



**STATE OF CALIFORNIA  
EMPLOYMENT TRAINING PANEL MEETING**

Employment Training Panel  
1100 J Street  
Sequoia Conference Room, 5<sup>th</sup> Floor  
Sacramento, CA 95814  
April 23, 2010

**PANEL MEMBERS**

Barry Broad  
Acting Chair

Greg Campbell  
Member

Barton Florence  
Member

Scott Gordon  
Member

Karnig Kazarian  
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. CLOSED SESSION**

Mr. Broad announced that the Panel would first enter into a Closed Session to deliberate on training at NUMMI under ET08-0193.

**II. PUBLIC PANEL MEETING CALL TO ORDER**

Barry Broad, Acting Chair, called the public Panel meeting to order at 10:06 a.m.

Members Present

Barry Broad  
Barton Florence  
Karnig Kazarian  
Janine Montoya  
Edward Rendon  
Rodney Wilson (on behalf of Greg Campbell)

Members Absent

Scott Gordon  
Janice Roberts

Executive Staff Present

Brian McMahan, Executive Director  
Maureen Reilly, General Counsel

**III. AGENDA**

ACTION: Ms. Montoya moved and Mr. Rendon seconded the motion that the Panel approve the Agenda.

Motion carried, 6 – 0.

**IV. MINUTES**

ACTION: Mr. Florence moved and Mr. Kazarian seconded the motion that the Panel approve the Minutes from the March 26, 2010 meeting.

Motion carried, 6 – 0.

## V. REPORT OF THE EXECUTIVE DIRECTOR

Brian McMahon, Executive Director, said at today's meeting, there are three projects to be funded under the 15% Workforce Investment Act (WIA) Funds under the High-Wage High-Skill Training (HWST) Program allocation.

Beginning with the current year budget update, the figures he discussed at the last meeting show a decline from a \$67 million estimate generated by the Employment Development Department (EDD) to \$59 million. This puts ETP in a deficit position of approximately \$6 million for the current year, a liability that will shift forward into the new fiscal year and appear in the Fund Status Report as a prior year contract liability.

The 2010-11 fiscal year estimate will hopefully improve, but the estimate at this time from EDD, is for approximately \$53 million in total collections for the program. From a budget standpoint, it is very important that as ETP's budget goes through the legislative review process this year, that no transfer to the Department of Social Services for the CalWORKS program occurs. The Governor's budget does include full funding for ETP with no transfer to the Department of Social Services (DSS), and for the first time, the Governor's budget also did not have a \$3.2 million transfer to the Department of Industrial Relations (DIR).

Mr. McMahon said that last week he attended the Assembly Budget Subcommittee No. 4 meeting on State Administration. He said the Subcommittee acted to approve a Budget Change Proposal (BCP) that the DIR had submitted as part of its budget to release funds, making them available for allocation to ETP. ETP did not come up as a direct budget item in the Committee, but ETP is beneficially impacted by that action. It is clear that ETP's budget is an open issue in the Assembly Subcommittee Review process, and that after the May Revise Budget numbers are provided, ETP will be considered by the Committee and discussions will occur relative to any potential transfer of our funding to the DSS.

On April 29, a meeting is scheduled in the Senate Budget and Fiscal Review Subcommittee No. 5 on the Revenues, the Economy, and Labor to review ETP's budget. Mr. McMahon anticipates a similar type of action, where ETP's budget will not be discussed in detail, and it will be held over until after the May budget revise.

Regarding ETP's project pipeline of existing unfunded proposals in the core program this year, staff is in the process of communicating with every contract applicant. ETP has finished contacting multiple-employer contractors and is beginning to contact the single-employer applicants. Staff estimates approximately \$37 million in pipeline demand for approximately 239 contracts. This includes the imposition of a \$500,000-cap on single-employer contracts and \$750,000-cap on multiple-employer contracts. It will be staff's recommendation to implement caps on projects for both the pipeline and for new projects in the 2010-11 fiscal year.

At the June Panel meeting, staff will present recommendations as to how we would prioritize under two different scenarios; full funding and reduced funding, and what steps the Panel might take to allocate the funds. Staff will also make recommendations to the Panel as to timing, how to move through the 239 project backlog, and how to stagger the projects over a

two-to-three month period. Assuming funding availability, the Panel would begin the process of hearing new projects in the 2010-11 fiscal year.

Mr. McMahon said that there has been no activity relative to the Governor's Jobs Initiative. He said SBX6 15, authored by Senator Maldonado, has not gone forward, and it is expected that in order for a Jobs Initiative to come out of the Legislature this year, there would have to be some negotiations between the Governor's office and legislative leadership.

Mr. McMahon said last week he attended an interesting hearing to review the 1804 Hagman bill. He said this is the measure to delete the language in the Unemployment Insurance (UI) Code that would authorize transfers of Employment Training Fund monies to the Department of Social Services for the CalWORKS program. The bill was amended in Committee to allow the transfers to occur, but to recognize that should a transfer happen, that it would be a loan and subject to repayment over a three-year period. Mr. McMahon thanked Chairman Broad for the strong work he did in organizing enough support to move that bill out of Committee.

Another bill of significance is SB 964 (Alquist) Workforce Development Program: High Speed Rail. The bill has been amended to remove the Chancellor's Office of the Community Colleges as the entity that would perform an assessment and an identification of occupations and skill sets associated with those occupations, ranging from engineering to manufacturing of the rail cars. EDD's Labor Market Information Division (LMID) has been identified as being assigned that lead role. There is an advisory committee to provide input around jobs training, and ETP continues to be a member of that advisory group. The bill is waiting to be heard in the Senate Education Committee.

Also on today's Agenda, staff is going to continue its recommendations to the Panel as to how ETP can be a relevant program, in terms of the State's efforts for economic recovery. This effort began with the Phase One recommendations, and Ms. Reilly will present the Phase Two recommendations to the Panel later. He said staff has prepared guidelines for AB 118, the Alternative and Renewable Fuel and Vehicle Technology Program Partnership with the California Energy Commission (CEC). He said the CEC and ETP would like to present a few of these projects to the Panel in June. After the Panel has reviewed the AB 118 guidelines, they will be posted on the ETP website to guide both staff, as well as potential applicants, under the program.

## **VI. REQUEST MOTION TO DELEGATE IN EVENT OF LOSS OF QUORUM/ACTION**

**ACTION:** Mr. Rendon moved and Mr. Kazarian seconded the Delegation of Authority to the Executive Director in consultation with the Chair or Vice Chair, for all matters under consideration.

Motion carried, 6 – 0.

## **VII. REPORT OF GENERAL COUNSEL**

Maureen Reilly, General Counsel, said the Panel approved two projects under the High-Wage High-Skill Training (HWST) Program earlier this month. She said the two projects are under \$75,000: 1) ConSol was approved in the amount of \$41,496; and 2) J.L.S.

Environmental Services, Inc. was approved in the amount of \$74,880. The Delegation Order was signed on April 20, 2010.

## **VIII. REVIEW AND ACTION ON HWST PROPOSALS**

David Guzman, Chief of Operations, said there are three High-Wage High-Skill Training (HWST) program projects to be considered this month. He said this is a partnership with the Employment Development Department funded by \$3 million of the Governor's 15% Discretionary Funds under the Workforce Investment Act (WIA) as may be augmented by the American Recovery and Reinvestment Act (ARRA). There will be no expenditure of Employment Training Tax funds from the core program for HWST. This program is similar to the Non-Profit Nursing Skills Training program that was fully encumbered by the Panel in January, 2010. The HWST training program is focused on training in job skills that reach Workforce Investment Act (WIA) "sector initiatives" such as green/clean technology, and will be fully encumbered as of June 2010 for the current fiscal year. If additional HWST training funds are made available in the next fiscal year, the funding category may be expanded, so long as it remains consistent with WIA goals.

All proposals in the HWST program will be capped at \$500,000 for single-employers and \$750,000 for multiple-employers. Of course, the Panel's Delegation Order process for those projects less than \$75,000 will apply. As with the other alternative programs, it is possible that the approved amount may be reduced across-the-board, once the final tally has been made for HWST.

In terms of the Program Profile, it is very similar to the Clean Energy Workforce Training Program (CEWTP), but it has some additional flexibility. The curriculum will be focused on green/clean job skills for the majority of the proposals. Continuous improvement in computer skills training will be also approved on a per-trainee basis and manufacturing and clinical preceptor skills may be funded for the appropriate industry sector. The cap on hours is 300 per trainee, Computer Based Training (CBT) will be allowed, but must be capped at 50% of the total training hours on a per-trainee basis.

With contractor eligibility, employers will need to demonstrate green/clean business operations. The eligibility standard will also be applied to all participating employers. There is no requirement for out-of-state competition. Private schools and training agencies must satisfy certification standards in accordance with the core program. The trainee eligibility is very different from ETP's core program, in that there is no requirement for a history of employment (retraining) or eligibility for Unemployment Insurance (new-hire training).

The federal funds give ETP flexibility in the area of retention; we will employ the 70% Portfolio Model for new-hire retention on a case-by-case basis. Other allowances under retention will be 200 hours within 365 days for those non-traditional occupations. Other modifications may be made available on a case-by-case basis. These retention alterations apply to both new-hire and retraining candidates. Post-retention wages would be based on the standard ETP minimum wage structure.

Turnover rate information will be required; however, there will be no turnover rate penalty within this program. Productive lab employers will be required to justify the need for

productive lab training and there will be no limitation on productive lab hours. Reimbursement will match current class/lab levels. An in-kind contribution will be required, consistent with the core program. However, there will be no substantial contribution, since this is a new funding source from prior projects.

HWST will follow core program procedures and standards in other areas, such as: marketing; eligibility determination; reimbursement rate table; support costs for multiple employer contracts; variable reimbursement methodology; minimum and maximum range of training hours; cap on literacy and safety training as a percentage of total hours; trainer-to-trainee ratios; proposal development and monitoring; and progress payments invoiced through Online Tracking System.

### **ONNI, Inc. dba GreenPlumbers USA**

Rosa Hernandez, Manager of the Sacramento Regional Office, presented a High-Wage High-Skill Training (HWST) proposal for ONNI, Inc. dba GreenPlumbers USA (GreenPlumbers), in the amount of \$399,842. GreenPlumbers is a training organization and accreditation program that provides occupational training to plumbers with the goal of understanding the roles of environmental responsibility and public health in their jobs. The organization trains and deploys thousands of residential and commercial “green” plumbers. GreenPlumbers works with the plumbing industry, utilities, and water agencies to implement the curriculum.

Ms. Hernandez introduced Stephen Lehtonen, CEO and Bill Lehtonen, Director of Public Outreach.

Mr. Florence said the ETP 130 states that GreenPlumbers has agreements with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada (UA), but there are no union letters included in support of the program. He said after reviewing the list of counties where training will take place, it will affect several UA locals and asked, what is the company’s basis for support? Stephen Lehtonen said they have active support with the Southern California Pipe Trades District Council 16, and are working closely with those they have already trained as instructors, who will be teaching courses in their apprenticeship programs. He said they are also working with Locals in Northern California, and they have trained three instructors to work with them. One of them is already teaches in some of their classes. As it states in the ETP 130, they have an overlapping agreement with the United Association of Plumbers & Pipefitters International Association, and he works directly with the General President and the Training Director. They are building a program for them that they will use at their instructor’s training in Michigan in August, and they are very proud of their support of the UA and are willing to submit union support letters. They normally submit letters of support as they train individuals, but if the Panel would like a general letter of support from the UA, they would be pleased to provide that.

Mr. Florence said none of the companies included in the list of participating employers have a Collective Bargaining Agreement; therefore, they are not associated with a UA. He asked how the UA is supporting this proposal. Stephen Lehtonen said they are non-discriminatory trainers and they train plumbers regardless of their affiliation. He said the list of participating employers is a sample list, and only provides approximately 25% of the contractors they are

currently training. He said, as you are probably already aware, securing contracts with the UA takes a little longer than it does to advertise for plumbers that want to attend training classes. He said they work with the UA to build a program that fits for them. He said it has taken a little longer, but they have in their list of contractors, A.O. Reed in San Diego for instance, who is a significant contractor that produces approximately \$65 million per year. They have approximately seven or eight in Southern California and another six or seven in Northern California. He said the contractors are coming in, and now decisions are being made about how they are going to provide the training and which of their instructors is going to offer it at their apprenticeship facilities. He said it will also be coordinated with funding that ETP has already given the UA Apprenticeship, such as the Southern California training program that received an ETP award last month.

Mr. Florence said ETP typically requires that if there is a Collective Bargaining Agreement, letters of support are required, and he would like to see the union letter of support. He said he believed the Panel has approved funding in the past for GreenPlumbers. Stephen Lehtonen said yes, they have two existing ETP contracts. Mr. Florence asked if any of the training proposals that they are putting forth now, would be mirrored to the proposals already approved, or if they are different programs, and how they are different. Mr. Lehtonen said in the prior ETP contract, they could not train the unemployed. He said the previous proposal was a much more restrictive program. He said the current proposal has added flexibility that would allow them to reach individuals whose wages have fallen, and also reach unemployed individuals to provide training for them to return to work; that is probably the biggest difference.

Mr. Florence asked if this proposal is to train the same people or a different set of trainees. Mr. Stephen Lehtonen referred Mr. Florence's question to Mr. Bill Lehtonen. Bill Lehtonen said no, they are not training the same people. He said in training at Union Local apprenticeship facilities, this training is new and not presently developed, in any form, by the Union in an Apprenticeship basis; it is only to journeymen plumbers at their facility. Stephen Lehtonen said when a plumber completes the program, they take an assessment through the National Inspection Testing & Certification in Los Angeles. Therefore, anyone that completes the program receives a certificate, thus there would be no purpose to re-take the training. After three years, there is an eight-hour recertification process.

Mr. Broad asked if there is a complete list of participating employers which identifies if they are union or non-union companies. Stephen Lehtonen said he was unsure if the list was complete. He said they plan to hold three, 12-week sessions this year and begin with six locations and expand to 8-10 locations; so the number of contractors participating will grow substantially. Mr. Broad said as requested by Mr. Florence, he asked that GreenPlumbers submit a union letter stating they are in support of this proposal, their members will be trained, and he asked them to submit the letter as soon as possible, and before any funds are disbursed. Mr. Florence asked if the motion and approval would pend upon first receiving the union support letter. Mr. Broad said yes, approval of this project is contingent on first receiving the union letter of support.

**ACTION:** Ms. Montoya moved and Mr. Rendon seconded approval of the HWST proposal for GreenPlumbers, with the contingency that ETP must first receive a letter of support from the union before any funds are disbursed.

Motion carried, 6 – 0.

## **California Manufacturing Technology Consulting**

Wally Aguilar, Manager of the North Hollywood Regional Office, presented a High-Wage High-Skill Training (HWST) proposal for California Manufacturing Technology Consulting (CMTC), in the amount of \$257,180. CMTC is a private non-profit organization that assists small and medium-sized manufacturers in California improve their operational efficiencies and global competitiveness. CMTC provides technical training and production consulting services to help manufacturers improve productivity, increase profits, and retain jobs.

Mr. Aguilar introduced Cheryl Slobodian, Director of Operations Support & Small Business Consulting; Ray Elledge, Program Manager; and Rocio Leon, Training Manager.

Mr. Florence said the number of estimated trainees provided in the ETP 130 is 140 in Job No. 1 and 160 in Job No. 2. He said the participating employers only reflect 40 individuals being trained; what about the rest of the employees? Ms. Slobodian said since the requirements for this contract were different than a standard ETP contract, they did not go out and promote directly to employers in advance. She said they have several employers that want to enter into the training. They will begin marketing now and have already identified the target companies. She said they work via a manufacturing organization in Southern California, so they will ramp that up and go out and meet with companies. Ms. Montoya said she was happy to hear that there is some manufacturing in these areas. She said she believed that Johnson Controls owns approximately 90% of the battery market, and was not aware of any battery manufacturers in California. Ms. Slobodian said Trojan Battery is located in Southern California and Phillips Aerospace has a division that makes electric batteries for electric cars. She said it is an emerging field and growth opportunity for companies, and there are companies entering the battery market. She said they requested a small contract comparable to what they are used to, because they are realistic about the number of manufacturers who are going to go through it.

**ACTION:** Mr. Kazarian moved and Mr. Rendon seconded approval of the HWST proposal for GreenPlumbers.

Motion carried, 6 – 0.

## **Clipper Windpower, Inc.**

Mr. Aguilar presented a High-Wage High-Skill Training (HWST) proposal for Clipper Windpower, Inc. (Clipper Windpower), in the amount of \$172,800. Clipper Windpower designs, engineers, and manufactures wind turbines throughout the Americas and Europe. The company also develops wind energy projects including acquisition and permitting, site engineering, project financing, local government support, plant construction, and plant operation and maintenance. Clipper Windpower can develop, finance, build, and operate facilities for a customer or as a joint venture partner.

Mr. Aguilar introduced Dale Betz, Manager of Training and Development.

Mr. Kazarian asked what kind of training and experience their in-house experts have. Mr. Betz said they have three master black belts that were previously employed at Alive Energy,

GE and Boeing. They were hired with the expertise they gained from their previous employers and have been tested and certified.

ACTION: Mr. Florence moved and Mr. Kazarian seconded approval of the HWST proposal for Clipper Windpower.

Motion carried, 6 – 0.

Mr. Broad moved the NUMMI matter forward in the Agenda, as there were some members of the press present at the meeting who were interested in the NUMMI matter only. He said, I would like to make it a little easier for them; let's take care of the NUMMI issue and then we'll return to the remainder of the Agenda.

#### **IX. ACTION ON ET08-0193, TRAINING AT NEW UNITED MOTOR MANUFACTURING INC. (NUMMI) (Presented Out-of-Order)**

Mr. McMahon said, staff has prepared a written statement relative to the Panel's action on the NUMMI issue and I'll read that into the minutes at this point:

The Employment Training Panel has determined it is in the best interest of the ETP program to reallocate up to \$2 million in funds from a prior year agreement with the California Manufacturers & Technology Association (CMTA). By taking this action, the Panel is making the funds available for a reimbursement of training costs under other pre-existing agreements as invoices become due and payable in the current fiscal year.

The funds were earmarked to reimburse the cost of training that took place in December 2009 through August 2010 at New United Motor Manufacturing Incorporated, otherwise known as NUMMI, under an agreement with ETP and CMTA, Agreement No. ET08-0193, that terminated in October of 2009.

The Panel approved the use of funds for training at NUMMI at its meeting in February, 2010 by way of amendment to that Agreement. The Panel first raised questions in this matter at its meeting in September, 2009, upon learning that the NUMMI plant in Fremont, the only automobile manufacturing plant in California, was scheduled to shut down operations at the end of March, 2010. The only other NUMMI plant in the United States is currently located in Texas. The plant closure was deemed necessary when Japanese automotive giant Toyota, the sole remaining purchaser of NUMMI products, stopped all orders. In preparing to take action today, the Panel had considered statements by NUMMI President and CEO, Mr. Ogura, attempting to explain why the ETP funds had been put to good use. However, the Panel did not find these statements persuasive. According to the Panel's Chairman Mr. Broad, "it is only reasonable to believe upper management at NUMMI knew about the stop-production order earlier than the public announcement was made. In turn, NUMMI should have stopped training at ETP's expense. What is also persuasive to me is the fact that ETP had funded training at NUMMI seven times over the past 26 years in direct contracts with the company. Here, for the first time, NUMMI approached us a participating employer under another contract whereby we disperse funds to multiple employers." Mr. Broad went on to explain, "The big difference is that our single employer contracts have a standard claw-back provision for the return of ETP funds if the company moves trainee positions out of the state.

It is entirely too coincidental that NUMMI approached us for funding through a multiple employer contract without the claw-back, just six months before the plant closure was announced in the press and made known to the Panel.”

The Panel noted that time is of the essence, given the current fiscal year appropriation for the Employment Training Fund that has been committed since October 2009. That leaves no available funding for ETP’s core program and these funds are critical for re-circulation back into the program. Through this reallocation, we will be able to immediately use the funds to offset the shortfall. I think we would like to say that despite the need for immediate action, we at the Panel are sympathetic to the difficult situation created by the plant closure at NUMMI, especially in regard to the individual workers who must cope with the stress of job displacement.

Mr. McMahon said, at this point I would ask the Panel to make a motion relative to the staff recommendation regarding the project.

[Note: The “written” NUMMI statement varies slightly from what Mr. McMahon read into the record]

Mr. Broad said thank you; are there any comments from the public? If there are, please come forward at this point. Seeing none, any discussion of Panel members? Do I hear a motion to approve the staff’s recommendation to reallocate the NUMMI training money back into our program?

**ACTION:** Mr. Kazarian moved and Mr. Wilson seconded approval of the New United Motor Manufacturing Inc. Panel action, to re-allocate up to \$2 million in funds from a prior-year agreement with the California Manufacturers and Technology Association.

Motion carried, 6 – 0.

## **X. PREVIEW OF AB 118 GUIDELINES**

Mr. McMahon said the AB 118 guidelines will help guide staff in developing projects and give applicants some degree of understanding in the project priorities for the program. A set of guidelines were developed similar to the Clean Energy Workforce Training Program (CEWTP) guidelines, which is part of ETP’s Interagency Agreement (IA) with the California Energy Commission (CEC).

Mr. McMahon said ETP currently has an IA that is pending with the CEC. The IA will appear before the CEC’s business meeting on May 5 to be approved. The CEC has earmarked \$6 million for this program. An initial \$5 million is currently appropriated to the ETP program; and an additional \$1 million is to be authorized in the 2010-11 budget year. Due to the timing of budget appropriations, it is the goal of staff to develop one or more projects under this funding for the June meeting of the Panel. Funds that are not allocated under this IA at the June meeting will be moved into the 2010-11 budget year. To do this, a Section 28 will need to be approved in the budget process. He said, we will present as many projects as we can this year, then the program will go into a hiatus until there is a new budget and the Section 28

re-appropriation authorization is approved. The Section 28 authorization will add at least 60 days to the process.

Mr. McMahon said the funds will be disbursed under a two-year performance based agreement. ETP will receive approximately \$600,000 in administrative fees to administer the program. He said the guidelines will be similar to what staff developed for the CEWTP program. Some specific areas of targeting are identified in the SB 118 guidelines, which include: alternative and renewable fuel feedstock production and extraction; renewable fuel production, distribution, transport, and storage; high-performance and low emission vehicle technology; automotive computer systems; mass transit fleet conversions, servicing, and maintenance; and other sectors or occupations related to the AB118 Program's purpose. He said staff has some flexibility to go beyond those areas of focus.

Mr. McMahon said there will be a strong preference for projects above \$75,000, in terms of the amount approved per project. If possible, projects below \$75,000 will be referred to multiple-employer agreements. No project will be funded above \$1 million without the CEC's prior approval, and generally projects will be limited to \$500,000 for a single-employer agreement and \$750,000 for a multiple-employer agreement.

Mr. McMahon said the standard ETP minimum wage requirement for both retrainees as well as new-hires will be used. Projects will come to the Panel for review on a slightly modified ETP 130 form, similar to that seen in the CEWTP and HWST proposals. When a company has experienced a turnover rate greater than 20% in the preceding year, staff will request a detailed justification as to why the high turnover occurred. Training hours will be capped at a maximum of 300, and staff expects that most projects will come in below that cap. The retention pattern staff developed for the CEWTP program will be used. For non-traditional trades, particularly the building trades where there is a great deal of difficulty in establishing retention, staff will look to the flexibility of 200 hours over a 365-day period. Since these are not Employment Training Tax generated funds, there will be some flexibility around eligible employers, such as non-profit organizations.

Mr. Broad asked, regarding non-profits, are we including governmental entities? Mr. McMahon said his recommendation, at the staff level, would be not to include governmental entities. Mr. Broad said he would generally agree with that, with this exception: primarily public agencies provide mass transit. He said, it might be appropriate, if the Panel agrees to allow a public agency to be eligible if the public agency itself is a deliverer of the actual service. For example, an airport authority doing something to create efficiencies at an airport. Mr. McMahon asked if this would be for a special-purpose type of agency. Mr. Broad said yes, such as a special agency or district that provides the actual operations itself, as opposed to a governmental agency that simply has oversight. In other words, we do not want to train the regulators; it may be appropriate to train a business operation unit of government that does this in the same way that a private entity would, such as in public transit. Mr. McMahon said most of these tend to be non-general fund. Mr. Broad said that is true. Mr. McMahon said we can attempt to develop more information. Mr. Broad asked if this makes sense to everyone. He said if we are talking about the heavy passenger rail in this State; it is operated either by Amtrak, MetroLink, or Caltrain, which is a joint power authority. This is an area where there are great efficiencies to be gained. Railroad operations are significant polluters, and there is much discussion and reports on what equipment could be made into green

equipment. Also, in regard to docked ships, traditionally the ships keep their engines running while they are in port and generate much air pollution. This area might warrant some improvement, and may be an area where a governmental entity is a service provider, rather than only a regulator. Mr. McMahon said staff will need to present this concept to the CEC.

Mr. McMahon said in the general program, a public entity is eligible as a participating employer for the placement of new hires, as incidental placements of no more than 20% of the total trainee population. In this program, we are proposing to allow placement of trainees in new-hire projects to essentially occur with any employer without the 20% cap. So, that would be placement with a governmental entity or a special purpose entity related to transportation. He said this is under the concept that a job is a job, and most of the work for these types of training will be in those sectors.

Mr. McMahon noted that under the CEWTP program, we used the concept of limited productive lab training, or on-the-job training where training would occur in a very structure environment, with a structured curriculum with direct oversight of a trainer or mentor. We would like to continue that training model to this program. With employer contributions, there will be the standard in-kind contribution required, but we will not be requiring a substantial contribution for multiple contracts since this is a new funding source and they would not have received funding under this program in the past.

At the end of the AB 118 Guidelines, there is a list of elements that default back to the core program. The CEC is interested in using the core program infrastructure to the greatest extent possible with the modifications mentioned.

Mr. McMahon said staff would like the Panel's approval of the guidelines in order to move forward to have them posted on the website. Ms. Reilly said this is not an action item since the CEC still has to determine the scope of work. Mr. Broad asked, is that something the Panel needs to take a vote on? Mr. McMahon said, apparently not. Mr. Broad said, so we were informed by General Counsel that this does not require a vote, and then said we will go forth and negotiate with the CEC to get this done, and will formally approve it at the next meeting? He asked if the Panel will ever need to take a vote on this matter. Ms. Reilly said, frankly I do not believe you need to take a vote as a Panel since these guidelines follow very closely the guidelines that were approved for other alternate source programs. However, it would be the Panel's prerogative to take a vote.

Ms. Reilly noted, the CEC will not consider the scope of work under the pending IA agreement until May 5; that is their calendar and we have no control over that. So we are recognizing these as draft guidelines, which is why the handout document includes a watermark draft. As soon as we get the green light officially from the CEC on May 5, we hope to enter into the IA on May 24. So we are looking at June for proposals to take to the Panel before the end of the fiscal year and encumber as much of this funding as possible, before we hit that dead zone in between the budget acts. We are trying to get some proposals under development using the draft guidelines, aiming for a June Panel meeting date for the first batch of AB118 monies to be encumbered. If there is a May meeting, staff could certainly bring this back in formal format for the Panel to review and approve, but we must begin development now. Mr. McMahon said he believes the guidelines have largely been vetted by the CEC and that there would be no significant or further change, so the

motivation here is to get something out that is publicly available, so that staff could begin project development activities. As Ms. Reilly indicated, the Panel cannot officially approve a project until we have received the approval of the concept IA by the CEC, so we are trying to work the timing as closely as possible to optimize our ability to approve projects before the end of the fiscal year.

Mr. Broad asked staff to bring final recommendations to the May or June Panel meeting. Ms. Reilly said yes, and then act on the proposals. Mr. Broad suggested that in the mean time, staff go back and discuss with the CEC the limited availability of this money to public agencies. Mr. McMahon said it appears that from the pipeline analysis of potential AB 118 projects, there is a strong demand. He said there is more than \$3 million in potential projects and 20 projects have been already been identified.

## **XI. REVIEW AND ACTION OF ECONOMIC STIMULUS INITIATIVE PHASE TWO**

Maureen Reilly, General Counsel, said this is an action item and members of the Panel should have before them a Memorandum relating to the Economic Stimulus Initiative. She said hand-out materials that were not included in the Panel Packet originally, and not posted on the website originally, will be posted on the ETP website and include the NUMMI statement, AB118 Guidelines, and the Economic Stimulus Initiative Memorandum, and will be available under the Panel Packets tab on the ETP home page.

Ms. Reilly said this concept was launched by the Panel over a year ago in February, 2009, when it first took up the issue of what ETP could do to reach unemployed and displaced workers under the current condition of an economic crisis in California. At that time, the Panel took action principally geared toward improving new-hire training outcomes and incentivizing MEC contractors to come forward and offer new-hire training. She said the Panel took action to increase the new-hire training rate from \$17 to \$20 per hour at the February, 2009 meeting and to change the new-hire cost cap from a mathematical calculation based on prior year averages, and begin testing a cap similar to the retraining cap, just hours per trainee; and that cap is still in a testing period.

In August, 2009, still under Phase One of this Initiative, the Panel took action to approve going forward with six regulation amendments. The principle one was to recognize the Panel's authority to modify the SET wage for retrainees, under certain instances and modify it down from the statewide average hourly. All six amendments have been approved by the Office of Administrative Law and they took effect February, 2010.

She said staff is now suggesting the launch of Phase Two of the Economic Stimulus Initiative. At this point in time, we have had the benefit of input from a large group of stakeholders in Northern and Southern California; forums were held last month. She said the focus is to improve new-hire training outcomes and retraining. The emphasis here, is on new-hire and trying to remove what road blocks exist in the current core program toward the successful outcome of new-hire training; principally new-hire placement.

Ms. Reilly said this concept paper presents six more proposed regulation amendments aimed at removing what regulatory road blocks we can. In other words, we are still within the ambit

of the enabling legislation. She said there are some key regulations in which in years gone by, the Panel had imposed stricter standards than are present in statute.

Ms. Reilly said some of the regulation changes would be to clarify existing regulations that are somewhat redundant or confusing, especially in the first item on Page 2 of the Memo; The Definitions at Section 4400. The key terms that we would like to see amended, not only to eliminate redundancy, but also to foster a more successful outcome for the new-hire placement rate, are the definition of employment, the definition of retained unemployment, and the definition of training. For example, in the definition of training, the regulation currently only recognizes simulated lab for class/lab rate, and we would like to see that expanded to allow productive lab at a class/lab rate within certain parameters. The definition of training currently in use is very outmoded for electronic training delivery. This is a part of computer-based training, of electronic training delivery at a class/lab rate. She said video conferencing is not used today, and therefore this too requires a regulation update.

Ms. Reilly said with the proposed amendment under employer eligibility, as Mr. McMahon mentioned earlier, the regulations currently only allow “incidental placement” of new-hire trainees with government and non-profit employers. In other words, with employers that do not pay into the Unemployment Insurance Fund, and therefore do not pay our tax, we only allow a 20% incidental placement rate, and this is a fixed cap. However, the statute is broader than that and allows the Panel to permit new-hire placements and incidental placements, relative to the overall training project as a whole. She said the definition of “incidental” would be in context on a case-by-case basis, and staff is recommending that we look at this because this is one area where we could help people get off unemployment with the benefit of ETP-funded training and be placed in a good job with a government entity. This is within the statutory authority.

Ms. Reilly said the next proposed regulation amendment concerns testing the removal of the mathematical calculation to cap new-hire training costs. She said the proposed amendment is still awaiting further testing because ETP has not had core program funding for a long while. Therefore, we have not had much of an opportunity to test the new-hire cost cap, so we would like to go forward in the coming fiscal year and continue testing, but do wish to begin the regulation amendment process.

Mr. McMahon said that he wanted to note that what staff is recommending is an expansion of productive lab training from special alternative source programs into the core program. He said he believed an issue for discussion would be whether that expansion of productive lab training should be across-the-board. In certain industries, on-the-job training is a very critical element of the type of training they do. For instance, biotechnology and manufacturing are strong employers or sectors, where that type of training is an essential part of an overall curriculum.

Mr. Broad said structured on-site training (SOST) was a problem in the past, which is why we nearly eliminated it, but obviously there needs to be some adjustment here. He said we must do it in a way which does not invite problems. Mr. McMahon said, on that point, what we have put in place for the alternative source programs, as mentioned earlier, it is a far more structured type of productive lab training where there is a coach or mentor dedicated exclusively to providing direction to the trainees during that period of instruction, not a supervisor that swings through the production floor twice a day. He said this involves a

trainer dedicated to productive lab training. Mr. Broad said correct; for those Panel members that were not on the Panel at that time, the problem was that the training project could slip a little bit, and the next thing you know we are just paying people's wages for doing their job, they are not getting trained to do anything new, and there is no one there training them. He said the employer is then relieved from having to pay the employees' wages, which is not the objective of the program.

Ms. Montoya said from her perspective in the trades, having individuals sitting in a classroom is a waste of time and they need to be out apprenticing. Mr. Broad said yes, I believe that is true, but the problem we were having was the ability to really supervise or have our people have a way of figuring out what was going on. He said, I do not think there is any question that you can have very effective training by showing someone how to do something. He said most of us figured out how to use computers by having someone else show us how because if we were to read only manuals, we would have never figured it out; that is the reality of it. Ms. Montoya stressed the importance of repetitive work, and that having someone in the premises to check your work and to answer questions is sufficient for apprenticeship. She said initially you have training, but really it is the repeated doing of it, that teaches. Mr. Broad said the question is whether the repeated doing it part, as opposed to the teaching part, is what we pay for, and I believe we pay for the teaching part and the employer pays for the repeated doing it part. He said it was subject to abuse, and we needed to really clamp down on it, and whatever we do, if we resurrect it, we have to resurrect it in a way that has a lot of accountability and transparency.

Mr. McMahon asked about the rulemaking process, if there will be a draft, and if public input is an option. Ms. Reilly said we repealed the Structured On-Site Training (SOST) regulations, and we did, in fact, shut down that program a few years ago. She said we are trying to come to a meaningful definition of productive lab, as well as electronic delivery, to help bring a class/lab rate into a non-classroom environment. Justifications for a class/lab rate, such as a strict trainer-to-trainee ratio, rosters, a particular classroom size, a curriculum, and a dedicated trainer, are features that we could reference in the regulation and yet still leave it up to the Panel on a case-by-case analysis in the factual setting of each proposal. She said it is almost impossible to define it in the abstract, but there would be features to look for that would align this method of training delivery with the class/lab model and that would justify the class/lab rate, which is what we are hoping to do. Ms. Reilly noted that, what staff would bring to the Panel would be proposed regulation amendments, and that once the Panel approves the text of the amendments, they would still go out as proposals through notice-and-comment rulemaking for public comment. During the comment period, they could be revised by the Panel. She said that every time a regulation text is revised, it must be re-noticed for at least a two-week period of time.

Ms. Reilly said staff would also like to present a proposed amendment to the requirement for review and assessment of an employer's turnover rate prior to granting the request for funding. She said what currently happens, is the statute requires that we fund only training for secure jobs. She said that in the past, the Panel has chosen to use a turnover rate as a measurement of job security and it is the only measurement of job security that is built into the regulations other than, of course, the retention period which is essential to the program. The turnover rate regulation currently uses three rates, which is a little confusing. There is a threshold rate of 20%; if they cross that threshold, then it starts the assessment process. The 20% assessment is measured in the year prior to the development of the proposal. Then the

Panel can still go ahead and fund that employer or participating employer, but the Panel must establish a second turnover rate, a trigger rate, and that is included in the contract. Then the trigger rate sets off the penalty which has its own rate. So you have a threshold rate of 20%; if you cross that threshold, now you are in turnover rate assessment. The Panel imposes a trigger rate which is measured in the last year of the contract. That can be more than 20%, although the Panel often defaults to the 20% default rate. If the company exceeds the trigger rate, it kicks the penalty off. The penalty is 25%; a full fourth of payment earned. It was set up that way as an administrative matter because that equates to final payment. Ms. Reilly said currently, the threshold rate and the penalty rate are rigid. The Panel's only room for exercise of its discretion is the trigger rate. Staff would like to look at this again and build in some more discretion for the Panel. All three rates could be considered; this is not statutory, it is purely regulatory.

Ms. Reilly said the next regulation to consider amending, in concept at least at this stage, is the Temporary Agency placement as well as a temporary agency in its own right as an employer for retraining. She said what staff has heard, and at this point it is still anecdotal evidence, though we have heard that the model of workforce delivery is shifting, the labor market is shifting. In certain industry sectors, employers tend to bring in a temporary workforce on a long-term basis. She said they may never hire these people directly, they may hire these people directly, or they hire a portion of these people directly. She said we are hearing that there is a long-term assignment, especially in industry sectors such as IT. The workforce comes in, the employer of record is the temporary agency, and the payroll goes through the temporary agency. Otherwise, these employers may very well get the same salary and benefits of the direct employees of the company. Under the current regulation, the Panel has limited even new-hire placements. Borrowing the incidental placement concept for eligible employers, they are limited to 20% of the total trainee population. Again, this is a rigid limitation. So even to bring someone off the unemployment roles or to give a displaced worker another chance in a given new-hire job number, there cannot be more than 20% placed with a temporary agency. Also, we do not recognize retraining at a temporary agency except for the temporary agency's permanent staff, such as those that pick up the phone and make the placements. She said that would be another model to consider in this situation, where the temporary agency can prove that there is a long-term direct assignment for a certain portion of its workforce contingent on training being received. Some company may say, we'll take 30-40 people for a two-year assignment but only if they are trained in ISO standards; so that would be another model the Panel may want to consider, having more flexibility, and the flexibility would come principally from recognizing its authority to exercise discretion on a case-by-case basis either for good cause, which then leaves it open, or possibly for certain parameters that could be set forth in the regulation.

Ms. Reilly said the final proposed regulation change again, in concept, would be to make it less difficult to designate a region or county as a High Unemployment Area (HUA). She said currently, it is a 25% factor and in times of very high unemployment, as we are seeing here, to go 25% over the average state unemployment rate, you are really off the charts. In today's economy with today's high unemployment, if you are 10% above the statewide average, it is a severe enough problem to recognize as a HUA.

Ms. Reilly said if the Panel will approve this concept to move forward with Phase Two of the Economic Stimulus Initiative, we will bring text back to the Panel at the June meeting to

consider moving forward for notice-and-comment rulemaking. She said the reason staff is considering the June meeting, is that it gives staff more time to gather anecdotal information, studies, reports and research as it may become available. Also, since the Panel will be presented with the Strategic Plan for the budget year at the end of the fiscal year, this effort will be coordinated with the Strategic Plan. It is, in fact, strategic planning; so that would make sense.

Ms. Reilly asked if the Panel had any questions. Mr. Florence asked, are we trying to change the target of who we are providing training to? Ms. Reilly said I wouldn't say the target, as much as trying to get a better outcome for new-hire placements. She said we have always, from the inception of the program, tried to reach unemployed workers with training that will allow them to be placed in good, secure jobs with the possibility of wage progression. That is true now more than ever, but there is a big risk for a MEC contractor to come in and accept our funding for training unemployed workers. The risk is they may not get them placed, and quite often it is very difficult to get them placed. Once placed, they still have to go through retention, and we are finding that it is hard to sell the program for new-hire training. So, it is not like trying to change the target, as much as allowing us to reach the target; to hit the target that we have always had. Mr. McMahon said ETP is funding less than 5% for new-hire projects, and he does not anticipate that these changes would expand that percentage much. It would conceivably help performance on those types of agreements. What staff is trying to do is to recognize that there are trends and changes in the workplace and we need to keep ETP as current and relevant as possible with what is going on in the marketplace.

Mr. Florence said he understands that there are many changes taking place, but when staff starts talking about more of a temporary workforce, he wants to be sure that the funds are going to workers that get trained to work in California and who will see the benefit of it. He said it seems like we are changing our strategy a little bit, and it seems like there are a lot of people out there who are planning to ask for the funds that we have to give out now. Mr. Broad said he shares Mr. Florence's concern about temporary agencies, so if the Panel moves forward, there is no guarantee that he would vote for a regulation that expands the eligibility for temporary agencies. He said he would support having the staff propose what they believe would work, and then the Panel will have a healthy debate about it, and then vote for or reject it, depending on how persuasive they are. Mr. Florence agreed with Mr. Broad. Mr. McMahon said from staff's standpoint, what we are envisioning would be situations where workers are with a temporary agency for a period of years, and the temporary agency is the employer of record, and they are paying all California payroll taxes for those individuals. He said staff will continue to analyze the concept. Mr. Broad said there has got to be a reason why some employers choose to have almost their entire workforce be supplied by temporary agencies and why others do not have any; and it must have to do with money. Money, convenience, responsibility, and all of these other issues that are related to it. While it may be a trend in certain places, that does not mean that it is a good trend, nor do we necessarily have to subsidize it. He said it is a fair issue for debate and believes the Panel should give staff the latitude to develop it.

Mr. Broad asked for a motion to approve the staff's request to move forward with Phase Two of the Economic Stimulus Initiative, and return to the Panel at a future meeting date with staff recommendations.

**ACTION:** Mr. Rendon moved and Ms. Montoya seconded approval of staff's request to move forward with Phase Two of the Economic Stimulus Initiative, and return to the Panel at a future meeting date with staff recommendations.

Motion carried, 5 – 0.

## **XII. PUBLIC COMMENTS**

Steve Duscha, representing Duscha Advisories, said he wanted to comment on the regulations. One of the items that really improves ETP's targeting is the productive lab on-the-job training, because as narrowed by the proposals from staff to situations where there is a trainer spending full time training, he believes you overcome the potential for abuse. He said this also allows training in manufacturing, and in the trades, which does not happen in the classroom. It allows the training to target the mid-range jobs; not just the high-range jobs where people go to class. People doing things in a manufacturing operation can actually be trained with this kind of training that has been proposed. He said he believes this a very good idea; we can debate the past, but this is not returning to the past.

## **XIII. PUBLIC MEETING ADJOURNS**

**ACTION:** Mr. Florence moved and Mr. Rendon seconded meeting adjournment at 11:32 a.m.

Motion carried, 5 – 0.