanced transportation vehicle technology. He said once the guidelines are developed for the program, staff will present them to the Panel, which will likely be at the September meeting. He said the guidelines will be similar to the \$5 million State Energy program and anticipates that while moving through the Inter-Agency process for funds, they will be 45-60 days behind the work we are doing on the State Energy program. He said there are two different divisions within the Energy Commission, both on different schedules, although we will borrow provisions in the Interagency Agreement between both program areas.

Mr. Broad asked if there were any questions from the public. Steve Duscha, Alliance for ETP, asked how ETP defines “green”. Mr. McMahon suggested reviewing the Labor & Market Information Division (LMID) definition of green and the definition developed by the Green Collar Jobs Council (GCJC). Mr. McMahon said it would largely be businesses that have green at their core; businesses that may not have green at their core but are involved in green activities whether it is a staffing out or recycling operation; a co-generation type of operation that is ancillary to a non-core green business will not be targeted for the program. He said a “green tab” will be posted on ETP’s website that will define the functional definition that we are using for the program, and links will be embedded in that tab to other sources of literature, much of which is compiled by the LMID of EDD.

X. STRATEGIC PLAN/ACTION

Michael Rice, Chief of the Administration, provided a brief overview of the proposed Strategic Plan for 2009-10, and with a request for action that it be approved. As a few technical corrections were made to the Plan recently, updated pages were handed out to the Panel members. Mr. Rice said when staff believed a June Panel meeting would be held, the Plan was included in the June Panel Packets, and it has been revised significantly since then, due to the new budget allocation. Primarily, the changes are in the areas of funding amounts, funding limitations, and goals and objectives.

Mr. Rice said in addition to information on the program and the organization, the Strategic Plan includes an economic overview; priority industries; workforce trends; initiatives and alliances; updated goals and objectives; and ETP's budget.

ETP's priority industries include industries deemed the most vital to California's economic health and recovery. Employers in priority industries receive higher training and reimbursement rates and are the primary focus of ETP's marketing efforts. The priority industries are manufacturing; green technology; nursing and allied healthcare; construction; goods movement and logistics; IT services; biotech and life sciences; multimedia/entertainment; and agriculture.

The Plan also identifies several workforce trends associated with the current economy, including: talent transfer; special populations; sector strategies; and partnerships.

Mr. Rice said the Plan identifies a number of ETP initiatives such as: federal funding; economic stimulus; talent transfer; green technology; nursing shortage and allied healthcare; career technical education; ex-offenders and at-risk youth, veterans; and small business. The ETP strategic focus is on economic development; enhancing role of MEC's; and revitalizing HUA's. ETP administrative strategies include a case management system; program evaluation; and maximizing funds.

Given the ETP's appropriation and available funds for the year, in order to maximize limited funding, the Plan proposes that ETP continue to:

- Incrementally encumber training funds to cover first year costs and mitigate the second year liabilities.
- Revise and update its internal processes (e.g., developing and monitoring training contracts, fiscal accounting, information technology support, and marketing activities) to make the best use of limited administrative funding.
- Single-employer projects are capped at \$500,000 per contract, with case-by-case exemptions for Critical Proposals only.
- Multi-employer projects are capped at \$750,000 per contract, with case-by-case exceptions.

- Small business projects are capped at \$75,000.
- Welfare-to-work training will not be funded (training for CalWORKs recipients will be funded under SET).
- Lowest priority will be assigned to: new hire truck drive training; all training in the adult entertainment industry; security guard training; and training for employees of training agencies.

Mr. McMahon said in single-employer and multiple-employer contracts, the cap may not necessarily be for the life of the agreement. He said staff is proposing a \$500,000 cap on funding projects approved by the Panel and encumbered out of the 2009-10 fiscal year. He said it is conceivable that in the 2010-11 fiscal year, a contractor could return to the Panel if time remained on their training term and they demonstrated a training need which would warrant additional funds amended into the agreement. He said it would be possible over the life of a two-year agreement, to exceed the \$500,000 cap, but that cap is the maximum amount that staff is proposing be awarded and approved at the Panel meeting.

Mr. Broad said the Panel had amended the new-hire truck driver training a couple of years ago to limit it, as a lowest funding priority, to the proprietary truck driving schools and not for the non-profits, where there was substantial employer and/or labor commitment in the process. He said many of the proprietary truck driver schools have the lowest quality of training and non-profit entities are among the very best quality in terms of training. He said it is quite a contrast and wants to ensure we are not foreclosing the non-profit entities. Mr. Rice said that was not the intent and staff will clarify that in the Strategic Plan.

Mr. Rice listed the six goals and objectives of the Strategic Plan: 1) expand the scope of the ETP program through partnerships; 2) target California's key and emerging industries; 3) continue support for small businesses; 4) support hard-to-serve populations through pilots and initiatives; 5) implement an ETP Economic Stimulus Initiative; 6) increase the efficiency and effectiveness of the ETP program.

Mr. Rice asked the Panel if there were any further questions. There were no further questions and action was taken on the Strategic Plan.

ACTION: Ms. Roberts moved and Mr. Rendon seconded approval of the FY 2009-10 Strategic Plan, with direction to staff to incorporate any requested changes, and with Delegation of Authority to the Executive Director for final approval, prior to submitting it to the Administration and Legislature.

Motion carried, 6 – 0.

Mr. Broad appointed a subcommittee of three Panel members: (1) Janice Roberts to Chair; (2) Edward Rendon; and (3) Janine Montoya, to vote on projects that would be funded by the federal stimulus funds. He said the purpose of the subcommittee is to develop criteria, with staff in the development of projects to come before the Panel, on green technology

proposals, including the standards to be used to disburse monies, and quality control in order to move the funds expeditiously but to spend them wisely. Ms. Roberts said, after reading the definition of green technology in the Panel Packet, that it will likely open it up to almost every company for qualification. She said her company does a lot of work with green technology but they do not manufacture it; they implement and use it. She said it is almost like saying that anyone with solar panels on their roof or who is using a recycled product could come to the Panel requesting funds, and she questioned whether this is the purpose. Mr. McMahon said the Energy Commission is most interested in investing in projects that directly produce workers with green skills. He said the Energy Commission is focusing on workers, and after reviewing some of our projects, they have identified projects that they would like to consider for augmentation. He said staff will consider some existing projects for adding additional funds under this program, looking at incumbent worker training projects, and some that would develop green skills among new-hire projects.

XI. PUBLIC COMMENTS

There were no public comments.

XII. ADJOURNMENT

ACTION: Mr. Rendon moved and Ms. Roberts seconded adjournment of the meeting at 12:29 p.m.

Motion carried, 6 – 0.