



INFORMER

#4, March 2009

Professional Engineers in California Government

Furlough Fridays and Other Foolishness



"Furlough Fridays" came suddenly and ended almost as quickly. The Governor's December 16 Executive Order instructed DPA to implement a furlough program of two days per month. DPA ordered employees to stay home the first and third Fridays of each month. After much confusion and media coverage, Furlough Fridays were canceled after March 6. Instead, employees will be docked two days per month and will accumulate that amount of leave time to be used some time before July 2012.

SEIU Local 1000, which represents nine state bargaining units, reached a tentative agreement with DPA to reduce the furlough days to one day per month, although they inadvertently applied it to 15,000 employees who work for Constitutional Officers who had been, up to that point, exempt from furloughs. This may become irrelevant after a Court ruled that employees of Constitutional Officers are covered by furloughs as well.

The furloughs make no sense for PECG-represented employees. 95% of them are paid through Special Funds, so cutting their pay didn't address or relieve the \$42 billion General Fund Budget deficit. However, employees were told to stay home at a time when federal economic stimulus dollars are on their way to states which have projects ready for construction. Eliminating the Furlough Fridays and allowing employees to defer taking the time off until years from now may relieve those project delivery concerns.

PECG filed suit, challenging the Governor's authority to reduce work hours and cut pay of employees without going to the Bargaining table. The initial Court ruling upheld the Executive Order imposing furloughs, but it is now under appeal. **PECG has also filed a grievance**, alleging that the furloughs violate the provisions of the Unit 9 MOU which are still in effect. The grievance will eventually be resolved by a neutral arbitrator.

In the meantime, it appears that DPA is willing to reduce the furloughs to one day per month for any bargaining unit that is willing to sign off on accepting the furlough. PECG's Bargaining Team is analyzing this alternative, which SEIU and perhaps others have agreed to.

The situation is even more confusing for Supervisors, who typically don't qualify for overtime. DPA acknowledged that on weeks with Furlough Fridays, Supervisors are no longer exempt from the federal law requiring time and a half for overtime and would have to be paid for all hours worked during those weeks. Now that there are no Furlough Fridays but their pay is still being reduced as if there were, it is not at all clear who should get paid for what.

The furloughs were a poorly conceived and sloppily implemented attempt to save the state money by reducing pay without legislation or negotiations. In many cases, it has cost the state more money than it saved through the reduced salaries.

In addition to filing a lawsuit and a grievance, **PECG has proposed alternative ways for the state to save the money.** One would be to **reduce outsourcing** of engineering and related services, which costs twice as much as using state employees. Another would be to offer a **retirement incentive** so higher paid or senior employees could be replaced by new hires at much lower salaries, also saving the state money while creating jobs.

PECG will attempt to reach some agreement with DPA to address the furlough/pay reduction problem but is prepared to continue with the lawsuit and the grievance arbitration if necessary.

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The State Budget Fix



On February 20, after months of wrestling with the issue, the Legislature passed and the Governor signed a package of program cuts, tax increases, and borrowing to address the \$42 billion General Fund Budget deficit, which caused state government to run out of money. Prior to this package of bills which has now become law, state vendors were going unpaid, contractors were on the verge of being ordered to halt construction projects, the state couldn't borrow money or sell bonds, income tax refunds were being delayed, and, in general, the state was unable to pay its bills.

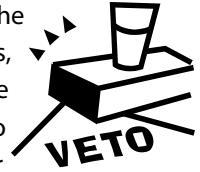
The bills include a new State Budget for the remainder of this current fiscal year as well as the 2009-10 year which begins on July 1. However, the problems are far from over.

The budget solution depends on a variety of factors, not the least of which is voter approval of some of the loans in a May 19 Special Election. For example, about \$5 billion of the package depends on voter approval of borrowing money against future lottery proceeds. Also,

Legislative Analyst Mac Taylor already projects that the state revenue will be about \$8 billion less than projected, depending on the severity, depth, and duration of the ongoing economic recession. Thus, the Legislature and Governor may be faced with further budget difficulties in the coming months.

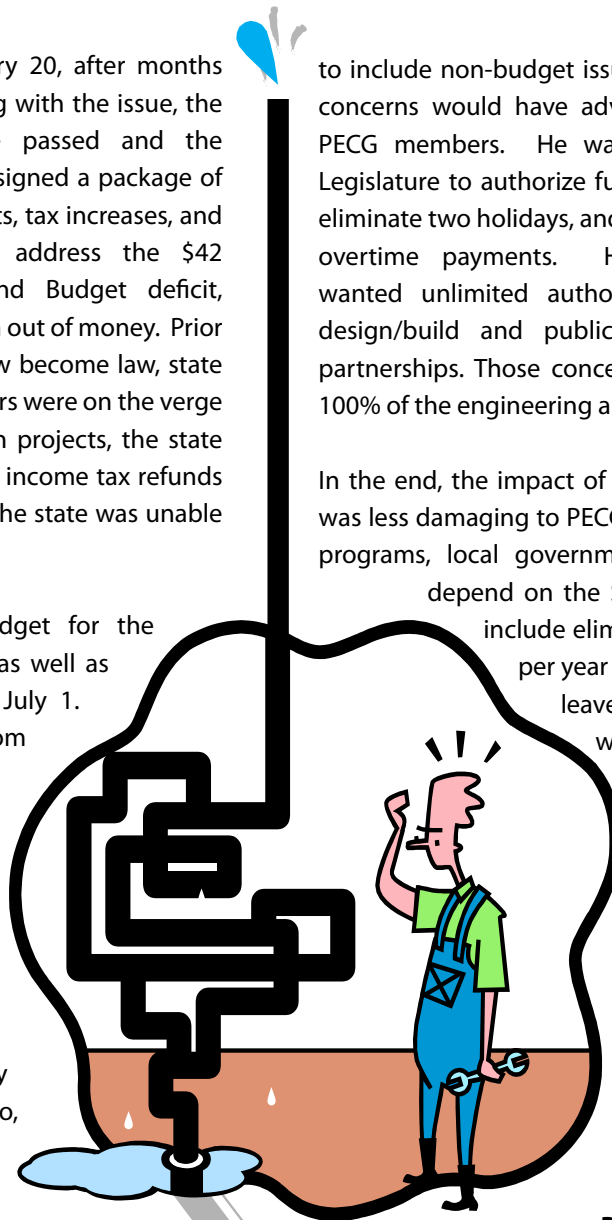
In December, the Legislature passed a package of bills (taxes, cuts, debt, and borrowing) and sent them to the Governor. He vetoed the entire package, not because he disagreed with those elements, but because he wanted it

to include non-budget issues. Ironically, all of his concerns would have adversely affected PEGC members. He wanted the Legislature to authorize furloughs, eliminate two holidays, and reduce overtime payments. He also wanted unlimited authority for design/build and public-private partnerships. Those concepts typically outsource 100% of the engineering and related workload.



In the end, the impact of the \$42 billion solution was less damaging to PEGC than to schools, social programs, local governments, and others who depend on the State Budget. The bills include elimination of two holidays per year and stops allowing paid leave to be counted as time worked toward overtime, but both topics can be modified at the bargaining table. The package contains no authorization for furloughs, meaning that PEGC's lawsuit and grievance are not affected.

In a major victory for PEGC, the bills which authorize design/build and public-private partnerships on highway projects require Caltrans to perform most of the engineering work in project development and construction inspection. As PEGC members have been excluded from working on those types of projects in the past, this ensures that the public and the taxpayer will be better served than has previously been the case.





Late Budget, Late Paychecks?

For many years, a potential problem for all state employees has been the impact on state paychecks if the Legislature is late in developing a State budget for the upcoming fiscal year. The annual Budget bill is a spending authorization.



When the Legislature and Governor miss the June 30 deadline for passing and signing a State Budget for the upcoming fiscal year beginning on July

1, many state vendors don't get paid until after the Budget is passed because there is no authorization to pay them. Every State Controller, from Gray Davis through John Chiang, has issued full paychecks to state employees on time, with or without a State Budget.

However, this has become the subject of a legal challenge by taxpayer groups and others with nothing better to do. The issue isn't whether state employees will ultimately receive their full paychecks – everyone agrees they will. The question is whether state employees will get paid the federal minimum wage in the absence of a State Budget and receive the rest of their salary after the Budget passes, which didn't occur last year until September.

A Sacramento Superior Court recently ruled that the Controller is prohibited from issuing the full paychecks if the Budget is late. While the decision may be stayed (delayed) while the case is being appealed, the issue is finally staring us in the face. While it may not be a concern this year – the package of bills passed by the Legislature and signed by the Governor

in February is a Budget through June 2010 – the time to resolve the problem is now.

The solution is not complicated. It would require the Legislature and the Governor to enact a **continuous appropriation** law which would provide that state employees would be paid their full salaries on time, whether or not the Legislature does its job by passing a State Budget within the Constitutional deadlines.

Assembly bill 1125 (Hernandez) is the continuous appropriation bill which is being sponsored by PECG and other organizations representing state employees. It is a high priority bill for this legislative session.

There is no reason why state employees who do their jobs and deliver their work on time should have their paychecks delayed because the Legislature and Governor don't pass the Budget on time. AB 1125, the continuous appropriation bill, is the solution to that problem.



Caltrans Director Will Kempton, left, shown here with PECG President Mark Sheahan, was the dinner speaker at the PECG Board of Directors meeting in March. Director Kempton discussed a wide range of topics, including the transportation program, funding, furloughs, compensation, and his continuing appreciation for the outstanding work performed by the department's employees.



There's a New Sheriff in Town

"We will stop outsourcing services that should be performed by the government."

"Inherently governmental activities should be performed by government employees."

"We will eliminate the no bid contracts that have wasted billions."

We will "reform our broken system of government contracting."

The above quotes read like something from the PEGC policy file. Actually, those are direct quotes from President Obama, either spoken or written by him during the past few weeks.

For decades, a series of federal Administrations have supported outsourcing of government services at the federal level and encouraged states to do the same. They have mandated that engineering contracts be awarded at the federal and state levels without competitive bidding. They have turned a blind eye to states and local agencies wasting billions of federal dollars through overpriced no-bid contracts on federally funded projects. In recent years, the federal government has encouraged design/build and public-private partnerships, no matter how wasteful or contrary to the public interest they may be.

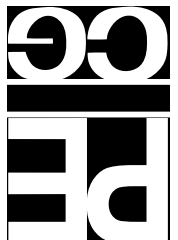
Now, suddenly and dramatically, it appears this will change. For the first time in decades, a President is calling for the end to wasteful, no-bid contracts and a return to having government activities performed by government employees, rather than outsourcing them.

PEGC has been working with a coalition of unions representing state transportation department employees for many years. Called the National Association of State Highway and Transportation Unions, NASHTU, the organization has focused its efforts in Washington D.C. on federal legislation and regulations regarding outsourcing and federal funding. PEGC will seek to work with the Obama Administration and Congressional leaders to pursue practical implementation of the President's anti-outsourcing statements and policies.

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