

## STATE EMPLOYEE FURLOUGHS

Governor Schwarzenegger ordered furloughs beginning on February 1, 2009 and stated they were to help alleviate costs in the state budget. In the Governor's Executive Orders instituting the furloughs, he stated the furloughs were necessary due to the deficits in the General Fund, the imposition of an unprecedented freeze on lending money from the California Pooled Money Investment and to protect the cash reserve.

The executive orders also specifically noted that:

..."to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved"....

..."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** (bold type added). This plan shall include a limited exemption process."

..."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."...

The Governor may have intended fairness across the board by applying the furlough to agencies funded by the General Fund as well as those dependent on federal or special funds.

By implementing furloughs and thus reducing the work of agencies funded by special funds or federal funds, he sets the stage for Californian to be impacted in additional ways:

Losing federal funding for programs or infrastructure needs makes California more of a donor state as it declines in the level of federal funding that is returned from federal income and excise taxes paid. Other states benefit from taxes paid by Californians when California loses federal funding.

Funding to be taken away and by loans from a special fund or outright abolition of an agency, which eliminates any future repayment of revenues taken during the crisis, works against a number of voter-approved ballot propositions or passes liability to local communities.

Many agencies are observing the furlough on Friday and then encouraging employees to come to work on Saturday at straight time or overtime, depending on the circumstances.

If revenue-generating agencies were allowed to continue at full workforce or in some cases with an expansion of efforts as in auditing and seeking repayment of funding owed to the state, those solutions would also go a long way to reducing the cash flow crisis.

In essence, some of the agencies ordered to furlough employees are costing us money and having a negative impact on financial recovery.

Schwarzenegger's administration estimated that cutting worker hours would save the state \$1.3 billion over the next year-and-a-half with two furlough days per month. With the imposition of the third day, the Administration wanted to move to nearly \$2 billion in General Fund Savings.

The Department of Finance projects 57.7% of the savings will be realized by the General Fund and the remaining 42.3 % will result from a combination of federal and special funds.

This means a depletion of spending will occur and services will be reduced *due to the loss of federal funds coming to California or due to special funds or fees paid to support the services provided that will be withheld or delayed.*

## **CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD BACKGROUND**

The California Unemployment Insurance Appeals Board (CUIAB) is a seven-member Board that maintains a staff in twelve offices throughout the State.

The (CUIAB) conducts hearings of cases concerning claims for unemployment and disability benefits. These cases are appeals of determinations made by the Employment Development Department (EDD), which is a totally separate entity from the CUIAB even though funding for CUIAB flows under EDD. The CUIAB also holds hearings on petitions from taxpayers concerning assessments made by EDD's Tax Branch.

There are two levels of appeal. The first or lower level is an appeal to an Administrative Law Judge. The second or higher level is an appeal to the CUIAB of the decision made by the Administrative Law Judge. You must exhaust your appeal to an Administrative Law Judge before you can appeal to the CUIAB.

With respect to appeals of decisions made by EDD on unemployment claims, any of the three parties to a claim may appeal—the employer, the applicant, or the EDD.

In July of 2009, after five months of furloughs applied to the CUIAB, the Governor directed the California Unemployment Insurance Appeals Board (CUIAB) to be more efficient in ensuring that claims for unemployment insurance benefits are handled as quickly as possible. The Governor has requested the Board remove current barriers in place for its administrative law judges (ALJs) to increase productivity and efficiency while the state faces limited resources.

The CUIAB has faced a backlog for years and the Governor asked the CUIAB ALJs:

- "to stop working from home which unreasonably restricts the type of work they are able to perform and renders them unavailable to respond to unemployed workers trying to resolve their claims, and
- "to eliminate the cap or maximum number of cases that could be assigned to them during their work week, in order to adjust for workload when a judge is available to take on more cases in a week. CUIAB ALJs are the only ALJs in the state that have such a limit on productivity."

Evidently, his furlough directions notwithstanding, the Governor wanted to hold someone else accountable for the increased backlogs when is issued this statement to the press:

"It is outrageous that at a time when the people of California are most in need of their services these judges are hiding behind a provision in a union contract to avoid work," said Governor Schwarzenegger. "While everyone else in the state is working smarter and more efficiently so should this Board and its judges instead of looking for ways to not get their work done."

More than 200 administrative law judges hear UI appeals, receiving between 24 and 30 cases a week. In June, the CUIAB had 82,722 open cases – a backlog that has drawn criticism from federal labor officials, citizens and legislators. State Auditor Elaine Howle has repeatedly highlighted problems at the board. According to the Board, only 14 judges were impacted by the telecommuting policy.

The board recently estimated it will get 538,957 new appeals this year, up from a previous estimate of 331,000.

## FURLOUGH IMPACTS AT THE DIVISION OF THE STATE ARCHITECT

The Department of General Services includes the Division of the State Architect (DSA) which provides design and construction oversight for K–12 schools and community colleges. DSA also develops and maintains accessibility standards and codes utilized in public and private buildings throughout the State of California. Plans must be submitted to DSA by project sponsors for evaluation of accessibility, fire and life safety, structural and seismic integrity, and environmental or energy considerations. All of the functions under the DSA are funded entirely by the projects they review and inspect since project sponsors must be able to show funding for the project is available (usually school bonds) to initiate the review process. *Most school projects require a 50% match to the bond funds and sponsors must declare the availability of the matching funds before projects are reviewed.*

The bulk of the work the DSA performs is in relation to new school construction. Additional responsibilities relate to specified areas of construction standards for new state buildings including accessibility standards.

The Division of the State Architect (DSA) was ordered by the Governor to observe the mandatory three furlough days on the first three Fridays of each month. All costs associated with the operation of the DSA are recovered from the projects they process. For this reason, the DSA originally requested an exemption from the furloughs, which Governor Schwarzenegger denied. The DSA furloughed its employees until recent complaints regarding delays in approving projects became an issue and criticism appeared in the press regarding how school construction could yield jobs if DSA could process construction applications more quickly.

In response, DSA requested authority to place employees on "self-directed" furloughs but plan review staff still work on Fridays and are "banking" those hours for days off in the future. Employees in general administrative functions, architecture, engineering, fire and life safety, and structural field engineers and construction supervisors do not work on Fridays. Likewise, no inspection occurs on Fridays.

Last April, as the School Facility Program received \$2 billion from the sale of bonds, the agency told school districts it was reordering priorities and switching from the "first come, first served" process to an approval system based on the amount of money applicants request from the state. In the announcement, DSA indicated it would return to the "first come, first served" process when the state's fiscal situation improved.

Although the offices are closed on Fridays, public access ends up compressed during the remaining days of the week, workload has not diminished and employees are not working overtime to accomplish their mission. When complaints were made public as a result of waiting times (referred to as "bin time") said to be 4 months or as much as 8-9 months, Stephen Amos, Chief Deputy Director of the Department of General Services was quoted in a San Diego Union Tribune Editorial as saying the bin waiting time is just twelve weeks, and "That situation is unacceptable". He stated, "We want to reduce bin time from 12 weeks to 6 weeks in the next 30 days." In June, the agency announced it would hire 25 additional staff and take other measures to catch up.

It has not been that difficult according to Kathy Hicks, Acting Deputy Director assigned to address the problems at DSA. Hicks indicates since January 21, 2010 when a task force discussed ways to reduce the bin time, she has reduced it from 12 weeks to 4.2 weeks by changing the organizational structure, redirecting personnel and it has been done without overtime or the use of outside consultants by having regional managers and supervisors spend half of their time on plan reviews.

When asked how much time would be required to review school plans for approval if everything went as quickly as possible, the *actual number of hours* (over a longer period of time due to multiple areas of review) required to work on plans was 8, 20, or 100 hours depending on the size and complexity of the project. Projects under \$1 million in cost are identified as small; those costing under \$15 million are labeled intermediate; and large are defined as those over \$15 million in cost.

It is important to note that these timeframes are the least number of actual work hours needed and would only apply if the plans came in with no errors, did not need to be returned for comments, corrections or additional material that might be missing, any or all of which extends the time from the original submittal. Bin time ends when plans are assigned to a reviewer. If the plans are returned to the sponsor, when they are resubmitted they again go into the bin time holding pattern until assigned again.

There are several stages of review required encompassing structural, seismic, access, and fire and life safety requirements. Reviews are conducted on a concurrent basis for these areas of responsibility but if plans are sent back due to an issue in one area, work in all others is also suspended.

Applications are reviewed on a "first in first out" basis according to Hicks. If a project declares it is "shovel ready" (within 75 days to start construction) it can move ahead of others. The DSA also has the ability to charge a fee as many municipalities do, to expedite plans—something that many project sponsors might choose in a time when personnel reductions take people away from every aspect of plan checking and approval and construction inspection and certification. DSA noted this; explaining maintaining "first in, first out" is an equitable way to ensure the process treats competing communities alike.

DSA is funded entirely from voter-approved bond funds dedicated to new school construction. Voters approved the latest round of bonds in 2006 with \$7.3 billion approved statewide but the State has stopped issuing new bonds because of the existing fiscal crisis. When bonds are sold, they are deposited in the Planning, Design, Construction Revolving Fund from which projects sponsors obtain funding.

In the past three years, DSA has received 9,624 project submittals. Of these, 6,900 schools have been constructed. On January 21, 2010 there were 285 projects in DSA at a total value of \$971 million.

## **OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT BACKGROUND**

The Sylmar Earthquake of 1971 caused the collapse of several hospitals and rendered others incapable of providing emergency care to people injured in the earthquake. As a result, in order to ensure that hospitals in California conform to high construction standards, the Legislature passed the Alfred E. Alquist Hospital Facilities Seismic Safety Act (HSSA) in 1973. The intent of the HSSA is to assure that hospitals are reasonably capable of providing services to the public after a disaster.

In 1983, the HSSA's authority was significantly expanded and ultimately preempted local building departments from all hospital construction plan review responsibility and transferred it to the Office of Statewide Health Planning and Development (OSHPD), and the Division of the State Architect. This essentially created a building department within the Office of Statewide Health Planning, called Facilities Development Division (FDD).

In 1991, recognizing the need to consolidate health facility plan review and construction observation functions, the Legislature established a single point of accountability and authority for plan review and construction observation activities relating to hospitals by transferring all duties and functions to OSHPD, FDD.

A number of other legislative changes over the years have sought to improve on seismic safety. Pursuant to the Hospital Seismic Safety Act, OSHPD's responsibilities are carried out by its Facilities Development Division (FDD). FDD is responsible for overseeing all aspects of construction for general acute care and psychiatric hospitals, skilled nursing homes and intermediate care facilities in California. This includes: establishing building standards which govern construction of these types of facilities; reviewing the plans and specifications for new construction, alteration, renovation, or additions to health facilities; and, observing construction in progress to ensure compliance with the approved plans and specifications.

FDD is intended to serve as a "one-stop shop" for all aspects of health facility construction. All geo-technical, structural, mechanical, electrical and fire/life safety considerations for inpatient healthcare facility physical plant are handled by FDD.

### **Hospital Building Safety Board**

The Hospital Building Safety Board was established in 1973 and functions as a citizen advisory board with members who are recognized experts in health facility design, engineering, and construction – advises FDD in the development of policies and procedures that guide administration of the Hospital Seismic Safety program. The Board is comprised of sixteen board members, appointed by the Director of OSHPD from nominations submitted by professional associations, as specified in the Health and Safety Code, and three more are appointed as public members. Six statutory ex-officio members, representing state agencies whose programs interface with the hospital design and construction program, also sit on the Board. The Director has the authority to appoint three additional ex-officio members as desired.

The purpose of the Board is to advise the Director of the Office of Statewide Health Planning and Development (OSHPD) on the administration of the Hospital Facilities Seismic Safety Act, and act as a board of appeals with regard to seismic safety and fire and life safety issues relating to hospital facilities.

### **Plan Review**

When documents are submitted for new construction, alterations, or additions of hospital buildings or skilled nursing homes, FDD reviews and approves the plans and specifications to ensure compliance with the provisions of the California Building Standards Code, Title 24, and the California Code of Regulations. This includes plan review of the design details of the architectural, structural, mechanical, plumbing, and electrical systems.

### **Construction Observation**

FDD observes construction activities to ensure compliance with the provisions of the California Building Standards Code, Title 24, California Code of Regulations.

The FDD construction oversight process entails the following: Upon plan approval, a building permit is issued and construction begins. The facility owner hires a FDD-certified Building Inspector, who throughout the construction phase, reports to FDD field personnel and the owners on the progress of the construction. The inspector notifies FDD of discrepancies between approved plans/specifications and work in progress, and assures their resolution by the hospital design team, with FDD approval. In addition, FDD field personnel make periodic visits to the construction site to assure that the seismic, fire and life safety, and other requirements of the building code are being met. Once construction is completed, FDD issues a certificate of occupancy that allows the owner to apply to the Department of Health Services for a license to operate the health facility.

### **Regulations**

FDD is also a regulatory agency authorized to develop building standards adopted in the California Building Standards Code for hospitals and skilled nursing facilities, as well as, licensed clinics and correctional treatment centers. Exceptions related to enforcement of building standards for correctional treatment centers should be noted, as they are under the jurisdiction of the local law enforcement agency or State Department of Corrections or California Youth Authority with the applicable agency certifying to FDD that their health facilities are code compliant. Licensed clinics remain under the jurisdiction of the local building official for code enforcement, however, under certain conditions, dialysis clinics and surgical clinics may be reviewed by FDD.

### **Seismic Retrofit**

FDD manages the seismic retrofit program that requires hospitals to comply with the regulations developed by OSHPD. The intent is to, over time, eliminate acute care hospital buildings that have low probability of remaining functional after an earthquake.



## **Post Earthquake Evaluations**

FDD staff also play an important role in the aftermath of an earthquake. Staff is dispatched to assess the extent of damage to health facilities in the affected communities. Based on these assessments, the facilities are cleared to continue providing care without interruption or, if the damage is severe enough, the facility may be closed. The results of these assessments are communicated to state and local emergency response personnel, so they can route patients to safe facilities. FDD staff also review and approve on-site construction required for mitigation of earthquake damage to the facility.

## IMPACT OF FURLOUGHS ON HOSPITAL CONSTRUCTION

According to the Office of Statewide Health Planning and Development (OSHPD), Facilities Development Division (FDD), the dollar value of plans approved by November 2009 but not in construction, had more than doubled since 2006. The proportion of projects with seismic components has increased more than ten-fold since 2000.

Between 2007 when Governor Schwarzenegger announced his "health care initiative" and November 2009, projects submitted to OSHPD for review and approval of plans and construction oversight had grown from approximately \$14 billion in value to over \$23 billion in value.

Although projects under OSHPD's jurisdiction are not funded by the General Fund, the Governor has still applied three days of furlough to an agency that could be providing over 400,000 jobs and aiding in lifting California out of the current recession.

Minutes from OSHPD's California Health Policy and Data Advisory Commission show an evolving awareness—and then silence—with respect to the impact of furloughs on their operations. Moreover, a creative solution was devised so reporting could be manipulated to make it appear that there was no major problem. (See minutes of April 10, 2009 OSHPD policy board meeting below.)

Initially, there was no real concern with the furlough orders as the following minutes from the OSHPD policy meeting as the furloughs were announced, since as a special-funded agency, there was no benefit to the General Fund to be realized by furloughing OSHPD employees.

"Director Carlisle welcomed all gathered and began his report by stating that the budgetary impasse is continuing. The Governor has projected that in one year California will potentially be facing a \$41 billion deficit. Historically this is the largest deficit ever to face the State and comes at a time when California revenues are drastically down. The situation shows no signs of a turnaround or abatement. As a result, State employees have officially been furloughed on the first and third Friday of each month through June 2010. OSHPD is not directly affected, being virtually an entirely special fund supported department. But to the extent that we have macroeconomic effects that apply to State departments across the board, such as hiring freezes and cessation of contracting activities, this can affect the Department and its operations.

(Minutes of California Health Policy and Data Advisory Commission, February 5, 2009, Sacramento)

Yet, by the April meeting, furloughs has been imposed. With little public note, it is mentioned almost in passing at the same Commission's next meeting:

..."Turning to state of the State, OSHPD Director Carlisle noted that California is still in the midst of a budget crisis. Staff continue to take two furlough days per month which roughly translates to a ten percent salary reduction. The reason for this is that the State is facing a continuing budget deficit which has been accelerated by the general economic downturn. This is

a significant situation for state government and has caused a drop in productivity roughly correlated to the reduction in staff hours"...

(Minutes California Health Policy and Data Advisory Commission, April 10, 2009, Sacramento)

OSHPD developed "new turnaround goals" effective July 1, 2009 that changed the timeframes in which plans are "promised" for review as follows:

Old Turnaround Goals S and G Projects

First Review: 60 days  
Backcheck: 30 days  
Post Approval: 30 days  
120 days

New Turnaround Goals S and G Projects

First Review: 70 days  
Backcheck: 40 days  
Post Approval: 30 days  
140 days

Old Turnaround Goals H and I Projects

First Review: 60 days  
Backcheck: 30 days  
Post Approval: 30 days  
120 days

New Turnaround Goals H and I Projects

First Review: 80 days  
Backcheck: 40 days  
Post Approval: 30 days  
150 days

Despite the extended turnaround times, in seven months, OSHPD had developed a new attitude about the furloughs as shown from a special meeting in November:

"Phased plan review represents about \$7.3 billion of construction work; i.e. projects put on hold for various reasons.

"HAZUS, (as of June 11, 2009 -- 453 buildings have been submitted for evaluation. The impact of the furloughs -- at two furlough days per month, that adds up to about one full region of personnel lost; a third furlough day means an additional region lost. In addition, the productivity of the remaining personnel is adversely affected because of the loss of interaction with furloughed coworkers. It is a demoralizing situation overall."

(Excerpt from meeting transcript: Hospital Building Safety Board, Monday, November 9, 2009, Hilton San Diego Resort)

## DEPARTMENT OF MOTOR VEHICLES BUSINESS PARTNERS PROGRAM

The Department of Motor Vehicles (DMV) is supported by dedicated revenue sources that are deposited in the Motor Vehicle Account from fees imposed for a variety of services rendered.

As an alternative to visiting a DMV office, DMV established a system that utilized vehicle dealers and auto clubs to process title and registration documents as a way to collect revenue more quickly and aid the consumer. As automation evolved to aid in processing required documents, an electronic system was implemented that allows qualified industry partners to process vehicle-related transactions from their remote locations.

The Business Partner Automation (BPA) program allows various private firms that meet the requirements to print registration certificates, issue license plates and stickers, and update DMV database records. These business partners fall into the following categories:

**Dealers:** Companies engaged in the business of selling vehicles, or buying or taking vehicles in trade for the purpose of resale.

**Registration Services:** A "registration service" is a person engaged in the business of processing registration applications for the public.

**Dismantlers:** A "dismantler" is engaged in the business of buying, selling, or dealing in salvaged, junked, and non-repairable vehicles, for dismantling the vehicles, or who buys or sells the integral parts and components.

**Rental Car Companies:** Companies in the business of renting vehicles.

**Leasing Companies:** Companies in the business of leasing vehicles.

**Salvage Pools:** Companies engaged exclusively in the business of disposing of total loss salvage, non-repairable, or recovered stolen vehicles on behalf of insurance companies, adjusters, leasing companies, self-insured person, or financial institutions.

The participants are authorized to issue validated registration cards, full year stickers and license plates and process other transactions from their offices.

For providing this service, industry partners are authorized to charge a fee for their services.

Staff surveyed several of these businesses that operate a chain of facilities throughout California and found "convenience fees" of \$20 - \$29 per transaction.

The auto clubs have provided vehicle registration services to their members for decades as a DMV business partner and as authorized by the California Insurance Code are exempt from charging additional fees for DMV services.

The state increased the fee it collects from BPA's on these types of transactions from \$3-\$4 in January 2009. BPA's do not pay fees for two types of transactions (Refunds and Posted Fees), so some transactions did not result in revenue to the DMV. (Note that the furloughs were implemented in February and DMV was ordered to cease Saturday operation *and* close three Fridays each month.)

Attached is a spreadsheet showing the volumes of vehicle registration work processed in recent years by business partners enrolled in DMV's Business Partner Automation (BPA) program and by California affiliates of the American Automobile Association (Automobile Club of Southern California and AAA Northern California, Nevada and Utah).

The monthly average of total BPA transactions is:

FY 2009/10 – 132k per month  
FY 2008/09 – 123k per month  
FY 2007/08 – 131k per month  
FY 2006/07 – 118k per month

The monthly average for Auto Club (AAA Offices) transactions for the same period is:

FY 2009/10 – 324k per month  
FY 2008/09 – 308k per month  
FY 2007/08 – 307k per month  
FY 2006/07 – 329k per month

Revenues to the Motor Vehicle Account were estimated to increase by \$28.6 million from \$2,196.7 million to \$2,225.3 million between 2008-09 and 2009-10.