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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

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COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT

BY _____ Deputy

**CALIFORNIA ATTORNEYS, ADMINISTRATIVE
LAW JUDGES AND HEARING OFFICERS IN
STATE EMPLOYMENT**

Petitioner and Appellant

v.

Case No.:

C 061009

**ARNOLD SCHWARZENEGGER as Governor of
the State of California; DAVID GILB as Director
of the Department of Personnel Administration;
JOHN CHIANG, Controller of the State of
California; and DOES 1 through 10**

Defendants and Respondents.

Sacramento County Superior Court No. 34-2009-80000¹³⁴126
Honorable Patrick Marlette, Judge
Department 19 (916) 874-7071

**PETITION FOR WRIT OF SUPERSEDEAS
AND EMERGENCY TEMPORARY STAY**

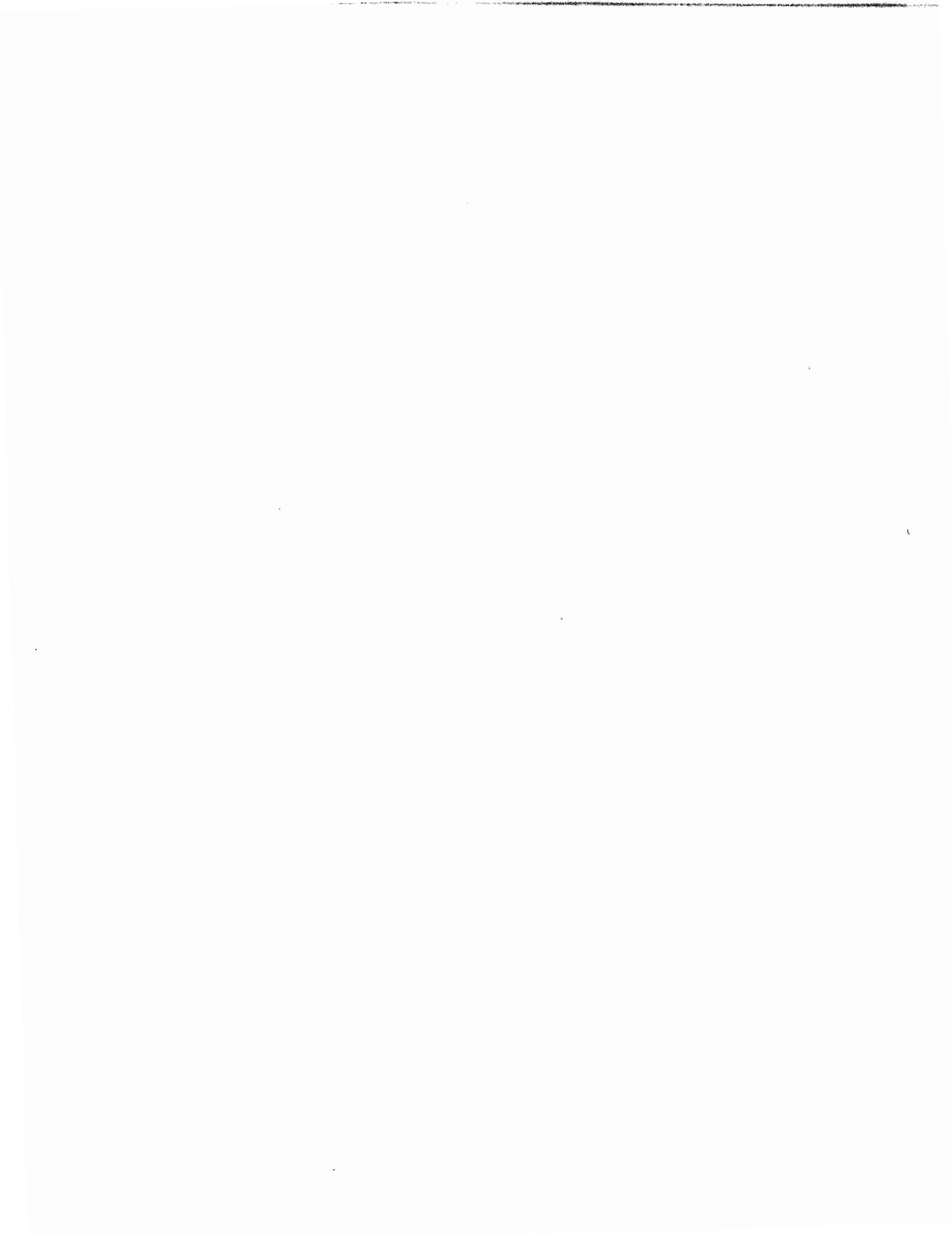
STAY REQUESTED

**Of the January 29, 2009 Order Authorizing Furloughs for State
Employees**

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I. INTRODUCTION

Petitioner hereby seeks a writ of supersedeas staying the trial court's order that Governor Arnold Schwarzenegger's Executive Order S-16-08, which unilaterally implemented furloughs on all state employees, was authorized by law. In the alternative, petitioner seeks a writ of supersedeas staying those portions of Executive Order S-16-08 which direct implementation of furloughs. In addition, petitioner seeks an immediate and temporary stay of the trial court's order and the Executive Order pending this court's ruling on this petition pursuant to California Rules of Court, rule 8.116.

Nothing in the California Constitution or in any state statute provides the Governor with the power to unilaterally "furlough" employees. The word "furlough" is not even mentioned in either the Dills Act or in any State employee's contract. By claiming unprecedented powers to furlough employees during a fiscal emergency --- an emergency in which the Governor himself shares significant blame for creating --- the Governor has usurped the power of the Legislature and removed employees from what used to be a collective bargaining process.

The furlough will have a particularly injurious impact on the State's legal professionals, who are required by their ethical obligations and also by their employment contract to work all hours necessary to effectively represent their clients. Furloughing these employees will not reduce the amount of work they are required to do, but will simply reduce their pay. Thus, the "furlough" is effectively a unilaterally, unbargained-for pay cut, which this Court has previously held to be beyond the authority of the executive branch to impose.

II. STATEMENT OF THE CASE

On January 5, 2009, Petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (“CASE”)¹ filed a petition for writ of mandate in the Sacramento Superior Court, case # 34-2009-80000134. The named respondents were Governor Arnold Schwarzenegger, Director David Gilb of the Department of Personnel Administration (“DPA”) and State Controller John Chiang. The petition sought a declaration that the Governor had no authority to unilaterally impose furloughs on represented employees, and an injunction prohibiting the Governor or any state officer from implementing the furloughs.²

On January 9, 2009, this case was consolidated with similar actions filed by other employee representatives.³ After an expedited briefing schedule, the matter was heard on January 29, 2009. Later that day, the trial court issued an order denying the writs in the consolidated cases. An amended minute order was filed the following day. (Exh. A)⁴

¹ Petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (“CASE”) is the exclusive collective bargaining representative of legal professionals in State Bargaining Unit 2 pursuant to Government Code section 3520.5. CASE represents approximately 3400 legal professionals in more than 80 different state departments, boards, and commissions.

² All pleadings in the case can be accessed online at <https://services.saccourt.com/publicdms2/DefaultDMS.aspx> by entering the case number and clicking “search.”

³ The case filed by Professional Engineers in California Government (“PECG”) and the California Association of Professional Scientists (“CAPS”) was case # 34-2008-80000126. The case filed by Service Employees International Union, Local 1000 (“SEIU”) was case #34-2009-80000135.

⁴ Because the record on appeal has not yet been filed, petitioner is attaching to this petition all relevant documents to aid this court in its determination of the instant petition, pursuant to California Rules of Court, rule

On February 3, 2009, CASE filed a notice of appeal.⁵ (Exh. B.)

III. STATEMENT OF FACTS

On November 6, 2008, Defendant/Respondent Governor Arnold Schwarzenegger sent a letter to state employees. (See Exh. C.) In that letter, Governor Schwarzenegger announced that he was “proposing a combination of economic stimulus measures . . . revenue increases, and spending reductions. . . .” (*Ibid.*) The letter then stated, “If approved by the Legislature, these spending reductions will impact our state workers.” (*Ibid.*, emphasis added.) The Governor thereafter outlined his proposals that would impact state employees, including, inter alia, a furlough of one day per month with a corresponding pay cut of approximately 5 percent. (*Ibid.*) The Governor then stated in the same letter, “All the actions we’re proposing must first be approved by the Legislature.” (*Ibid.*)

Also on November 6, 2008, the Governor issued a proclamation calling the Legislature into special session to address the state’s fiscal crisis. (See Exh. D.) The Governor submitted proposed legislation to the Legislature in conjunction with that special session. (See Exh. E.) In that proposed legislation, the Governor proposed to add section 19826.4 to the Government Code, which read, in pertinent part:

Notwithstanding the Ralph C. Dills Act (Chapter 3 (commencing with section 3512) of Division 4 of Title 1) or any other provision of law, the Department of Finance and the Department of Personnel Administration shall, commencing

8.112(a)(4)(B). The order is attached as Exhibit A. The request for a stay in the trial court and the denial is noted on page 12 of the trial court’s order. The notice of appeal is attached as Exhibit B.

⁵ The fees for this appeal were paid to the superior court at the time of filing the notice of appeal.

on December 1, 2008 and ending on July 1, 2010, implement a program for the furlough of state employees.

(*Ibid.*) The Legislature did not enact the Governor's proposals during the special session.

On December 1, 2008, the Governor issued two additional proclamations, each calling for additional special sessions, one of which was convened pursuant to Proposition 58. (See Exhs. F and G.) The proclamation under Proposition 58 recited that the Governor was submitting proposed legislation to the Legislature to address the fiscal crisis. (See Exh. F.) The Assembly Budget Committee analyzed the Governor's proposed legislation. (See Exh. H.) That analysis revealed that the Governor's proposals included an identical plan to furlough state employees for one day per month. (*Id.* at p. 14.) The Legislature did not enact the Governor's proposals during the special sessions.

On December 19, 2008, Governor Arnold Schwarzenegger issued Executive Order S-08-16. (See Exh. I.) In that Order, the Governor directed the Department of Personnel Administration to "implement a furlough of represented state employees and supervisors for two days per month. . . ." (*Ibid.*) The furlough would be effective February 1, 2009, through June 30, 2010. The furloughs would result in an approximate 10 percent pay cut for all state employees. The Governor's Executive Order made a number of proclamations relating to a perceived fiscal cash crisis, and the Legislature's failure to "effectively" address the crisis.⁶

On January 9, 2009, Director David Gilb sent a memorandum to all state departments announcing that DPA had developed a furlough plan as

⁶ The Executive Order failed to mention that the Legislature passed a comprehensive budget package on December 18, 2008 and submitted it to him for signature, which he vetoed on January 6, 2009.

directed by the Governor in his executive order. (See Exh. J.) That memorandum stated that general government operations would be closed on the first and third Friday of each month, beginning on February 6, 2009. (*Ibid.*) Later that same day, Chief Deputy Attorney General Jim Humes sent an email to all employees of the Attorney General's Office, which stated, in pertinent part, "we are a separate constitutional office and we have decided to decline to adopt Governor's approach [to implement furloughs]." (See Exh. K.) Also that same day, California Treasurer (and former Attorney General) Bill Lockyer sent a letter to David Gilb, in which he advised that "[b]ased on our legal review, we believe the Governor has not established that he has the legal authority to impose furloughs and the related salary cuts on state employees" and therefore elected not to comply with the furlough program. (See Exh. L.)

On February 3, the counsel for the State Controller sent a letter to the trial court requesting clarification of the ruling. (Exh. M.) Attached to that letter were letters from all of the independently elected statewide constitutional officers, urging the Controller not to implement the furlough on their respective departments or agencies, based on their independent authority. (*Ibid.*) In response, counsel for the Governor and DPA sent a letter to the trial court. (Exh. N.) On February 4, 2009, CASE sent a letter to the trial court in response to the earlier letters, and attached a letter from the executive director of the Board of Equalization to the Controller also urging the Controller not to implement the furlough order on the Board. (Exh. O.) In its letter, CASE also pointed out that another constitutionally created entity, the State Compensation Insurance Fund (see Cal. Const. Art. 14 §4), may have a similar interest in the question posed by the Controller. The California Constitution gives the Legislature "plenary powers" over the Fund, and the Legislature has specifically enacted Insurance Code section

11873, which provides, in pertinent part “Notwithstanding any provision of the Government Code or any other provision of law, the positions funded by the State Compensation Insurance Fund are exempt from any hiring freezes and staff cutbacks otherwise required by law.” Accordingly, CASE respectfully suggested to the trial court that the State Compensation Insurance Fund be allowed or ordered to intervene as well. As of this writing, the trial court has taken no action in response to those letters.

IV. ISSUES TO BE RAISED ON APPEAL

Pursuant to California Rules of Court, rule 8.112(a)(4)(A), petitioner will challenge on appeal the trial court’s ruling that the Governor has authority to unilaterally implement furloughs on CASE members.

V. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF GRANTING THE WRIT AND REQUEST FOR TEMPORARY STAY

A. Standard for Granting the Writ

Supersedeas is an extraordinary writ used to “preserv[e] the court’s jurisdiction while it prepares, usually in the context of an appeal, to rule on th[e] merits.” (*People ex rel. San Francisco Bay Conservation and Development Commission v. Town of Emeryville* (1968) 69 Cal.2d 533, 538.) Because the courts have the inherent power to issue a stay in aid of their jurisdiction, no express grant of authority is necessary to authorize of such writs. (*Ibid.*) Nevertheless, Code of Civil Procedure section 923 now expressly confirms that reviewing courts have the power to issue writs of

supersedeas, “or to make any order appropriate to preserve the status quo.”

The standard for granting the writ is well established:

The issuance of a writ of supersedeas is a matter of discretion to be exercised by the court whenever it appears necessary and proper to preserve appellate jurisdiction. Being discretionary, the writ will not be granted to maintain a status quo of the litigation unless the appeal presents substantial questions for decision [citations], and unless there is a probability that error has been committed.

(*Donen v. Donen* (1964) 228 Cal.App.2d 441, 448.) The burden is on the petitioner to show the necessity of the writ and the probability of error by the court below. (*Saltonstall v. Saltonstall* (1957) 148 Cal.App.2d 109, 114.)

B. The Question of the Governor’s Authority Is A Substantial Question

On appeal, petitioner will challenge the Governor’s authority to unilaterally impose furloughs via executive order. The scope of the Governor’s authority is substantial because it involves fundamental question about the separation of powers between the executive and the legislative branches. Moreover, the scope of the order, which impacts hundreds of thousands of state employees, and the public which they serve, is enormous.

C. There Is A High Probability The Trial Court Erred

The trial court determined that the Governor had authority to unilaterally impose furloughs on several distinct theories. First, the trial court determined that Government Code sections 19851 and 19849, “taken

together, provide the Governor with authority to reduce the workweek of state employees. . . ." (Exh. A at p. 7.) Second, the trial court determined that the Memoranda of Understanding ("MOUs")⁷ incorporated sections 19849 and 19851, and thus the Governor had the power to impose furloughs by contract. (*Ibid.*) Third, the trial court determined that provision of the MOUs permit the state to reduce hours due to lack of funds or emergencies. (*Id.* at p. 8.) These determinations were in error.

1. The Legislature Alone Has The Power to Set Salaries

Preliminarily, it is important to understand that in California, the Legislature is the seat of virtually all legislative power.

Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. [Citations.] Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] In other words, 'we do not look to the Constitution to determine whether the Legislature is authorized to do an act, but only to see if it is prohibited.' [Citation.] [¶] Secondly, all intendments favor the exercise of the Legislature's plenary authority: 'If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are

⁷ Respondent below submitted a request for judicial notice of all the MOUs of the various employee representatives in the consolidated actions which was granted. (See Exh. A p. 3.) The MOUs are voluminous, and in the interest of brevity are not being submitted to this Court. However, the CASE MOU is available online at http://www.dpa.ca.gov/pv_obj_cache/pv_obj_id_2A0E1F48424B1C60538E275AA8736672E8F90800/filename/mou.pdf

to be construed strictly, and are not to be extended to include matters not covered by the language used.

(Methodist Hospital of Sacramento v. Saylor (1971) 5 Cal.3d 685, 691.)

The setting of state employee salaries is a legislative function. *(Tirapelle v. Davis (1993) 20 Cal.App.4th 1317, 1325, fn. 10; Lowe v. California Resources Agency (1991) 1 Cal.App.4th 1140, 1151.)* The Legislature has partially delegated its authority in this regard to DPA. Government Code section 19826 provides, in pertinent part:

(a) The department shall establish and adjust salary ranges for each class of position in the state civil service subject to any merit limits contained in Article VII of the California Constitution. The salary range shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities. In establishing or changing these ranges, consideration shall be given to the prevailing rates for comparable service in other public employment and in private business. The department shall make no adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes. The department may make a change in salary range retroactive to the date of application of this change.

(b) Notwithstanding any other provision of law, the department shall not establish, adjust, or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Section 3520.5.

In subdivision (b), the Legislature specifically withheld from DPA the power to reduce salaries for represented employees. As this Court has already determined, the statute expressly “preclud[es] DPA from unilaterally adjusting represented employees’ wages.” *(Department of Personnel Administration v. Superior Court (Greene) (1992) 5 Cal.App.4th*

155, 178.) Accordingly, “the question of represented employees’ wages . . . must ultimately be resolved by the Legislature itself.” (*Ibid.*)

The Government Code specifically grants to state departments the power and authority to lay off employees “because of lack of work or funds, or whenever it is advisable in the interests of economy, to reduce the staff of any state agency. . . .” (Gov. Code § 19997.) There is a detailed and specific statutory scheme for the manner in which layoffs are to be implemented. (See Gov. Code §19997 et seq.) There is no such statutory authorization for furloughs.⁸ In fact, the Government Code expressly prohibits departments from unilaterally reducing the work time of employees against their will. (Gov. Code § 19996.22, subd. (a).) The Government Code specifies that “[t]enure of civil service employment is subject to good behavior, efficiency, the necessity of the performance of the work, and the appropriation of sufficient funds.” (Gov. Code § 18500, subd. (c)(6).) The Legislature has already passed, and the Governor has already signed, a budget appropriations bill for Fiscal Year 2008-2009. Accordingly, the funds have already been appropriated, and there is no basis to alter the tenure of the legal professionals in Unit 2.

Similarly, Government Code section 19816.10 provides that DPA has no power to alter days, hours, or conditions of work in a manner contrary to any existing Memorandum of Understanding (MOU). The current MOU between the State and the legal professionals in State Bargaining Unit 2 expired on July 1, 2007, but by law remains in effect pending the ratification of a successor MOU, or until impasse is reached. (Gov. Code § 3517.8.) The parties are currently in the process of

⁸ The single reference to employee furloughs in the Government Code appears in Government Code section 68108, and is applicable only to employees of the judicial branch of government.

negotiating an MOU, and thus impasse has not been reached. Therefore, the prior MOU remains in effect, including all provisions regarding days and hours of work.⁹ Thus, the existing constitutional and statutory framework establishes that the Legislature, and not the Governor, can set the salaries of state employees.

The trial court attempted to distinguish the *Greene* case, but its reasoning was entirely unpersuasive. First the trial court found that the furloughs do not change the salary *range* of employees, but rather simply reduce the hours worked which results in a loss in pay. (Exh. A at p. 9.) But this distinction is foreclosed by the language in *Greene*, which specifically found that section 19826 expressly “preclud[es] DPA from unilaterally adjusting represented employees’ wages.” (*Department of Personnel Administration v. Superior Court (Greene)*, *supra*, 5 Cal.App.4th 155, 178.) Second, the trial court observed that in *Greene*, the parties had reached impasse, whereas in the instant case, an MOU is still in effect. (Exh. A at pp. 9-10.) Adopting the trial court’s logic leads to the conclusion that employees are better protected without an MOU than with one, which is absurd and contrary to the entire Dills Act. More significantly, the provisions of the MOU which the trial court found authorized the Governor’s unilateral action do not provide any such authority, as will be demonstrated *infra*.

⁹ As but one example, section 6.3.A. of the MOU provides that all exempt legal professionals in Unit 2 shall work an average of 40 hours per week. The contemplated furlough would obviously be contrary to that provision, and since the MOU supersedes the Government Code in this instance, the furlough is therefore illegal.

2. The Governor Has Acknowledged He Lacks the Power to Furlough State Employees

For years, various California governors have sought to obtain the power to unilaterally furlough state employees. In 1992, then-Governor Wilson was the proponent of an initiative measure – the Government Accountability and Taxpayer Protection Act (GATPA) – which appeared as Proposition 165 on the 1992 ballot and which would have, inter alia, allowed him to unilaterally impose furloughs on state employees. (*League of Women Voters v. Eu* (1992) 7 Cal.App.4th 649, 653-654.) According to the Secretary of State’s Statement of Vote, Proposition 165 failed to garner a majority of votes in the election, and thus never went into effect.¹⁰ The fact that Governor Wilson proposed a ballot initiative to give him the power to furlough state employees represents an acknowledgment that the authority of the Governor does not permit him to unilaterally furlough state employees.

Governor Schwarzenegger, in his letter to state employees on November 6, 2008, twice acknowledged that he needed legislative approval to impose his furlough plan. First, he outlined his various proposals and stated, “*If approved by the Legislature*, these spending reductions will impact our state workers.” (See Exh. C, emphasis added.) Later in the same letter, after explaining his then-one-day per month furlough plan, he stated, “All the actions we’re proposing must first be approved by the Legislature.” (*Ibid.*)

¹⁰ See page viii at http://www.sos.ca.gov/elections/sov/1992_general/statement_of_vote_general_1992.pdf

After memorializing in writing his admission that he needed legislative authority to impose furloughs, Governor Schwarzenegger submitted to the Legislature, during special session, proposed legislation that would specifically authorize DPA to implement furloughs. (See Exh. E.) Thus, by word and by deed, Governor Schwarzenegger has repeatedly admitted that he lacks authority to implement furloughs without legislative authority.

The trial court failed to even address the fact that the Governor repeatedly acknowledged he lacked the very authority he claimed in the Executive Order.

3. Sections 19851 and 19849 Do Not Grant the Governor the Power to Unilaterally Impose Furloughs

Government Code section 19851 provides as follows:

(a) It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of state employees eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies. It is the policy of the state to avoid the necessity for overtime work whenever possible. This policy does not restrict the extension of regular working-hour schedules on an overtime basis in those activities and agencies where it is necessary to carry on the state business properly during a manpower shortage.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Government Code section 19849 provides as follows:

(a) The department shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Subdivision (b) of both sections establishes that they are subject to supersession under Government Code section 3517.6, subdivision (a)(1). That section contains a long list of statutes that are subject to supersession, and, as applicable to this case, reads as follows:

In any case where the provisions of [section 19849, . . . 19851] are in conflict with a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

Although the trial court correctly observed that both sections are listed in the CASE MOU (see Exh. A, p. 7, fn. 5), the trial court failed to note that the beginning of that section of the MOU provides as follows:

The following Government Code sections and all DPA regulations related thereto are hereby incorporated into this MOU. *However, if any other provision of this MOU is in conflict with any of the Government Code sections listed below or the DPA regulations related thereto, such MOU provision shall be controlling.*

(Emphasis added.) Provisions of the CASE MOU supersede sections 19851 and 19849. For example, section 6.3.A of the MOU provides as follows:

Employees are expected to work all hours necessary to accomplish their assignments and fulfill their responsibilities. Employees will normally average forty (40) hours of work per week including paid leave; however, work weeks of a longer duration may occasionally be necessary.

Thus, this section establishes the 40-hour work week, and supersedes that provision of section 19851 that might otherwise allow a reduction in hours. This same section establishes that CASE members will occasionally work weeks in excess of 40 hours, and thus it supersedes the overtime provisions of section 19849.

In addition to being superseded, the sections at issue fail to support the trial court's ruling in a critical respect. Even if the sections could be interpreted to allow the Governor to reduce hours, they do not permit a reduction in *pay*. The scope of the MOU is wages, hours, and other working conditions. (Gov. Code §§ 3516, 3517.6) Not only does the MOU contain specific provisions regarding the hours of work, it contains specific provisions about the pay that CASE members are to receive. Attachment A to the MOU is a detailed salary schedule for the various positions held by CASE members. The furlough imposed by the Governor is a reduction in hours, with a corresponding reduction in pay. Authority to reduce hours, if it exists, does not include the authority to impose a reduction in pay. Nothing in sections 19849 or 19851 authorize any reductions in pay. Accordingly, those sections do not empower the Governor to impose furloughs.

4. The Provisions of the MOU Cited by the Trial Court Do Not Authorize Furloughs

The trial court relied on several sections of the CASE MOU as an alternative basis to the ruling. First, the trial court cited section 3.1.B of the MOU (see Exh. A at p. 8) which provides as follows:

To the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; train, direct, schedule, assign, promote, and transfer its employees; initiate disciplinary action; relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons; maintain the efficiency of State operations; determine the methods, means and personnel by which State operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. The State has the right to make reasonable rules and regulations pertaining to employees consistent with this MOU provided that any such rule shall be uniformly applied to all affected employees who are similarly situated.

The trial court relied on the language permitting the state to “relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons . . . [and to] take all necessary actions to carry out its mission in emergencies.” (Exh. A at p. 8, fn. 6.)

However, the first clause of this section contains limiting language on entirety of the section: it is only effective “[t]o the extent consistent with law and this MOU.” As explained above, this Court already determined that a unilateral reduction in wages was inconsistent with the law. (*Department of Personnel Administration v. Superior Court (Greene)* *supra*, 5 Cal.App.4th 155, 178.) And, for all of the reason mentioned above,

interpreting section 3.1.B of the MOU to allow unilateral imposition of furloughs would be inconsistent with the entirety of the MOU.

The trial court also cited Article 10.3 of the CASE MOU, which provides:

The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to the implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative.

(Exh. A at p. 8.) This section emulates the Government Code, which expressly allows for layoffs but does not allow furloughs. More importantly, this section merely allows the state to “propose” a reduction in hours as an alternative to layoffs. The section specifically contemplates a negotiation between the parties. Nothing in this section authorizes the unilateral imposition of furloughs.

VI. CONCLUSION

The furloughs are set to begin on February 6, 2009. If they take effect, CASE members and all state employees will lose wages to which they are entitled by law. The members of the public will suffer untold injuries as a result of the loss in services. This Court has already determined that the authority to reduce salaries resides with the Legislature, not the Governor. Thus, there is a high probability that petitioner will prevail on the merits of the appeal. It is imperative that the trial court’s order be stayed, or the portions of the Governor’s Executive Order directing furloughs be stayed, so that irrevocable harm does not occur during the pendency of this appeal. Accordingly, for the foregoing reasons, petitioner

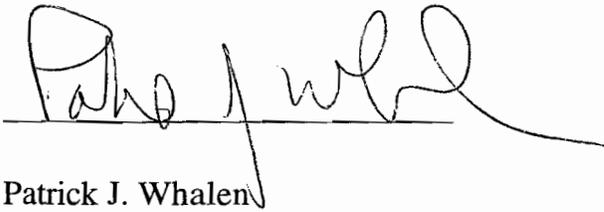
respectfully requests this Court grant the writ of supersedeas and issue an immediate temporary stay.

Dated: Feb 5, 2001

Carl J. Wolf

VERIFICATION

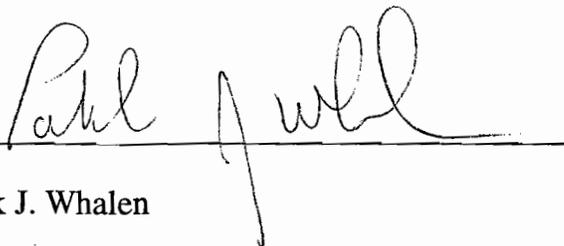
I, Patrick J. Whalen, am the attorney for CASE, the Petitioner/Appellant in this proceeding. I have read the foregoing petition and know its contents. The facts stated therein are true and are within my personal knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 5, 2009 at Sacramento, California.

A handwritten signature in black ink, appearing to read 'Patrick J. Whalen', is written over a horizontal line. The signature is cursive and includes a long, sweeping underline that extends to the right.

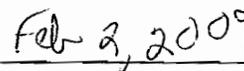
Patrick J. Whalen

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that the foregoing brief contains 4,829 words, as determined by the "word count" feature of commercial software.

A handwritten signature in cursive script, appearing to read "Patrick J. Whalen", written over a horizontal line.

Patrick J. Whalen

A handwritten date "Feb 2, 2009" written over a horizontal line.

Date

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, THIRD APPELLATE DISTRICT, DIVISION		Court of Appeal Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Patrick J. Whalen State Bar # 173489 Law Offices of Brooks Ellison 1725 Capitol Avenue Sacramento, CA 95811 TELEPHONE NO.: (916) 448-2187 FAX NO. (Optional): (916) 448-5346 E-MAIL ADDRESS (Optional): counsel@calattorneys.org ATTORNEY FOR (Name): California Attorneys etc.		Superior Court Case Number: 34-2009-80000134
APPELLANT/PETITIONER: California Attorneys, etc. RESPONDENT/REAL PARTY IN INTEREST: Governor Schwarzenegger, et al.		FOR COURT USE ONLY
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE		
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.		

1. This form is being submitted on behalf of the following party (name): California Attorneys, etc.

2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
 b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
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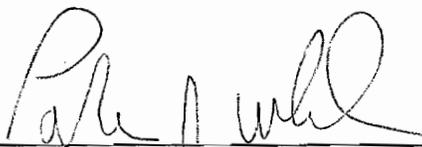
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Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: February 5, 2009

Patrick J. Whalen
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY)

INDEX OF EXHIBITS

- A. Trial Court Order of January 30, 2009
- B. Notice of Appeal filed February 3, 2009
- C. Letter from Governor Schwarzenegger to State Employees dated November 6, 2008
- D. Proclamation of Governor Schwarzenegger dated November 6, 2008
- E. Proposed Statutory Language
- F. Proposition 58 Proclamation of Governor Schwarzenegger dated December 1, 2008
- G. Special Session Proclamation of Governor Schwarzenegger dated December 1, 2008
- H. Assembly Budget Committee Summary of Governor's Proposed Budget
- I. Executive Order S-16-08 dated December 19, 2008
- J. Memorandum from DPA Director Dave Gilb to All State Agencies dated January 9, 2009
- K. Email from Chief Deputy Attorney General Jim Humes to All DOJ Employees
- L. Letter from State Treasurer Bill Lockyer to DPA Director David Gilb dated January 9, 2009
- M. Letter from Counsel for State Controller John Chiang to Judge Marlette dated February 3, 2009
- N. Letter from Counsel for Governor Schwarzenegger and DPA to Judge Marlette dated February 3, 2009
- O. Letter from Counsel for CASE to Judge Marlette dated February 3, 2009



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE/TIME : 01/30/09

JUDGE : P. MARLETTE

REPORTER : none

DEPT. NO : 19

CLERK : D. RIOS, SR.

BAILIFF : none

PRESENT:

**Professional Engineers in California Government;\California
Association of Professional Scientists,
Plaintiff,**

VS. Case No.: 2008-80000126

**Arnold Schwarzenegger, Governor, State of
California\Department of Personnel Administration\State
Controller John Chiang\and Does 1 through 20 inclusive,
Defendant.**

Nature of Proceedings: Amended Minute Order

The Court is issuing a revised version of its final ruling in these matters. The revision makes no substantive changes in the ruling, but corrects an editing error in the last sentence of the third paragraph from the end of the ruling, regarding the State Controller, by deleting the word "incidental". The revised final ruling which follows shall be the final ruling of the Court.

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al., v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2008-80000126;

CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE EMPLOYMENT, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000134;

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000135.

The following shall constitute the Court's final rulings on the demurrers and petitions for writ of mandate and complaints for declaratory relief in the above-captioned matters:

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**CASE TITLE : PECG; CAPS v.
SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,
Deputy Clerk**

CASE NUMBER: 2008-80000126

DEPARTMENT: 19

CASE TITLE: PECG; CAPS v. SCHWARZENEGGER

PROCEEDINGS: Amended Minute Order

Introduction and Background:

On December 19, 2008, in a response to the current State budget crisis, Governor Arnold Schwarzenegger issued Executive Order S-16-08. As relevant to this action, the Executive Order directed the Department of Personnel Administration, effective February 1, 2009 through June 30, 2010, to adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, and to adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees.

Several organizations representing state employees affected by the Executive Order have filed three separate petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Order imposing the furloughs, and seeking to overturn them.

The first such action, Case No. 2008-80000126, was filed by petitioners Professional Engineers in California Government ("PECG") and California Association of Professional Scientists ("CAPS") on December 22, 2008. That action initially was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding; it was reassigned to this Department after respondents filed a peremptory challenge to Judge Connelly pursuant to Code of Civil Procedure section 170.6 on January 7, 2009.

The second such action, Case No. 2009-80000134, was filed by petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") on January 5, 2009. That action was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Case No. 2008-80000126.

The third such action, Case No. 2009-80000135, was filed by petitioner Service Employees International Union, Local 1000 ("SEIU"), on January 7, 2009. The action was assigned to Department 29 of this Court, Judge Timothy M. Frawley, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Cases Nos. 2008-80000126 and 2008-80000134.

On January 9, 2009, the Court heard simultaneous ex parte applications by the petitioners and respondents in Case No. 2008-80000126 for orders shortening time that would have the effect of setting a hearing on respondents' demurrer to the petition and the hearing on the merits of the petition itself for a date prior to February 1, 2009, when the furloughs would go into effect.

At the hearing on January 9, 2009, counsel for the petitioners in Cases Nos. 2009-80000134 and 2009-80000135 appeared and stipulated on the record that those cases would be treated as related to Case No. 2008-

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BY: D. RIOS, SR.,
Deputy Clerk

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80000126, and that those cases would be transferred to this Department for hearing pursuant to Rule of Court 3.300(h)(1)(a). Counsel for respondents in Case No. 2008-80000126 also stated on the record that he represented the respondents in one of the other two cases, and most likely would represent the respondents in the other (although at that time, the petition had not formally been served on the respondents), and also stipulated on the record that the three cases would be heard in this Department as provided above. The parties further agreed to a briefing schedule and to a combined hearing on the respondents' demurrers to, and the merits of, the three petitions. The parties to all three actions have filed their briefs and other papers according to the agreed-upon schedule and the Court heard oral argument on the matter on Thursday, January 29, 2009.

On January 12, 2009, a fourth action was filed challenging the Governor's Executive Order, entitled *California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000137. The Court issued an order finding that case to be related to the three cases captioned above and further ordered that case assigned to this Department. That case has been set for hearing on Friday, February 5, 2009.

Ruling on Preliminary Evidentiary Issues:

Respondents¹ have made two requests for judicial notice, filed January 9, 2009 and January 13, 2009, along with an Amended Request for Judicial Notice on January 23, 2009 in response to the Court's order directing them to submit complete copies of the Memoranda of Understanding ("MOUs") involved in these actions. No objections to the requests have been filed. The Court has reviewed the requests and the documents attached thereto and finds that all such documents are proper subjects for judicial notice. Respondents' requests for judicial notice are therefore granted.

Respondents' evidentiary objection to the Declaration of Peter Flores, Jr. is overruled on the ground that the lack of a signature on the declaration has been remedied by the filing of an amended declaration, unchanged in substance, which bears Mr. Flores' signature.

Ruling on Respondents' Demurrers to the Petitions:

¹ In using the terms "respondents" or "defendants" in this ruling, the Court is referring to Governor Arnold Schwarzenegger and the Department of Personnel Administration. Although State Controller John Chiang also has been named as a respondent in these actions, the Controller has filed an Opposition to the Respondents'/Defendants' Demurrer stating that his interests are actually aligned with the petitioners and that, but for the short time frame, he would have filed a formal motion to realign the parties, seeking to be redesignated as a petitioner/plaintiff. The Controller's position in these actions will be discussed further below. In this ruling, the Court also has treated the terms "the Governor", "the Department of Personnel Administration" (or "the department" or "DPA") and "the State" as being essentially interchangeable.

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Respondents' demurrers are overruled on the following basis:

The petitions and complaints allege generally that the provisions of the Governor's Executive Order S-16-08 that implement a furlough of represented state employees and supervisors for two days per month, and an equivalent furlough or salary reduction for state managers, effective February 1, 2009 through June 30, 2010, are invalid in that such action on the part of the Governor is not authorized by law, and moreover is forbidden by certain provisions of law, in particular, Government Code section 19826(b).

The Court finds that such allegations are sufficient to state a cause of action for issuance of a writ of mandate or for declaratory relief, regardless of whether Government Code section 19826(b) is superseded by the terms of the MOUs petitioners have entered into with the State (as respondents argue), because the petitions and complaints allege, in essence, that the Governor lacks the positive authority to make the challenged order in the first instance, irrespective of any statutory prohibition that may or may not apply. The allegation that the Governor lacks any authority to make the challenged order is sufficient to state a cause of action on its own.

The Court further finds that the issue of the Governor's authority to make the challenged order is not an issue within the exclusive initial jurisdiction of the Public Employment Relations Board, because it involves issues of statutory interpretation and separation of powers between the Governor and the Legislature, which are matters properly within the jurisdiction of the courts, and not issues of unfair practices under the Ralph C. Dills Act, which are matters properly within the jurisdiction of the Board. (See, e.g., *California School Employees Association v. Azusa Unified School District* (1984) 152 Cal. App. 3rd 580, 592-593; *California Teachers' Association v. Livingston School District* (1990) 219 Cal. App. 3rd 1503, 1519.) Moreover, the petitions and complaints in effect allege that the Governor's Executive Order regarding an employee furlough violates the provisions of the petitioners' MOUs with the State governing wages and hours. The Board does not have the authority to enforce agreements between the parties. (Government Code section 3514.5(b); see also, *San Lorenzo Education Association v. Wilson* (1982) 32 Cal. 3rd 841.)

Moreover, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that the normal policy reasons requiring parties to exhaust available administrative remedies do not apply in this case for many of the reasons stated by the Third District Court of Appeal in a case arising out of an earlier state budget crisis: namely, that the facts are undisputed, so there is no need for administrative development of the record; judicial intervention will not interfere with the expertise of the agency or create problems of judicial economy, given that the underlying issues are within the expertise of the courts and undoubtedly would be resolved ultimately by the courts even if initial jurisdiction were found in the Board; and, given that this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts, there is little concern of conflicting decisions between the Board and the courts. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 168-169.)

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In addition, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that exhaustion of administrative remedies by resort to the Board should be excused on the ground that requiring exhaustion under the particular circumstances of this case would cause both the State and its employees to suffer irreparable injury, again, for many of the reasons stated in the 1992 *Greene* case: specifically, that the extremely grave nature of the fiscal crisis faced by the state, and the urgent need for resolution of these issues in as expeditious a manner as possible, create a great potential for irreparable harm in the nature of layoffs of state employees, with a concomitant reduction in the nature of state services, all of which are amply demonstrated by the declarations and documents that have been filed by parties in this matter (many of them by respondents). Even if, as the Court of Appeal stated in the *Greene* case, there is a possibility that the Board could order the same relief that petitioners seek here, it is extremely unlikely that the entire process of Board adjudication followed by judicial review as provided by law would be completed in a sufficiently timely manner to address the immediate crisis. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 170-171.)

Petitioners SEIU and CASE raise additional claims for declaratory relief regarding the effect of the furlough on the exempt status of employees under the federal Fair Labor Standards Act ("FLSA"). The SEIU complaint alleges that a significant number of its employees will be required to work in excess of 40 hours during furlough weeks, that such employees will no longer be considered exempt employees as a matter of law during those weeks, that such workers will be entitled to overtime pay during such weeks, and that respondents lack any mechanism or systems in place to move employees from exempt to non-exempt status from week-to-week, with the result being that such employees will not receive the overtime pay to which they are entitled under the FLSA. Such facts are sufficient to state a cause of action in declaratory relief based on the theory that respondents are not willing and able to comply with their obligations under the FLSA, at least for the purpose of withstanding a demurrer. Respondents' contention that the complaint on its face shows that petitioner's FLSA claim is not ripe for review, and seeks only an advisory opinion, because there is no allegation that respondents actually have failed to pay any overtime that is due, is unpersuasive.²

The CASE complaint alleges the same facts regarding the effect of the furloughs on its employees' exempt status under the FLSA. The complaint lacks the specific allegations present in the SEIU complaint regarding respondents' lack of willingness and ability to comply with the FLSA, but alleges in general terms that respondents' actions will result in denial of the protection of the laws regarding overtime compensation. In essence, this complaint is identical in substance to the SEIU complaint; the Court concludes that it also states a cause of action for declaratory relief.

² This is, of course, distinct from the issue of whether there is any proof tending to demonstrate that FLSA violations actually will occur. This issue is dealt with in the Court's ruling on the merits, below.

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Section 19851(a) provides: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of the state employee eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies."

Section 19849(a) provides that the Department of Personnel Administration "...shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The Court finds that these two statutes, taken together, provide the Governor with authority to reduce the workweek of state employees to meet the needs of state agencies, and to do so by adopting a rule. The provisions of the Executive Order regarding the furlough are a rule in that they establish a standard of general application to state employees. Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures.

The Court further finds, on two separate bases, that the Governor has authority to reduce the work hours of the state employees represented by the petitioners in these actions pursuant to the terms of the MOUs the State entered into with the petitioner employee organizations, which remain in effect, although technically expired, pursuant to Government Code section 3517.8(a).

First, each of the petitioners' MOUs expressly incorporates the terms of sections 18949 and 19851 into the agreement between the parties⁵, and the terms of the MOU do not conflict with these statutes, notwithstanding that the MOUs call for a normal work week of 40 hours. Thus, these provisions of law are not superseded by the MOUs, and the Governor retains the authority, pursuant to law and contract, to take any actions he would be permitted to take pursuant to Government Code sections 19849 and 19851 as described above.

⁵ See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 80 (PECG MOU); Exhibit B, p. 75 (CAPS MOU); Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 16 (CASE MOU); Exhibit B, p. 20 (SEIU MOU for Bargaining Unit 1); Exhibit C, p. 22 (SEIU MOU for Bargaining Unit 3); Exhibit D, p. 21 (SEIU MOU for Bargaining Unit 4); Exhibit E, p. 21 (SEIU MOU for Bargaining Unit 11); Exhibit F, pp. 22-23 (SEIU MOU for Bargaining Unit 14); Exhibit G, p. 21 (SEIU MOU for Bargaining Unit 15); Exhibit H, p. 21 (SEIU MOU for Bargaining Unit 17); Exhibit I, p. 21 (SEIU MOU for Bargaining Unit 20); Exhibit J, p. 19 (SEIU MOU for Bargaining Unit 21). In addition, the PECG MOU provides, in Article 17.1, which appears under the heading "State Rights", that: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 72.)

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Second, the specific terms of certain of the petitioners' MOUs expressly permit the State either to reduce hours in case of lack of funds or to take all necessary action to carry out its mission in emergencies.

For example, Article 3.1.B of the MOU between the State and petitioner CASE, which appears under the heading "State Rights", provides that "[t]o the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to...relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons...[and to] take all necessary actions to carry out its mission in emergencies."⁶

Article 10.3 of the CASE MOU, which appears under the heading "Layoff", further provides: "The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative."⁷

Article 12.1.B of the CAPS MOU, which appears under the heading "State Rights", provides that: "Consistent with this Agreement, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."⁸

Article 4.B of each of the SEIU MOUs similarly provides that: "Consistent with this Contract, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."⁹

The Court finds that the current fiscal emergency, which is amply documented in the evidence respondents have submitted, authorizes the Governor to reduce the work hours of state employees under these

⁶ See, respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 11.

⁷ See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 59.

⁸ See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit B, p. 71.

⁹ See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit B, p. 16 (Bargaining Unit 1); Exhibit C, p. 17 (Bargaining Unit 3); Exhibit D, p. 17 (Bargaining Unit 4); Exhibit E, p. 17 (Bargaining Unit 11); Exhibit F, p. 18 (Bargaining Unit 14); Exhibit G, p. 17 (Bargaining Unit 15); Exhibit H, p. 17 (Bargaining Unit 17); Exhibit I, p. 16 (Bargaining Unit 20); Exhibit J, p. 15 (Bargaining Unit 21).

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cited terms of the various MOUs. The nature of the fiscal emergency is such that the state employee furloughs imposed by the Governor's Executive Order are both necessary and reasonable under the circumstances.¹⁰

The existence of the current emergency also authorized the Governor to make his order without first meeting and conferring with state employee organizations pursuant to Government Code section 3516.5.

The Court accordingly finds that both statutory law and the provisions of the petitioners' MOUs authorized the Governor to reduce the work hours of state employees through a furlough in the current fiscal emergency.

The Court finds that Government Code section 19826(b) does not preclude the Governor from taking such action.

Section 19826(b) states that the Department of Personnel Administration shall not establish, adjust or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Government Code section 3520.5, which is the case for all of the petitioners in these actions.

This case, however, does not involve the establishment, adjustment or recommendation of a salary range for represented state employees. This case involves a temporary reduction in the hours worked by certain state employees, which will result in a loss of pay for the hours not worked. The order does not change established salary ranges at all: state employees will continue to receive their normal pay according to established ranges in weeks that do not include a furlough day. In essence, state employees are subject to a temporary deduction from their total pay under the established ranges, and not to being paid under a new or adjusted salary range.

The present case is therefore distinguishable from *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, which involved an across-the-board salary cut of 5% with no furlough or reduction in work hours. *Greene* also involved the issue of what the State was entitled to do in the bargaining process under the Ralph C. Dills Act, specifically, whether the State could unilaterally impose the salary cut as part of its "last, best and final offer" when it was officially at impasse with the state employee organizations. The present case does not involve bargaining issues in that the parties are not at impasse, and petitioners' pleadings have raised issues regarding the Governor's positive authority to make the challenged

¹⁰ At oral argument on these matters, counsel for CASE and PECG argued that many of their members work in so-called "special fund" agencies, and that the Governor's order, which was designed to deal with a looming General Fund deficit, was not reasonably related to the fiscal emergency insofar as it orders furloughs for those employees. (CASE also raised this issue in its reply brief.) This contention was not raised in any of the petitions or complaints for declaratory relief, and petitioners did not submit any evidence to support it. The Court therefore makes no findings on it.

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order rather than issues regarding any failure to comply with his collective bargaining obligations under the Dills Act.

Moreover, the *Greene* case did not address any provisions of the employee organizations' MOUs that might have authorized the salary reduction in that case, on the basis of an emergency or otherwise, because the case technically involved a situation in which there was an absence of a MOU, as is the case when an existing MOU has expired and the parties have bargained to impasse. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 174.) As noted above, the petitioners' MOUs in this case remain in effect pursuant to Government Code section 3517.8(a), and contain provisions authorizing the Governor's order reducing work hours. The *Greene* case therefore is not controlling here.

The Court accordingly rules that, with regard to the issues raised by all petitioners regarding the Governor's authority to make the challenged order, the petitions for writ of mandate are denied and judgment shall be entered for the defendants (respondents) on the complaints for declaratory relief. This ruling applies to both state employees represented by all of the petitioners under the Dills Act and to those state employees represented by petitioners PECG and CAPS who are excluded from the Dills Act by law, as the authorities on which the Court has relied in finding that the Governor has the authority to take the challenged action apply to both classes of employees.¹¹

With regard to the causes of action for declaratory relief raised by SEIU and CASE raising issues involving possible non-compliance with the FLSA, the Court finds that as a matter of proof, as distinguished from a matter of pleading, petitioners' claims that implementation of the Governor's order will actually result in employees formerly considered to be exempt from the Act's provisions working overtime within the meaning of the Act during a furlough week, and that the State will not comply with the Act with regard to employees who do so, are entirely hypothetical and speculative prior to implementation of the furloughs, and thus not ripe for decision.

As respondents point out, under applicable federal regulations, employees may be furloughed for budget-related reasons without affecting their exempt status, except for the workweek in which the furlough occurs.¹² The viability of petitioners' FLSA claims therefore depends upon proof that there will be, as a matter of fact,

¹¹ At oral argument, counsel for petitioner SEIU raised the contention that the Governor's order amounted to an unconstitutional impairment of contracts. This contention was not raised in any of the petitions, and was not briefed by the parties. Petitioner SEIU did cite several out-of-state cases in its reply brief in which government employee furloughs were challenged on this basis. Those cases were cited, however, for the proposition that a furlough is equivalent to a reduction in employee salary, and not in support of the contention that the Governor's action impaired the petitioner's contracts with the State. Because such contention was not raised by the petitions or briefed by the parties, the Court makes no finding on it.

¹² See, Title 29, Code of Federal Regulations, section 541.710.

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CASE TITLE : PECG; CAPS v.
SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

CASE NUMBER: 2008-80000126

DEPARTMENT: 19

CASE TITLE: PECG; CAPS v. SCHWARZENEGGER

PROCEEDINGS: Amended Minute Order

employees who work more than 40 hours during a furlough week. At this point, before the furlough actually has been implemented, there is no evidence before the Court regarding any employee actually doing this, let alone any evidence that this will be the case with large numbers of state employees. Petitioners' allegations that this will happen are merely hypothetical.

Similarly, the evidence that petitioner CASE has submitted demonstrating that the State's payroll system is antiquated and lacks the flexibility and reliability to be able to cope with the kind of week-to-week changes in an employee's exempt status that will occur when furloughs are implemented¹³, is not necessarily proof that the State will not be able to cope with paying overtime pay to those to whom it is entitled. Once again, petitioners' proposition that the FLSA will be violated depends upon proof that employees actually will be entitled to overtime, and that there will be sufficient numbers of them that the State will not be able to comply with the FLSA. Such proof is lacking at this point.

Finally, even if petitioners were able to prove that the State was likely to fail to comply with the FLSA with regard to some number of state employees, it would not necessarily follow that they would be entitled to the relief they seek, which is the invalidation of the furlough order itself. Any actual violation of the FLSA would give rise to remedies arising under the FLSA, i.e., for recovery of the unpaid overtime compensation¹⁴, but the failure to comply with the FLSA in that situation would be a separate issue from the validity of the furlough. Notwithstanding this Court's ruling upholding the Governor's order, any affected employee retains his or her rights and remedies under FLSA, and the Court's ruling that petitioners have not proven an actual violation of the FLSA at this point does not preclude them, or their individual members, from exercising those remedies once an actual violation can be proven. Thus, FLSA compliance issues, hypothetical or otherwise, do not serve as a basis for overturning the Governor's Executive Order regarding furloughs.

The Court therefore finds in favor of defendants (respondents) on the SEIU and CASE complaints for declaratory relief regarding alleged non-compliance with the FLSA.

A final issue remains with regard to the State Controller. As noted in footnote 1 above, the Controller, although named as a respondent/defendant, has taken a position in these actions in alignment with the petitioners, specifically stating that his office "...has no intention of implementing the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a court of law."¹⁵ In *Tirapelle v. Davis*

¹³ See, Declaration of Don Scheppmann, chief of Personnel/Payroll Services Division of the Office of the California State Controller, dated October 14, 2008 and filed in the case entitled *David A. Gilb, California Department of Personnel Administration v. John Chiang, Office of State Controller, et al.*, which is pending in the United States District Court for the Eastern District of California, attached to CASE's opposition to respondents' demurrer as Exhibit A.

¹⁴ See, e.g., 29 U.S.C. Section 216.

¹⁵ See, Controller's Opposition to Respondents' Demurrer, p. 2:15-17.

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SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

CASE NUMBER: 2008-80000126

DEPARTMENT: 19

CASE TITLE: PECG; CAPS v. SCHWARZENEGGER

PROCEEDINGS: Amended Minute Order

(1993) 20 Cal. App. 4th 1317, the Third District Court of Appeal held that the Controller may not refuse to implement an executive action affecting state employees' pay that is authorized by law. In this case, the Court has ruled that the provisions of the Governor's Executive Order reducing the work hours of state employees through a furlough, and thereby affecting their pay during the furlough weeks, is authorized by law. The Controller therefore lacks authority to refuse to implement the Governor's Executive Order. The Court's judgment in this matter therefore shall include an order directing the Controller to take all necessary and appropriate steps to implement the provisions of the Governor's Executive Order imposing furloughs on state employees, including the reduction in such employees' pay.

At the close of the hearing, counsel for CASE made an oral motion on the record that the Court stay its ruling pending appellate review. The Court denied the motion.

////////////////////////////////////

Counsel for respondents is directed to prepare the orders and judgments in accordance with this ruling under the procedures set forth in Rule of Court 3.1312.

Certificate of Service by Mailing attached.

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SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

CASE NUMBER: 2008-80000126

DEPARTMENT: 19

CASE TITLE: PECG; CAPS v. SCHWARZENEGGER

PROCEEDINGS: Amended Minute Order

CERTIFICATE OF SERVICE BY MAILING

C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Gerald James
Attorney at Law
660 J Street, Suite 445
Sacramento, CA 95814

David W. Tyra
KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
400 Capitol Mall, 7th Floor
Sacramento, CA 95814

Patrick Whalen
ELLISON WILSON ADVOCACY, LLC
1725 Capitol Avenue
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S.E.I.U.
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Will M. Yamada
Department of Personnel Administration
Legal Office
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Sacramento, CA 95811

RICHARD CHIVARO, Chief Counsel
Ronald V. Placet,
Sr. Staff Counsel
Office of the State Controller
300 Capitol Mall, Ste 1850
Sacramento, CA 95814

Dated: 1/30/09

Superior Court of California,
County of Sacramento

By: D. RIOS, SR.,
Deputy Clerk

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v.
SCHWARZENEGGER

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,
Deputy Clerk**





COPY

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2 PATRICK J. WHALEN
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E-mail: counsel@calattorneys.org

6 Attorneys for Petitioners
7 California Attorneys, Administrative Law Judges,
And Hearing Officers in State Employment
8

FILED
ENDORSED
FEB - 3 2009
By FEN-RU CHEN
Deputy Clerk

9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12 CALIFORNIA ATTORNEYS,
13 ADMINISTRATIVE LAW JUDGES AND
14 HEARING OFFICERS IN STATE
EMPLOYMENT,

15
16 Petitioners,

17 vs.

18 ARNOLD SCHWARZENEGGER as Governor
of the State of California; DAVID GILB as
19 Director of the Department of Personnel
Administration; JOHN CHIANG, Controller of
20 the State of California; and DOES 1 through 10,

21 Respondents.

22 PROFESSIONAL ENGINEERS IN
23 CALIFORNIA GOVERNMENT;
24 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

25 Petitioners,

26 vs.

27 ARNOLD SCHWARZENEGGER, Governor,
State of California; DEPARTMENT OF
28 PERSONNEL ADMINISTRATION; STATE

Case No.34-2009-80000134

NOTICE OF APPEAL

Date: January 29, 2009
Time: 9:00 a.m.
Dept.: 19

Case No.34-2008-80000126 (Related Case)

1 CONTROLLER JOHN CHIANG; and DOES 1
2 through 20 INCLUSIVE,

3 Respondents.

4 SERVICE EMPLOYEES INTERNATIONAL
5 UNION, LOCAL 1000,

6 Petitioners,

7 vs.

8 ARNOLD SCHWARZENEGGER, Governor,
9 State of California; DEPARTMENT OF
10 PERSONNEL ADMINISTRATION; STATE
11 CONTROLLER JOHN CHIANG; and DOES 1
12 through 20 INCLUSIVE,

13 Respondents.

Case No.34-2009-80000135 (Related Case)

14 PLEASE TAKE NOTICE that petitioner CALIFORNIA ATTORNEYS,
15 ADMINSTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE EMPLOYMENT
16 ("CASE"), appeals from the judgment and order denying the Petition for Writ of Mandate and
17 Complaint for Declaratory Relief entered on January 29, 2009.

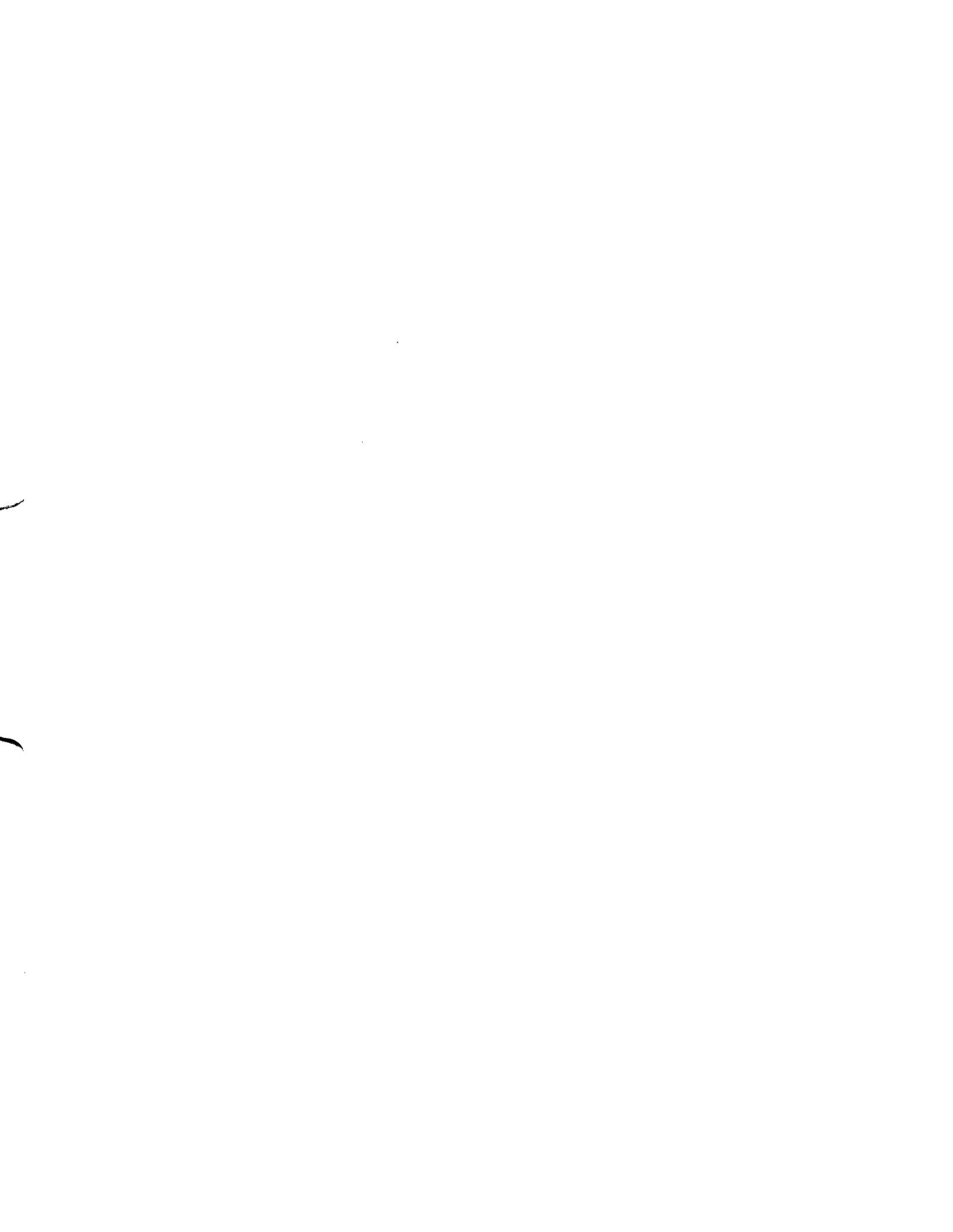
18
19 THE LAW OFFICE OF BROOKS ELLISON

20
21 Dated: Feb 3, 2009

22 

23 PATRICK J. WHALEN

24 Attorneys for Plaintiff
25 CALIFORNIA ATTORNEYS,
26 ADMINISTRATIVE LAW JUDGES AND
27 HEARING OFFICERS IN STATE
28 EMPLOYMENT





GOVERNOR ARNOLD SCHWARZENEGGER

November 6, 2008

Dear Valued State Worker,

During the six weeks since I signed our state budget, the mortgage crisis has deepened, unemployment has increased and the stock market has dropped significantly. As a result, we are facing a projected \$11 billion revenue shortfall this fiscal year.

These dramatic developments require us to work together and respond immediately. I have called the Legislature into special session to address our fiscal emergency, and I am proposing a combination of economic stimulus measures, programs to keep Californians in their homes, revenue increases and spending reductions to address the real, immediate financial problems facing the state.

If approved by the Legislature, these spending reductions will impact our state workers. Californians rely on you to deliver important services every day, and I am proud of your hard work and dedication to the state. That's why I want you to hear about these impacts from me directly.

To achieve cost savings and protect vital state services, I am proposing the following measures:

- **Furloughs:** All state employees will be furloughed one day each month for the next year and half, a total of 19 days. This will result in a pay cut of about 5 percent. The pay cut will not affect retirement and other benefits for which you are eligible.
- **Holidays:** The Columbus Day holiday will be eliminated, and Lincoln's Birthday and Washington's Birthday will be observed together on Presidents Day. In addition, we will no longer pay time-and-a-half to employees working on holidays. Instead, employees required to work on holidays will receive holiday credit for use at another time, as they do now.
- **Four-day week:** The law will be amended to make it easier for departments to allow employees to work ten hours a day, four days a week.
- **Overtime:** The state will no longer count leave time (including sick leave and vacation time) as time worked for overtime purposes. Instead, employees will only become eligible for overtime pay once actual time worked exceeds the required threshold.

November 6, 2008

Page two

These changes will save the state roughly \$1.4 billion over two years. I know these are not easy proposals, and I assure you we are working closely with union leadership to achieve results in the least painful way possible. All the actions we're proposing must first be approved by the Legislature.

I've always said that California has the most talented and most diligent state employees, and I am confident we will make it through this tough time by working together. Thank you for your cooperation and hard work on behalf of the State of California.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Schwarzenegger". The signature is stylized and cursive, with a large initial "A".

Arnold Schwarzenegger

)

)



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PROCLAMATION

11/06/2008

Special Session Proclamation 11/06/2008

PROCLAMATION

by the
Governor of the State of California

WHEREAS, an extraordinary occasion has arisen and now exists requiring that the Legislature of the State of California be convened in extraordinary session.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by Section 3(b) Article IV of the Constitution of the State of California, do hereby convene the Legislature of the State of California to meet in extraordinary session at Sacramento, California on the 6th day of November 2008, at a time to be determined, for the following purpose and to legislate upon the following subjects:

1. To consider and act upon legislation to address fiscal and budget-related matters.
2. To consider and act upon legislation to address the economy, including but not limited to efforts to stimulate California's economy and create and retain jobs.
3. To consider and act upon legislation to address the housing mortgage crisis.
4. To consider and act upon legislation to address the solvency of the Unemployment Insurance Fund.

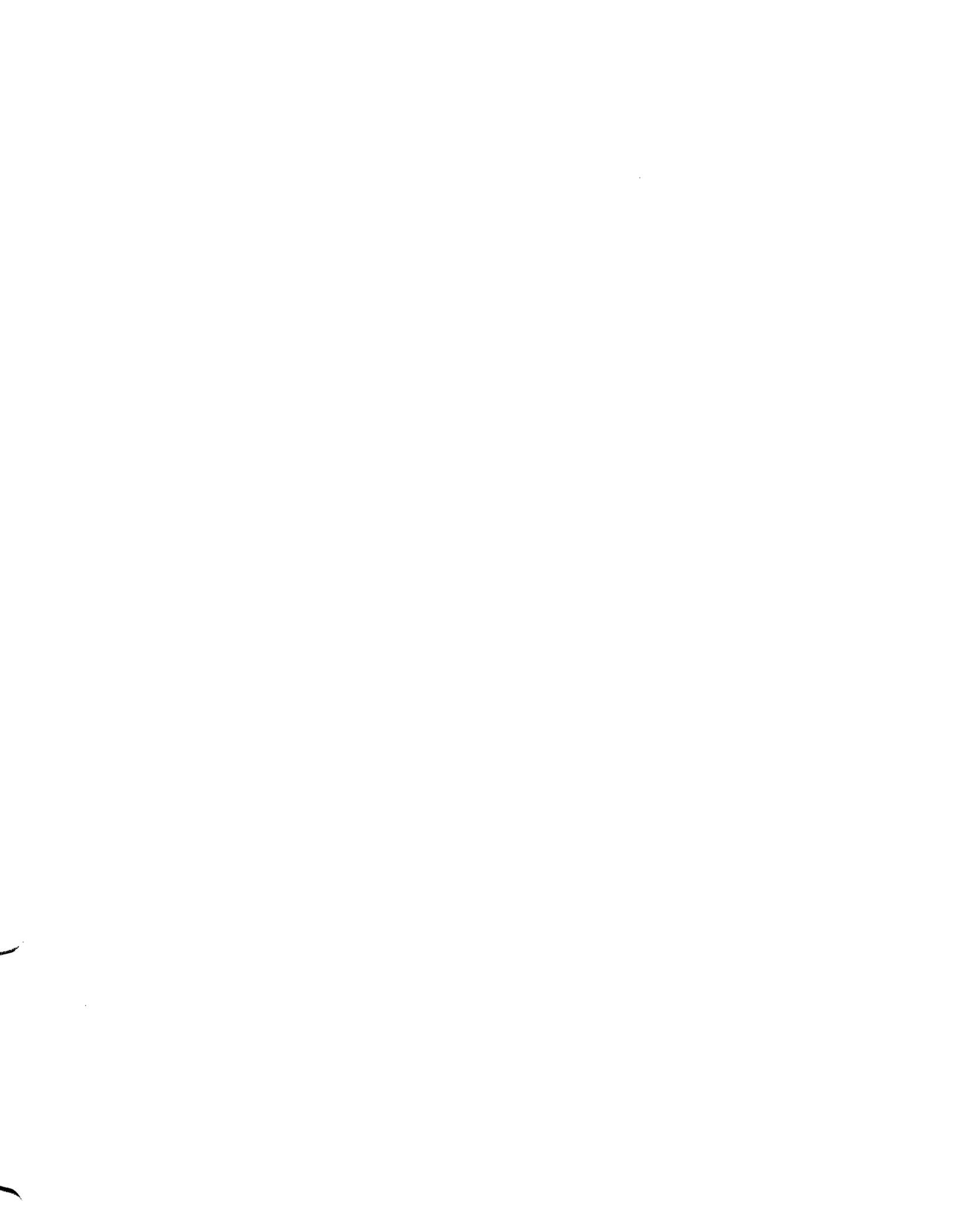


IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed 6th day of November, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State





22, 23, 24 & 25 - Employee Compensation Changes

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An act to amend Section 19852 of, to amend, repeal, and add Section 19853 of, to add Section 19844.1 to, and to add and repeal Section 19826.4 of, the Government Code, relating to state employment, and declaring the urgency thereof, to take effect immediately.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

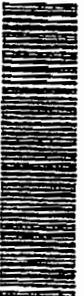
SECTION 1. Section 19826.4 is added to the Government Code, to read:

19826.4. (a) Notwithstanding the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1) or any other provision of law, the Department of Finance and the Department of Personnel Administration shall, commencing on December 1, 2008, and ending on July 1, 2010, implement a program for the furlough of state employees. The furloughs shall be for a period or periods not to exceed a total of 19 workdays, as defined in Section 19851, during the period the program is in effect.

(1) For purposes of this subdivision, "furlough" means the placement of employees on temporary, nonduty status to reduce payroll costs. An employee subject to furlough shall not receive compensation for any furlough period.

(2) The state may reduce employees' salaries, as defined in paragraph (1) of subdivision (c) of Section 19827.2, to accomplish the purposes of the furlough. A furlough shall not adversely affect an employee's retirement service credit or service anniversary date, create a break in service or constitute an absence from state service as described in Section 20960, impact the accrual of leave credits or payment of health, dental, or vision benefits; impact the calculation of final compensation, impact the calculation of death, disability, or survivor benefits, or adversely affect any other benefit or payment an employee would otherwise receive or be entitled to receive.

(b) The Department of Personnel Administration and the Department of Finance shall jointly administer this section. The Department of Personnel Administration may adopt policies and procedures as needed to implement this section. The adoption,



amendment, or repeal of those policies and procedures is hereby exempted from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 commencing with Section 11340) of Part 1 of Division 3 of Title 2) and the Ralph C. Dills Act and shall become effective immediately upon that adoption, amendment, or repeal.

(c) For purposes of this section, "state employee" includes both of the following:

(1) All civil service employees of the state, including those persons exempted from the definition of "state employee" in subdivision (c) of Section 3513.

(2) Those persons exempted from the civil service pursuant to subdivisions (e) and (g) of Section 4 of Article VII of the California Constitution.

(d) This section shall not apply to employees subject to an operative memorandum of understanding, effective July 3, 2006, to July 2, 2010, inclusive, between the state and State Bargaining Unit 5.

(e) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 19844.1 is added to the Government Code, to read:

19844.1. (a) Notwithstanding any other provision of law, personal leave, sick leave, annual leave, vacation, bereavement leave, holiday leave, and any other paid or unpaid leave, shall not be considered as time worked by the employee for the purpose of computing cash compensation for overtime or compensating time off for overtime.

(b) If subdivision (a) is in conflict with the provisions of a memorandum of understanding reached or amended on or after December 1, 2008, pursuant to Section



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3517.5, that memorandum of understanding shall be controlling without further legislative action, except that if those provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 3. Section 19852 of the Government Code is amended to read:

19852. ~~When~~ Notwithstanding any other provision of law, if the Governor determines that the best interests of the state would be served thereby, the Governor may require that the 40-hour workweek established as the state policy in Section 19851 shall be worked in four days in any state agency or part thereof.

SEC. 4. Section 19853 of the Government Code is amended to read:

19853. (a) Except as provided in subdivision (c), all employees shall be entitled to the following holidays: January 1, the third Monday in January, February 12, the third Monday in February, March 31, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the day after Thanksgiving, December 25, the day chosen by an employee pursuant to Section 19854, and every day appointed by the Governor of this state for a public fast, thanksgiving, or holiday.

If a day listed in this subdivision falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If November 11th falls upon a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. Any employee who may be required to work on any of the holidays included in this subdivision, and who does work on any of these holidays, shall be entitled to be paid compensation or given compensating time off for that work in accordance with their classification's assigned workweek group. For the purpose of computing the



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number of hours worked, time when an employee is excused from work because of holidays, sick leave, vacation, annual leave, or compensating time off, shall be considered as time worked by the employee.

(b) If the provisions of subdivision (a) are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(c) Any employee, who is either excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, shall be entitled to the following holidays, with pay, in addition to any official state holiday appointed by the Governor:

(1) January 1, the third Monday in January, February 12, the third Monday in February, March 31, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, Thanksgiving Day, the day after Thanksgiving, December 25, and any personal holiday chosen pursuant to Section 19854. The department head or designee may require an employee to provide five working days' advance notice before a personal holiday is taken, and may deny use subject to operational needs.

(2) When November 11 falls on a Saturday, employees shall be entitled to the preceding Friday as a holiday with pay.



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(3) When a holiday, other than a personal holiday or November 11, falls on a Saturday, an employee shall, regardless of whether he or she works on the holiday, only accrue an additional eight hours of personal holiday credit per fiscal year for the holiday. The holiday credit shall be accrued on the actual date of the holiday and shall be used within the same fiscal year.

(4) When a holiday other than a personal holiday falls on Sunday, employees shall be entitled to the following Monday as a holiday with pay.

(5) Employees who are required to work on a holiday shall be entitled to pay or compensating time off for this work in accordance with their classification's assigned workweek group.

(6) Less than full-time employees shall receive holidays in accordance with Department of Personnel Administration rules.

(d) (1) Any employee, as defined in subdivision (c) of Section 3513, may elect to receive eight hours of holiday credit for the fourth Friday in September, known as "Native American Day," in lieu of receiving eight hours of personal holiday credit in accordance with Section 19854.

(2) It is not the intent of the Legislature, by the amendments to this subdivision that add this paragraph, to increase the personal holiday credit that an employee receives pursuant to Section 19854.

(e) This section shall become effective with regard to the March 31 holiday only when the Department of Personnel Administration notifies the Legislature that the language contained in this section has been agreed to by all exclusive representatives, and the Department of Personnel Administration authorizes this holiday to be applied



to employees designated as excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1), and the necessary statutes are amended to reflect this change.

(f) This section shall become inoperative on December 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 19853 is added to the Government Code, to read:

19853. (a) All state employees shall be entitled to the following holidays: January 1, the third Monday in January, the third Monday in February, March 31, the last Monday in May, July 4, the first Monday in September, November 11, Thanksgiving Day, the day after Thanksgiving, December 25, the day chosen by an employee pursuant to Section 19854, and every day appointed by the Governor of this state for a public fast, thanksgiving, or holiday.

(b) If a day listed in this subdivision falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If November 11th falls upon a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed.

(c) Any state employee who may be required to work on any of the holidays included in this section, and who does work on any of these holidays, shall be entitled to receive straight-time pay and eight hours of holiday credit.

(d) For the purpose of computing the number of hours worked, time when an employee is excused from work because of holidays, sick leave, vacation, annual leave,



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compensating time off, or any other leave shall not be considered as time worked by the employee for the purpose of computing cash compensation for overtime or compensating time off for overtime.

(e) Any state employee, as defined in subdivision (c) of Section 3513, may elect to receive eight hours of holiday credit for the fourth Friday in September, known as "Native American Day," in lieu of receiving eight hours of personal holiday credit in accordance with Section 19854.

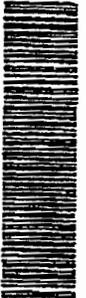
(f) Persons employed on less than a full-time basis shall receive holidays in accordance with the Department of Personnel Administration rules.

(g) If subdivision (a) is in conflict with the provisions of a memorandum of understanding executed or amended on or after December 1, 2008, pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(h) This section shall become operative on December 1, 2008.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be applicable as soon as possible in the 2008-09 fiscal year, and thereby facilitate the orderly administration of state government at the earliest possible time, it is necessary that this act take effect immediately.



LEGISLATIVE COUNSEL'S DIGEST

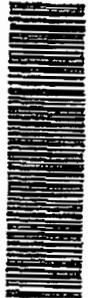
Bill No.

as introduced, _____.

General Subject: State employment: furloughs: holidays.

The Ralph C. Dills Act permits state employees to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations, as specified. The act authorizes the Governor and a recognized employee organization to enter into a written memorandum of understanding for presentation to the Legislature. Existing law requires the Department of Personnel Administration to establish and adjust salary ranges for each class of position in the state civil service, subject to specified merit limits. The California Constitution exempts certain persons employed by the state from civil service, including specified deputies or employees selected by boards, commissions, or state officers appointed by the Governor.

This bill would require the Department of Finance and the Department of Personnel Administration, commencing December 1, 2008, and ending on July 1, 2010,



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22 - Employee Compensation Changes

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An act to add and repeal Section 19826.45 of the Government Code,
relating to state employment.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 19826.45 is added to the Government Code, to read:

19826.45. (a) Notwithstanding the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1) or any other provision of law, the Department of Finance and the Department of Personnel Administration shall, commencing on December 1, 2008, and ending on July 1, 2010, implement a program for the furlough of exempt employees. The furloughs shall be for a period or periods not to exceed a total of 19 workdays, as defined in Section 19851, during the period the program is in effect.

(1) For purposes of this subdivision, "furlough" means the placement of exempt employees on temporary, nonduty status to reduce payroll costs. An employee subject to furlough shall not receive compensation for any furlough period.

(2) The state may reduce exempt employees' salaries, as defined in paragraph (1) of subdivision (c) of Section 19827.2, to accomplish the purposes of the furlough. A furlough shall not adversely affect an employee's retirement service credit or service anniversary date, create a break in service or constitute an absence from state service as described in Section 20960, impact the accrual of leave credits or payment of health, dental, or vision benefits, impact the calculation of final compensation, impact the calculation of death, disability, or survivor benefits, or adversely affect any other benefit or payment an employee would otherwise receive or be entitled to receive.

(b) The Department of Personnel Administration and the Department of Finance shall jointly administer this section. The Department of Personnel Administration may adopt policies and procedures as needed to implement this section. The adoption,



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amendment, or repeal of those policies and procedures is hereby exempted from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2) and the Ralph C. Dills Act and shall become effective immediately upon that adoption, amendment, or repeal.

(c) For purposes of this section, "exempt employee" means a person specified in subdivision (d) or (f) of Section 4 of Article VII of the California Constitution.

(d) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.



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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

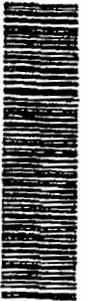
as introduced, _____.

General Subject: Exempt employees of the state: furlough.

Existing law requires the Department of Personnel Administration to establish and adjust salary ranges for each class of position in the state civil service, subject to specified merit limits. The California Constitution exempts certain persons employed by the state from civil service, including members of boards and commissions, state officers directly appointed by the Governor, and employees of the Lieutenant Governor's office directly appointed or employed by the Lieutenant Governor.

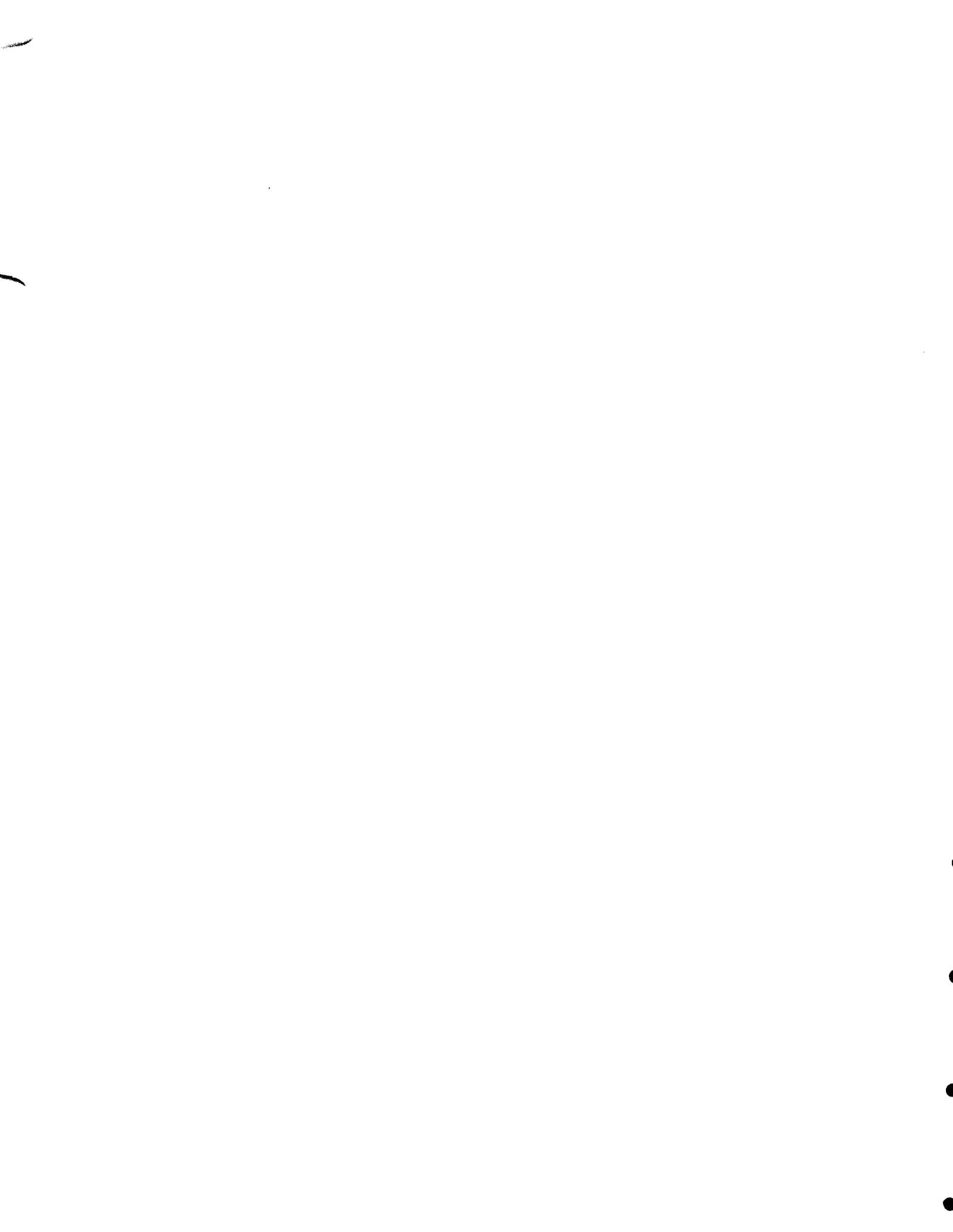
This bill would require the Department of Finance and the Department of Personnel Administration, commencing on December 1, 2008, and ending on July 1, 2010, to implement a furlough program, as specified, for the exempt employees described above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



0029146829146







Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PROCLAMATION

12/01/2008

Prop 58 Special Session Proclamation 12/01/2008

PROCLAMATION

by the
Governor of the State of California

WHEREAS on this date, pursuant to Section 10(f) of Article IV of the Constitution of the State of California, I have proclaimed a fiscal emergency; and

WHEREAS on this date, I am submitting to the Legislature proposed legislation to address that fiscal emergency; and

WHEREAS this extraordinary occasion having arisen and now existing, it requires that the Legislature of the State of California be convened in extraordinary session.

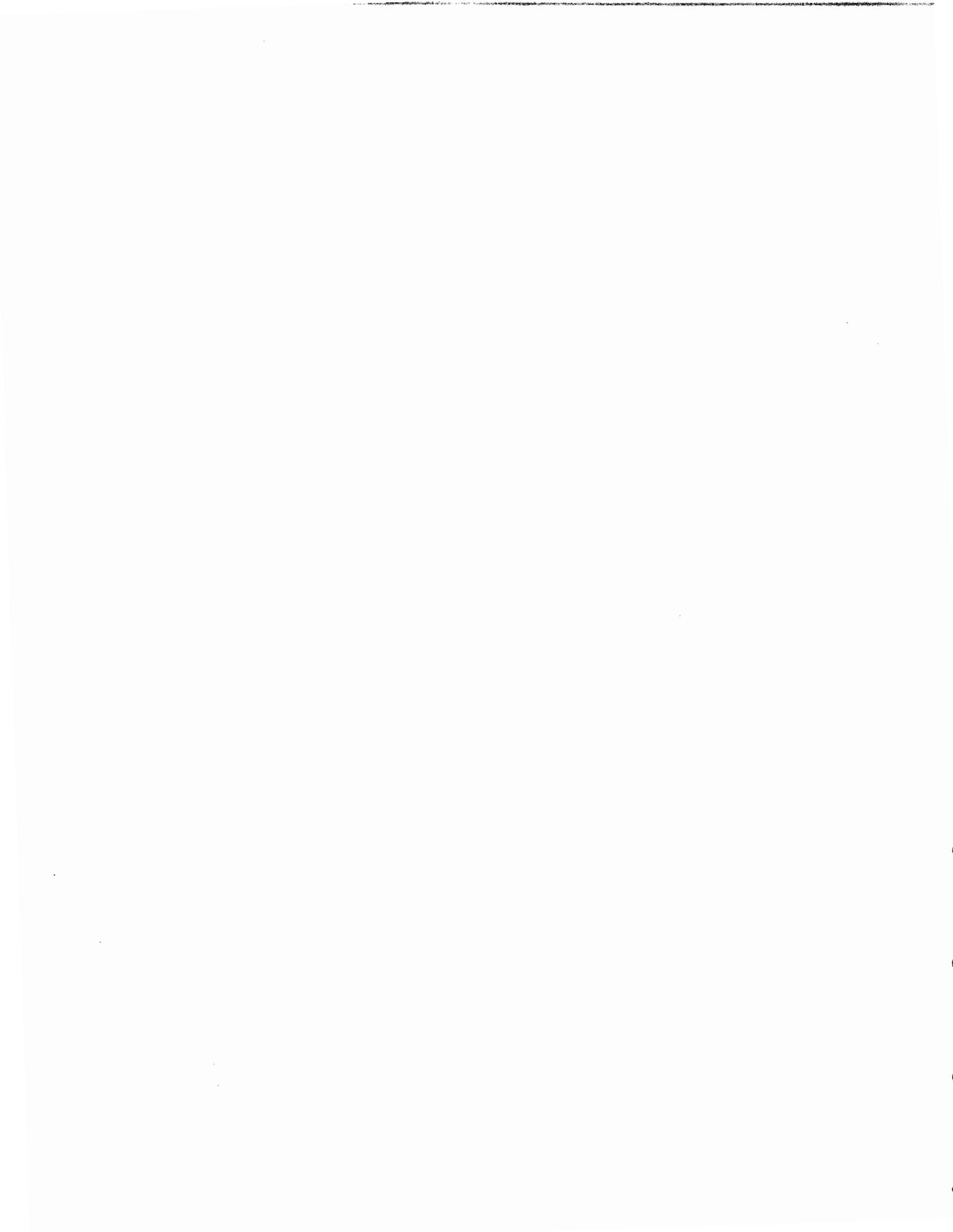
NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by in accordance with Section 10(f) of Article IV of the Constitution of the State of California, do hereby convene the Legislature of the State of California to meet in extraordinary session at Sacramento, California on the 1st day of December 2008, at a time to be determined, to consider and act upon legislation to address the fiscal emergency proclaimed by me this day.

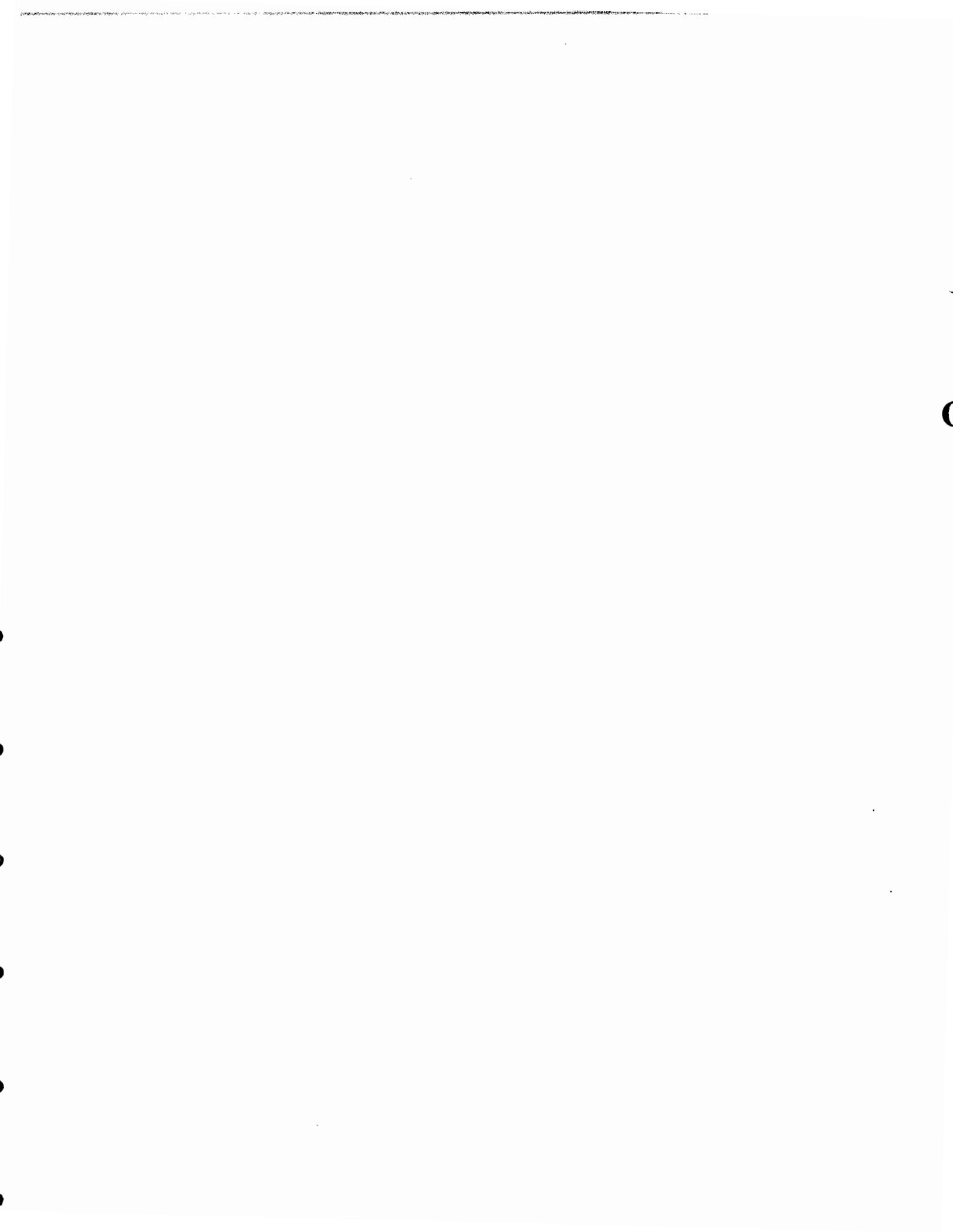


IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the state of California to be affixed this 1st day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State





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Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PROCLAMATION

12/01/2008

Special Session Proclamation 12/01/2008

PROCLAMATION

by the
Governor of the State of California

WHEREAS, an extraordinary occasion has arisen and now exists requiring that the Legislature of the State of California be convened in extraordinary session.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by Section 3(b) Article IV of the Constitution of the State of California, do hereby convene the Legislature of the State of California to meet in extraordinary session at Sacramento, California on the 1st day of December 2008, at a time to be determined, for the following purpose and to legislate upon the following subjects:

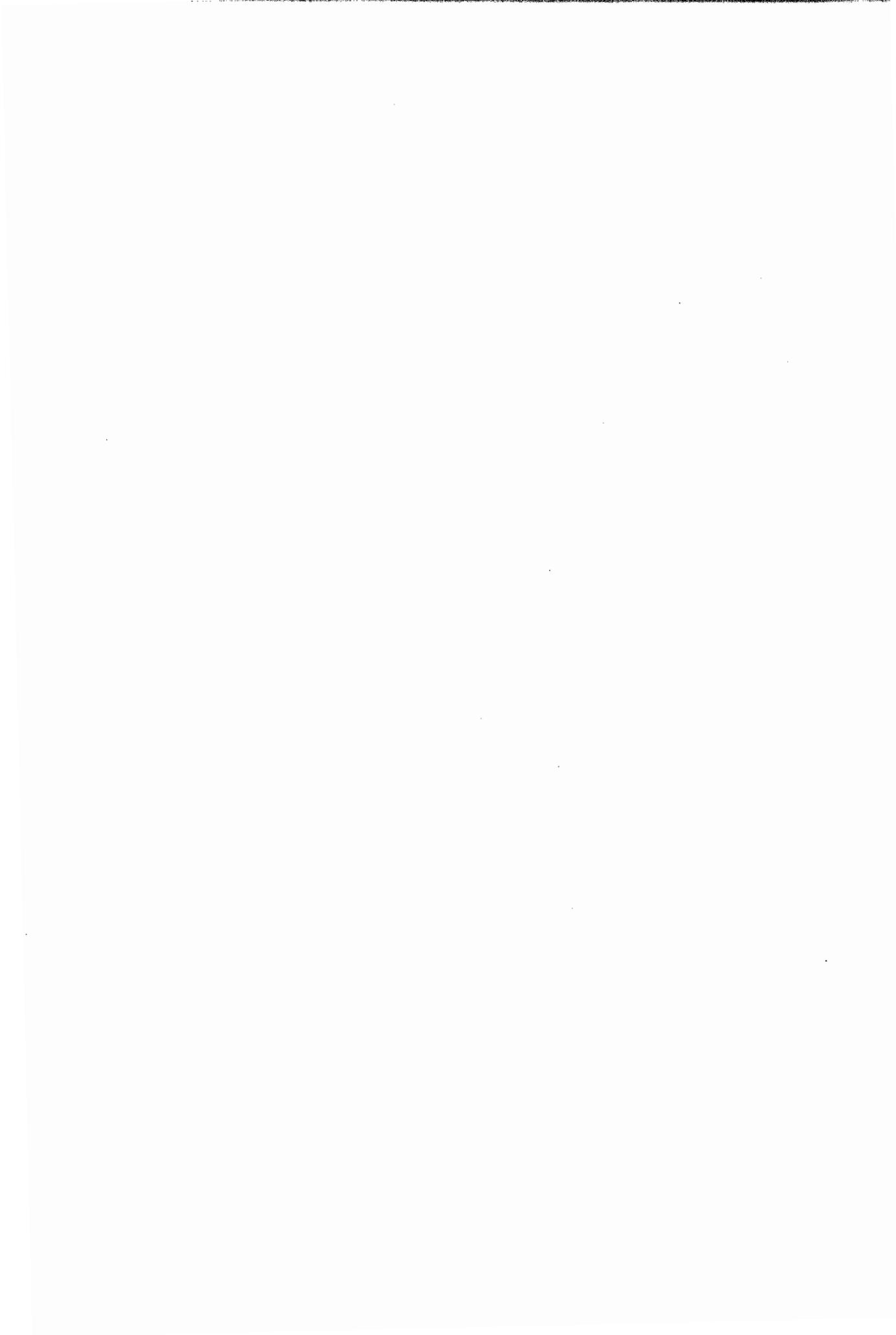
1. To consider and act upon legislation to address the economy, including but not limited to efforts to stimulate California's economy, create and retain jobs, and streamline the operations of state and local governments.
2. To consider and act upon legislation to address the housing mortgage crisis.
3. To consider and act upon legislation to address the solvency of the Unemployment Insurance Fund.

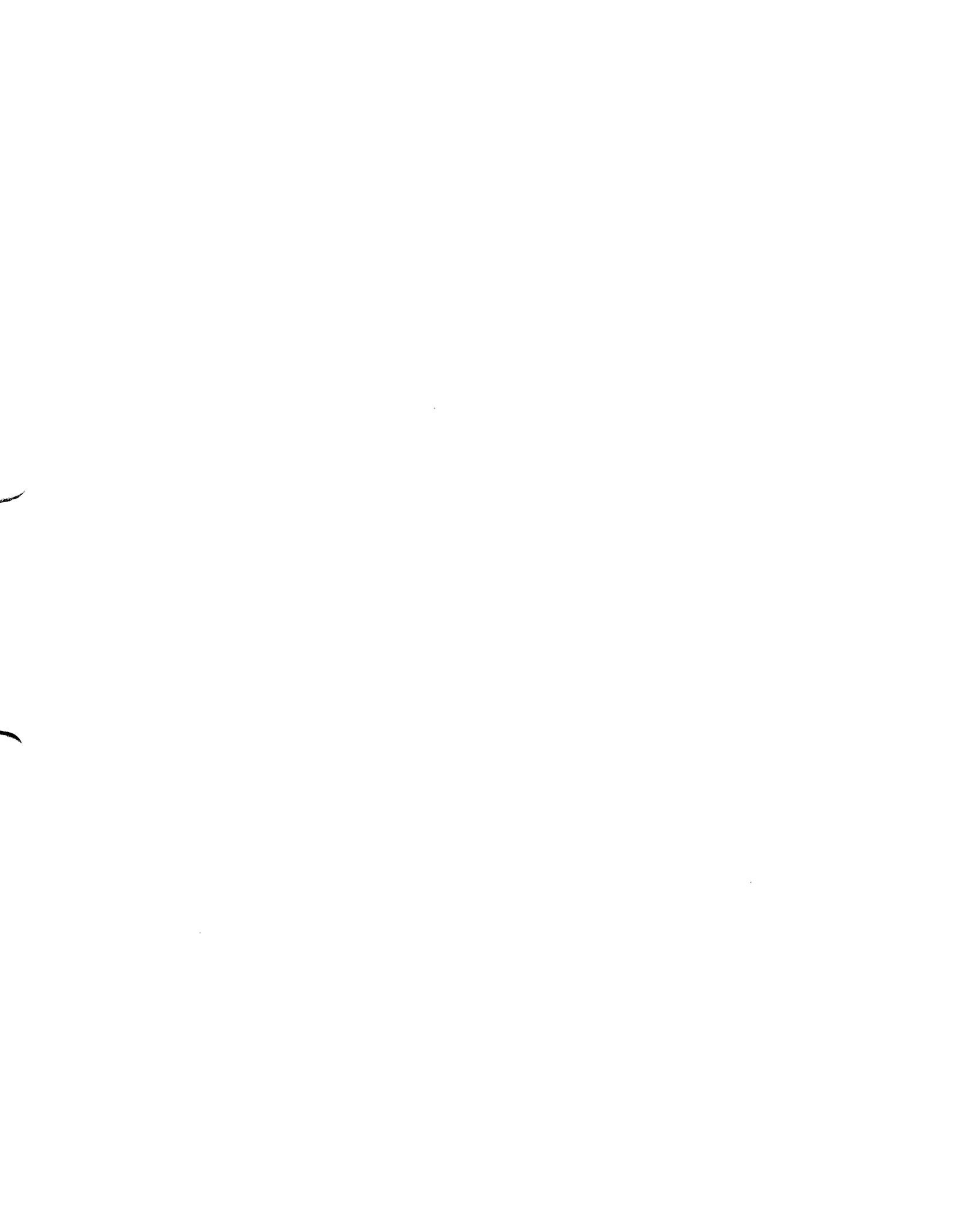


IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed 1st day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State







SUMMARY OF GOVERNOR'S PROPOSED DECEMBER 2008-09 BUDGET ADJUSTMENTS

DECEMBER 2, 2008

Noreen Evans

CHAIR, ASSEMBLY BUDGET COMMITTEE

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OVERVIEW

Due to the continuing downturn in the world, national, and state economies, General Fund revenue projections have fallen by \$11.2 billion in 2008-09 and \$13 billion for 2009-10.

The Governor has declared a fiscal emergency and called a "Proposition 58" Special Session to address the fiscal emergency and proposes a mix of solutions, including \$3.5 billion in revenue increases and \$3.8 billion in budget cuts. These solutions do not completely close the \$11.2 billion revenue shortfall, but together with various cash solutions would ensure the state is able to meet all its remaining spending obligations.

In addition, the Governor's proposals would result in \$9.3 billion in new revenues and \$5.1 billion in cuts for 2009-10.

The Governor's proposed changes are identical to those proposed in November for the 2007-08 4th Extraordinary Session. However, the Governor's proposal now assumes an implementation date of February 1, 2009, which results in less revenues/savings for the 2008-09 budget year than estimated in November.

The intent of this report is to provide a general understanding of the Governor's proposals.

Key points about a "Proposition 58" Special Session:

- ◆ Governor's proclamation must include solutions to address the fiscal emergency.
- ◆ The Legislature has 45 days to act to address the fiscal emergency.
- ◆ If the Legislature does not act within the 45 day period, then the Legislature cannot act on any other Legislation until it acts to address the fiscal emergency.
- ◆ Urgency measures and tax levies take effect immediately; majority vote measures generally take effect 90 days after the close of the Special Session.

SUMMARY OF BUDGET SOLUTIONS

(in millions)

Revenue Solutions	2008-09	2009-10	Total
1.5 cent Sales Tax Increase (for 3 years)	\$2,628	\$6,744	\$9,372
9.9% Oil Severance Tax	\$354	\$845	\$1,200
Expand sales tax to certain services	\$272	\$1,154	\$1,426
5 cent a drink Alcohol Tax Increase	\$195	\$585	\$780
Total Revenue Solutions	\$3,450	\$9,329	\$12,779
Expenditure Solutions			
Proposition 98 Cut	\$2,500	\$24	\$2,524
UC/CSU	\$132	\$132	\$264
Medi-Cal	\$95	\$655	\$750
Developmental Disabilities	\$26	\$60	\$86
SSI/SSP	\$195	\$1,078	\$1,273
CaWORKs	\$137	\$776	\$913
In-Home Supportive Services	\$50	\$327	\$377
Public Transit	\$153	\$306	\$690
Corrections	\$10	\$598	\$608
Local Public Safety	\$189	\$501	\$690
Williamson Act	\$35	\$35	\$70
State Employee Compensation	\$247	\$555	\$802
Total Expenditure Solutions	\$3,777	\$5,078	\$8,856

K-12 EDUCATION

2008-09 Budget Adjustment Proposals:

- ◆ **Total Proposition 98 for K-14 Education.** Reduces Proposition 98 funding in the current year by \$2.5 billion providing a total of \$55.6 billion to K-12 schools and community colleges.

- ◆ **K-12 Reductions:**
 - ◆ Eliminates the \$244.3 million or 0.68 percent COLA for K-12 district and county office revenue limits.

 - ◆ Reduces school district revenue limit funding by \$1.791 billion.

 - ◆ Proposes categorical program flexibility to allow districts to transfer funds from certain restricted prior year balances as well as current year balances from nearly all categorical programs to offset the reduction to revenue limits. Districts using this flexibility are required to adopt a transfer plan at a regularly scheduled school board meeting and agree to report the amounts transferred and the programs affected.

 - ◆ Captures \$71.2 million in prior year savings from several categorical programs due to underutilization. These reductions include: \$28.6 million for K-3 Class Size Reduction, \$2.6 million for Principal Training, \$3.3 million for Alternative Certification and \$1 million for the Pupil Retention Block Grant.

 - ◆ Reduces \$55 million by capping child care programs to reflect the amount of funding that has not been allocated for contracts with providers. This will not result in a reduction in services to families.

 - ◆ Reduces \$42 million from Stage 2 and Stage 3 child care programs based on revised estimates for lower than anticipated caseload. Stage 2 costs are revised down by \$27 million and Stage 3 costs are revised down by \$15 million.

 - ◆ Reappropriates \$108 million from prior year child care savings for CalWORKs Stage 2 and 3 costs in 2008-09. The 2008-09 budget used anticipated one-time savings from the After School Safety and Education (ASES) program to fund CalWORKs however the ASES savings did not materialize.

HIGHER EDUCATION

University of California (UC)

2008-09 Budget Adjustment Proposals:

- ◆ Reduces UC by \$65.5 million in unallocated reductions. Together with UC's \$33.1 million share of the \$190 million statewide savings requirement for state operations assumed in the enacted 2008 Budget, UC will approximately reflect a 10 percent reduction, consistent with the reduction level proposed in the January 2008-09 Governor's Budget.

California State University (CSU)

2008-09 Budget Adjustment Proposals:

- ◆ Reduces CSU by \$66.3 million in unallocated reductions. Together with CSU's \$31.1 million share of the \$190 million statewide savings requirement for state operations assumed in the enacted 2008 Budget, CSU will reflect approximately a 10 percent reduction, consistent with the reduction level proposed in the January 2008-09 Governor's Budget.

Hastings School of Law (HCL)

2008-09 Budget Adjustment Proposals:

- ◆ Reduces Hastings by \$402,000 in unallocated reductions. Together with HCL's \$114,000 share of the \$190 million statewide savings requirement for state operations assumed in the enacted 2008 Budget, HCL will reflect approximately a 10 percent reduction, consistent with the reduction level proposed in the January 2008-09 Governor's Budget.

California Community Colleges (CCC)

2008-09 Budget Adjustment Proposals:

- ◆ Reduces the 0.68 percent COLA, or \$39.8 million, for CCC apportionments that was enacted in the education trailer bill.
- ◆ Reduces \$292.4 million from the amount for general purpose apportionments and provides categorical flexibility similar to the proposal for K-12 LEAs.
- ◆ Provides community college districts the flexibility to transfer categorical allocations to the district's General Fund for any purpose up to the amount of their share of the \$290.1 million reduction. Districts that decide to use this flexibility must adopt plans in public meetings and agree to report the amounts and programs from which transfers were made and the purpose for which those funds were used.

TRANSPORTATION

Local Public Transit

2008-09 Budget Adjustment Proposals:

- ◆ Eliminates all Public Transportation Account (PTA) funding for the State Transit Assistance Program, thus eliminating all state support for local transit operations, which totals \$153 million in 2008-09 and \$306 million in 2009-10. This is on top of about \$1 billion in cuts to public transit approved in the Budget Act.

Vehicle Registration Fees

2008-09 Budget Adjustment Proposals:

- ◆ Increases vehicle registration fees by \$12 to generate \$92 million in 2008-09 and \$359 million in 2009-10 for the Motor Vehicle Account (MVA) which will be used to backfill funds that are proposed to be shifted from the Department of Motor Vehicles to local public safety programs. This fee increase is on top of the \$11 fee increase approved in the Budget Act.

HUMAN SERVICES

Department of Social Services

2008-09 Budget Adjustment Proposals:

Supplemental Security Income/State Supplementary Program (SSI/SSP)

- ◆ Reduces the SSI/SSP payment to the federal minimum effective May 1, 2009, reducing the grant for an aged/blind individual by \$40 and for a couple by \$117. The General Fund reduction generates \$176.5 million in 2008-09 and \$1.062 billion 2009-10. The proposal impacts 1.2 million families.
- ◆ Eliminates the Cash Assistance Program for Immigrants (CAPI) effective May 1, 2009, resulting in General Fund savings of \$18.9 million in 2008-09 and \$114.1 million in 2009-10. The CAPI program provides benefits to aged, blind, and disabled legal immigrants who successfully complete an application process. The proposal impacts approximately 11,000 families.

CalWORKs

- ◆ Reduces CalWORKs grants by 10 percent effective May 1, 2009, resulting in General Fund savings of \$46.6 million in 2008-09 and \$279.6 million in 2009-10. This proposal would reduce the maximum monthly grant for a family of three from \$723 to \$651.
- ◆ Proposes a modified CalWORKs Safety Net program to eliminate cash aid for children whose parents have exceeded their 60-month time limit and who are not meeting work participation requirements. This would result in General Fund savings of \$40.3 million in 2008-09 and \$242 million in 2009-10 and assumes a May 1, 2009 implementation. The proposal eliminates aid for 98,000 children.
- ◆ Eliminates cash aid for children whose parents are non-citizens or certain types of felons and if they have exceeded their 60-month time limit. This would result in General Fund savings of \$38.4 million in 2008-09 and \$230.3 million in 2009-10. This proposal eliminates aid for 82,000 children.
- ◆ Proposes a face-to-face self-sufficiency review every six months with a county worker for CalWORKs families not meeting work requirements, with failure to attend resulting in a full family sanction, or complete elimination of cash assistance. This results in General Fund savings of \$11.7 million in 2008-09 and \$94.8 million in 2009-10 assuming a May 1, 2009 start date.

In-Home Supportive Services (IHSS)

- ◆ Eliminates domestic and related services, including meal preparation, laundry, and cleaning services, for IHSS recipients with a functional index score below 4. This results in General Fund savings of \$11.6 million in 2008-09 and \$71.4 million in 2009-10 assuming a May 1, 2009 implementation.
- ◆ Eliminates the state buyout program for IHSS recipients with a functional index score below 4. This results in General Fund savings of \$6.2 million in 2008-09 and \$37 million in 2009-10 assuming a May 1, 2009 start date.
- ◆ Limits state participation in wages of IHSS workers to the state minimum wage plus \$0.60 per hour for health benefits and assumes a May 1, 2009 implementation. This results in General Fund savings of \$41.5 million in 2008-09 and \$248.8 million in 2009-10.

California Food Assistance Program (CFAP)

- ◆ Eliminates the CFAP effective July 1, 2009, resulting in General Fund savings of \$30.3 million in 2009-10. This state-only program provides food benefits to low-income legal non-citizens.

HEALTH CARE SERVICES

Department of Developmental Services

2008-09 Budget Adjustment Proposals:

- ◆ Proposes a three percent reduction to regional center service providers effective February 1, 2008. The reduction exempts certain types of providers and the department may consider other exemptions necessary to ensure the health and safety of consumers. Additionally, the proposal includes a suspension of the 1:66 coordinator-to-consumer ratio, but exempts from this suspension consumers on the federal Home and Community Based Services waiver, those three years of age or younger in the Early Start Program, and consumers moving from a developmental center into the community. These changes result in General Fund savings of \$25.5 million in 2008-09 and \$60.0 million in 2009-10.

Department of Health Care Services

2008-09 Budget Adjustment Proposals:

- ◆ Eliminates Medi-Cal "optional benefits," including: adult dental, chiropractic, incontinence creams and washes, acupuncture, audiology, speech therapy, optometry/optometrists, optician/optical lab services, podiatry, and psychology services. Results in General Fund savings of \$19.7 million in 2008-09 and \$129.4 million in 2009-10. The Governor proposed this in his 2008-09 budget and it was rejected by the Legislature. An estimated 3 million beneficiaries will lose access to these benefits.
- ◆ Reduces Medi-Cal benefits for newly qualified immigrants (in the U.S. for less than 5 years) and immigrants who Permanently Reside Under the Color of Law (PRUCOL) to the level currently provided to undocumented immigrants. Immigrants would retain emergency services, pregnancy-related services, long-term care in a nursing facility, and breast and cervical cancer treatment. Results in General Fund savings of \$9.4 million in 2008-09 and \$139.9 million in 2009-10. The Governor proposed this in his 2008-09 budget and it was rejected by the Legislature. 90,000 individuals will lose full scope Medi-Cal.
- ◆ Implements monthly eligibility determination for emergency services for undocumented immigrants. Currently, this population receives up to six months of health services after initial eligibility determination. Results in General Fund savings of \$4.8 million in 2008-09 and \$71.2 million in 2009-10. The Governor proposed this in his 2008-09 budget and it was rejected by the

Legislature. This would affect 3,700 individuals in 2008-09 and 22,000 individuals in 2009-10 and annually.

- ◆ Reduces the income level for new applicants to the Section 1931(b) program to the pre-March 2000 standard of an average of approximately 72 percent of the federal poverty level, and defines under-employment as the principal wage earner working less than 100 hours a month for persons applying for Section 1931(b) and for the medically needy program. Results in General Fund savings of \$2.6 million in 2008-09, \$88.2 million in 2009-10. The Governor proposed this in his 2008-09 budget and it was rejected by the Legislature. Twenty six thousand individuals in 2008-09, 182,000 individuals in 2009-10, and 429,000 individuals annually will no longer be eligible for no cost Medi-Cal.
- ◆ Shifts federal Safety Net Care Pool funding from designated public hospitals to the California Children's Services, Genetically Handicapped Persons, Medically Indigent Adult Long-Term Care, and Breast and Cervical Cancer Treatment programs, which are eligible for these funds. Results in no General Fund savings in 2008-09 and \$54.2 million in 2009-10. The Governor proposed this in his 2008-09 budget and it was rejected by the Legislature.
- ◆ Reinstates share of cost for Medi-Cal for aged, blind, and disabled individuals with incomes over the SSI/SSP limits. Eligibility for Medi-Cal without a share of cost was expanded in January of 2001 from 69 percent up to 127 percent of the federal poverty level. This proposal aligns eligibility with the SSI/SSP limits and results in General Fund savings of \$14.3 million in 2008-09 and \$185.8 million in 2009-10. Seventy three thousand individuals will no longer be eligible for no cost Medi-Cal.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Williamson Act

2008-09 Budget Adjustment Proposals:

- ◆ Eliminates an annual \$34.7 million General Fund payment to local governments that partially backfills a loss of property tax revenues from local landowners who enter into land protection contracts in exchange for lower property taxes under the Williamson Act.

While local governments can cancel contracts if state funding is eliminated, they cannot begin to collect taxes based on the property's full value until four years have elapsed. After four years, the property is annually taxed at an incrementally higher value over a five-year period. In the sixth year, the property is taxed at full value.

PUBLIC SAFETY

Department of Corrections and Rehabilitation

2008-09 Budget Adjustment Proposals:

- ◆ Reduces funding by \$15.8 million by eliminating parole supervision, after release from prison, for offenders without current or previous convictions for serious, violent, or sexual crimes. Savings from this change in state parole policy are projected to grow to \$456.6 million in 2009-10.
- ◆ Implements comprehensive credit reform that will authorize the California Department of Corrections and Rehabilitation to provide up to four months of earned credit for successful program completion by eligible inmates, authorize consistent day-for-day credit for all eligible inmates in state prison and those who are in jail pending transfer to state prison, and provide credits to inmates who are awaiting assignment to a conservation camp. These changes are similar to credit reforms included in the August Revise and will result in current year costs of \$6.1 million but will provide for ongoing savings of \$90.5 million beginning in 2009-10.
- ◆ Adjusts the statutory threshold values for property crimes to reflect inflation since 1982, which will result in ongoing savings of \$51.3 million beginning in 2009-10. This proposal was included in the August Revise.

Local Public Safety

2008-09 Budget Adjustment Proposals:

- ◆ Eliminates funding provided to counties that operate juvenile camps and ranches resulting in current year savings of \$12.3 million, which grows to \$29.4 million in 2009-10.
- ◆ Eliminates funding provided to county sheriffs of specified small and rural counties, which will result in ongoing savings of \$16.7 million beginning in 2009-10.
- ◆ Provides \$92 million in 2008-09 and \$359 million in 2009-10 in Vehicle License Fee (VLF) funding for specific law enforcement grant programs. This proposal will eliminate General Fund support of these programs resulting in savings of \$152.5 million in 2008-09 and \$397.5 million in 2009-10. There will be a \$12 increase in the annual vehicle registration fee to backfill Department of Motor Vehicle operations currently supported by the VLF funds.

GENERAL GOVERNMENT

Employee Compensation

2008-09 Budget Adjustment Proposals:

- ◆ Requires state employees to take a one day furlough each month between February 1, 2009 and June 30, 2010. This would produce approximately \$203 million in General Fund savings in 2008-09 and \$451 million in 2009-10.
- ◆ Eliminates two state holidays (likely Lincoln and Columbus days) and premium pay for hours worked on all remaining holidays. This would produce approximately \$26.3 million in General Fund savings in 2008-09 and \$74.5 million in 2009-10.
- ◆ Changes overtime calculations to be based on actual time worked. This would produce approximately \$12.5 million in General Fund savings in 2008-09 and \$30 million in 2009-10.
- ◆ Allows establishment of "alternative work schedules" such as 10 hours per day, four days per week. Legislation may also be introduced regarding flexibility for meal and rest periods.

Office of Emergency Services

2008-09 Budget Adjustment Proposals:

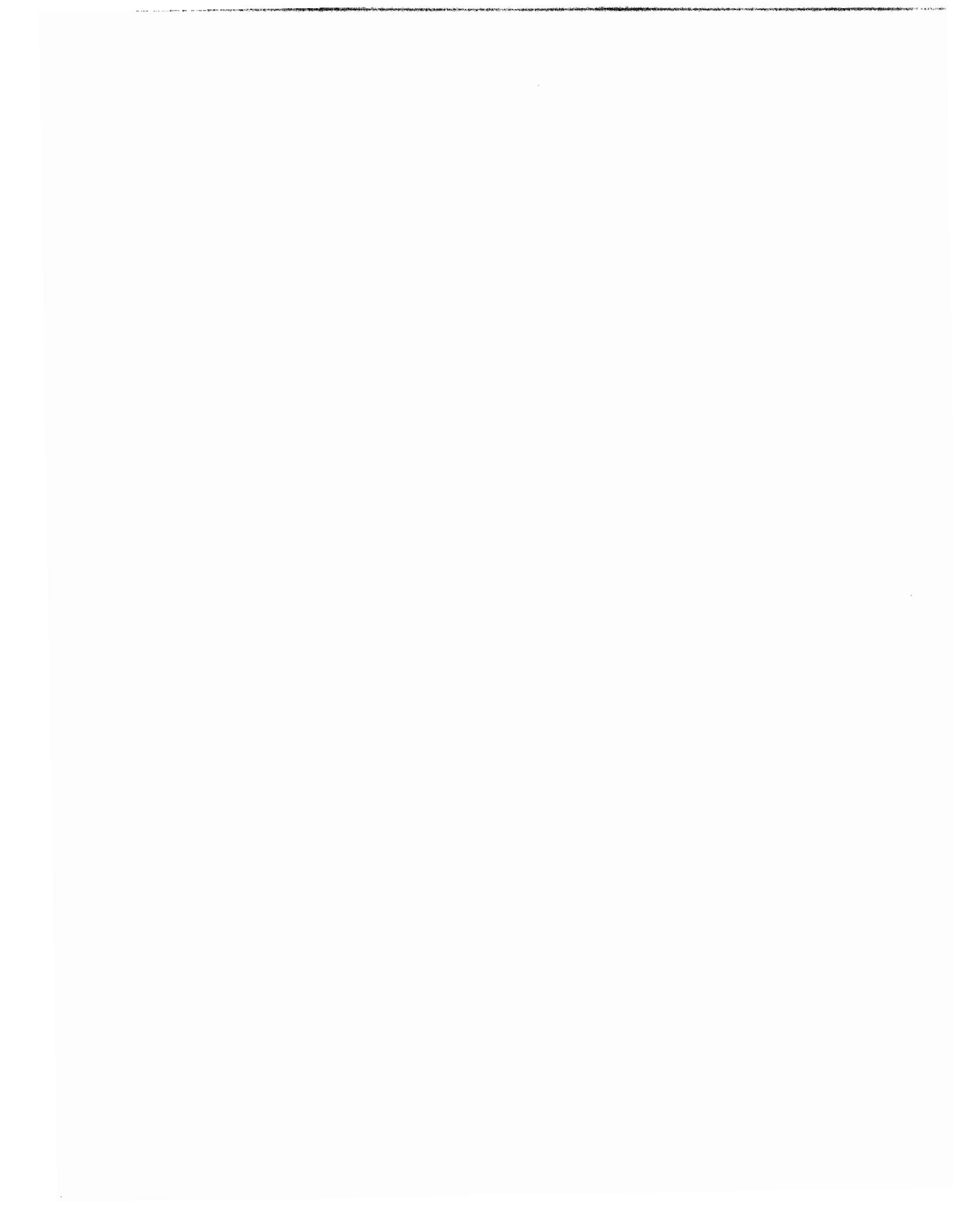
- ◆ Eliminates funding for various local assistance programs administered by the Office of Emergency Services resulting in current year savings of \$23.9 million, which grows to \$57.4 million in 2009-10. Programs that will be eliminated as a result of this reduction include Vertical Prosecution Block Grants, Rural Crime Prevention, California Multi-jurisdictional Methamphetamine Enforcement Teams, High Technology Theft Apprehension Program, and Sexual Assault Felony Enforcement Teams.

REVENUE AND TAXATION PROPOSALS

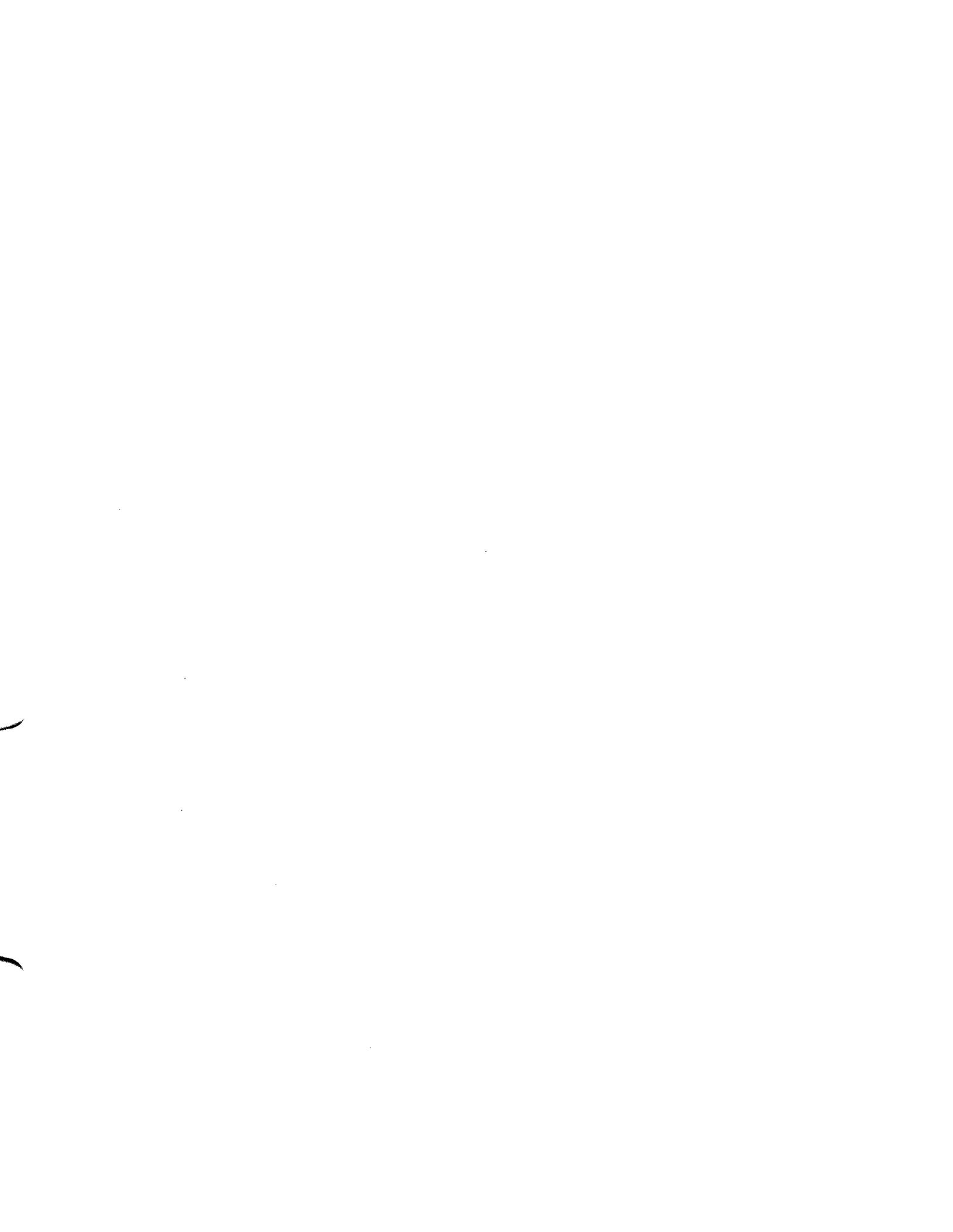
Sales and Use Tax

2008-09 Budget Adjustment Proposals:

- ◆ Increases the total state sales and use tax (SUT) rate by 1.5 percent (to a total of 7.25 percent) effective for a three-year period starting on February 1, 2009 (assuming enactment in December). Existing local uniform tax rates total an additional 1.5 percent, and optional local add-on rates may add up to another 2 percent. Thus, the Governor's proposed increase would result in total combined SUT rates varying from 8.75 percent to 10.75 percent, depending on the locality. The Administration estimates that this rate increase will generate \$2.41 billion in 2008-09 and \$6.608 billion in 2009-10. These amounts include \$218 million in 2008-09 and \$713 million in 2009-10 that would be transferred to the Transportation Investment Fund under Proposition 42.
- ◆ Broadens the SUT to include appliance and furniture repair, vehicle repair, golf, and veterinary services, effective March 1, 2009, and to amusement parks and sporting events, effective April 1, 2009. The Administration estimates that this broadening will produce \$272 million in 2008-09 and \$1.154 billion in 2009-10.
- ◆ Imposes an oil severance tax of 9.9 percent of gross value of oil produced in California, effective February 1, 2009. Low-value stripper oil would be exempt, as would oil owned or produced by the state or local governments. The Administration estimates that this tax will generate \$354 million in 2008-09 and \$846 million in 2009-10.
- ◆ Increases excise taxes on alcoholic beverages by the equivalent of a nickel a drink (1.5 ounces of spirits, 12 ounces of beer, or 5 ounces of wine), effective March 1, 2009. The Administration estimates that this tax increase will generate \$195 million in 2008-09 and \$585 million in 2009-10. The Administration also proposes to use these revenues for drug and alcohol abuse treatment and prevention programs.
- ◆ Imposes an oil severance tax of 9.9 percent of gross value of oil produced in California, effective January 1, 2009. Low-value stripper oil would be exempt, as would oil owned or produced by the state or local governments. The Administration estimates that this tax will generate \$354 million in 2008-09 and \$1.201 billion in 2009-10.









Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

EXECUTIVE ORDER S-16-08

12/19/2008

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18 months; and

WHEREAS the cash reserve in the State Treasury is below the amount established by the State Controller to ensure that the cash balance does not reach zero on any day in the month; and

WHEREAS without effective action to address the fiscal and cash crisis, the cash reserve in the State Treasury is estimated to be a negative \$5 billion in March 2009; and

WHEREAS on November 6, 2008, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS on December 1, 2008, due to the worsening fiscal crisis, I declared that a fiscal emergency exists and convened the Legislature to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS on December 1, 2008, due to the fiscal emergency and the nationwide economic recession, I also issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the economic crisis; and

WHEREAS on December 17, 2008, the California Pooled Money Investment Board took the unprecedented action to halt lending money for an estimated 2,000 infrastructure projects as a result of the cash crisis, including the substantial risk that California will have insufficient cash to meet its obligations starting in February 2009; and

WHEREAS in the December 1, 2008 fiscal emergency extraordinary session, the Legislature failed to effectively address the unprecedented statewide fiscal crisis; and

WHEREAS immediate and comprehensive action is needed to address the fiscal and cash crisis facing the State of California; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars, thus making it likely that the State will miss payroll and other essential services payments at the beginning of 2009; and

WHEREAS immediate and comprehensive action to reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved; and

WHEREAS State agencies and departments under my direct executive authority have already taken steps to reduce their expenses to achieve budget and cash savings for the current fiscal year; and

(50)

WHEREAS a furlough will reduce current spending and immediately improve the State's ability to meet its obligations to pay for essential services of the State so as not to jeopardize its residents' health and safety in the current and next fiscal year.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby determine that an emergency pursuant to Government Code section 3516.5 exists and issue this Order to become effective immediately.

IT IS ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees, regardless of funding source.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, the Department of Personnel Administration shall work with all State agencies and departments to initiate layoffs and other position reduction and program efficiency measures to achieve a reduction in General Fund payroll of up to ten percent. A limited exemption process shall be included.

IT IS FURTHER ORDERED effective January 1, 2009, the Department of Personnel Administration shall place the least senior twenty percent of state employees funded in any amount by General Fund resources on the State Restriction of Appointment (SROA) list.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, all State agencies and departments under my direct executive authority, regardless of funding source, are prohibited from entering into any new personal services or consulting contracts to perform work as a result of the furloughs, layoffs or other position reduction measures implemented as a result of this Order.

IT IS REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, implement similar or other mitigation measures to achieve budget and cash savings for the current and next fiscal year.

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER ORDER that, as soon as hereafter possible, this Order shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN

(51)







MEMORANDUM



DATE: January 9, 2009

TO: Agency Secretaries
Undersecretaries
Directors

FROM: **David A. Gilb**
Director
Office of the Director
(916) 322-5193; FAX (916) 322-8376

SUBJECT: State Employee Furlough per Governor's Executive Order S-16-08

To reduce current spending to ensure that essential services of the State are not jeopardized and the public health and safety is preserved, the Department of Personnel Administration, under the Governor's authority and at the direction of the Governor, has developed a furlough plan that will result in the closing of general government operations on the first and third Fridays of each month, beginning this February. As such, these unpaid furlough days are not work days and employees shall not report to work. The first furlough day under this plan will be February 6, 2009.

DPA will post details on its website early next week and send a memo to personnel offices with additional information.

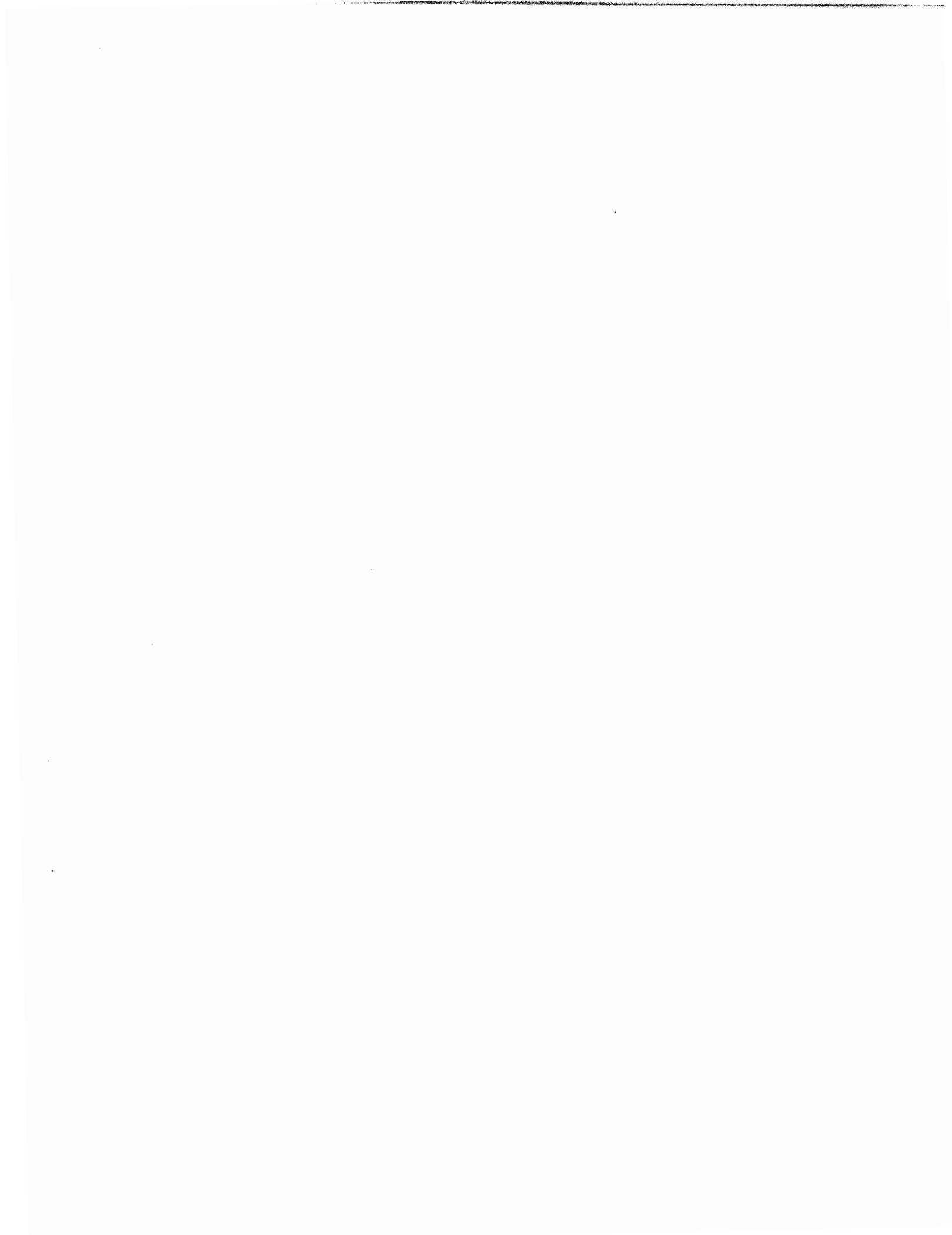
For operations that cannot close, Agency Secretaries (and Directors who do not report to an agency) may request approval from DPA to use a "self-directed" furlough for specific positions. There will be two types of self-directed furlough:

- Employees take two furlough days each month but on days chosen by the employee and approved by the supervisor. For example, revenue-generating positions may be considered for this type of furlough.
- Employees accrue two furlough days per month to be taken when feasible. Furlough days that cannot be used within the same month must be taken within two years following the end of the furlough program. Furlough days will not be cashed out. Posted positions in-24/7 facilities such as prisons and hospitals automatically qualify for this self-directed furlough and do not require prior approval from DPA.

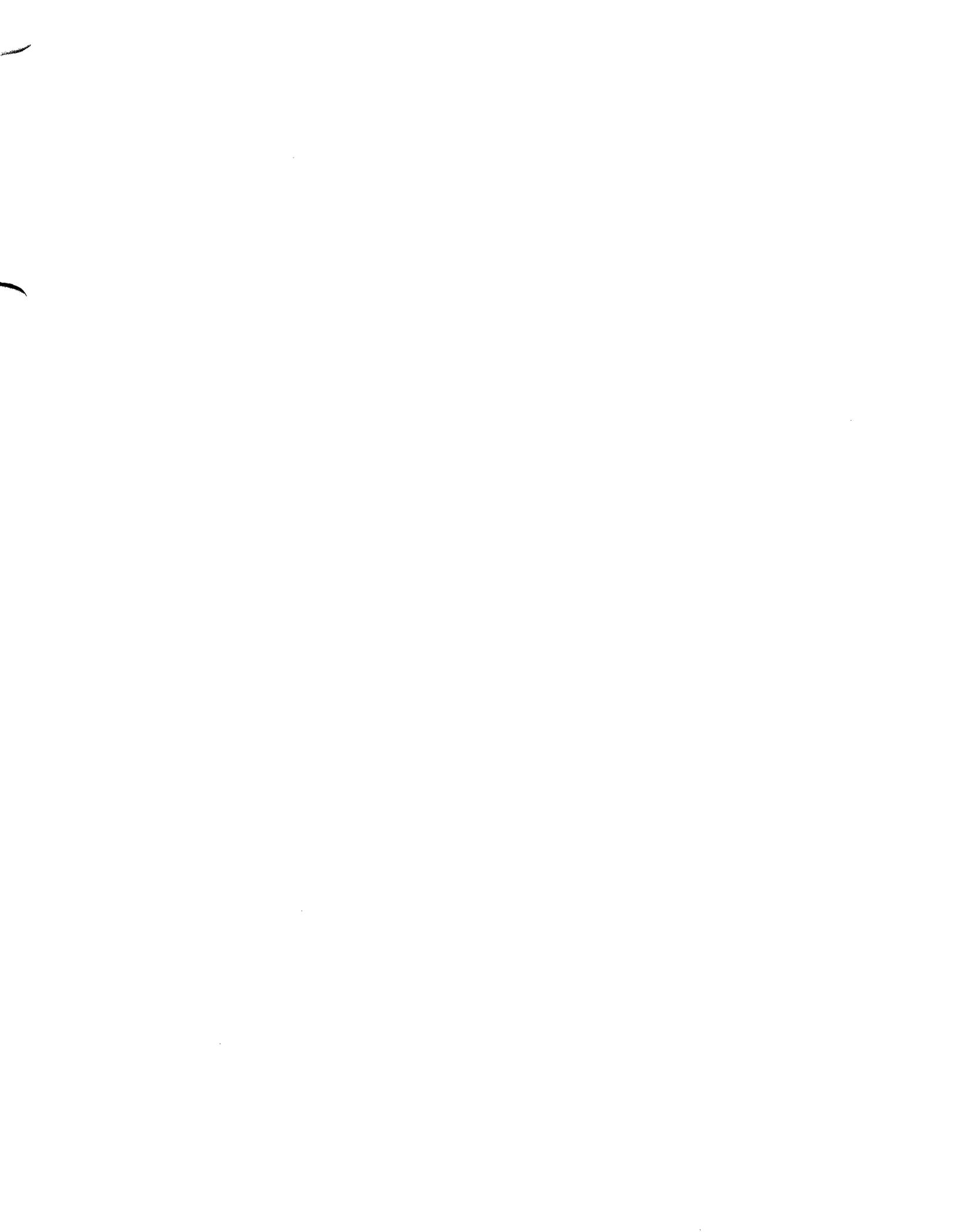
Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same (i.e., the furlough will not affect payouts for unused leave, service credit, health and retirement benefits, etc.)

Please note: The state continues to meet with representatives for state employees about the impact of this program and will notify you of any further developments.

(22)



K



Ellison Wilson Advocacy

From: James Humes [James.Humes@doj.ca.gov]
Sent: Friday, January 09, 2009 5:49 PM
To: All DOJ All DOJ
Subject: DOJ's Fiscal Mitigation Measures

Colleagues: The DOJ has been a leader in finding constructive solutions to the State's fiscal crisis. Last year, we announced fiscal austerity measures that included a soft hiring freeze, a process to more closely review contracts, and travel restrictions. These measures worked: at the end of the fiscal year we were able to return over \$17 million to the General Fund. This year, our budget was cut by \$51 million—more than 10% of our General Fund revenues, which has forced us to tighten our belts even further. But by exercising fiscal prudence, we have been able to meet our budget challenges without lay-offs and while still providing excellent service to the People of California.

As you know the State's fiscal troubles are getting worse, and the State now faces a projected \$40 billion deficit. To address the deficit, Governor Schwarzenegger recently issued an executive order ordering state employees under his control to be furloughed two days each month beginning February 1. He also ordered agencies under his authority to initiate the process to prepare for possible layoffs. While we in the DOJ will continue to do more than our part in finding budget solutions, we are a separate constitutional office and we have decided to decline to adopt Governor's approach. Instead, we are implementing alternative measures that will enable us to meet the same fiscal targets without furloughing or laying off employees.

These alternative measures will allow us to achieve our budgetary targets in a more constructive way that will better promote the State's interests. Still, these measures will impose yet additional burdens on us, and we ask your cooperation, understanding, and help as we deploy them.

Effective immediately, the following fiscal measures will be implemented:

1. Employees May and Are Encouraged to Voluntarily Participate in the Governor's Furlough Plan When it Becomes Effective.

2. A More Stringent Hiring Freeze Is Being Implemented. This hiring freeze will include the following terms:

? All formal job offers made and accepted before today will be honored.

? Vacancies can be filled only if filling the position is mission critical and it is approved by the division head and the Chief Deputy Attorney General through the exemption process.

3. Contract Review. Except contracts for expert witnesses and contracts for outside counsel, all contracts under \$25,000 must be reviewed and approved by the Budget Office. Existing procedures will continue to apply to contracts over \$25,000.

4. Purchase Orders Over \$5,000 Must Be Reviewed and Approved by the Budget Office Before the Actual Purchase.

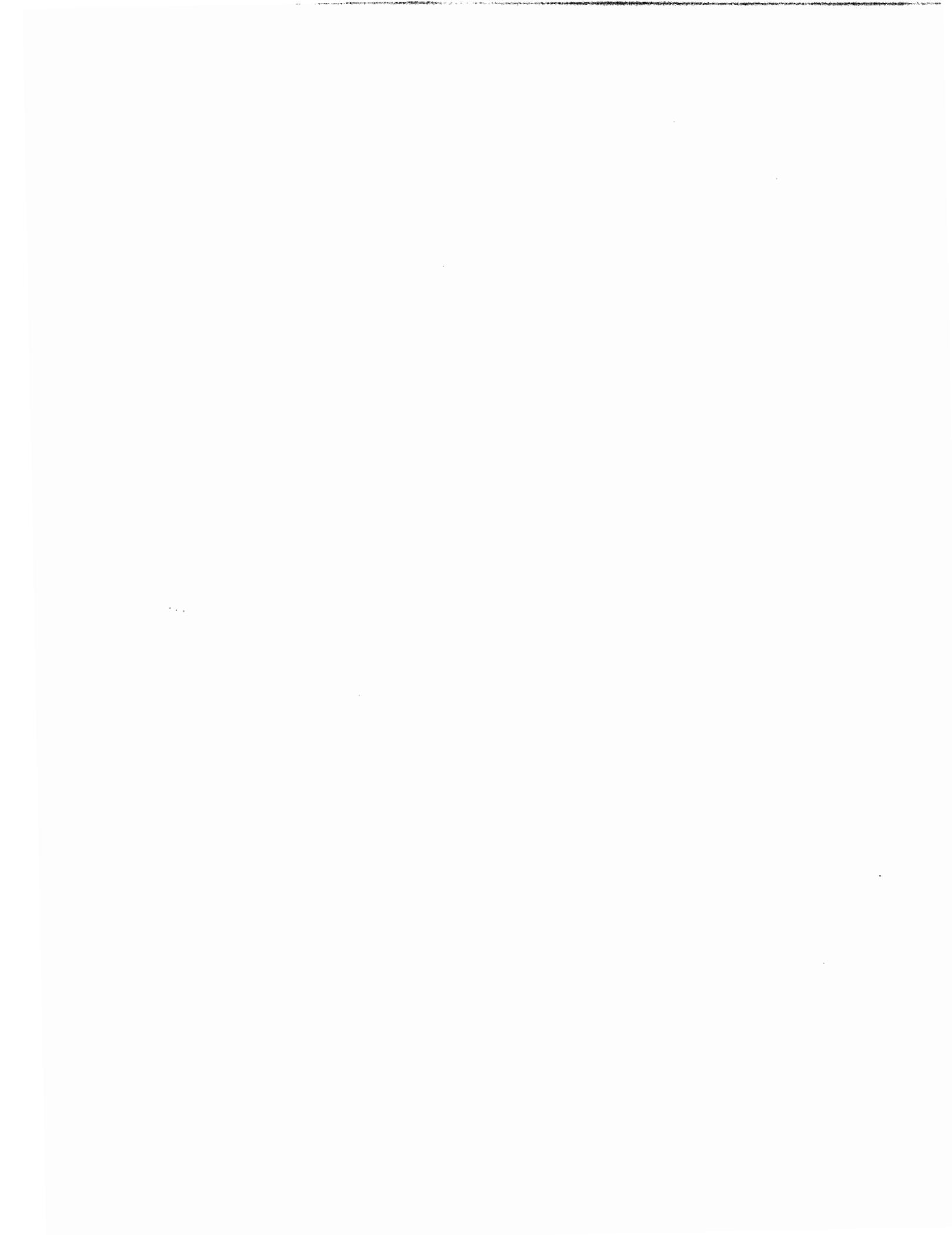
5. Service Authorization Requests Over \$1,000 Must Be Reviewed and Approved by the Budget Office Before Obtaining the Service.

6. Discretionary Travel and Conferences, and External Training Will Be Denied.

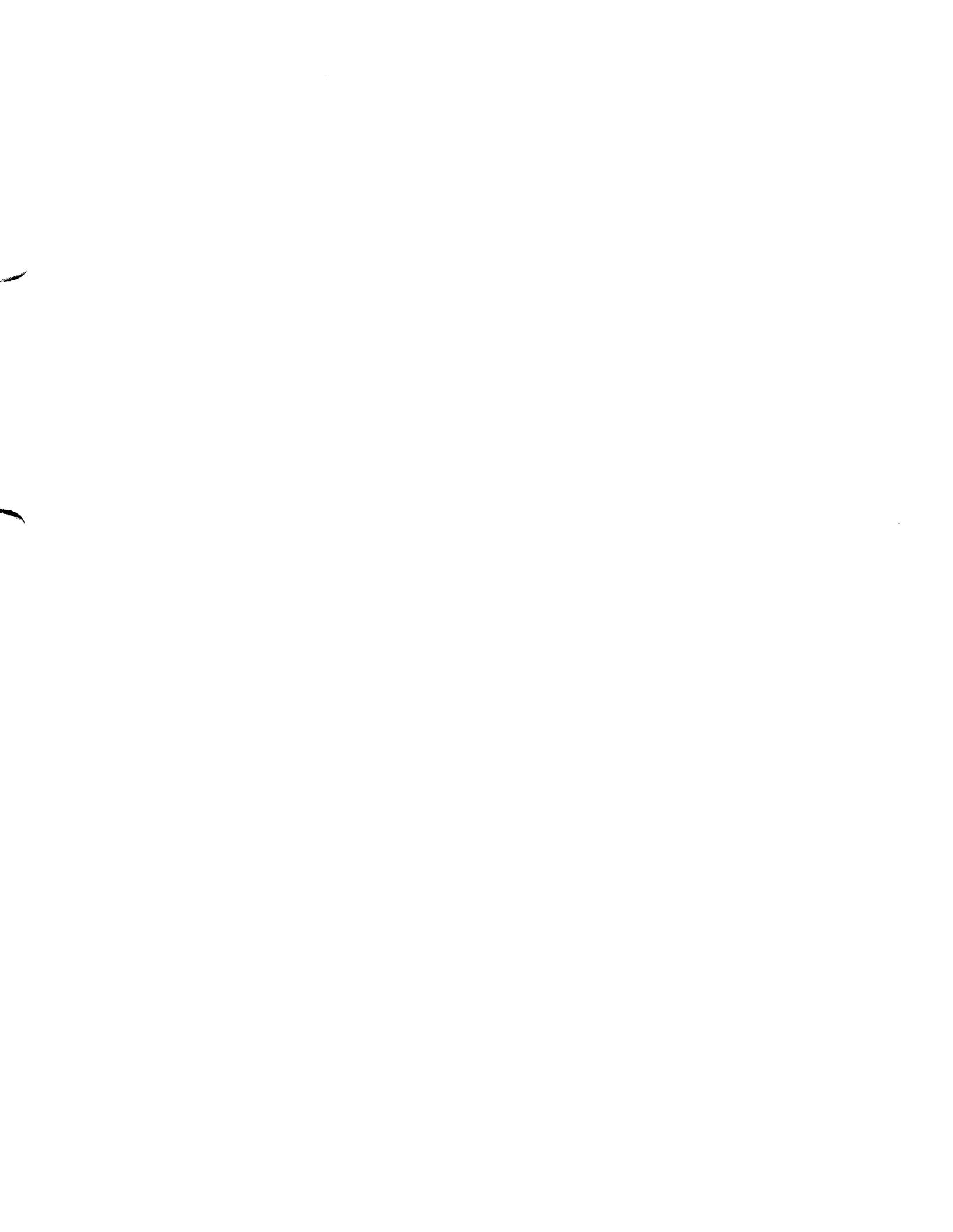
7. Discretionary Overtime Is Prohibited for Those Employees Who Are Eligible to Earn It. If a mission critical activity arises that would require overtime, overtime may be approved by the employee's division head or their designee (who must be no lower than the third management level within the division). Compensating time off (CTO) will be the method of paying approved overtime whenever possible.

8. Targeted Transfers of Personnel from General Fund to Reimbursable Positions Will Be Considered.

Thank you. Jim



L





BILL LOCKYER
TREASURER
STATE OF CALIFORNIA

January 9, 2009

David A. Gilb, Director
Department of Personnel Administration
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95811-7243

RE: State Employee Furlough per Governor's Executive Order S-16-08

Dear Mr. Gilb:

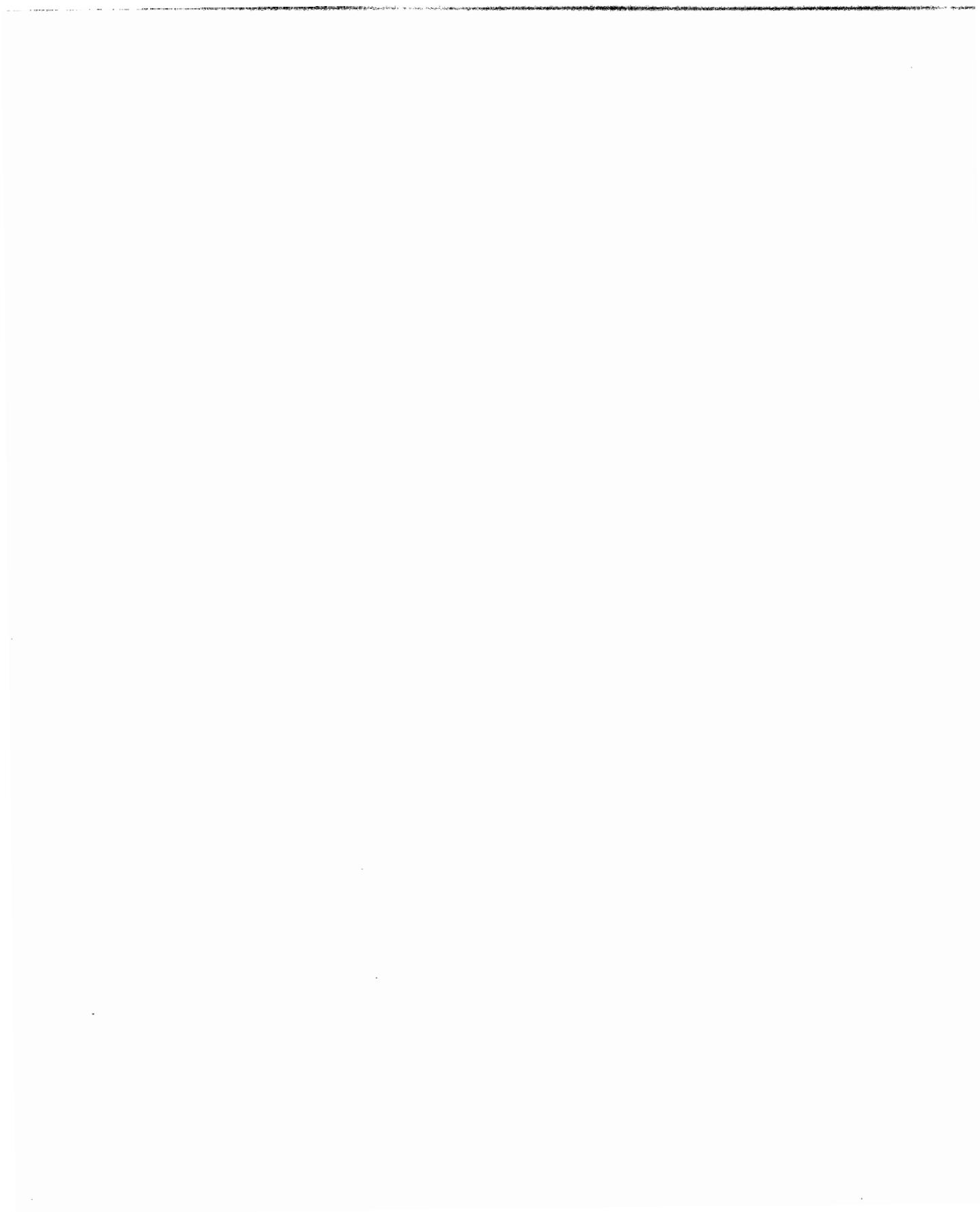
As acknowledged by representatives of the Governor's Office during a telephone call today with representatives of the constitutional officers, the Governor's Executive Order S-16-08 may not be imposed on the constitutional officers. After careful consideration of the Governor's Executive Order and a thorough review of the issues by our legal office, the State Treasurer's Office will not comply with the furlough program provided for in the Executive Order, including the most recent announcement regarding closing State offices on the first and third Friday of each month. Based on our legal review, we believe that the Governor has not established that he has the legal authority to impose furloughs and the related salary cuts on state employees.

This office is acutely aware of the serious financial issues facing the State of California. We have committed our resources, personnel, and energies to identifying ways in which the Treasurer's Office can conduct its business in the most efficient, cost effective manner possible, in addition to assisting the State's decision-makers in identifying various options to resolve the crisis, and we have worked successfully with the Department of Finance throughout the year to reduce our costs and increase our revenues. We will continue to do so and will continue to implement changes in how the Treasurer's Office performs its work to both reduce expenditures and contribute savings to the General Fund. However, we will not comply with an Executive Order that we are convinced does not rest on solid legal grounds and which would impose such a hardship on the backs of our employees.

Sincerely,

A handwritten signature in cursive script that reads "Bill Lockyer".

BILL LOCKYER
California State Treasurer



M





JOHN CHIANG
California State Controller

February 3, 2009

The Honorable Patrick Marlette
Superior Court of California
County of Sacramento
Gordon D. Schaber Courthouse
Department 19
720 Ninth Street
Sacramento, CA 95814

Re: *Professional Engineers in California Government, et al. v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000126

California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. Governor Arnold Schwarzenegger, et al., Case No. 2009-80000134

Service Employees International Union, Local 1000 v. Governor Arnold Schwarzenegger, et al., Case No. 2009-80000135

Dear Judge Marlette:

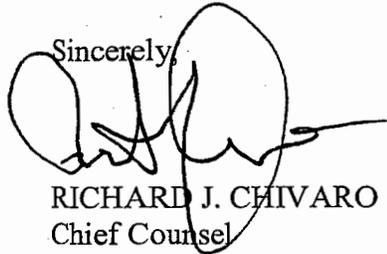
This office has received the enclosed letters from the independently elected Constitutional Officers and other elected state-wide officials including the Lieutenant Governor, Office of the Attorney General, Secretary of State, State Treasurer, Superintendent of Public Instruction, and Insurance Commissioner regarding the applicability of the recent ruling in the above-referenced cases to employees of those offices.

Prior to the ruling, the Governor and his staff contacted the constitutional officers and informed them that their offices were not affected by the executive order inasmuch as those officers were not under the direct authority of the Governor. Based on this contact, none of the constitutional officers sought to challenge the executive order. The specific terms of the executive order state that it only applies to state employees under the Governor's direct authority. However, since your decision was issued, the Governor's office has construed the ruling in its broadest possible sense to apply to all state employees and, basing its decision on this reading, has now notified the independent constitutional officers and state-wide officials that their employees are impacted by the ruling.

The Honorable Patrick Marlette
February 3, 2009
Page 2

The issue of whether independently elected constitutional and state-wide officers are subject to a Governor's executive order and/or whether the Governor's executive order applies to constitutional and state-wide officers, their agencies and staff was not an issue before the court and, therefore, was never pled, briefed, litigated or argued by any of the parties. Therefore, the State Controller's Office respectfully requests clarification of the breadth of the court's ruling. Specifically, we ask that the court clarify whether the ruling was intended to confer broad authority in the Governor to cover issues that were not properly before the court. Given the fact that the Governor intends to implement his order on February 6, 2009, your prompt response would be appreciated.

Sincerely,



RICHARD J. CHIVARO
Chief Counsel



RONALD V. PLACET
Senior Staff Counsel

RJC/RVP/ac

Enclosures

Letter from Lieutenant Governor John Garamendi
Letter from Secretary of State Debra Bowen
Letter from California State Treasurer Bill Lockyer
Letter from Superintendent of Public Instruction Jack O'Connell
Letter from Insurance Commissioner Steve Poizner
Letter from Chief Deputy Attorney General James M. Humes

cc: David W. Tyra, Kronick, Moskovitz, Tiedemann & Girard

Will M. Yamada, Personnel Relations Counsel,
Department of Personnel Administration

J. Felix De La Torre and Brook Pierman, SEIU Local 1000

Patrick Whalen, California Attorneys, Administrative Law Judges and
Hearing Officers in State Employment

Gerald James, Professional Engineers in California Government and
California Association of Professional Scientists

Gregg McLean Adam, Carroll, Burdick & McDonough

(56)

1 **Professional Engineers in California Government, et al. v. Governor Arnold Schwarzenegger, et al.**
2 **Sacramento County Superior Court Case No. 2008-80000126**

3 **California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. Governor**
4 **Arnold Schwarzenegger, et al.**
5 **Sacramento County Superior Court Case No. 2009-80000134**

6 **Service Employees International Union, Local 1000 v. Governor Arnold Schwarzenegger, et al.**
7 **Sacramento County Superior Court Case No. 2009-80000135**

8 **PROOF OF SERVICE**

9 I am employed in the County of Sacramento, State of California. At the time of service, I was at least 18
10 years of age, a United States citizen employed in the county where the mailing occurred, and not a party to the
11 within action. My business address is 300 Capitol Mall, Suite 1850, Sacramento, CA 95814.

12 On February 3, 2009, I served the foregoing document entitled:

13 **CONTROLLER'S LETTER TO JUDGE MARLETTE DATED FEBRUARY 3, 2009**

14 on all interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope,
15 addressed as follows:

16 David W. Tyra
17 Kronick, Moskovitz, Tiedemann & Girard
18 400 Capitol Mall, 27th Floor
19 Sacramento, CA 95814

Will M. Yamada, Personnel Relations Counsel
Department of Personnel Administration
1515 S Street, North Building, Suite 400
Sacramento, CA 95814

20 J. Felix De La Torre
21 Brook Pierman
22 SEIU Local 1000
23 1808 14th Street
24 Sacramento, CA 95814

Patrick Whalen
California Attorneys, Administrative Law Judges
and Hearing Officers in State Employment
Law Office of Brooks Ellison
1725 Capitol Avenue
Sacramento, CA 95814

25 Gerald James
26 Professional Engineers in California Government and
27 California Association of Professional Scientists
28 660 J Street, Suite 445
Sacramento, CA 95814

Gregg McLean Adam
Carroll, Burdick & McDonough LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104

[X] BY MAIL

I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 3, 2009, at Sacramento, California.


Amber A. Camarena



LIEUTENANT GOVERNOR JOHN GARAMENDI

February 2, 2008

The Honorable John Chiang
State Controller
P.O. Box 942850
Sacramento, CA 94250-5872

Dear Controller Chiang:

I am writing to clarify my position with regard to employee furloughs affecting state constitutional offices, and to request that you not implement a furlough applying to employees under my direction. I respectfully maintain that the Governor does not have the power to mandate a furlough.

I understand these are extraordinary times. We are facing unprecedented economic challenges and there is no question that all state offices must share in making hard choices to cut costs and preserve cash. I have agreed to substantial cuts in my operating budget, including two consecutive 10% reductions this fiscal year, which more than offset savings from a furlough.

It is my responsibility to structure cost savings that preserve the integrity of my office.

Nothing in Judge Marlette's ruling could be construed to modify historical precedent which requires Constitutional officers to manage their budget and operations in a manner which will allow for the most effective discharge of their duties. This includes decisions relating to effective staffing requirements.

I appreciate your cooperation in this request, and will await the Court's direction.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "John Garamendi".

JOHN GARAMENDI
Lieutenant Governor

124



Secretary of State
DEBRA BOWEN
State of California

February 2, 2009

The Honorable John Chiang
California State Controller
P.O. Box 942850
Sacramento, CA 94250-5872

Dear Mr. Chiang:

I write regarding Governor Schwarzenegger's direction to you following the January 29, 2009, Superior Court ruling concerning the Governor's ability to furlough certain state employees. I do not believe this ruling can legally be applied to state employees working at the Secretary of State's office, nor do I believe it is in California's best interests. I respectfully ask that you not apply the ruling to the employees under my control and direction.

I am committed to doing my part to address California's unprecedented budget situation. However, implementation of the Governor's Executive Order as written will interfere with my ability to provide services, such as filing corporate documents and accepting Uniform Commercial Code filings, that are critical to business and commercial activity in the state.

Moreover, reducing the number of employee hours spent now will result in overtime hours being spent later, thus costing taxpayers money rather than saving it. I support the Governor's overall goal of reducing state spending, which is why I reduced my 2008-09 General Fund budget by 10%. For 2009-10, I am committed to achieving savings equal to or greater than the amount of money the Governor seeks to achieve by furloughing people who work for the Secretary of State's office.

As you are aware, California's Constitutional officers were not a party to the Superior Court litigation because they were repeatedly told that the Governor believed he lacked authority over their employees.

Executive Order S-09-08, issued on July 31, 2008, recognized that Governor Schwarzenegger did not have the authority to impose the requirements on the state's Constitutional officers because they are not under his direct executive authority:

"IT IS FURTHER REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, constitutional officers, the legislative branch



The Honorable John Chiang
February 2, 2009
Page 2 of 2

(including the Legislative Counsel Bureau), and judicial branch, assist in the implementation of this Order and implement similar mitigation measures that will help to preserve the State's cash supply during this budget impasse."

Similarly, Executive Order S-16-08, issued on December 19, 2008, explicitly omitted agencies not under the Governor's direct executive authority:

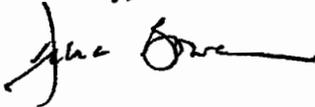
"IT IS REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, implement similar or other mitigation measures to achieve budget and cash savings for the current and next fiscal year."

As recently as January 9, 2009, the Governor's own staff conceded in a telephone conference, that the Governor had no authority to apply Executive Order S-16-08 to the agencies of other Constitutional officers. They requested that the Constitutional officers implement the order voluntarily.

While the Superior Court's ruling upholds Executive Order S-16-08, it does not address the employees of California's other Constitutional officers because that issue was never raised during the litigation. I did not join the lawsuit filed against the Governor because I am not under his direct executive authority and his staff assured me and the other Constitutional officers that we were not subject to his order. Having thus ensured that I would have had no standing to challenge the order in court, the Governor cannot now use the decision of the Superior Court to require my staff to take unpaid furlough days.

If you have any questions about my position in this matter, or if you need further information, please contact me at (916) 653-7244.

Sincerely,



Debra Bowen
Secretary of State

DB:elg:pg



BILL LOCKYER
TREASURER
STATE OF CALIFORNIA

January 30, 2009

John Chiang
State Controller
P.O. Box 942850
Sacramento, CA 94250-5872

RE: State Employee Furlough per Governor's Executive Order S-16-08

Dear Mr. Chiang:

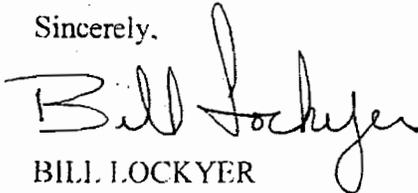
In light of the ruling issued by Judge Marlette yesterday, I am requesting that the State Controller's Office not implement the furlough order in connection with employees under my control and direction. It is my position that the Governor does not have the authority to unilaterally impose a furlough on the employees of the other constitutional officers without their consent and that there is nothing in Judge Marlette's ruling that deals with these issues, which were neither argued nor pled in his court. His order cannot be interpreted to authorize furloughs in the departments under the control and management of constitutional officers other than the Governor.

Government Code section 12302 provides the Treasurer with the exclusive authority, subject to the Civil Service Act, to appoint and fix the salaries of the employees necessary to carry out the duties of the office. In addition, as the office of a separately elected constitutional official, this office has been granted inherent powers and responsibilities and the authority to act independently within certain constraints. For instance, the Treasurer must act within the constraints of budget appropriations and legislative enactments. However, the Treasurer retains the authority to determine how best to carry out his duties without interference from other executive branch elected officials.

I would note that both in private conversations and in statements to the press, representatives of the Governor's Office have previously acknowledged and assured our offices that constitutional officers are not required to comply with Executive Order S-16-08. I do not see anything in Judge Marlette's ruling that would suggest that generally accepted principle to be overturned.

As this matter progresses, we would certainly comply with an appellate court order upholding the Governor's Executive Order and applying it to the constitutional offices; any legislative action taken to impose furloughs on state employees; or agreements reached with state employee bargaining units that are subsequently ratified by the Legislature. However, at this time and as noted above, I am asking that the Controller's Office not implement the Executive Order with respect to employees under my control and direction.

Sincerely,

A handwritten signature in cursive script that reads "Bill Lockyer". The signature is written in dark ink and is positioned above the printed name.

BILL LOCKYER
California State Treasurer

(62)



CALIFORNIA
DEPARTMENT OF
EDUCATION

JACK O'CONNELL
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

February 2, 2008

The Honorable John Chiang
State Controller
P.O. Box 942850
Sacramento, CA 94250-5872

Dear Controller Chiang:

I write in response to the Sacramento Superior Court's ruling upholding Governor Arnold Schwarzenegger's employee furlough plan, specifically, the Governor's recent directive to apply his plan to departments not under his auspices. I request that you not apply the furlough to employees under my control and direction, based on my belief that the Governor lacks the authority to unilaterally impose a furlough on state employees who work for an elected constitutional officer other than the Governor. The court proceedings did not address this issue, and the court's order cannot be read to allow or require that my employees be subjected to a furlough at the Governor's directive.

There is good reason why the court's order cannot be given such sweeping application. Until the court's ruling, representatives of the Governor's Office and the Department of Personnel Administration explicitly advised the various constitutional offices that they were not required to comply with Executive Order S-16-08. Instead, the Governor's representatives sought our commitment to achieving the Executive Order's primary objective of a ten percent reduction in General Fund expenditures. This approach is consistent with the position of elected constitutional officers as separately elected leaders charged with the duty to fulfill the obligations of their offices. The State Superintendent of Public Instruction (SSPI) must act within budgetary limitations and legislative enactments, but as an elected official, the SSPI retains inherent powers to determine the manner in which the duties of the office are carried out.

Under my direction, the California Department of Education will do its part to address the state's dire financial situation and achieve General Fund savings. My Department has frozen hiring and contracting, and substantially limited travel and other expenditures. All expenditures are being closely monitored and trimmed. However, reductions will be made by me in a thoughtful manner that preserves, where ever possible, our capacity to carry out vital programs. As an example, it makes no sense to drastically cut federally funded programs that provide meals to needy children, when the goal is a reduction in General Fund spending. In addition, the needs of students at

The Honorable John Chiang
February 2, 2009
Page 2

California's State Special Schools, which operate on a 24-hour basis, must be given careful consideration.

I remain hopeful that these difficult circumstances can be resolved without the imposition of unilateral furloughs for any state employee, and will follow the progress of further judicial proceedings, collective bargaining efforts, and legislative action. But at this time, for the reasons described above, I ask that the Controller's Office not implement Executive Order S-16-08 for the Department under my control and direction.

Sincerely,



JACK O'CONNELL

JO:gp



STEVE POIZNER
Insurance Commissioner

February 2, 2009

Honorable John Chiang
State Controller
300 Capitol Mall
Sacramento, CA 95814

Dear Controller Chiang:

The Governor's office has informed me that they intend to apply Judge Marlette's court ruling to the Department of Insurance as well as to the offices of the other independently-elected statewide officers. There is legal uncertainty as to the Governor's authority in this matter.

The court's ruling did not specifically address the question of whether the Governor's executive authority to order furloughs extends to other statewide offices. Therefore, I ask you to withhold implementation the ordered furloughs at the Department of Insurance until this matter is resolved.

Thank you for your immediate attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Poizner", written over a large, stylized flourish.

STEVE POIZNER
Insurance Commissioner



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL

JAMES M. HUMES
CHIEF DEPUTY ATTORNEY GENERAL

February 2, 2009

Honorable John Chiang
California State Controller
300 Capitol Mall, Suite 1850
Sacramento, CA 95814

RE: *Professional Engineers in California Government v. Schwarzenegger*
Sacramento Superior Court Case No. 34-2008-80000126-CU-WM-GDS

California Attorneys, Administrative Law Judges, etc. v. Schwarzenegger
Sacramento Superior Court Case No. 34-2009-800000134-CU-WM-GDS

Service Employees International Union, Local 1000 v. Schwarzenegger
Sacramento Superior Court Case No. 34-2009-80000135-CU-WM-GDS

Dear Mr. Chiang:

I understand that the Governor's Office has changed its position regarding the applicability of the Governor's furlough order on other constitutional officers. Before Judge Marlette's January 29, 2009 minute order, the Governor's Office encouraged, but did not require, other constitutional officers to comply with the furlough order. Accordingly, this office did not intervene in these cases. But emboldened by the minute order, the Governor's Office now informs us that it wants to apply the furlough order to other constitutional officers after all. Because we believe that the Governor's interpretation of the minute order is incorrect, and because we believe that the furlough order cannot be forced on other constitutional officers under these circumstances, we ask the Controller's Office to refrain from implementing the furloughs called for in Executive Order S-16-08 on our employees.

It appears that the Governor's Office is attempting to use the *absence* of any ruling addressing whether the Governor has authority to furlough employees of constitutional officers like the Attorney General as a ground to assert that authority. This tactic is improper for several reasons.

Hon. John Chiang
February 2, 2009
Page 2

To begin with, the question of whether the Governor has authority to furlough employees of the other constitutional officers was not before the court. As you know, the writ actions were each brought by unions asking the court for an order holding that the Governor's executive order requiring the furloughs is illegal. Thus, unions were trying to prove that you had a ministerial duty not to follow the Executive Order for the reasons set forth in their writ petitions. (*Sacramento County Fire Protection Dist. v. Sacramento County Assessment Appeals Bd. II* (1999) 75 Cal.App.4th 327, 331 [describing the requirements for a writ as "a clear, present (and usually ministerial) duty on the part of the respondent; [and] (2) a clear, present and beneficial right in the petitioner in the performance of that duty." (citation omitted)].) The court rejected the unions' position and intends to render a judgment denying the writ petitions. But that judgment, whenever it is signed, cannot be interpreted to address issues that were not before the court, much less to grant affirmative relief in favor of the Governor on those issues as if he had prosecuted his own petition for writ of mandate against you.

Nor can the Governor's authority to unilaterally impose a furlough on employees of the other constitutional officers be lightly implied from his more general authority. While a full briefing regarding the Governor's authority to issue executive orders is beyond the limited scope of this letter, our Supreme Court has noted, "[u]nlike the federal Constitution, the California Constitution . . . embodies a structure of divided executive power." (*Marine Forests Soc. v. California Coastal Com'n* (2005) 36 Cal.4th 1, 31; see also Cal. Const., art. V, § 11 [providing for the election of the Lieutenant Governor, Attorney General, Controller, Secretary of State, and Treasurer]; Zasloff, *Taking Politics Seriously: A Theory of California's Separation of Powers* (2004) 51 UCLA L. Rev. 1079, 1113 ["the California Constitution explicitly and repeatedly creates a multiple executive. The Lieutenant Governor, Attorney General, Secretary of State, Treasurer, and Controller all are directly elected and do not answer to the Governor."]) The Attorney General has a constitutional duty to ensure that the laws are uniformly and adequately enforced in California (Cal. Const., art. V, § 13) and statutory control over the Department of Justice. (Gov't Code, § 15000.) Dozens of statutes impose various duties on the Attorney General and DOJ. Thus, there can be no question that the Attorney General, like the other constitutional officers, wields executive authority as surely as the Governor does. For this reason, we do not believe that an executive order, which has been defined as "a formal written directive of the Governor which by interpretation, or the specification of detail, directs and guides *subordinate officers* in the enforcement of a particular law" (63 Ops.Cal.Atty.Gen. 583, 584 (1980), emphasis added), applies to the Attorney General. Accordingly, the Governor lacks the authority to compel the Attorney General to comply with the executive order mandating furloughs.

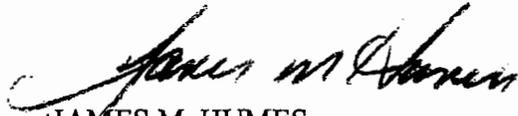
The Attorney General would have intervened in these writ actions had he believed that the Governor intended to apply mandatory furloughs to DOJ employees. He did not do so only because the Governor's Office previously took the position, both in private conversations and

Hon. John Chiang
February 2, 2009
Page 3

publicly, that the constitutional officers were not required to participate in the furlough program. (See Goldmacher, *Statewide Dems Say No to Furloughs For Own Staff*, Sacramento Bee (January 12, 2009) [article notes that Governor's Office "has said the furloughs can't be mandated on other constitutional offices" and quotes Governor's spokesman stating that with respect to constitutional officers, furloughs are "their decision"] <available at <http://www.sacbee.com/static/weblogs/capitolalert/latest/018524.html>>.) For the Governor presently to take the position, based on Judge Marlette's order, that he is entitled to require furloughs for the constitutional officers' employees, is tantamount to a bait-and-switch.

We urge the Controller not to implement the furlough order against DOJ employees.

Sincerely,



JAMES M. HUMES
Chief Deputy Attorney General

(68)

1

2

KRONICK
MOSKOVITZ
TIEDEMANN
& GIRARD
A LAW CORPORATION

DAVID W. TYRA

(916) 321-4500
dtyra@kmtg.com

February 3, 2009

BY HAND DELIVERY

Honorable Patrick Marlette
Judge of the Superior Court
Sacramento County Superior Court
Department 19
720 Ninth Street
Sacramento, CA 95814

Re: *Professional Engineers in California Government and California Association of Professional Scientists v. Schwarzenegger, et al.*,
Case No. 34-2008-80000126
California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. Schwarzenegger, et al.,
Case No. 34-2009-80000134
Service Employees International Union, Local 1000 v. Schwarzenegger, et al.,
Case No. 34-2009-80000135

Dear Judge Marlette:

I write in response to the improper ex parte communication sent to you by counsel for Controller John Chiang this morning. Respondents object to this communication to you and further object to the relief sought in it. In the event that this Court is inclined, however, to consider the matters raised in the various letters submitted to this Court, it is Respondents position that (1) the other constitutional officers of the State of California whose letters are attached to the Controller's letter must intervene in this action, at the very least for the limited purpose of obtaining the sought after clarification of this Court's ruling, and (2) this Court should establish a briefing schedule regarding the issues raised so that the Court has the benefit of a full discussion of the issues prior to making any ruling.

To begin with, the letter from the Controller's office amounts to an ex parte application seeking relief from this Court regarding the application of this Court's ruling last Thursday in the above-referenced actions. Ex parte applications for relief are governed by California Rules of Court, Rule 3.1200, *et seq.* Those rules require that a party seeking ex parte relief provide at least 24-hours notice of their request for such relief. (See Rule 3.1203.) No such notice was given here. Instead, I received an e-mail at 10:11 a.m. today forwarding a pdf

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1675 CHESTER AVENUE, SUITE 320 BAKERSFIELD, CALIFORNIA 93301 TELEPHONE (661) 864-3800 FAX (661) 864-3810
1432 HIGUERA STREET SAN LUIS OBISPO, CALIFORNIA 93401 TELEPHONE (805) 786-4302 FAX (805) 786-4319

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Honorable Patrick Marlette
February 3, 2009
Page 2

file of the Controller's letter along with the other letters attached. This e-mail did not include a cover message from the Controller's counsel. Based on the above, the Controller's letter to you constitutes an improper ex parte communication and should be disregarded by the Court.

Second, the letter seeks relief on claims not presented to the Court by parties not before the Court. As a general proposition, courts do not, and should not, decide abstract questions of law based on claims not raised to the Court and certainly not on claims raised by parties who are not before the Court. (See *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 746.) The Controller's request for "clarification" of this Court's ruling of last week raises a number of new and novel legal issues, which were not raised by any of the pleadings filed by the Petitioners in the above-referenced action. Furthermore, these claims are raised by parties, *i.e.*, the constitutional officers of the State of California other than the Governor, who are not parties to this action. Based on this, Respondents again urge the Court to disregard the Controller's letter.

Third, *if* this Court is inclined to consider the matters raised in the letters submitted to it, then Respondents urge the Court to order the other constitutional officers to intervene in the action for the limited purpose of obtaining the clarification they seek. Respondents further request that this Court establish a briefing schedule regarding the issues raised in the letters submitted to the Court.

It is Respondents' position that pursuant to this Court's ruling of last week, the Governor, acting as the state employer, has the inherent executive authority to order furloughs for state employees, including the employees of other constitutional officers. No distinction was made in this Court's ruling between different types of state employees much less whether there may be some limitation on the Governor's authority to order furloughs for a particular class of state employee. Furthermore, the majority of state employees working in the offices of the other constitutional officers are represented by SEIU, while those in the Attorney General's office are represented by CASE, and thus on its face this Court's ruling applies to those employees.

As this Court's ruling last week recognized, the state employer has the authority to take action impacting state employees' hours of work including, but not limited to, the authority to order furloughs. The management of this authority is delegated to the Department of Personnel Administration ("DPA") for the purpose of "managing the nonmerit aspects of the state's personnel system." (Gov. Code § 19815.2) Toward that end, DPA "succeeds to and is vested with the duties, purposes, responsibilities, and jurisdiction exercised by the State Personnel Board with respect to the administration of salaries, hours, and other personnel-related matters, training, performance evaluations, and layoffs and grievances." As noted by the court in *Tirapelle v. Davis* (1993) 20 Cal. App. 4th 1317, 1322, "...in general, the DPA has jurisdiction over the State's financial relationship with its employees." In other words, the state employer has broad authority to take various actions regarding the employment of *all* state employees, including those of constitutional officers. This authority includes furloughing state employees when necessary to address a fiscal emergency.

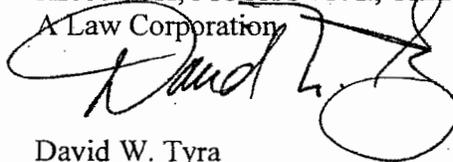
Honorable Patrick Marlette
February 3, 2009
Page 3

It is Respondents' position that the request for clarification made to this Court by the Controller is improper and should be disregarded. However, if this Court is inclined to consider the request for clarification, then Respondents agree with the statement made by the Attorney General in his letter that "a full briefing regarding the Governor's authority to issue executive orders is beyond the limited scope of this letter." For this reason, and only if this Court is inclined to consider this request at all, Respondents reiterate their request that this Court order the other constitutional officer to intervene in this action for the limited purpose of considering the request for clarification and that this Court establish a briefing schedule on the questions presented by the other constitutional officers. With respect to any proposed briefing schedule, Respondents request that such a schedule be expedited in order to resolve this question at the earliest possible date.

Thank you for your consideration.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation



David W. Tyra

DWT

cc: See Proof of Service Attached

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PROOF OF SERVICE

I, May Marlowe, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On February 3, 2009, I served a copy of the following document(s):

February 3, 2009 Letter to Court

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- by causing to be transmitted via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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Ronald V. Placet, Esq.
Shawn D. Silva, Esq.
Ana Maria Garza, Esq.
OFFICE OF THE STATE CONTROLLER
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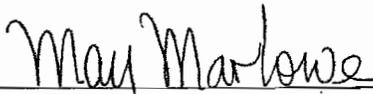
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

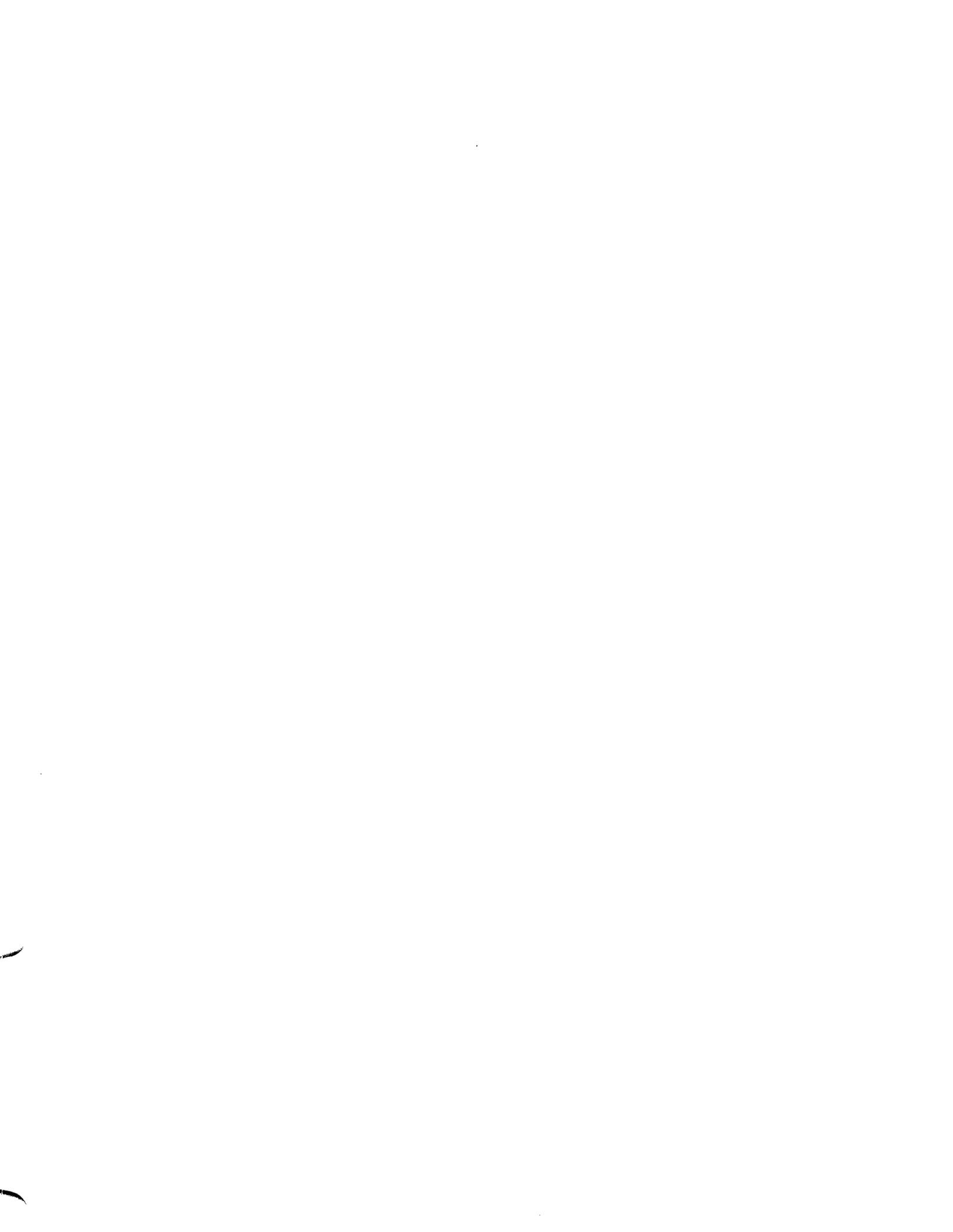
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 3, 2009, at Sacramento, California.



May Marlowe





ELLISON WILSON ADVOCACY, LLC

GOVERNMENTAL AFFAIRS - LEGISLATIVE ADVOCACY

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Attorney at Law

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Attorney at Law

TIMOTHY E. WARRINER
Legislative Advocate
Attorney at Law

February 4, 2009

By Facsimile, e-mail, and U.S. Mail

The Honorable Patrick Marlette
Superior Court of California
Gordon D. Schaber Courthouse
Department 19
720 Ninth Street
Sacramento, CA 95814

Dear Judge Marlette:

I write on behalf of petitioner CASE relating the recent letters by Richard Chivaro (counsel for respondent Chiang) and David Tyra (counsel for respondent DPA and the Governor).

Petitioner CASE agrees with Mr. Tyra that the issue of whether the Governor's Executive Order S-16-08 could apply to independently elected constitutional officers was not before this Court, and was not addressed in any of the pleadings filed with this Court. (Tyra letter, p. 2.) CASE further agrees with Mr. Tyra that if this Court chooses to entertain the issue, those constitutional officers should be permitted or ordered to intervene. (Tyra letter, p. 2, 3.) Finally, CASE agrees with Mr. Tyra that briefing schedule should be established to allow those constitutional officers an opportunity to address this Court. (Tyra letter, p. 2.)

Since neither CASE nor any of the other petitioners purport to represent the interests of the statewide officers, it would be unfair to adjudicate the rights of those officials without giving them an opportunity to be heard. "Unlike the federal Constitution, the California Constitution-like many state constitutions-embodies a structure of divided executive power. . ." (*Marine Forests Society v. California Coastal Commission* (2005) 36 Cal.4th 1, 31.) Thus, the

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question posed by the Controller and the attached letters from the constitutional officers raises important separation of powers issues within the executive branch of California Government, and those issues must be resolved if this Court's order is to be intelligently implemented. It is CASE's position, along with the constitutional officers, that the Governor's order cannot legally be imposed on independently elected statewide officials or the departments they are charged with managing.

On a related note, I am attaching to this letter a copy of a letter from the Executive Director of the State Board of Equalization to Controller John Chiang, which was not included in the attachments to Controller Chiang's letter to this Court. The letter makes clear that the Board does not believe the executive order applies to them. As this Court may be aware, the Board of Equalization is a separate constitutional entity as well (see Cal. Const. Art. 13 §17), and thus should be among the parties given an opportunity to brief this Court on the scope of their constitutional authority in relation to the Governor's executive order.

CASE also feels compelled to advise the Court that another constitutionally created entity, the State Compensation Insurance Fund (see Cal. Const. Art. 14 §4), may have a similar interest in the question posed by the Controller. The California Constitution gives the Legislature "plenary powers" over the Fund, and the Legislature has specifically enacted Insurance Code section 11873, which provides, in pertinent part "Notwithstanding any provision of the Government Code or any other provision of law, the positions funded by the State Compensation Insurance Fund are exempt from any hiring freezes and staff cutbacks otherwise required by law." Accordingly, CASE respectfully suggests that the State Compensation Insurance Fund be allowed or ordered to intervene as well.

Thank you for your consideration in this matter.

Sincerely,



Patrick Whalen

Attorney for Petitioner California Attorneys, Administrative Law Judges
and Hearing Officers in State Employment

Enclosure: Letter from State Board of Equalization Executive Director Ramon Hirsig

Cc: David W. Tyra, Kronick, Moskovitz, Tiedemann & Girard
Will M. Yamada, Personnel Relations Counsel,
Department of Personnel Administration
J. Felix De La Torre and Brooke Pierman, SEIU Local 1000
Rick Chivaro and Ronald Placet
Office of The State Controller

Gerald James, Professional Engineers in California Government
and California Association of Professional Scientists

Gregg McLean Adam

Carroll, Burdick & McDonough

Ramon Hirsig, Executive Director, State Board of Equalization

Suzanne Ah-Tye, Chief Counsel, State Compensation Insurance Fund

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sacramento, California. I am over the age of eighteen (18) years and not a party to the above-entitled action. My business address is 1725 Capitol Avenue, Sacramento, CA 95814.

On February 4, 2009 I served the following documents:

1. CASE Letter to Judge Marlette

I served the aforementioned document(s) by delivering a true copy of the above documents to the electronic mail addresses listed below, and by facsimile transmission to the telephone numbers listed below, and by placing true and correct copies in sealed envelopes and depositing them with the United States Postal Service with the postage fully prepaid:

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Engineers in State Government

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Executive Director, State Board of
Equalization

Suzanne Ah-Tye
State Compensation Insurance Fund
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facsimile: (415) 703-7058

Chief Counsel, State Compensation Insurance Fund

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on February 4, 2009.



Jo Beck



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
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MICHELLE STEEL
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

February 3, 2009

The Honorable John Chiang
California State Controller
P. O. Box 94250-5872
Sacramento, CA 94250-5872

Re. State Employee Furlough per Governor's Executive Order S-16-08

Dear Controller Chiang:

As the Executive Director of the Board of Equalization, and at the direction of the Board Members, I am asking that you take no action to include BOE employees in the furlough program proposed by the Governor. The Board Members believe that the Executive Order issued by the Governor lacks the legal or constitutional authority to impose furloughs on BOE as an independent constitutional entity, or upon its employees.

In order to maximize the state's fiscal resources, the hard working employees of the BOE will continue to work to bring in the revenues which fund many programs and operations. We will however, continue to look for other ways to streamline our budget, while at the same time, managing its resources to optimize revenue production.

Sincerely,

Ramon J. Hirsig
Executive Director

RJH:rar

cc: Honorable Betty T. Yee, Chairwoman
Honorable Judy Chu, Ph.D., Vice Chair
Honorable Bill Leonard
Honorable Michelle Steel

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sacramento, California. I am over the age of eighteen (18) years and not a party to the above-entitled action. My business address is 1725 Capitol Avenue, Sacramento, CA 95814.

On February 5, 2009 I served the following documents:

1. Petition for Writ of Supersedeas and Temporary Stay

I served the aforementioned document(s) by enclosing them in an envelope and (check one):

XX depositing the sealed envelopes with the United States Postal Service with the postage fully prepaid.

_____ placing the sealed envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The envelopes were addressed and mailed as follows

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Kronick, Moskovitz, Tiedemann
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and Department of Personnel Administration

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Chief Counsel
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Attorney for Petitioners California
Association of Professional Scientists &
Professional Engineers in State
Government

Brooke Pierman
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bpierman@seiu1000.org

Attorney for Petitioner Service
Employees International Union,
Local 1000

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on February 5, 2009



Jo Beck