

INFORMER

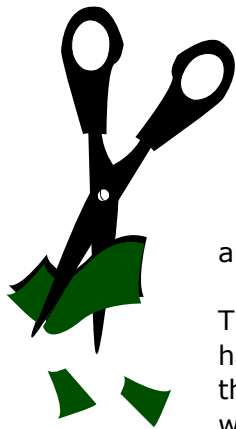
#2, February 2010

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT

THE BAD IDEAS JUST KEEP ON COMING

Now that his furlough program is the subject of dozens of lawsuits throughout the state, the Governor is proposing to replace it with pay and benefit cuts which would cost state employees even more.

In his State Budget Proposal, the Governor recommended to the Legislature that furloughs end on June 30, as scheduled. In their place, he asked the Legislature to require a 5% pay cut beginning July 1; another 5% cut if \$7 billion in additional federal funds do not materialize, which they won't;



and a 5% of salary increase in the employee contribution to PERS. He would also order departments to make unallocated personnel budget cuts of an additional 5%, primarily through attrition and not filling existing vacancies.

The Governor says he does not have the authority to impose these cuts himself, although that's what he said about furloughs before he issued Executive Orders implementing them after the Legislature refused to authorize them. Thus far, the Legislature is saying that he

continued on page 3 »

AND THE WINNERS ARE...

In recognition of National Engineers Week (February 14 through 20), the Engineers' Council presented its 55th Annual Awards on February 20. Among the recipients of these prestigious honors were two PECG members.



Dr. Lian Duan received the Distinguished Engineering Achievement Award for his innovation and leadership in the field of bridge engineering and transportation. Caltrans Supervising Bridge Engineer Mike Whiteside received the Outstanding Engineering Achievement Merit Award for his significant contributions on the San Francisco-Oakland Bay Bridge East Span Seismic Safety Project, particularly his oversight of the development of the unique self-anchored suspension bridge.

Congratulations to both of these outstanding Caltrans Bridge Engineers and their colleagues for continuing excellence in engineering and transportation infrastructure. ■

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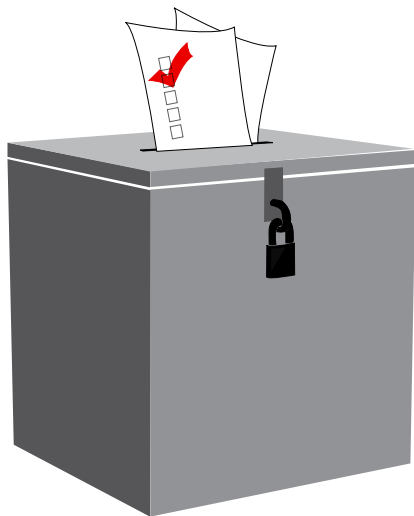
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IT'S HEATING UP AGAIN

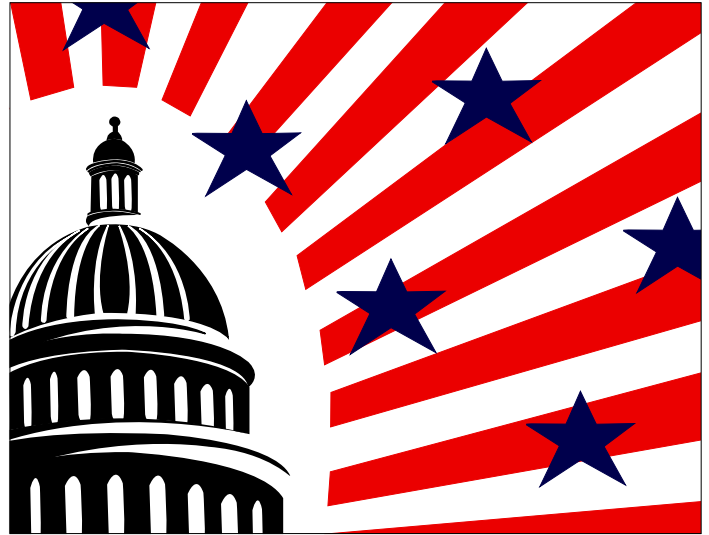
Legislation, lawsuits, deficits, and an election year – it's all happening again in Sacramento. The General Fund faces a \$21 billion deficit. This time around, the Governor wants the Legislature to approve state employee pay cuts and pension contribution increases. Thus far, the Legislature says no, but is willing to count the potential savings to help balance the Budget. If the Governor doesn't get his way, he could always try continuing the furloughs, if the courts have not blocked him by then.

There are many other significant budget issues. One is the question of Caltrans Capital Outlay Support, which involves whether the workload will be greater or less, the mix of Caltrans employees and consultants, and the potential for using **design-build or public-private partnerships**, including Caltrans' involvement on those state highway projects. Legislation last year provided limited authorization for such projects but specified an extensive Caltrans role in the design and inspection of that work. There is some



question if those provisions are being complied with on some projects. Other key legislation includes two PECG-sponsored bills -- Assembly Bill 1699 (Hernandez)

which would require the **continuous appropriation** to ensure that state employees get paid on time this summer, whether or not the State Budget is late, and AB 1431 (Hill) which would add a **Geologist or Geophysicist** to the Board for Professional



Engineers and Land Surveyors, now that it has an expanded role due to legislation last year.

Meanwhile, the attacks on the **pension** plans are increasing as the Governor's Office and others seek to convince the public and pressure Democratic legislators to either charge employees more for their pensions or reduce the benefits for future hires. Other issues include ongoing hearings regarding **pay raises** for PECG-represented supervisors back to 2008 and the refusal of DPA to process through arbitration PECG grievances on Unit 9 pay raises last July and the elimination of **holidays**. Both of these grievances will apparently require lawsuits to enforce DPA's obligation to participate in arbitration.

It's an election year, so overlaying (and perhaps dominating) everything the Governor and Legislature do is -- **politics**. While most of the Legislature and all of the Constitutional Officers are up for election or re-election, as expected, the Governor's race will dominate the attention of the media and the electorate. At the moment, the candidates appear to be former Governor and current Attorney General Jerry Brown for the Democrats, and billionaires Meg Whitman and Steve Poizner for the Republicans. ■

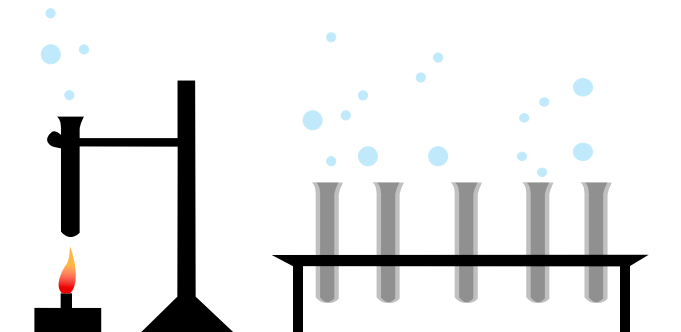
YOU BE THE JUDGE

Every year, thousands of high school and middle school students prepare projects to enter into a regional or local Engineering and Science Fair in their community. Several PEGC sections have become sponsors of these fairs and many members participate, primarily as judges for the projects to determine winners. In some cases, the best projects go on to compete and gain honors in national and international competitions.



For many years, PEGC has been a co-sponsor of the Sacramento Regional Science and Engineering Fair, which will be held at Sacramento's Rosemont High School on March 26 and 27. For those interested in volunteering some time to be a judge, you can get more information and sign up at www.srsefair.org. Participation also qualifies you to use mentoring leave under section 5.11 of the Unit 9 MOU.

The Los Angeles, San Diego, Fresno, and Inland Empire (San Bernadino/Riverside) PEGC sections are also involved in co-sponsoring Engineering and Science Fairs in their areas. Please contact section leaders for more information. Participating in these fairs as judges or in any other capacity is an excellent way to help interest young people in a career in Engineering or a related profession. ■



THE BAD IDEAS JUST KEEP ON COMING

» *Continued from page 1*

should try to achieve any cuts at the bargaining table, not through legislation. If that remains their position, the Governor could try to resort to continuing the furlough program.

His proposal to increase the employee contributions to PERS has an additional hurdle. As the Governor said in his State of the State speech, "For current employees these pensions cannot be changed – either legally or morally. We cannot break the promises we already made. It is a done deal."

Two days later, he issued his Budget Proposal. The courts have ruled that pension benefits for existing employees cannot be reduced and employee contributions to pension plans cannot be increased without some offsetting benefit. The Legislative Analyst and others have warned the Governor about this problem but, thus far, his position remains unchanged.

Regarding furloughs, PEGC's lawsuit (the initial one challenging the Governor's Executive Order) is still awaiting a court date for oral argument in the Court of Appeal. On January 29, the Court asked all parties to respond to a series of questions regarding the legislative history and the interpretation of the statutes involving work weeks, furloughs, and emergencies, as well as the application of the collective bargaining process. The briefs or written legal arguments from the parties won't be completed until late April, after which the Court would set a date for oral argument. Some time after that, the Court would issue its ruling.

PEGC has also filed a lawsuit in Superior Court in Alameda County regarding the furloughs for Special Fund positions, which cover 96% of PEGC-represented employees. A previous ruling from that same Court (but a different Judge) found that furloughs cannot be used for Special Fund employees, at least under some circumstances.

Ultimately, the Courts of Appeal around the state will rule on these various lawsuits challenging furloughs. If there are conflicting decisions, it is more likely that the California Supreme Court will ultimately make the final decision on the Governor's authority to impose furloughs and related issues. ■

INSURANCE FOR PECG MEMBERS



Life, auto, and other low cost group insurance programs are among the many benefits available to PECG members. For **auto, homeowners, and renters insurance**, Liberty Mutual Insurance Company offers special discounts to PECG members. Call Mike Segur at (866) 467-4841, ext 55885 or email him at michael.segur@libertymutual.com for more information and a free no obligation quote. Through March 31, for each car or homeowner's insurance quote you receive from Mike, Liberty Mutual will donate \$5 to the PECG-Sponsored Sacramento Regional Science and Engineering Fair.

All PECG members are provided \$1,500 **life insurance** plus \$1,500 accidental death and dismemberment coverage at no cost. In addition, members can purchase life insurance up to \$521,000 and cover dependants for up to \$255,000. Long term **disability insurance** is also available, all through Standard Insurance Company. For more information, call the PECG office at (415) 956-1344 or email at insurance@pecg.org.

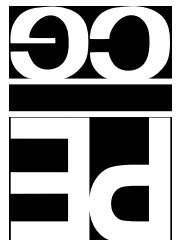
Thousands of PECG members participate in these money saving insurance programs. They are yet another benefit of being a PECG member. ■

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MINIMUM WAGE — IS THIS THE YEAR?

If you go to work on time and do your job, you should be paid on time, in full, for the work you do. This is not just a basic or theoretical principle. It is the law for all employees in California, including state employees.

The State Controller writes the checks on behalf of the State of California. Article XVI, Section 7 of the California Constitution authorizes those checks to be written only if there is an appropriation authorization in a bill passed by the Legislature and signed by the Governor. Article IV, Section 12 of that same Constitution requires the Legislature to pass a State Budget bill by midnight of June 15 each year, authorizing expenditures for the new fiscal year beginning on July 1. What happens if there is no Budget in place by July 1?

In recent decades, the Legislature has failed to meet the Constitutional Budget deadline 80% of the time. About half the time, the Budget did not pass until August 1 or later.

If the Legislature and Governor fail to comply with the Constitutional requirement, there is no penalty-for them. In recent years, it has been various state contractors and service providers who pay the price because their payments are delayed by weeks or, on occasion, months. Now, for the first time, it appears that state employees may also become the victims of this Constitutional violation.

In past years, even when the Budget is late, State Controllers John Chiang and his predecessors always paid state employees their full paychecks on time. However, in 2008, the Governor sued Controller Chiang to block state employee paychecks until the budget was finally passed and approved. Based on a previous Supreme Court ruling, the Sacramento Superior Court found that the law does not authorize the Controller to pay state employees their salaries in the absence of a Budget or other statute authorizing expenditures. However, under the federal Fair Labor Standards Act (FLSA), the state (and every other employer) must pay at least the federal minimum wage to

employees, regardless of the State Constitution. The Court found that “unless a valid appropriation exists, the Controller has a duty under state law to refuse to draw a warrant to pay state employee salaries.”

That Superior Court decision is currently under appeal. Briefs (written legal arguments) have been completed and the next step is for the Court of Appeal to schedule a day for oral argument, followed by a decision. That may occur before July 1.

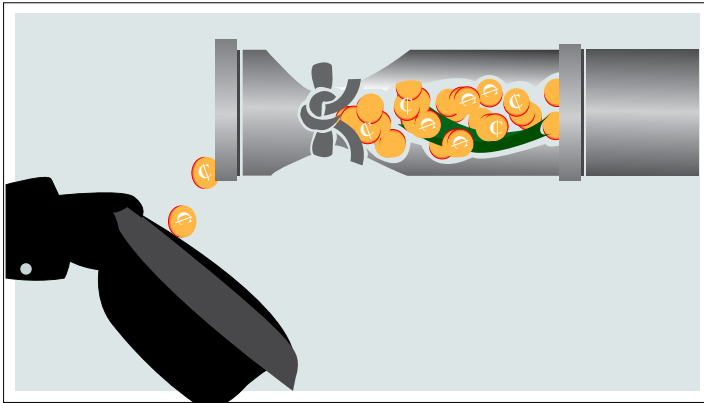
State Controller John Chiang will issue paychecks for June on July 1, the first day of the new fiscal year. With or without a Court of Appeal ruling, it is likely that the Governor will then go to court to try to block him from issuing full paychecks for July if the state budget is not in place at that time. The argument will be that employees should only be paid the federal minimum requirement, which is \$7.25 per hour for those covered by the federal FLSA (typically Associates/ Range D and below) and \$455 per week for those who are exempt from such coverage (generally Seniors and above). They would then receive the rest of their paychecks after the Budget has passed and is signed by the Governor.



Of course PECG, which joined with the Controller in opposing the Governor’s initial lawsuit, will be back in court arguing that the court order should not take effect until the appeal process has concluded, which could involve the Supreme Court. Whether that argument will prevail is uncertain.

In summary, in most years, the Legislature is late in approving a State Budget for the fiscal

year beginning July 1, sometimes by as much as a month or two. The current court ruling is that state employees cannot receive their full paychecks until a Budget or other legislation is in place. That ruling could be enforced as early as July of this year. As there is a \$20 billion State Budget deficit and many contested issues between the Governor and the Legislature, it is highly probable that the Budget will not be passed on time.



What can be done to resolve this problem?

The simplest, most direct solution is what's called a continuous appropriations bill. Such a bill, if passed by the Legislature and signed by the Governor, would authorize state employees to receive their full paychecks, on time, even if the Legislature is late in passing a State Budget.

PECG sponsored Assembly Bill 1125, authored by Assembly Member Ed Hernandez. That bill would provide for the continuous appropriation authorization to pay state employees on time, this year and on into the future.

Under legislative rules, the bill, which was introduced last year, had to pass the Assembly by January 31. Despite efforts by PECG's leaders, legislative advocates, and more than 7,000 faxes sent from PECG members to their legislators and Assembly leadership, the bill was held in the Assembly Appropriations Committee without even coming to a vote as the January 31 deadline passed.

However, thanks to the efforts of PECG members and others, the Legislature agreed to reintroduce the bill as **Assembly Bill 1699**, again authored by Assembly Member Hernandez. That bill has a later deadline and could still be passed by the

Legislature and signed by the Governor this spring. At some point in the coming weeks, PECG will probably again be asking the members to contact their legislators to urge their approval of AB 1699 as it works its way through the committee and legislative process.

There are a lot of "ifs" and uncertainties on this issue. Will the Court of Appeal act before July 1 and, if so, will they uphold or reverse the Superior Court ruling blocking issuance of full paychecks to state employees? Will the Controller be allowed to continue to issue paychecks despite any court ruling, or will he be blocked from doing so? Will AB 1699 be passed by the Legislature and signed by the Governor to eliminate this problem this year and in future years? In the most unlikely scenario, will the Legislature actually pass a Budget bill on time, in effect deferring this problem until next year?

It should be kept in mind that the issue is not whether state employees will ultimately be paid their full salaries, which they will. The issue is whether a small part of the salary will be paid on time, with the rest later, if the Legislature and Governor fail to carry out their Constitutional responsibilities to pass a Budget.

Be assured that PECG is doing everything we can to take effective action, in the courts and in the Legislature, to ensure that you get paid, in full and on time, for the work you perform. We may be calling on the membership to assist in our efforts through legislative contacts and other activities. In the meantime, as always, the PECG leadership appreciates the continued support of the members during these difficult economic times. ■

